FAMILY SUPPORT FORUM

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Remembering IFSEA Members

Michele Nevins, an active member of IFSEA, died unexpectedly, Saturday, May 19, 2007. Michele was a Supervisor for HFS, Child Support Enforcement's Centralized Accounting Unit. Michele was a frequent panel member at the Annual IFSEA Conference, speaking on diverse accounting and collections topics. Her fun loving attitude and easy laughter always captivated her audience.

Michele will be remembered as someone who contributed generously to our organization and one who always had time to help others. She is survived by her husband Gary and three children.

Lesley R. Zegart, "Les", died on May 2, 2007 at Provena St. Joseph Medical Center result of a short illness. He was 64 years old. He was a veteran of the United States Air Force and has been interred in the Abraham Lincoln National Cemetery at Elwood. He is predeceased by his son, Jacob, and his father, Bernard. He is survived by his mother, Esther, his brothers, Joel and Mitchell, one niece and two nephews.

He was employed in the Joliet office of the Attorney General, Public Aid Claims Bureau since 1989. He started out handling McHenry, Grundy, Livingston, Iroquois and Ford Counties. Later, he handled part or all of Will County. Prior to his tenure with the Attorney General's office he worked in private practice and the Kane County State's Attorney's office doing child support enforcement. He was a past member of the IFSEA Board of Directors.

- In This Issue -

From the President . . .

. . .IFSEA UPDATE

By Mary Morrow

The 2006-07 year for IFSEA has been a year of growth and a year of national exposure. IFSEA sent its first organizationally sponsored delegate to the National Child Support Enforcement Association's annual training conference. Christine Kovach, Past President represented our organization. Her experience allowed her to talk delegates from other states about our Illinois organization. Christine returned to Illinois with her head full of ideas to help improve Child Support in Illinois and to strengthen our IFSEA organization. At this Houston Conference, Christine and a handful of proud Illinois delegates witnessed Pamela Compton Lowry accept NCSEA's 2006 "Most Improved Program" for Illinois. This positive feedback leads me to encourage the Board of Directors to continue sending delegates to national events whenever possible.

IFSEA's Annual Training Conference was held in mid October in Chicago. To continue with our endeavor to bring Illinois exposure at the national level, this year's conference with the help of generous sponsors, featured Margot Bean, Director of the Federal Office of Child Support Enforcement, as the keynote speaker. We also welcomed other nationally recognized authorities on Child Support as speakers at the conference. Of note are Elaine Sorenson labor economist and Principal Research Associate at the Urban Institute, Phillip Strauss, nationally renowned authority on Bankruptcy Law, Linda Hudson, Business Analyst with Northrop Grumman Information Systems working as a State Technical Support Liaison on the OCSE effort to expand usage of the Federal Parent Locator Service (FPLS), Director Barry Maram, Director of Illinois Healthcare and Family Services, and our own IV-D Administrator and NCSEA Secretary, Pamela Compton Lowry. These speakers along with a host of Illinois experts on Child Support made for a top-notch conference learning experience. This year we were fortunate to have among our attendees, several Child Support workers from our neighboring states. IFSEA encourages representatives from nearby states to attend by waiving the conference fee for two representatives from each of our border states.

As IFSEA continues its involvement on the National level, we have joined NCSEA, ERICSA and other regional and national organizations to sponsor a IV-D Director's study to measure the impact the IVD program has on avoiding costs in other programs. Information from this study will help legislators and the public determine the impact that funding cuts will have on our many program partners.

As our organization continues to grow and to reach out to Child Support professionals across the state, I encourage you as a member of IFSEA, to participate in activities to broaden your knowledge of support and widen your network of Child Support colleagues.

From HFS . . .

. . .ILLINOIS IV-D UPDATE

By Pamela Compton Lowry

Greetings to my fellow IFSEA members. State child support enforcement programs are the topic of national debate in the US Congress, so this column will focus on that debate.

As you know, the Deficit Reduction Act of 2005 contained several provisions helpful to the IV-D program but also contained some deep funding cuts. Under the DRA, IV-D programs are finally authorized to use the federal offset program to collect child support arrears even after the last child on the order has emancipated. Additionally, the threshold for passport denial was reduced from $5,000 to $2,500.

The problematic provisions of the DRA include:
- Disallowing the match of state-earned incentive dollars with Federal Financial Participation (FFP).
- Imposing a $25 fee for never-TANF cases in which annual collections are $500.
- Reducing the genetic testing FFP for parentage testing from 90% to 66%.

The loss of match on re-investment of incentive dollars into the child support program will mean annual losses of millions of dollars for the State of Illinois. This creates additional budget pressure on a program that has demonstrated both performance improvement and cost effectiveness.

For now, the State of Illinois will be covering the collection fee. This policy decision was made based on a cost benefit analysis that indicated that those most likely to have to pay the fee are those with regular payments of current support. Should as few as 10% of those families opt out of the program to avoid the fee, the State would lose as much in incentive dollars as the state cost to cover the fee. The likely effect on many of these families would be a decrease in their ability to collect support once they opted out of the program.

The Child Support Protection Act of 2007 has now been introduced in both the US House and Senate to restore funding to the child support enforcement program. These bills, sponsored in the Senate by Senators Rockefeller, Cornyn, Kohl. Snow, and Coleman, and in the House by Congressmen McDermott, Emanuel, Arcuri, Stark, Levin, Lewis, Davis, Castor, Kagen, Hall and Ellison, seek to repeal the provisions that reduce federal funding for state child support programs.

For information about the progress of these bills, and more information about the effect of the DRA provisions on child support programs around the country, you may want to visit the National Child Support Enforcement Association website at www.ncsea.org.

Sincerely,

Pam

IFSEA

From the 2006 IFSEA Scholarship Winners. . .

. . .Reflections on the Conference

Diana Fields, Cook County State's Attorney's Office and Cathy Wolf, DCSE Champaign Region were recipients of the 2nd Annual IFSEA Training Conference Scholarship. Here are their impressions of the event…

Diana Fields


Mary Morrow and Diana Fields

I would like to start off by saying Thank You for choosing my essay and giving me the opportunity to attend IFSEA. I have been an employee with the Cook County State's Attorney's Office Child Support Enforcement Division for the past 10 years and I have heard the supervisors within the office talk about IFSEA and what they learned. I never thought I would have the opportunity to attend a conference because I am not a supervisor. I have to be honest and say I did not know what exactly was going to be covered at the conference or what to expect. When the conference opened and I heard Margo Bean say that the state of Illinois received an award for the most improved state in the nation I was ecstatic. My job at the State's Attorney's Office is a Custodial Parent Coordinator. Contacting employers and making sure withholding notices are sent out to employers is part of my daily responsibilities. To know that I was able to help in improving our child support system here in Illinois is very rewarding.

When I received the call saying I was the winner of the scholarship I was very surprised. I immediately ran to find my supervisor Susan Dalton to share the good news. She was very excited and said that no one from the Cook County State's Attorney's Office had ever won. To be chosen to represent on behalf of our office, was a great honor. Once at the conference, it was a great opportunity to meet other child support workers from around the state. I sat in on many different sessions and listened to what the different speakers had to say about child support. The session that was given by HFS employee Patti Litteral from Springfield was very useful. She gave out several phone numbers that are useful for me and other members of my unit. I received clarity on some other issues her unit deals with and where we can refer both custodial and non-custodial parents.

My experience at the conference was more than I expected. When I got back to work I made the suggestion that if given the opportunity in the future perhaps other members of our office may be given the opportunity to attend IFSEA. For me personally, it was a great experience to attend the conference and I hope to be able to attend another IFSEA conference in the near future. Thank you to all!!!

Cathy Wolf

Andrea Sarver and Cathy Wolf

IFSEA,
Winning the scholarship for IFSEA was just the shot of encouragement that I needed as a child support worker. The type of work that I do as a Family Support Specialist is sometimes very challenging and frustrating. I found that attending IFSEA helped me achieve a better perspective and it has given me a great reminder about the value of the type of work I do.

By attending the Collections and Enforcement Actions session, my knowledge about how my agency has been helping single parent families through alternative collection methods such as financial institution liens, passport denials, and many more was reinforced. I think these alternative methods are much more effective than just taking a cases back to court for judicial enforcement due to limited resources. I know from working with my clients that because of these new methods they are finally receiving support for the very first time.

The Hot Tips for Lawyers session was very interesting. I am not an attorney, but I wanted to hear the perspective of those who are. At this session I was able to hear the opinions of HFS attorneys, but also hear the interpretation of the law by those who are in the private sector regarding child support.

I enjoyed Seven Habits of Highly Successful People session. Some things that Norris taught I knew instinctively, others I did not. I found valuable information that I want to infuse in my professional life as well as my personal world. I found the time management matrix to be very helpful. I now also try to start each day with " the end in mind."

Last but not least was the judges' panel, which I found fascinating. I have learned from these judges that anything could happen in court. I thought it was interesting where the judges would agree on a point of law but even more interesting when they didn't and why. I think this is why I appreciate the administrative process that HFS has for establishing child support. I like that it has consistent guidelines that it is efficient and it is cost effective. I believe without it many low-income families would never have a child support order.

I would just like to express my gratitude for the privilege of attending the IFSEA conference. I would encourage anyone involved with child support to attend IFSEA and apply for the scholarship as well. It was a great way to learn more about helping Illinois families with child support enforcement.

If you or anyone you know of is interested obtaining a scholarship to attend the 2007 IFSEA Training Conference, please complete and submit the scholarship application found on page 16 of the FORUM.

From the Courthouse . .

. . .Cases and Commentary

The following is a summary of arguably support-related cases published since cases were last summarized in the FORUM – essentially almost a "Year-Plus in Review."

Direct links to slip opinions of these and other recent decisions are maintained on IFSEA's web site, www.illinoisfamilysupport.org, soon after they are released.

by Thomas P. Sweeney

Child Support Obligation Ends When Obligor's Parental Rights Terminated

Dept. of Healthcare & Family Services ex rel Stover v. Warner, 366 Ill. App. 3d 1178, 853 N.E. 2d 435 (4th Dist., 8/2/06), reversed denial of obligor's petition to vacate support orders following termination of his parental rights.

In 1996, Warner was found to be the father of Stover's two children, and ordered to pay support. In 2002, Warner's and Stover's parental rights were terminated in separate proceedings. In 2005, Warner petitioned to vacate the support obligation and recover payments made since the termination order. It was stipulated that the children remained in the custody and guardianship of DCFS since before the termination of parental rights, that adoption remained the goal but had not yet occurred. The trial court denied Warner's petition, and he appeals.

Reversed. While prior cases had concluded that termination of parental rights and adoption did not necessarily relieve a natural parent of his financial responsibilities for a child, Section 17 of the Adoption Act had since been amended to provide that "after either the entry of an order terminating parental rights or the entry of a judgment of adoption, the natural parents of a child sought to be adopted shall be relieved of all parental responsibility" for that child. The Court concluded: "Section 17 does not provide that natural parents are relieved of parental responsibility and deprived of legal rights only where their legal rights have been terminated and a specific person has expressed interest in adopting their natural child. Rather, a fair reading of the statute includes situations where a child is available for adoption, whether or not someone is actively seeking to adopt that child. . ." Here Warner's parental rights were terminated and adoption remained the goal. His support obligation was a parental responsibility, which therefore terminated.

On November 29, 2006, the Illinois Supreme Court granted DHFS's petition for review, (No. 103289).

Retroactive Modification Proper Where Obligor Failed to Report New Employment as Ordered; Support "Abatement" Governed by Limits of Supreme Court Rule 296

People ex rel. Greene v. Young, 367 Ill. App. 3d 211, 854 N.E. 2d 300 (4th Dist., 8/23/06), reversed denial of modification and enforcement of support retroactive to the date obligor obtained unreported employment.

In 1984 Robert was ordered to pay child support. Over the next five years the case was repeatedly in court to address support and his off-and-on employment. In May, 1988, an order "abated" his support, but ordered him to give written notice upon obtaining or changing employment. The order did not say payments would accrue during the "abatement." Further hearings were scheduled to review his employment search efforts. When Robert failed to appear in November, 1988, a body attachment was ordered to issue, but was later quashed on motion of the Assistant Attorney General. Nothing further occurred until June, 2004, more than three years after the child attained majority.

After her initial pleadings were denied or dismissed, Candice's amended complaint, filed in April, 2005, sought: (1) a finding of contempt for failure to report employment or pay arrearages found due in 1987, plus interest; (2) modification of support retroactive to when Robert became employed following the May, 1988 order; and (3) sanctions for failure to pay the 1987 arrearage and a bond in an amount calculated at a level of support previously ordered. The Trial Court found: (1) a contempt proceeding is not a proper way to collect support after the child has attained ma-

jority; (2) the May, 1988 order abated future support so it did not accrue after that date; and (3) no authority existed for retroactive modification or imposition of a child support obligation after the child attained majority. Candice appeals dismissal of her complaint.

Reversed and remanded. The Trial Court did have authority to abate support in May, 1988, and support could not accrue under the law in effect then. But when Supreme Court Rule 296 became effective on February 1, 1989, it provided that support could be "abated" only up to six months without further extension. Applying Supreme Court Rule 296, Robert's abatement lasted no later that August 1, 1989, since he did not seek to extend it.

Based on statements of public policy in the Parentage and Non-Support Punishment Acts the Court concluded the circuit court is not statutorily barred from imposing a retroactive child support obligation where, as in this case, the obligor was under an obligation to report new employment and failed to do so. "Our research has led us to no cases with facts similar to those present here. However, we find support for our holding in the public policy of this state in regard to a parent's duty to support his children and the fact Robert directly disregarded a court order requiring him to report any change in his employment status."

The Trial Court had also erred in denying enforcement of the support remaining due from 1987. Reversed and remanded with directions.

Justice Turner dissented. He disagreed with what amounts to a retroactive application of the accrual provisions of Supreme Court Rule 296. He further protests that Candice could cite no authority to permit retroactive modification of support after the child has attained majority, and failed to justify her 15-year delay in pursuing the matter. "Here, the majority's holding finds no support in the law, and in my view, citing public-policy considerations as a rationale for disregarding settled law does not justify the majority's action to reach a preferred result, however desirable."

Claim of Unconscionability of Settlement Agreement with Support Terms Requires Court Review Before Entry

In Re Marriage of McNeil, 367 Ill. App. 3d 676, ___ N.E. 2d ____ (2nd Dist., 9/26/06), reversed denial of a motion to reject a settlement agreement as unconscionable without an independent review by the Court.

The parties – both lawyers – were divorced in 1992. Their 1993 marital settlement agreement required Kenneth to pay child support and provide insurance for the two children. In December, 2002, Cathy filed contempt petitions, claiming Kenneth owed more than $60,000 in support and insurance costs, that he had voluntarily left a salaried legal position and willfully refused to obtain appropriate employment. In August, 2003, Cathy also petitioned to modify the dissolution judgment with regard to custody and insurance obligations.

On August 4, 2005, the parties appeared in Court and testified to a settlement agreement. Kenneth, now employed in the domestic relations law firm of Nadler, Pritikin & Mirabelli, was represented at that hearing by none other than Enrico Mirabelli. The parties testified to their agreement that (1) Kenneth's failure to pay was not contempt and the rule would be discharged, (2) his support obligation was modified to $1,100 per month; (3) joint custody remained in effect with some revisions; (4) his past-due support plus interest totaled $42,700; and (5) he would pay $12,700 immediately and $6,000 per year on that arrearage. After confirming that this was his agreement, the Court accepted the agreement with a written order to be entered. A check for $12,700 was paid to Carhy drawn on the law firm account.

In December Cathy presented a written order for entry. At a hearing on her request for its entry Kenneth objected to the proposed order as unconscionable, that he had already found he could not comply with the payment terms agreed to. Since the written order did conform to the agreement testified to on August 4, the Court refused to hear evidence on Kenneth's claim of unconscionability, and entered the order *nunc pro tunc* to that date. Kenneth appealed.

Within another few months Kenneth was found in contempt for failure to comply with the August 4 order. He appeals this, too.

Reversed and remanded. Section 502 (b) of the IMDMA anticipates that a court will consider the unconscionability of a settlement agreement upon motion of one of the parties. Thus, failure to address the merits of Kenneth's claim was error. The inquiry into unconscionability requires the Court to consider (1) the conditions under which the agreement was made, and (2) the parties' economic circumstances resulting from the agreement. Here, even if the Court arguably considered the first factor, it did not consider the second. Reversed and remanded with directions to determine whether the settlement agreement is unconscionable and not in the children's best interests. In light of the conclusion that the

settlement agreement was improperly, "or at least prematurely," entered, the contempt findings were also reversed.

Compliance With Responding State URESA Order Provides Equitable Estoppel Defense to Arrearage Claim Under Original Order

Babcock v. Martinez, 368 Ill. App. 3d 130, 857 N.E. 2d 911 (4th Dist., 10/23/06), reversed a support arrearage finding as barred by the defense of equitable estoppel.

In their 1987 Cook County divorce Ricardo was order to pay child support defined as a percentage of his net income. After he moved to Kansas, Linda sought enforcement through a URESA petition. In 1988 the Kansas court first ordered Ricardo to pay $200 per month on that obligation, then increased it to $300 per month. That support was paid reliably through income withholding.

Sixteen years later Linda sought enrollment and modification of the Cook County order in Macon County, including college expenses for one of the children plus accrued arrearages. Ricardo sought summary judgment, asserting that the Cook County order was invalid because it called for a percent of income, and that he had fully complied with the only valid order – the one entered in Kansas. Finding that the Kansas order had not superseded the Illinois order, the Court entered summary judgment for Linda, and found an arrearage of more than $92,000 had accrued. Ricardo appeals.

Though ultimately ruling in Ricardo's favor, the Appellate Court first rejected his assertions that the Cook County order was invalid or that the Kansas order nullified or modified the Cook County order. Though not proper, percent of income orders are enforceable. The Kansas RURESA includes an antisupersession provision that says any order entered as a responding state does not nullify or modify any other order entered by another jurisdiction unless specifically ordered. "Because the record does not indicate that the Kansas orders specifically nullify the previous support order, we hold Linda is entitled to recover any arrearages due based upon the 1987 Cook County support order."

The Court also rejected Ricardo's argument that Linda's failure to respond to Requests to Admit must result in a finding he owed no arrearage. While an assertion of what he had paid is a factual matter that could be subject of a Request to Admit, an assertion that he owed no arrearage or a specified amount was a matter for legal determination which cannot be deemed admitted by failure to respond.

However, under the facts of this case the doctrine of equitable estoppel bars Linda's claim to enforce the Cook County order. Unlike the many cases where equitable estoppel has been rejected, Ricardo could reasonably believe that the change in his support obligation was approved by the Court, since it was ordered by the Kansas Court.

> "In particular, the facts of this case strongly suggest the application of the doctrine. For nearly 17 years, Ricardo regularly paid $300 per month in child support via automatic deduction from his paychecks and annual income tax refunds. For 17 years, Linda accepted the $300 per month from Ricardo without protest. The $300 amount was not determined by a private agreement but was ordered by a court of law. Whether the Kansas court had the authority to prospectively reduce Ricardo's child-support amount is irrelevant for the purposes of this particular argument. By sitting idly by for 17 years (until both children had, or almost had, reached majority), Linda induced Ricardo to rely, to his detriment, on the assumption that he was satisfying his child-support obligation. Further, Ricardo's reliance on Linda's inaction was reasonable in light of the fact that the support amount was determined by a court order. Ricardo had no reason to believe he was somehow evading his responsibility by complying with the Kansas support order."

The Court finally rejected Ricardo's objections to the evidence upon which the Court entered judgment for more than $8,000 in unpaid medical bills. Finding Linda's enforcement action was otherwise barred by equitable estoppel, the summary judgment granted Linda was vacated and the cause was remanded for entry of orders recalculating Ricardo's support obligation under the Cook County order, and for reimbursement of medical costs, but with directions to find no arrearage.

The moral of the story – maybe too late to be of much use: Obligees who have sought enforcement of existing support orders through interstate means -- particularly under RURESA – should be advised not to accept without protest when the respondent state enters terms inconsistent with their prior orders.

Ruling on Maintenance Issue Not Final, Appealable Without S. Ct. Rule 304 (a) Finding When Support Modification Issues Unresolved

In Re Marriage of Gaudio, 368 Ill. App. 3d 153, 857 N.E. 2d 332 (4th Dist., 10/23/06), dismissed appeal of a denied maintenance modification for lack of jurisdiction.

The Marital Settlement Agreement incorporated in the parties' 2000 divorce provided that Dennis was to pay Susan unallocated maintenance and support of $8,000 per month until June 15, 2005, after which only child support but no maintenance shall be due. In May, 2005, Dennis petitioned to determine child support for the one remaining minor child. On June 15, 2005, Susan petitioned to set support for the minor child and for post-majority educational expenses for the older one.

On September 25, 2005, the court entered an order that, "until this case is determined by the court, the prior order concerning unallocated support and maintenance shall continue without prejudice to either par-ty." *(Query: what should Dennis be paying at this point, since maintenance ended per the prior order two months earlier?)*

On October 4, 2005, Susan petitioned for the Court to award her permanent maintenance. Hearing was held on all pending matters the next day. At that time Susan's maintenance petition was dismissed on the basis she had waived maintenance beyond June 15, 2005. No decision was reached on the other support and educational expense issues, the matter being continued to January, 2006. *(Again, what should Dennis then be paying?)* Apparently the Court did decide the remaining child support issues some time in March, 2006, which Susan sought to appeal in April. However, on November 1, 2005, Susan appealed the denial of her maintenance petition, and the Appellate Court refused to consolidate this appeal with the later one.

Appeal dismissed for lack of jurisdiction. In post-dissolution matters, regardless how the issues are raised (in a single petition versus separate petitions), if an order finally resolves a separate claim but leaves other claims pending, the trial court must make a Rule 304(a) finding before the order is appealable. Susan's November 1, 2005, notice of appeal was premature because other matters remained pending, and the trial court did not make a Rule 304(a) finding. A premature notice of appeal does not confer jurisdiction on the appellate court. However, this ruling does not affect the Court's ability to address the issues in the later appeal.

Support Arrearages from First Marriage Accrued During Second Marriage are Not Marital Property of Second Marriage; Recovered Attorney's Fees Are

In Re Marriage of Edwards, 369 Ill. App. 3d 1035, ___ N.E. 2d ____ (5th Dist., No. 5-06-0046, 11/29/06), answered questions raised in an interlocutory appeal, partially affirmed and partially reversed trial court denial of objections to interrogatories in a marriage dissolution dispute.

In their 2005 divorce the parties agreed to reserve determination of the nature and disposition of child support arrearages and attorney's fees owing to the petitioner from her first husband. In response to interrogatories about the arrearages and attorney's fees coming from purge orders entered against petitioner's first husband the petitioner objected neither was marital property of the second marriage. The trial court denied the objections, concluding both were marital property. This interlocutory appeal certified the questions whether child support or attorney's fees are marital property subject to discovery and division.

The Appellate Court held the child support from the prior marriage is not marital property, but attorney's fees recovered in the enforcement proceedings were. The Court agreed with petitioner's position that the "source-of-funds" rule applied to child support, rendering it non-marital since petitioner's right to it accrued prior to the current marriage. Rejected was respondent's position that rights to the support payments that came due during the current marriage accrued during the latter marriage. The attorney's fees recovered, initially paid from the marital estate, are properly classified as marital property.

Father's Name on Birth Certificate is Evidence of Paternity Acknowledgment; Registry with Putative Father Registry Not Required for Standing to Oppose Adoption

In Re Petition of Reyes, 369 Ill. App. 3d 150, ___ N.E. 2d ____ (1st Dist., No. 1-06-1534, 12/8/06), reversed termination of a natural father's parental rights for failure to register with the Putative Father Registry.

Jose Coral is the natural father of a child born to Anna Reyes. When she and her current husband sought to adopt the child they sought termination of Jose's parental rights on the grounds he had not registered with the Putative Father Registry. Despite

evidence he was named on the child's birth certificate, the Court terminated his rights solely for that reason, without any further evidentiary hearing. Jose appeals.

Reversed. The Adoption Act requires that consents to adoption are required from parents unless they are found unfit or have waived their rights by failing to file with the Putative Father Registry within 30 days of the child's birth. However, registry with the Putative Father Registry is not required of a man adjudicated or formally acknowledged to be the child's father. The Vital Records Act provides that where a child is born to parents who are not married, his name may appear on the birth certificate only if the parties have both signed the acknowledgment of paternity. Since Jose's name is on the birth certificate, that is sufficient evidence that he is the acknowledged father of the child. Thus his consent to adoption is required without any need to register with the Putative Father Registry. Thus the order termination Jose's parental rights is reversed, and the matter remanded with instructions to hold a fitness hearing to establish by clear and convincing evidence if Jose is otherwise unfit.

$1,172,100Penalty Against Employer for Failure to Withhold Child Support, is Unconstitutional as Applied

In Re Marriage of Miller, 369 Ill. App. 3d 46, ___ N.E. 2d ____ (1st Dist., No. 1-05-0243, 12/12/06), reversed imposition of a $1,172.100 penalty against an employer for failure to withhold and send child support payments pursuant to a notice to withhold.

In Harold and Lenora's 2001 divorce Harold was ordered to pay $82 per week in child support. A Notice to Withhold was served on his employer, H.R. Miller, Sr. After a warning letter was ignored, Lenora filed a complaint against H.R. Miller Sr. in March, 2002, seeking the $100 per day penalty for 35 weeks of payments allegedly withheld but not sent in a timely manner. H.R. claimed the penalty provision was unconstitutional as applied in his case. The court rejected H.R.'s claim of unconstitutionality.

In October, 2004, the parties stipulated that H.R. had withheld but not forwarded 128 weeks of support since Lenora had filed her complaint, and that imposition of the penalty would amount to $1,172,100. Judgment was entered against H.R., and he appealed.

Reversed. The Court rejected H.R.'s claimed defense of laches. He did not sufficiently show how he was prejudiced by any delay by Lenora. However, the Court accepted H.R.'s argument the penalty provision was unconstitutional as applied to him because it resulted in such an excessive penalty. The Court reasoned:

> "Although the legislature has broad discretion in prescribing the penalties for violations of its laws, (citation) the legislature's power to fix penalties is subject to the requirements of due process. (Citation) A statutory penalty will survive a substantive due process challenge if it bears a rational relationship to a legitimate government purpose. (Citations). If a penalty is grossly excessive, it does not further a legitimate government purpose and constitutes an arbitrary deprivation of property. (Citation)). Accordingly, the due process clause prohibits the legislature from imposing a statutorily created civil penalty 'so severe and oppressive as to be wholly disproportioned to the offense and obviously unreasonable'."

On its face, the $100-per-day penalty provision rationally advances the State's legitimate interest in encouraging the prompt payment of child support. However, the Court concluded, when compared to the other penalties provided by the legislature for similar misconduct -- such as the maximum fine of $25,000 possible under the Non-Support Punishment Act – the $1,172,100 penalty imposed in this case was unconstitutional as a denial of due process.

Judgment reversed and remanded "for further proceedings." (*But what is the trial court to do on remand – impose no penalty or pick some other number?)*

On March 28, 2007, the Illinois Supreme Court granted Lenora's and the Attorney General's petitions for leave to appeal.

Distribution from Spendthrift Trust is Income Available for Payment of Child Support and Maintenance; Specific Evidence of Inability to Pay Required to Avoid Contempt Finding, Purge Order

In Re Marriage of Sharp, 369 Ill. App. 3d 271, ___ N.E. 2d ____ (2nd Dist., No. 2-05-1233, 12/14/06), affirmed a contempt finding for failure to comply with a temporary support and maintenance order, and the underlying order.

In August, 2005, an order was entered in the parties' divorce requiring Steven to pay temporary child support and maintenance of $5,000 per month.

Except for just over $2,000 obtained through garnishment of his bank account, nothing was paid. In December, 2005, Laurie filed a contempt petition for the four months of delinquent payments, just under $18,000.

Evidence at the contempt hearing showed that Steven is the beneficiary of a spendthrift trust, and relies almost entirely on funds from that trust for his income. By its terms the trust does not permit its use for payment of maintenance and support. During the period from September into December Steven drew $31,000 from the trust, which he used to pay for rental and repair of his Porsche, a vacation, and other living expenses. In addition he borrowed $8,000 more during this period for living expenses. At the hearing he claimed his income just covered his living expenses and that the funds from the trust could not be used to pay the maintenance and support.

The trial court was not sympathetic, found him in contempt, and ordered him jailed unless he paid what was owed. (Evidence also indicated $30,000 could be drawn from the trust to satisfy the purge if necessary.) Steven appeals the contempt ruling and the propriety of the temporary order.

Affirmed. Since Steven did not provide a record of proceedings when the temporary order was entered the Appellate Court could only conclude that order was inappropriate. In the contempt proceedings Steven had the burden to present specifics as to his income and expenses to support a claim of inability to pay. His general protests of inability to pay was insufficient. And while the spendthrift trust might not be invaded through income withholding or garnishment, once the money was in his hands it was available to pay toward the support and maintenance obligation.

Claim of Non-Parentage, DNA Test Request, 12 Years After Paternity Initially Challenged, Barred by Statute of Limitations, Sanctioned as Frivolous

In Re Marriage of Thomsen, ___ Ill. App. 3d ___, ___ N.E. 2d ____ (2nd Dist., No. 2-06-0289, 1/17/07), affirmed a division of college expenses and denial of a request for DNA tests made twelve years after parentage had been determined.

The parties were divorced in 1993. David disputed the parentage of the two children, and apparently had genetic tests (HLA?) done in 1990 which showed "a 99.99% chance that respondent was the father" of the two children. Linda was granted custody of the children and David was apparently ordered to pay child support. His right to visitation was suspended as not in the best interests of the children, there having been evidence he sexually abused the children.

In 2004 Linda sought a trust (alleging arrearages of $109,000) and contribution towards college expenses of one of the children. The trial court ordered David to pay half the college expenses, but ruled the name of the college should not be disclosed to him. He appealed and lost.

David sought DNA tests to challenge again his paternity, arguing improvements in the reliability of genetic testing since 1990 justified his request for new testing. Linda moved to dismiss, citing the statute of limitations against petitions to establish non-parentage. David failed to respond, and Linda's motion was granted. The Appellate Court affirmed, first because David failed to present facts sufficient to overcome the statute of limitations defense. Secondly it was clear from his efforts to dispute paternity as far back as 1990 that he had had "knowledge of relevant facts" well beyond any applicable limitation period. Because the trial court had found his request to be "frivolous," imposition of sanctions under Supreme Court Rule 137 was affirmed as appropriate.

Supreme Court Rules: Failure to Timely File With Putative Father Registry Does Not Bar Action to Establish Parentage

J.S.A v. M.H., ___ Ill. 2d ___, ___ N.E. 2d ___ (No. 101697, 2/1/07) vacated the decision of the Third District Appellate Court finding the alleged natural father of a child was barred from seeking to establish parentage because he had failed to register with the Putative Father Registry.

In January, 1996, M.H. gave birth to a child. At that time both she and J.S.A., subsequently shown by DNA tests to be the child's father, were married to other people. In 1999 J.S.A. filed a petition to establish parentage and later to intervene in adoption proceedings subsequently filed by M.H. and her husband. The trial court initially ordered a "best interests" hearing before proceeding with new DNA tests for M.H. and J.S.A., but the Appellate Court reversed that ruling. On remand, DNA tests were ordered for M.H.'s husband, adoption proceedings were stayed pending those results, and J.S.A was determined to be the child's biological father when M.H.'s husband refused to take the DNA tests. All the while there were motions pending by M.H. and her husband to reconsider denial of their motions to dismiss J.S.A. from the adoption proceedings and enjoin his parentage action because he had failed to

register with the Putative Father Registry. When the trial court denied all those motions M.H. and her husband filed an interlocutory appeal.

In ***J.S.A v. M.H.,*** 361 Ill. App. 3d 745, 841 N.E. 2d 983 (3rd Dist., 10/28/05), the Appellate Court dismissed the interlocutory appeal for lack of jurisdiction and vacated prior rulings. The Court concluded that the plain language of Section 12.1 of the Adoption Act unequivocally states that failure to register with the Putative Father Registry bars a putative father from "thereafter bringing or maintaining *any action* to assert any interest in the child." This requirement must be satisfied before the 20-year limitation of the Parentage Act applies. Because J.S.A. was barred from pursuing a parentage action, all prior orders in the parentage action were held to be void, and the Appellate Court's prior rulings were vacated.

The Supreme Court disagreed. J.S.A. had filed his petition to establish parentage before M.H. and her husband filed a petition to adopt the child. The language of the Parentage Act is clear and unambiguous that he could seek to do so within 20 years of the child's birth, even if another man might be presumed to be the father. Looking at the Parentage Act as a whole, it is clear J.S.A. filed a valid petition to establish his parent-child relationship.

The stated public policy behind the Parentage Act is to establish a statutory scheme to determine who is the parent of a child, and toward that end the legislature included a long statute of limitations. "In contrast, the legislature has explicitly stated that the purpose of the Putative Father Registry is to 'determin(e) the identity and location of a putative father of a minor child who is, or is expected to be, the subject of an adoption proceeding, in order to provide notice of such proceeding to the putative father'." Only a short term window of opportunity is provided. But the Putative Father Registry provisions state that they apply only where an adoption is pending or expected. The language of the statutes makes clear that each has a separate and distinct purpose. "We find that not only are the specific facts which trigger the application of the Putative Father Registry provisions nonexistent in the matter before us, but also that the specific purpose of the Putative Father Registry is not furthered by requiring J.S.A. to comply with its provisions." Here it is obvious J.S.A filed his petition first, when no adoption proceedings were pending or expected, and M.H. and her husband's adoption petition was filed only to thwart his action.

"In sum, the plain language of both the Parentage Act and the Putative Father Registry provides no indication that the Putative Father Registry provisions were intended by the General Assembly to apply to filings under the Parentage Act when there is no adoption action pending or contemplated at the time a parentage petition is filed." Appellate Court dismissal vacated, cause remanded for consideration of the interlocutory issue presented, and prior rulings reinstated.

Credit for Support Payments Directly to Former Spouse Improper When Ordered To be Paid to State

In Re Marriage of Paredes, ___ Ill. App. 3d ___, ___ N.E. 2d ____ (1st Dist., No. 1-05-1525, 2/16/07), reversed a support arrearage determination allowing credit for payments made directly to a public aid recipient contrary to direction of the court order.

In the parties' 1990 divorce Jose was ordered to pay child support for the one child of the marriage, specifically to be paid through the Clerk to IDPA as the child was then on public aid. After the child was emancipated Jose and the department litigated the issue of arrearages. Evidence established that while Maria was a public aid recipient Jose had paid $26,075 in child support directly to her, of which she turned over only $12,570 to the department. In finding an arrearage of $19,900, the trial court gave Jose a credit against sums due for $13,505 in support paid directly to Maria which she had not turned over to the state. The Department appeals.

Reversed. Under Section 10-1 of the Public Aid Code, a recipient of public assistance is deemed to have assigned all rights to support to the department to the extent of financial assistance provided. The department is a separate entity to whom the support was owed. Thus, payments not made to the department cannot be credited. Secondly, the Court's order specified to whom the payments were to be made. To change that would require a modification of the order which only the Court could do. "To allow credit toward arrearages for such payments would undermine the function of the court to determine any change or modification in child support payments."

And (c) (*o.k., thirdly – just wanted to see if you were paying attention*), as a matter of public policy, the Court agreed with the department's argument that allowing such credit "thwarts its ability to effectively collect support because it creates an incentive for parties who owe the Department not to pay through the Clerk's office," and, "frustrates the ability of the

Department to effectively monitor the payment of support because tracing individual private payments is simply cost prohibitive."

Post-Dissolution Action to Establish Parentage
Proper in Dissolution Case, Governed by Parentage Act

In Re Marriage of Mannix and Sheetz, ___ Ill. App. 3d ___, ___ N.E. 2d ____ (1st Dist., No. 1-06-2130, 3/30/07), affirmed post-dissolution parentage determination.

The judgment of dissolution of Sheila and Daniel's marriage entered in Cook County in March, 2003, stated that the parties had one child and that the petitioner "is not now pregnant." Support was ordered for the one child. Seven months later Brian was born. The respondent ex-husband was named as father on Brian's birth certificate. Nothing was done at that time to address his parentage or support. In connection with support enforcement and modification proceedings in 2001 the Court ordered support to increase to $1,000 per month, "to continue until the younger child attains majority of complete high school."

Not until March, 2005 was it called to the court's attention that Brian had never been named in the dissolution judgment, at which time the Court advised that Brian's parentage status should be determined. Apparently still without a paternity determination, the divorce court in October, 2005, granted temporary custody of Brian to the ex-husband, Daniel.

In January, 2006, Sheila filed a petition in Lake County to determine Brian's parentage, alleging Daniel to be his father, and seeking custody and that Daniel return him to her immediately. In March, Daniel was granted leave by the Cook County divorce court to petition to establish his parentage in that cause, attaching Sheila's Lake County pleadings and her responses to a Request to Admit in which she admits he is Brian's father. Sheila moved to dismiss Daniel's petition, contending the divorce court did not have jurisdiction to determine the parentage issue as a post-dissolution matter and that the Lake County petition had priority in time of filing. Her motion was denied, and the Court determined Brian was a child born of the marriage and Daniel is his father. Sheila appeals.

Affirmed. Section 9 (a) of the Parentage Act makes clear that actions to determine parentage may be brought in other kinds of proceedings, and in any such case the provisions of the Parentage Act apply. Daniel's action applies the presumption of paternity stated in Section 5 of that Act, regarding children conceived during a marriage. And while Section 2-619 (a)(3) provides that a cause may be dismissed if there is another action already pending between the same parties for the same cause of action, that section does not make such a dismissal mandatory. In this case, particularly in light of all the judicial admissions of paternity by Sheila, the Court's determination of Daniel's parentage was appropriate

IFSEA Supports NCSEA in Funding Study

IFSEA has joined with the National Child Support Enforcement Association, the National Council of Child Support Directors, the Eastern Regional Interstate Child Support Enforcement Association, the Western Interstate Child Support Enforcement Council, and several state and county child support enforcement associations in funding a study to examine the cost structure and cost benefits of state child support enforcement programs. The supporting organizations agree that the Congress needs current data and an analysis of the impact of the funding changes on state programs. This report is intended to be used by the funding organizations to further their work to ensure the Congress is fully informed about the Child Support Enforcement Program. The funding organizations will also cooperate in the collection of data and provide input into the analysis. IFSEA will contribute $1,000 to the study.

No Word Yet on MCLE Credit

By Thomas P. Sweeney

IFSEA has yet to receive any ruling on its application for Minimum Continuing Legal Education (MCLE) accreditation for its 2006 conference on support enforcement. A decision by the MCLE Board was expected by the end of April.

At the time of the conference the MCLE Board had not yet begun accepting applications for accreditation of individual courses. At that point providers seeking accreditation were given until February 1, 2007, to file their applications. In December the MCLE Board announced a new schedule for submission of applications. Applications for programs held in October, 2006 were to be submitted in February, 2007. IFSEA's application was submitted February 5, 2007.

"We have been overwhelmed with the number of applications we have received," a representative of the MCLE Board reported. "Yours is in the top inch of about a five-inch stack of applications," he said in late-March, 2007, estimating we should have an answer in another thirty days.

Applications for individual course accreditation require submission electronically of a description and agenda for the program, along with biographies of its presenters and copies of up to 50 pages of materials representative of what was provided to attendees. The MCLE Board had originally indicated applications for accreditation were to include copies of all written materials provided to program attendees. Winnowing down the materials to a representative 50 pages was a real challenge.

In addition to an initial application fee of $50, course providers will be charged fees of $1 per credit hour approved per person. Credit hours are based on 60 minutes of course material, rounded down to quarter-hours for partial hours of sessions. IFSEA's application seeks up to 8.25 hours of credit for the entire conference, including 1.0 hour of ethics/professionalism credit, depending on the number of sessions attended by each attendee.

Attendees of the 2006 conference will be notified of the credits for which they have been approved when that information is available. IFSEA plans to seek advance accreditation for its 2007 and subsequent conferences, as soon as that application process becomes available.

NASCAR Replica Giveaway

Cat Racing donated a NASCAR licensed, 1:24 scale replica of their 2006 car - signed by their driver, Dave Blaney. This item was a 2006 IFSEA conference door prize - but it was received to late to be included at the conference. So we're having a drawing for it now. Send an email or letter by June 29th to Christine Towles - christine.towles@illinois.gov or 1018 N. Scott St, Wheaton, IL 60187. All submissions received by June 29, 2007 will be included in the drawing to be held on July 2, 2007. Make sure to include your name and daytime phone number!

Illinois Family Support Enforcement Association Board of Directors announces the 3rd annual opportunity for an IFSEA Training Conference Scholarship. IFSEA's 2007 Conference will be held October 21st –23rd, Moline, Illinois.

- The scholarship will include the conference fee and lodging for the 2007 Annual Training Conference.
- Conference registration includes all meals with the exception of dinner on Monday night.
- The Scholarship recipient will be responsible for their transportation to and from the conference.
- Applicants need not be current IFSEA members but are required to be dedicated to the improvement of family support enforcement in Illinois.

Applicant Information:

Name:	
Title:	
Agency:	
Address:	
Telephone #:	Fax #:
E-mail Address:	

For what type of child support agency do you work? Check one:

☐ IDPA ☐ Illinois Attorney General's Office ☐ State's Attorney's Office
☐ Private Attorney ☐ Other_____

Job Description – Please attach a brief description of the type of work you do.

Essay – Please tell us in one to two pages why you are interested in applying for the scholarship and how attending the IFSEA Training Conference will benefit you and your customers.

Applications must be postmarked by September 17, 2007. Please return this application and related documentation to:

Illinois Family Support Enforcement Association
Attention: Christine Towles
1018 N. Scott St.
Wheaton, IL 60187

Thank you for your application!

FAMILY SUPPORT FORUM

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2006 - 2007

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Newsletter Editor
Christine Towles
1018 N. Scott St.
Wheaton, IL 60187
Ph: 630-221-2329 Fax: 630-221-2332
e-mail: Christine.Towles@Illinois.gov

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ILLINOIS FAMILY SUPPORT ENFORCEMENT ASSOCIATION
Application for Membership / Address Correction

Please: [ ] accept my application for membership in IFSEA. [ ] correct my address as noted below.

[ ] Regular membership - please enclose $20.00 annual dues.
[ ] Subscription membership - please enclose $20.00 annual fee.
[ ] Affiliate membership - (dues to be determined by Directors upon acceptance).

Applicant's Name: _____
Position/Title: _____
Employer/Agency: _____
Office _____
City/State/Zip: _____ Office Phone: _____
Preferred Mailing Address: _____
Preferred Phone: _____ Preferred Fax: _____
E-Mail Address: _____
[ ] Send Forum to E-Mail Address

Is this a [ ] New Application [ ] Renewal [ ] Address Correction ONLY?
Please return with dues to: IFSEA, 1018 N. Scott St., Wheaton, IL 60187

(FEIN: 37-1274237)

(1/05)

SAVE THE DATE!

This year's IFSEA conference is going to be held at Stoney Creek Inn, Moline, IL October 21-23, 2007. More information in the next IFSEA Forum.

Illinois Family Support
Enforcement Association
1018 N. Scott St.
Wheaton, IL 60187

Is Your Address Correct?
See Reverse to Correct.