2024-25 SUMMARY OF ILLINOIS DIVORCE AND FAMILY LAW CASES

A Review of Critical Cases Developing our Caselaw

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New Bills and Laws to Note for 2024-25.

Senate Bill 27. Amends the Illinois Marriage and Dissolution of Marriage Act. Defines "child" for purposes of child support to include any child under age 18 and any child over the age of 18 **who has not attained age 19** and is still attending high school (instead of any child under age 18 and any child **age 19 or younger** who is still attending high school). Effective immediately.

Public Act 103-0785 prohibits discrimination based on reproductive health decisions in employment, housing, financial credit, and public accommodations. The law clarifies and extends existing protections in the Illinois Human Rights Act, ensuring Illinoisans have the right to make reproductive health decisions without discrimination.

2nd Technical Corrections Act–Pub. Act 103-967 (eff. Jan. 1, 2025). Highlights include:

- **It's Far Harder to Impute Income.** Adds criteria for determining child support if a parent is unemployed or underemployed: 11-plus factors.
  - Allows a court to impute income to a party only upon conducting an evidentiary hearing or agreement of the parties.
  - Key language at 3.2b: "The court may impute income to a party only upon conducting an evidentiary hearing or by agreement of the parties. Imputation of income **shall** be accompanied by **specific written findings** identifying the basis or bases for imputation using these factors."
  - Provides that incarceration shall not be considered voluntary unemployment for child support purposes in establishing or modifying child support.

- **Relocation Definition: Shortest Distance Using Surface Road Miles**. This change specifies that an internet mapping service shall measure the mileage using surface roads. If the internet mapping service offers alternative routes, the alternative route with the shortest distance shall be used.
- **Parenting Plans as Judgments / Effect of Dismissal**. Provides that if the underlying action in which the parenting plan or allocation judgment is approved or entered by the court and the underlying action is subsequently dismissed, the parenting plan or allocation judgment is void and unenforceable. Provides that a parenting plan or allocation judgment, once approved or entered by the court, is considered final for purposes of modification or appeal so long as the underlying action is pending.
- **Parental Responsibly Cases and Court-Ordered Counseling.** If the court orders the parties to participate in family or individual counseling, the counseling is subject to the Mental Health and Developmental Disabilities Confidentiality Act and the federal Health Insurance Portability and Accountability Act of 1996.
    - Removes the language providing that, if counseling is ordered, all counseling sessions are confidential, and the communications in counseling shall not be used in any manner in litigation nor relied upon by an expert appointed by the court or retained by a party.
- **Abating Maintenance During Imprisonment.** Deletes the automatic provision abating maintenance during imprisonment.

Maintenance Termination

Culm

Maintenance Termination Due to De-Facto Marriage-Like Relationship / Resident, continuing conjugal cohabitation–not proven

✓✓§ 17-2[m] Termination of Maintenance on Account of Nonmarital "Cohabitation"

✓§ 17-2[m][2][C] Economic Impact of Relationship

✓§ 17-2[m][3] The Maintenance Termination "Factors"

✓§ 17-2[m][3][B] Length and Continuous Nature of Relationship

✓§ 17-2[m][3][C] Amount of Time Spent Together

§ 17-2[m][3][D] Nature of Joint Activities

✓§ 17-2[m][3][E] Interrelationship of Personal Affairs including Finances [and Future Planning]

§ 17-2[m][3][F] Whether the Couple Vacationed and Spent Holidays together

§ 17-2[m][3][G] Totality of the Evidence Including Exchange of Rings

§ 17-2[m][4] Separate Residences

In re Marriage of Culm, 2025 IL App (1st) 240
No *de facto* marriage-like relationship existed that was intimate and relatively long-term but not consistent or monogamous. Family members had very little involvement, and there was almost no financial commingling. This case creates the "intimate and exclusive relationship" test in measuring the length of the relationship. It also introduces "future planning" as a subset of factor 4, stating that a "*De facto* relationship typically involves planning to be together permanently." Weighed against that is whether the couple attempted to hide the nature of their relationship. There was no evidence of the same in this case.

Miller

Maintenance Termination Due to De-Facto Marriage-Like Relationship / Resident, continuing conjugal cohabitation–not proven

We now have the 2015 Second District decision and the 2024 Third District *Miller* decision involving different Miller families. The recent *Miller* decision reversed the trial court's refusal to terminate maintenance in a family-involvement case (the most decisive factor), where there were separate residences and a 3-year relationship. The January 2024 *Saunders* case similarly reversed the trial court. Like four of the other five most recent cases, the result was ultimately a denial of termination (here, the boyfriend married someone else less than two months after the relationship's breakup). Similarly, in *Larsen,* there was a directed verdict where there was no financial or commercial relationship. (No joint financial accounts were emphasized, including no loans taken out for one another and no contribution toward the former wife's mortgage). The fourth appellate court case for which the result on appeal was that maintenance was not terminated is the First District's *Edson* decision. It involved a close case where there were separate residences (the couple could readily part ways with no more than a call or a text). Recall that the appellate court affirmed the denial of maintenance termination in the First District's decisions in *Edson* and *Larsen*. In each of these 2023 denials, the boyfriend did not have free access to the former wife's house, no belongings were stored at each other's house, and the couple did not share any financial accounts.

In re Marriage of Culm, 2025 IL App (1st) 240. Reversed granting. ✓ **Denial**
In re Marriage of Tammie & Douglas Miller, 2024 IL App (3d) 230098 (03/20/24) ✓ Reversed denying.
In re Marriage of Saunders, 2024 IL App (3d) 230151 (01/09/2024)✓ Reversed granting. Denial.
In re Marriage of Larsen, 2023 IL App (1st) 230212 (12/29/2023)✓ Affirmed denial. Denial.
In re Marriage of Edson, 2023 IL App (1st) 230236 (06/20/2023) ✓ Affirmed denial. Denial.

We include comprehensive references to the spreadsheet that delineates the caselaw breakdown. We analyze each post-*Sappington* appellate court decision consistent with the caselaw-driven non-exclusive factors.

Of these five cases, the result following appeal was a termination of maintenance in only one case (the 2024 *Miller* decision, as opposed to the 2025 2nd District *Miller* decision involving

Lorena and Jeffrey Miller).

Mowen

Mowen v. Kelly, 2025 IL App (4th) 240906 (2/11/25)

✓✓ § 16-8 Entry of Judgment and Termination of Benefits Under Wills, Trusts, Pension Plans, and Life Insurance Policies

✓✓ § 16A-8[e] Construction of Marital Settlement Agreements: Waiver Language

✓ § 8-14[b][16][C] "Divorce Judgment Waiver vs. Not Changing Beneficiary Designation in Qualified Plan."

The Plaintiff was named in his son's retirement accounts as the secondary beneficiary. The son died following a divorce that awarded the decedent/former husband his retirement accounts. Despite the divorce, the former wife remained the primary beneficiary. The decedent's son filed an action for declaratory judgment seeking a judicial determination that he was the sole payable-on-death beneficiary of his father's retirement accounts by arguing that the primary beneficiary's interest (the ex-wife's interests) in the accounts was terminated when she and the decedent divorced. The parties filed cross-motions for summary judgment, and the trial court granted the son's motion and denied the ex-wife's motion. The appellate court reversed and held that the trial court erred when it entered summary judgment for the plaintiff-son. The trial court had ruled in the son's favor because the decedent's retirement accounts were in his name. The appellate court ruled that the decedent's beneficiary designations should have been honored. The case was remanded with directions to deny the plaintiff's motion for summary judgment and grant the defendant's (ex-wife's) motion for summary judgment.

The key holding of the case was that the divorce judgment did not terminate the ex-wife's expectancy interest in the decedent's retirement accounts—because the divorce decree only awarded the decedent *ownership* of the accounts, not the beneficiary designations. The Illinois Trust Code section 605(b) that automatically terminates a former spouse's interest in a revocable trust does not apply because there was no evidence that the retirement accounts were trusts.

The elements of section 605(b), as applicable, include the requirement that a settlor execute a trust instrument or amendment thereof before the entry of the judgment of judicial termination of the marriage of the settlor. Thus, the appellate court asked, "Where is the trust instrument, or the amendment of a trust instrument, signed by the decedent as the settlor of a trust?" The appellate court noted that the beneficiary change form that was in evidence referred to the decedent as an "employee" rather than a "settlor." The appellate court concluded:

> Instead of coming forward with a trust agreement, plaintiff cites cases in which the appellate court observed that an individual retirement account (IRA) is a trust. See *In re Estate of Davis*, 225 Ill. App. 3d 998, 1006 (1992); *First National Bank of Blue Island v. Estate of Philp*, 106 Ill. App. 3d 360, 361 (1982). However, a 401(k) plan, which is governed by

> section 401 of the Internal Revenue Code of 1986 [Citation], is different from an IRA, which is governed by section 408 of the Internal Revenue Code. A group retirement plan is not an IRA, either. An IRA is "a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries," not for the benefit of a group. Absent evidence of a trust, section 605(b) of the Illinois Trust Code (760 ILCS 3/605(b) is inapplicable.

Practice tip. The divorce decree relating to a qualified plan should provide that 1) the employee spouse revokes any prior beneficiary designation and 2) the non-participant spouse further waives any such beneficiary interest in the account(s) that she or he "may hereafter have." The appellate court also contrasted another case relied upon by the son: *Principal Mutual Life Insurance Co. v. Juntunen*, 189 Ill. App. 3d 224, 226 (1989). In that case, the MSA provided, "Each of the parties hereby releases and/or waives any interest, *beneficial* or otherwise, which he or she may have acquired in or to life insurance policy(ies) owned by the other." (Emphasis added.)

Adopt a belt-and-suspenders approach when dealing with qualified plans. First, advise your clients to change their beneficiary designations following the divorce, especially for qualified plans. Second, provide clear waiver language as recommended above.

Hyman

In re Marriage of Hy man, 2024 IL App (2d) 230352 (12/23/2024)
Note: This case is the second published appellate court decision. The first case can be found at 2023 IL App (2d) 220041 and involved a newly-discovered-asset clause.

✓ § 19-3[b] **Fees for Appeal**
§ 19-4 Factors Considered in Determining Fee Awards
✓ § 19-4[c] Time Records Must Adequately Describe Services Rendered
✓✓§ 19-4[d] Reasonable Hourly Rates Are Usual and Customary Rates Charged in Community in Which Services Are Provided
§ 19-4[m][4] Post-Leveling Contribution Award Decisions

✓ § 16-6 **Statutory Interest** (Judgments)
§ 16-6[c] Money Awards in Judgments and Marital Settlement Agreements

§ 16B-4[e] **Fraud: Excusing Diligence**: Discussion of original *Hyman* decision involving fraud determination and petition for allocation of undisclosed assets.
§ 16B-4[f] Failure to Engage in Formal Discovery

Issues on Appeal and Background.

Respondent Rachel D. Hyman appeals from the trial court's orders:
(1) granting only $10,000 of the fees that she had sought under Sections 508(a) [needlessly increasing the cost of the litigation] and (b) instead of $56,755.25 (an 82% reduction),
(2) denying her petition for fees related to her previous successful defense of Jeffrey's appeal under 508(a)(3) and 508(b) [where she sought approximately $25,000 regarding her 2023 appellate fees], and
(3) denying her request for statutory post-judgment interest following her "Petition for Allocation of Undisclosed Marital Assets."

The appellate court vacated the trial court's order and fully remanded the case for reconsideration consistent with its ruling.

Recall the newly discovered asset clause from the first appeal:

> In the event there are additional marital assets discovered not otherwise set forth in this agreement, upon disclosure/discovery of an additional marital asset, said marital asset shall be divided between the parties as follows: fifty percent (50%) to Rachel and fifty percent (50%) to Jeffrey using the greater of (a) the value of the asset at the time the property is discovered or (b) value of the asset on the date of entry of a Judgment for Dissolution of marriage.

✓ **Trial Court Level Fees**. Despite the finding of non-compliance, the trial court reduced fees based on billing records that included "literally dozens" of "vague entries" that "didn't really the subject matter" of communications; "numerous instances of more than one attorney doing the same work"; and "many instances of too much time, in the Court's judgment, being billed for certain tasks" (with several specific examples listed)."

The trial court also listed reliance "on its own knowledge and experience in determining the value of the services rendered." However, the court also enumerated a final basis for its reduction of the requested fee award:

> "The Court will note that I even went so far as to speak to people who I know who are and have been attorneys in the area of family law in this general vicinity[ ] and spoke to them about their opinion as I do sometimes in situations like this. For whatever it is worth, the various opinions I had pinned down a reasonable amount of attorneys' fees between 5- and $10,000. Like I said, my own estimate was $10,000, so that is what I went with. And that is how I applied my knowledge and experience in determining the value of the services rendered."

The appellate court stated:

> Here, the trial court explicitly stated that it sought out the opinions of unnamed "people who I know who are and have been attorneys in the

> area of family law in this general vicinity." These unnamed lawyers did not testify. Their knowledge, practical experience, opinions, and potential biases were never tested by cross-examination. The opinions of unnamed, untested acquaintances of a trial court have no place in the court's determinations, and any judgment incorporating those opinions is made in error. Thus, we must vacate the trial court's judgment as to the fee petition and remand the cause for a new hearing on the request for fees.

✓✓ **Appellate Fees**. The appellate court emphasized that section 508(b) mandates the imposition of attorney fees where the party seeking the enforcement prevails and the court finds that the other party's failure to comply was without compelling cause or justification. (Citing *Putzler*). Because the trial court had found that the former husband failed to comply without cause or justification, the trial court also erred in denying her petition for appellate fees.

✓ **Statutory Interest on Judgments**. Finally, the appellate court ruled that the trial court erred when it denied statutory interest on a portion of the property judgment per 2-1303 of the Code. The former husband argued a case that had creatively held that the underlying award of $130,196 was due to the former husband's failure to disclose stock options, making this award her 50% share after taxes and expenses. The former husband urged that the award was a judgment dissolution award and represented simply an order to pay. The appellate court disagreed.

The appellate court emphasized:

> The underlying judgment against Jeffrey was clearly a money judgment in the eyes of Jeffrey and the trial judge that granted the stay. It was a judgment that fixed and determined the amount of Jeffrey's debt to Rachel to a sum certain and finally determined the rights of the parties with respect to the stock options held at the time of the judgment for dissolution. The trial court cannot now change that reality.
>
> Ultimately, however, the trial court's attempted distinction of the judgment as a "marriage dissolution judgment" is irrelevant. In enacting the current versions of sections 12-109(a) and 12-109(b), the legislature has provided a comprehensive, all-inclusive mandate that *all* judgments shall bear postjudgment interest. See 735 ILCS 5/12-109(a), *In re Marriage of Hyman*, 2024 IL App (2d) 230352, ¶¶ 22-23.

The appellate court concluded:

> Our determination is further supported by the statutory maxim *inclusio unius est exclusio alterius* (the inclusion of one thing in a statute is construed as the exclusion of all others). See *In re Marriage of Holtorf*, 397 Ill. App. 3d 805, 810 (2010). Under this principle, "the enumeration of exceptions in a statute is construed as an exclusion of all other exceptions." *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 286 (2003). Section 12-109(b) of the Code enumerates a single exception to

> the requirement of section 12-109(a). Section 12-109(a) states "[e]very judgment *except those arising by operation of law from child support orders* shall bear interest thereon as provided in Section 2-1303." *In re Marriage of Hyman*, 2024 IL App (2d) 230352, ¶ 24

The appellate court rejected the former husband's attempt to rely on the 1980 *Finley* decision that held that interest is discretionary and not mandatory, stating: "However, in Wiszowaty, our supreme court explained that appellate courts, such as in *Polsky*, had been reading *Finley* incorrectly."

Conclusion. Thus, the plain Code language provides at 735 ILCS 5/12-109:

> (a) Every judgment except those arising by operation of law from child support orders shall bear interest thereon as provided in Section 2-1303.

Since the appellate court concluded that the underlying order constituted a judgment, it was entitled to statutory interest.

Bremel

✓✓§ 8-32 **Uniform Fraudulent Transfer Act Claims**
UFTA Cases 1) Application of Out of State Caselaw 2) Punitive Damages Allowed if accompanied by aggravated circumstances.
Bremel v. Quedas, Inc., 2024 IL App (1st) 231209 09/30/2024

I report on this UFTA case since fraudulent transfer issues can arise in our family law cases. These include:

✓ Transfers of assets to family members incident during the divorce process or as divorce planning to reduce the estate to the point when one can't be recompensed through dissipation.

✓ Similar transfers of assets to family members or insiders to avoid post-decree collection activities.

Read or be aware of this case because we also apply several so-called uniform acts with some being more uniform than others. Those *uniform* acts that we need to understand include: 1) the UIFSA and the UCCJEA; 2) the Uniform Mediation Act; 3) the Uniform Premarital Agreement Act (which is not at all uniform but has slightly different options in different states) and the UFTA. [And note that we also have the Uniform Voidable Transactions Act that has not yet been adopted in Illinois–but one that we should adopt. But the relevant provisions of the UFTA and the UVTA implicating punitive fees are the same for these purposes.]

So, with each of these Acts, we habitually focus on Illinois caselaw as persuasive while excluding out-of-state cases. The *Bremel* Plaintiff represented that there were no Illinois cases discussing whether under §8(a)(3)(C), punitive damages and attorney's fees are allowed in UFTA cases. That section provides that the court may grant "*any* other relief the circumstances may require." Based on this catch-all, the majority rule in cases around the nation holds that punitive damages are allowed under the UFTA. The appellate court noted that "any" has "broad and inclusive connotations" under Illinois law. The appellate court then stated that, contrary to one Illinois appellate case cited, we give greater than the usual deference to out-of-state caselaw when considering a uniform act.

Of the 47 jurisdictions that have adopted the UFTA or the UVTA, 29 states had discussed the availability of punitive damages under one of the versions of the Uniform Act, either explicitly or implicitly. See footnote 7. After reviewing out-of-state caselaw, the appellate court observed:

> After examining the language of the UFTA and the decisions of other jurisdictions, we believe that the better-reasoned approach is that which permits the imposition of punitive damages in appropriate circumstances. The "catch-all" provision of section 8(a)(3)(C) permitting the trial court to award "any other relief the circumstance may require" (740 ILCS 160/8(a)(3)(C) is broad, allowing the court considerable discretion in fashioning an appropriate remedy based on the particular circumstances before it.

The appellate court cautioned, however, that just because punitive damages may be awarded in a case arising under the UFTA does not necessarily mean that such an award is appropriate in all circumstances. Punitive damages are intended "to punish the offender and to deter that party and others from committing similar acts of wrongdoing in the future." As such, punitive damages are disfavored in the law, so "courts should be careful never to award such damages improperly or unwisely." The case emphasized: "An award of punitive damages is appropriate where the underlying tort is accompanied by aggravated circumstances such as wantonness, willfulness, malice, fraud, or oppression, or when the defendant acts with such gross negligence as to indicate a wanton disregard for the rights of others."

The appellate court found that the trial court erred in finding that punitive damages were disallowed by the statute. Therefore, the appellate court remanded the case to the trial court with instructions to consider such damages if considered appropriate under the circumstances.

The nuance in this case, as opposed to the *WS Management* decision, is that the *Bremel* Plaintiff contended that the amount of any punitive damages award should, at a minimum, equal his attorney fees. In other words, Plaintiff argued (1) that punitive damages are available in UFTA cases and (2) that, in his case, the proper award of punitive damages should equal his attorney fees. The case concluded that attorney's fees can properly be considered a subset of punitive damages when aggravating circumstances exist.

Concurring Opinion.
The concurring opinion urged that while punitive damages are allowed, attorney's fees should not be granted under the guise of punitive damages. Still, the concurring opinion emphasized that the trial court should be able to consider the amount of attorney's fees in potentially awarding punitive damages.

See Forbes article involving a case allowing punitive damages of six times the underlying judgment where the debtor embezzled funds from two elderly sisters.

59-page article regarding the UFTA and the UVTA and its discussion of punitive fees. https://accfl.memberclicks.net/assets/docs/150214_kettering_article_feb_2015.pdf.

✓✓ Practice Tip:
If you bring an UFTA claim, request punitive damages specifically as part of the prayer for relief and allege aggravating circumstances. Further allege that the amount of attorney's fees should be considered by the court in making an award of punitive damages. Thus, the fees incurred should not be the cap of what is sought. Nor should they necessarily be *equal* to the amount being sought. Instead, the court should consider attorney's fees incurred in making any punitive damages award.

So, indeed the award could exceed the overall fees if the circumstances are particularly aggravating.

A.C.

§ 18-2 Criminal and Civil Contempt Distinguished
✓✓ § 18-2[a] Generally
Contempt of Court: Civil versus Criminal Contempt / Self-represented litigants should not be deprived of the use of electronic devices commonly used in their representation.
In re Parentage of A.C., 2024 IL App (1st) 232052 (8/28/24).
In this case, the father was held in direct civil contempt of court for a number of actions he committed in court, including but not limited to refusing to shut down his iPad, refusing to advise the court how to shut down the device once it was confiscated, and showing incivility and disrespect to the court. The trial court was concerned, among many things, that the father, who was self-represented, was using a device to improperly record the proceedings. The father appealed from the order finding him in contempt of court and ordering indefinite confinement until a purge payment of $2500 was made. In another appeal consolidated with this appeal, he also appealed a later order dictating that the $2500 purge payment be paid to respondent Crystal M. and child representative Paul Garcia (Garcia), with $1250 to be disbursed to each.

The First District appellate court reversed the trial court's order requiring incarceration and a monetary purge, finding that he was not sentenced to a valid term of incarceration. The appellate court found that the nature of the contempt sanction was actually criminal contempt and was not

coercive. Also problematic was the fact that he was ordered to pay a $2,500 fine in the first contempt order—but in the second order, it was repeatedly referred to as a purge rather than a fine. While a period of jail time and a fine are valid punishments for criminal contempt, it is not acceptable to have an indefinite period of jail time subject to the payment of a purge for criminal contempt. The First District affirmed and left intact a sentence of criminal fines as an appropriate sanction for a finding of direct criminal contempt.

In dicta, the court referenced Supreme Court Rule 44. It prohibits audio recording in the courtroom. But the appellate court cautioned against depriving self-represented litigants of the use of electronic devices in a courtroom since lawyers are regularly permitted to utilize such devices to present their cases.

Other than my book, a good online source discussing contempt is:
https://rdklegal.com/contempt-in-an-illinois-divorce-case/

IDVA

Martinez.

§ 21-8[g] IDVA May Not Be Used to Avoid Effect of Other Laws

✓✓ Domestic Violence and Temporary Support

Martinez v. Leon, 2024 IL App (1st) 231058 (8/29/24).

The Petitioner appealed from a trial court order that granted her request for a plenary order of protection against the respondent, with whom she had an infant son, but that denied her request for a temporary child support order. The trial court denied the request for trial support on the basis that respondent 1) did not receive adequate notice of the hearing and 2) the matter was more appropriately decided in a separate proceeding. The appellate court noted that an express goal of the IDVA is to ensure that victims are not trapped in abusive situations by financial dependence. Therefore, the appellate court held that the trial court erred when it denied the petitioner's request for temporary child support. Of note, the appellate court applied the public interest exception because otherwise, the appeal would have been determined to be moot. It also found an unusual need for guidance in publishing the opinion and determined that the issue was almost certain to recur.

The appellate court held that the language of Section 214(b)(12) is straightforward and unambiguous. It provides:

> **Order for payment of support**. Order respondent to pay temporary support for the petitioner or any child in the petitioner's care or over whom the petitioner has been allocated parental responsibility, when the respondent has a legal obligation to support that person, in accordance with the Illinois Marriage and Dissolution of Marriage Act, which shall govern, among other matters, the amount of support, payment through the clerk and withholding of income to secure payment. An order for child support may be granted to a petitioner *with lawful physical care of*

> *a child, or an order or agreement for physical care of a child*, prior to entry of an order allocating significant decision-making responsibility. Such a support order shall expire upon entry of a valid order allocating parental responsibility differently and vacating the petitioner's significant decision-making authority, unless otherwise provided in the order.

Practice tip: Serve a financial affidavit with supporting documents in connection with a domestic violence case when seeking temporary support.

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§ 11-2[c] Hague Abduction Convention

Baz

✓✓§ 11-2[c] Hague Abduction Convention
✓✓§ 11-2[c][2] U.S. Supreme Court Cases re the Hague Convention
✓✓§ 11-2[c][3][B] Habitual Residence Caselaw

Baz v. Patterson, 100 F.4th 854, 867 (7th Cir. 2024).
The April 2024 Seventh United States Circuit Court of Appeals opinion in *Baz v. Patterson* started as a typical parentage case. The 7th Circuit appellate court ultimately held that parental stipulations regarding a child's habitual residence are evidence of shared parental intent but not conclusive.

The parties had one child together and agreed in their May 2022 Allocation Judgment that "[t]he 'Habitual Residence' of the minor child is the United States of America, specifically the County of Cook, State of Illinois, United States of America." The Allocation Judgment also provided that the child would spend summers and school breaks in Illinois, where the father resided, although the child was to primarily live with the mother in Germany. In June 2023, the father's parenting time had begun in the United States, but the mother had not returned or made plans to return the child. The father went to the child's school in Germany, removed the child from school, and brought the child back to the United States.

Mother filed suit under the ICARA, which implements the Hague Convention. For countries that have joined, the Hague Convention establishes the international standards for determining whether a child has been wrongfully removed or retained from their habitual residence, and if so, the Convention provides for the child's return. In determining habitual residence, the appellate court applies a four-part inquiry which, in part, determines what States the child was habitually resident in immediately prior to their removal or retention.

The *Baz* court ultimately held that the child's habitual residence was in Germany. The Seventh Circuit Appellate Court heavily relied on the Supreme Court's 2020 decision in *Monasky v. Taglieri*. In that case, the Court upheld an order for the child's return to Italy, rejecting the view that the habitual residence depended on an agreement between the child's parents. Instead, "[t]he place where a child is at home, at the time of … retention, ranks as the child's habitual residence." In holding that the child's habitual residence was Germany, the Appellate Court stated that it did "not suggest that the habitual-residence provision of the Illinois Allocation Judgment carries no weight" but that it was simply a relevant consideration, among others.

One commentator stated:

> In *Baz*, because the Allocation Judgment did not determine habitual residence, this resulted in extensive litigation which ultimately affected the child because they had to move internationally three times in just two years. Upon moving from the United States to Germany in May 2022, the five-year-old child attended kindergarten, participated in extracurricular activities, and settled into life in Germany. In July 2023, when the child was brought back to the United States, litigation to return the child to Germany commenced. The child remained in the United States until April 2024 when it was held that the child was to be returned back to Germany. With every move the child has had to acclimate to a new country, new school, new friends, and a new life. Children in international custody disputes are ultimately the ones affected if stipulations in an allocation judgment are non-binding as they may have to endure extensive litigation and several international moves.

The key language of the decision stated:

> In reaching this conclusion, we do not suggest that the habitual-residence provision of the Illinois Allocation Judgment carries no weight, nor do we imply in any way that either parent was foolish to make such an agreement. A parental stipulation as to their child's future habitual residence will often be powerful evidence of "the intentions and circumstances of caregiving parents," which are "relevant considerations." *Monasky*, 589 U.S. at 78. In other cases, it may be evidence of the last shared parental intent, which we have said "is one fact among others, and indeed may be a very important fact in some cases." *Redmond*, 724 F.3d at 729, 737 (7th Cir. 2013). Our conclusion does not disturb these principles. But in the end, a child's habitual residence depends not on any one fact, but on the totality of the circumstances specific to the case.

See:

https://www.isba.org/sections/familylaw/newsletter/2024/10/internationalcustodydisputesallocationjudgmentsdon

§ 21-13 **Possession of Firearms if Convicted of Domestic Violence and Ability of Divorce Court to Restrict Access to Guns Without an Order of Protection**
U.S. v. Rahimi, 602 U.S. ____ Rahimi-Ardebili v. United States, (2024) (6/21/24)

In 2024, the United States Supreme Court weighed in on a hot-button issue involving the intersection of domestic violence laws and Second Amendment rights. The Supreme Court in *United States v. Rahimi* decided that when an individual has been found by a court to pose a credible threat to the physical safety of another, that individual may be temporarily disarmed consistent with the Second Amendment. This 8-1 decision authored by Justice John Roberts held that the federal law prohibiting domestic abusers subject to protective orders from possessing guns is constitutional under the Second Amendment.

The Court's decision in *Rahimi* reversed the extreme and deadly decision from the U.S. Court of Appeals for the Fifth Circuit that had struck down 18 U.S.C. 922(g)(8), the above-referenced federal law disarming domestic abusers subject to restraining orders. And the clear implication is that similar laws—including state-law prohibitions on possessing a gun when subject to a domestic violence restraining order—are also consistent with the Second Amendment. The *Rahimi* Court emphasized that instead of asking whether a modern gun regulation has a *precise* historical precursor, courts need only determine "whether the challenged regulation is consistent with the principles that underpin our regulatory tradition." The Second Amendment, the Court emphasized, is "not … a law trapped in amber" and "was never thought to sweep indiscriminately." Significantly, the Court expressly rejected the analysis in Justice Thomas's dissent—and in the Fifth Circuit and other lower courts that have struck down gun laws requiring a "historical *twin*" rather than a "historical analogue."

While this seems like a coming together for the Supreme Court, given the 8-1 nature of the decision, this is misleading. Justice Sotomayor filed her concurring opinion, in which Justice Kagan concurred. Justice Gorsuch, Kavanaugh, Barrett, and Jackson each filed concurring opinions. And then we have Justice Thomas's 30-plus page dissent, where he argued in favor of a strict reading of his majority decision in *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U. S. 1 (2022).

Chapter 8B Property. We reworked § 8-24[e][4] "Consideration of VA Disability Benefits" due to the issue's complexity including discussing two 2023 out-of-state decisions that develop the contractual-indemnification approach in the wake of the seminal Supreme Court *Howell* decision.

We discuss the March 2024 decision involving the contractual indemnification approach to dividing military retirement disability pay

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Tronsrue

§ 8-24[e][4] Consideration of VA Disability Benefits

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Illinois courts weighed in on this issue in the 2024 *In re Marriage of Tronsrue* decision[1] involving a 1992 divorce decree that awarded the former wife 18.6% of her ex-husband's disability retirement pay. The settlement agreement provided that if the U.S. Army or the V.A. would not withhold the appropriate amounts, the husband would pay over this percentage directly. The Third District appellate court enforced the contractual- indemnification approach and found that the underlying order was not void—as discussed without our jurisdiction chapter. The majority held that the underlying order was subject to indefinite enforcement. The lengthy dissent urged that Federal preemption issues should be controlled—without analyzing the nuances addressed in the contractual indemnification cases.

Parenting Time Modification

Royer

In re Marriage of Royer, 2025 IL App (2d) 240378 (01/14/2025)

✓✓§ 17-3[a] Introduction and Change of Circumstances—Generally

✓§ 17-3[b][2] Directed Verdicts and Due Process Concerns [*Burns*]

✓✓ § 14-3[c] Pleadings and Burden of Proof re Minor Modifications to Parenting Time

Holdings

•The trial court's determination that modifying the February 2020 parenting plan to grant overnight visits with the father every other weekend constituted a "minor modification" under 750 ILCS 5/610.5(e)(2) was against the manifest weight of the evidence.

•The father failed to sustain his burden to prove that the modification was in the child's best interests or that it was a minor modification.

Facts:

•The parties married in 2015 and had a daughter in 2016.

•In a 2020 parenting plan,

•The father failed to fully provide the requested medical records to the guardian ad litem (GAL).

•In 2023, the father claimed he no longer had medical issues preventing unsupervised parenting time.

•Evidence showed the father drove the daughter unsupervised against court orders.

Controlling Law

•750 ILCS 5/610.5(e) - Allows minor modifications to parenting plans without a change in circumstances if in the child's best interests.

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[1] In re Marriage of Tronsrue, 2024 IL App (3d) 220125.

•750 ILCS 5/602.7(b) – best interest factors regarding parenting time.

Rationale
This was an accelerated R. 311(a) appeal (150-day rule following notice of appeal). The appellate court found that the father failed to sustain his burden to prove the overnight visits with the daughter were a minor modification to the parenting plan and in the daughter's best interests, given his history of serious medical issues affecting his ability to care for the daughter. Regarding his request for unsupervised parenting time, the appellate court noted the lack of evidence other than self-serving statements that his medical issues had been resolved. It further noted the evidence that the father violated a prior order by driving the daughter unsupervised, and the father's parents' belief that he did not need supervision.

Key Language
¶ 36 Because the Act favors "the finality and continuity of parenting plans," a modification is considered "minor" under section 610.5(e)(2) only in limited circumstances; a minor modification is "small" or "inconsequential." *In re Marriage of Burns*, 2019 IL App (2d) 180715, ¶ 29 (citing *In re Marriage of O'Hare*, 2017 IL App (4th) 170091, ¶¶ 27-28). When a trial court makes a minor modification to a parenting plan, it must ensure that the parenting plan's original intent remains intact. *In re Marriage of Wendy S.*, 2020 IL App (1st) 191661, ¶ 25. Whether a modification should be considered "minor" under the Act is a mixed question of law and fact. As our supreme court has explained:

> "A mixed question of law and fact is one 'involv[ing] an examination of the legal effect of a given set of facts.' [Citation.] Stated another way, a mixed question is one 'in which the historical facts are admitted or established, the rule of law is undisputed, and the issue is whether the facts satisfy the statutory standard, or *** whether the rule of law as applied to the established facts is or is not violated.' [Citations.]" *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 2d 380, 391 (2001).

¶ 37 Here, Brock failed to sustain his burden to prove that the modification to the February 2020 parenting plan—providing an overnight visit with Brock every other weekend—was in J.R.'s best interests or that the modification was minor. The record is clear that, since the beginning of this case, Brock had numerous severe medical problems that precluded him from caring for J.R. unsupervised and from driving with her unsupervised. In 2020, Brock told the GAL that his debilitating pain and overwhelming fatigue caused him to pass out daily. This culminated in the February 2020 parenting plan requiring Brock to provide the GAL with medical records. However, Brock failed to fully provide his medical records and failed to present evidence, other than self-serving statements, that his serious medical problems had subsided or resolved. Considering the historical context for the February 2020 parenting plan, insufficient evidence was presented to establish that the modification was minor and in J.R.'s best interests. Further, there was ample testimony that Brock drove J.R. without supervision and that his parents were not always present during J.R.'s visits, both violating the February 2020 parenting plan. In short, the trial court's finding that it was in J.R.'s best interests to provide overnight visits with Brock

every other weekend was manifestly erroneous. Brock failed to sustain his burden of proof to establish the difference between the two sets of circumstances to be a minor change. Brock failed to prove he substantially changed and thus failed to establish the new parenting order was a minor change. We hold that the trial court's determination that the modification to the February 2020 parenting plan was a minor change was manifestly erroneous."

Knight

In re Marriage of Alpert Knight, 2024 IL App (1st) 230629 (12/27/2024)

✓ § 10-3[j][9] Needs and Financial Resources of the Child
§ 17-1[b] Change of Circumstances
✓ § 17-1[b][3] Changes Anticipated by Judgment or Marital Settlement Agreement
✓✓ § 17-1[o][2] Timing of Applicable Law
✓✓ § 19-4[m][7] Caselaw following *Heroy*

Issue: Whether a child support modification is warranted where the obligor parent enjoys a substantial income growth such that the children now enjoy a much higher standard of living with him than they do with the obligee parent. The appellate court held that under the facts of this case, the trial court erred by finding no substantial change in circumstances. Accordingly, the appellate court reversed and remanded.

The appellate court found that the MSA did not contemplate Robert's substantial increase in income in 2020 and 2021, as evidenced by the income range specified in the agreement and the requirement for both parties to annually confirm that their incomes remained within that range. The court also reasoned that the former wife's expert testimony regarding needed repairs to her home was relevant to evaluating the children's needs and the standard of living they would have enjoyed had the marriage not been dissolved—which are statutory factors for determining child support under Section 505 of the IMDMA.

Procedural Outcome
The appellate court affirmed the denial of the former wife's discovery requests related to Robert's trust assets, but reversed the circuit court's denial of Amanda's motion to modify child support and barring of her expert witnesses. The case was remanded for further proceedings to determine whether Robert's child support obligation should be increased and for reconsideration of Amanda's petition for attorney's fees.

Background: Prior to the 2022 foreseeability amendment, an increase in income would not constitute a substantial change in circumstances if "the increase was based on events that were contemplated and expected by the trial court when the judgment *** was entered." *In re Marriage of Durdov*, 2021 IL App (1st) 191811, ¶ 22; *In re Marriage of Salvatore*, 2019 IL App (2d) 180425, ¶ 24 ("[A] substantial change in circumstances will not be found when the parties'

present circumstances were contemplated when they entered their agreement."). In 2022, after the motion to modify was filed, Section 510 was amended to incorporate the foreseeability amendments. It now states:

> "Contemplation or foreseeability of future events shall not be considered as a factor or used as a defense in determining whether a substantial change in circumstances is shown, unless the future event is expressly specified in the court's order or the agreement of the parties incorporated into a court order. The parties may expressly specify in the agreement incorporated into a court order or the court may expressly specify in the order that the occurrence of a specific future event is contemplated and will not constitute a substantial change in circumstances to warrant modification of the order[.]"

The case reasoned that based on the language of Section 801(c) of the IMDMA and caselaw interpreting it (including those arising shortly after the original adoption of the IMDMA), the foreseeability amendments apply to proceedings commenced *after* its effective date for modification of an order or judgment entered before the effective date. Citing *Benink* and earlier caselaw, the decision states:

> Because Amanda's motion to modify was filed before section 510 was amended, the prior version of section 510 applies here. Thus, when determining whether there has been a substantial change in circumstances warranting a modification of child support, we look to whether Robert's increase in income was contemplated by the circuit court and parties when the Judgment was entered. *Knight v. Knight*, 2024 IL App (1st) 230629, ¶ 25.

The case then states:

> Typically, a substantial change in circumstances means that the obligor parent's ability to pay, the child's needs, or both have changed. *In re Marriage of Durdov*, 2021 IL App (1st) 191811, ¶ 22. The substantial change in circumstances may be based solely on the supporting parent's ability to pay. *In re Marriage of Yabush*, 2021 IL App (1st) 201136, ¶ 32. At issue here is whether the substantial increase in Robert's income in 2020 and 2021 was "based on events that were contemplated and expected by the trial court" at the time the Judgment was entered. (Internal quotation marks omitted.) See *In re Marriage of Durdov*, 2021 IL App (1st) 191811, ¶ 22. A substantial change will not be found where the parties contemplated the present circumstances when they entered into the agreement. See *In re Marriage of Salvatore*, 2019 IL App (2d) 180425, ¶ 24. *Knight v. Knight*, 2024 IL App (1st) 230629, ¶ 31.

The appellate court then examined the terms of the MSA to determine whether the parties contemplated the then-husband's substantial increase in income when they entered into their agreement.

The critical language of the decision then states:

> The MSA memorializes the parties' acknowledgment that Robert's income was between $600,000 to $1.6 million, but states that it could be higher in "2015 only attributable to capital gains incurred for liquidation of securities needed for the funding of this settlement[.]" However, in 2020 and 2021, Robert's gross income was $2,019,048 and $3,641,757, respectively, well above the range specified in the MSA. Although minor increases in income do not necessarily constitute a substantial change in circumstances (see, *e.g.*, *In re Marriage of Connelly*, 2020 IL App (3d) 180193, ¶ 19, 438 Ill. Dec. 188, 145 N.E.3d 724 (finding a 10% increase in salary was not substantial enough to justify a modification of child support)), in 2020 Robert's income was 25% more than the top end of the range specified in the MSA, and in 2021 it was 127% percent more. The MSA identifies only one instance in which Robert's income could be higher in the future, that is, for 2015 if he needed to sell securities to fund his obligations under the MSA. Under a plain reading of the MSA, the parties did not contemplate Robert's substantial increase in income for purposes of section 510 of the Act. *Knight v. Knight*, 2024 IL App (1st) 230629, ¶ 34.

The appellate court reasoned that the former husband's substantial increase in income took on an added significance when coupled with the income verification clause. The parties agreed to confirm in writing every year, until their children are emancipated, that their incomes remain within the range specified in the MSA. The appellate court emphasized: "This indicates that the amount of their respective incomes was critical to their agreement on the amount of Robert's child support obligation. It continued, "The only reason the parties would have agreed to an income verification clause until the children become emancipated is that they understood that Robert's child support obligation could change in the unexpected event that either his or Amanda's income was outside the range specified in the MSA. Otherwise, there would be no reason to include an annual income confirmation clause in the MSA."

The ex-husband argued that the plain language of the MSA showed that the MSA contemplated the substantial change in his income because the agreement made him responsible for a 75% share of the various child-related add-ons. The appellate court disagreed and stated:

> Unlike marital settlement agreements that require a supporting parent to pay a percentage of any additional income in child support (see, e.g., id. ¶ 25 (marital settlement agreement's true-up provision that required father to pay 28% of any earnings he made in addition to the salary he was earning at the time of the dissolution showed that an increase in his earnings "was contemplated by the parties"); *In re Marriage of Durdov*, 2021 IL App (1st) 191811, ¶ 28 (the parties contemplated an increase in salary when supporting parent was required to pay "an amount equal to

> twenty-eight percent (28%) of any additional net income received from any other source including but not limited to bonuses, commissions, compensation for consulting projects, and other forms of income" (emphasis and internal quotation marks omitted))), the parties here agreed that Robert's child support obligation would remain fixed at $10,000 per month. In fact, the MSA expressly states that statutory guideline child support was inappropriate in light of, *inter alia*, the parties' income. *Knight v. Knight*, 2024 IL App (1st) 230629, ¶ 36.

Therefore, the appellate court concluded that the trial court erred in failing to find that the former wife established a substantial change in circumstances that was not contemplated by either party. The appellate court rejected the contention that the former wife failed to show increased needs of the children. The decision emphasized that there was nothing in the record showing that the trial court considered the standard of living the children would have enjoyed if the marriage had not dissolved—as required by Section 505(a)(2)(c) and decisions such as the seminal *Bussey* case (holding that a child is not relegated only to shown needs. Accordingly, the trial court erred in focusing on a needs-based analysis and not on the standard of living the children would have enjoyed but for the divorce.

Proposed Expert Testimony Involving Lifestyle Issue.
This is the first published decision involving a unique wrinkle, i.e., proposed expert testimony on the cost of repairs to the ex-wife's home to bring it up to the standard of living established during the marriage. The case states reversed the trial court on the denial of this testimony and held:

> The expert testimony regarding the condition of Amanda's residence is relevant to both the needs of the children and the standard of living they would have enjoyed had the marriage not been dissolved. See In re Marriage of Bussey, 108 Ill. 2d at 297-98 (finding that the standard of living had the marriage continued and the needs of the children are both relevant considerations in a child support modification proceeding). On remand, we direct the circuit court to consider Amanda's experts' testimony; however, we express no opinion on the weight the circuit court should give to such testimony.

Fees.
Following the denial of the former wife's petition, she filed a contribution petition. By that time she had paid her attorneys $110,001 in fees and owed an additional $106,809. The trial court denied her petition, stating, "Amanda has not shown, after consideration of all relevant factors, that requiring her to pay the entirety of her legal fees would undermine her financial stability." Finally, the decision addressed attorney's fees in light of *Heroy* (at 19) and *Schnieder*. The appellate court also reversed the trial court's decision where the trial court had denied her petition for fees.

Gorr

Modification of Parenting Plan: Decision-Making
✓✓ Parental Allocation / § 11-13[b][2] "Inability to Cooperate."
§ 11-14[e] Pleadings and Procedure
✓✓ § 11-16 Delegation of Authority Involving Parental Responsibilities

§ 17-3[a] Introduction and Change of Circumstances-Generally [to (c)]
✓ ✓ Modification / § 17-3[m] Joint Custody Modification / Cross Petitions to Modify

Visitation / Parenting Time / § 14-2 Restrictions on Parenting Time
✓✓ § 14-2[a][2] Restriction on Parental Time and Responsibilities Defined and Described
✓ ✓ § 14-2[a][4] Modification of Restricting Parenting Time

IRMO Gorr, 2024 IL App (3d) 230412 (6/6/24).
Many seasoned Illinois family lawyers don't understand the complexities of modifying restrictions on parental decision-making or even what constitutes a restriction on parenting time or decision-making. This is the second recent case to weigh in on this issue under the Rewrite to Section 600 series of the IMDMA.

The former wife in *Gorr* appealed from a trial court order denying her third amended petition to modify the parenting time and joint decision-making allocation with her ex-husband. She argued on appeal that the trial court erred when it 1) removed an obligation for the parties to abide by what she referred to as the "recommendations" of professionals and treatment providers when making significant decisions for their children and 2) did not dissolve joint decision-making in her favor because the parties were unable to successfully co-parent.

The appellate court first noted that the word "recommendation" never appeared in the underlying order that was the subject of dispute. It had provided that the parents were to "work with" a given mental health professional on a "family therapy/child behavior plan," to which the parties agreed to "reasonably participate and cooperate."

Modification of Restriction Involving Parenting Time.
On appeal, neither party's appellate brief cited the proper legal standard for modification of a restriction on parenting time. After extensively reviewing the record, the appellate court concluded that the language requiring the parties to "reasonably participate and cooperate" in the therapy plan served as a restriction over their significant decision-making responsibilities for the healthcare of their children.

The appellate court observed that *IRMO Trapkus*, 2022 IL App (3d) 190631, ¶ 46, addressed modification seeking to remove a similar restriction, which should be governed by § 603.10 of the IMDMA. 750 ILCS 5/603.10(b). This subsection allows for the modification of an order restricting parental responsibilities if "after a hearing, the court finds, by a preponderance of the

evidence, that a modification is in the child's best interests based on (i) a change of circumstances that occurred after the entry of an order restricting parental responsibilities; or (ii) conduct of which the court was previously unaware that seriously endangers the child." In making that determination, the court considers the four non-exclusive factors named in the statute.

The trial court based its decision on a change in circumstances resulting from the parties' inability to adhere in good faith to the provision outlining the reasonable participation and cooperation with the therapy plans. The appellate court found that the trial court properly found that, since the last order affecting parenting time, a change of circumstances has occurred whereby the mother steadfastly sought to instill the providers' recommendations to advance her approach to procuring medical care for her children. The appellate court noted that these efforts circumvented the father from certain decision-making processes. But the appellate court found that:

> Angela's construction of the order motivated her use of comments from the children's healthcare providers as dictates and leverage against Brian which created an unsuitable environment for the parties to collaborate and procure adequate care for [the child.]

The appellate court further found that this aspect of the modification request must be in the child's best interests and that while the trial court gave lip service to the best interest standard, the trial court erred by singularly focusing on the parties' shortcomings when deciding to modify their arrangement. More particularly, the trial court had been focused on Angela's using the family therapy/child behavior plan as a cudgel to advance her approach of involving medical care for a child while circumventing the father in the process.

The key portion of the decision states:

> Although the court prefaced its decision to modify by stating that its decision was "in the children's best interest," it failed to elucidate how removing the restriction to reasonably participate and cooperate in McKee's therapy plans was in A.G.'s best interest. 750 ILCS 5/603.10(b). It also failed to identify which modification provision it was applying.
>
> ¶ 41 Furthermore, the modification does nothing to address the parties' animosity and conflict. While medical decision-making has reverted to the parties, they are limited to discussing their disagreements on potential medical courses of action over Our Family Wizard. Without clarification as to how this arrangement serves the parties' children's best interest and will not promote continued impasses, we hold that the court's decision to modify the allocation agreement was manifestly erroneous. On remand, the court must review its modification decision through the best interests of the parties' children. If it concludes that modification is necessary, it should fully explain how such an arrangement remains compatible

> with the children's best interests in light of the parties' differing opinions regarding the best approach to address decision-making, namely A.G.'s ADHD and consequent behavioral and educational difficulties.

Denial of Cross-Petitions to Modify Decision-Making.
The appellate court further found that the trial court applied the incorrect standard in denying the parties' respective petitions for decision-making and instructed the trial court to consider the parties' joint decision-making arrangement pursuant to sections 602.5 and 610.5 of the IMDMA.

The opinion stated:

> It is unclear from the record whether the court imputed its finding of a "change in circumstances" that supported its modification concerning a restriction over the parties' medical decision-making to a "substantial change" in circumstances that is required to modify under section 610.5 of the Act. 750 ILCS 5/610.5(c). The question of whether the parties' exhibited hostility in the area of one significant decision-making area—medical decisions—presented a substantial change in circumstances warranting the parties' request for the reallocation of decision-making over all statutorily identified significant issues is a nuanced distinction that seemingly went unexplored by the court.

The appellate court explained that the father had petitioned for the sole apportionment of decision-making responsibilities over health and education. Further, the mother's pleading had requested sole decision-making over all major areas. Yet by denying these respective requests, all that the trial court's order provided was that it found no basis to modify decision making as requested by each party. The appellate court then stated:

> The court's oral supplementation provided that "[i]nsofar as decision-making" neither party was suited as sole-decision maker, because Angela lacks trustworthiness and clarity in judgment but the court also lacked confidence that Brian would get his children the care they needed.

The appellate court concluded that it had no opinion regarding whether either parent had demonstrated a substantial change in circumstances. Instead, the opinion stated that the appellate court was "unable to discern from the record" whether the court *considered* the parties' petitions through the appropriate legal standard and constraints delineated in section 610.5(c). Therefore, the decision held that the foundation of the court's decision to uphold the parties' joint decision-making was unsupported without an analysis of whether (1) the parties supported their petitions by showing a substantial change in circumstances had occurred and if so (2) whether modifying is necessary to serve the children's best interest. Accordingly, the appellate court concluded that the trial court abused its discretion in denying the cross-petitions to modify decision-making authority.

Comment re OFW. This is the first appellate court case to comment on the required use of OurFamilyWizard. Often, it is believed that the use of such a portal reduces hostility between the parents. I've urged that, in some cases, the mandatory use of such an online portal may be helpful for proofs involving Abuse of Allocated Parenting Time. Yet requiring the use of such a portal obviates communication that has greater bandwidth, including direct phone calls. Therefore, required communication via OFW should be limited to agreements or findings appropriate to restrict parenting time or where communication is limited due to a domestic violence order.

Keep in mind that OurFamilyWizard uses an Email paradigm for communications, while other online communication apps use a texting paradigm. I believe that the latter paradigm is easier for professionals to assist their clients following the Bill Eddy BIFF approach to communication.

The appellate court observed:

> Furthermore, the modification does nothing to address the parties' animosity and conflict. While medical decision-making has reverted to the parties, they are limited to discussing their disagreements on potential medical courses of action over Our Family Wizard. Without clarification as to how this arrangement serves the parties' children's best interest and will not promote continued impasses, we hold that the court's decision to modify the allocation agreement was manifestly erroneous.

GAL vs In Chambers Interviews

Gualandi

✓✓§ 11-12[b**] Role of Guardian Ad Litem**
§ 11-14[e] Pleadings and Procedure and Pleadings Putting Parental Responsibility Allocation at Issue
✓✓§ 11-16 Delegation of Authority Involving Parental Responsibilities

✓✓§ 12-1[h] Burden of Proof under Removal Statute and Relocation Statute
✓§ 17-3[e][3] Relocation without Leave *** Need to add heading ***

In re Marriage of Gualandi, 2024 IL App (5th) 240238 06/28/2024 (Lexis Link)
This case involved an agreed Judgment that was entered in 2017, which provided the father with the majority of the parenting time but also provided for the mother's parenting time Monday evening through Thursday evening during the school year so that she could homeschool the children. Less than a year after the divorce, the father filed a petition to modify parenting time and parental responsibilities, claiming that the mother failed to exercise her parenting time in the sense that the child was not being homeschooled but was enrolled in the public schools in Marion, Illinois (near the Shawnee National Forest). The mother sought to enforce the original judgment, and in February 2019, the trial court entered an order modifying parenting time and

parental responsibilities. At the time, the mother lived in Rossville, Illinois (northeast of Champaign), a distance of nearly four hours each way. Her parenting time was reduced to alternate weekends, and the children were allowed to continue in public schools.

The father then filed a later petition to further modify parenting time and parental responsibilities in 2021, claiming, among other things, that the mother was not exercising her designated parenting time and had moved multiple times without notifying the father. The mother never filed a notice of relocation. The father then attempted to serve the mother at her last known address in Rossville, but she had moved from there. The return service indicated that she was living with her sister in Covington, IN. An alias summons was issued to that address, but she was no longer living there. Then in July 2021, a docket entry showed that the mother had provided an updated mailing address in Rossville, IL. The father continued to search for the mother's address, and he filed an amended notice for publication outlining his attempts. Ultimately the court allowed service by publication. The mother then filed a motion to appoint a GAL, which included her contact information in Roseville. Yet the GAL's investigation showed that the mother lived in Indiana and had indeed moved five times after separating from the father. The mother voiced concerns about the children's living conditions and hygiene while in the father's care. The GAL performed a home visit to the father's home and found the lack of cleanliness to be concerning. The GAL met with one of the children who had dandruff and odor about her—with her bedroom being in a state of "chaos." The daughter informed the GAL that she preferred to live with her father and voiced concerns about the mother's boyfriend. Other evidence affirmed the concerns both in the mother's and the father's households.

Yet the GAL failed to perform a home visit of the mother's household. While the GAL had concerns about the father's failure to provide some basic needs or address the children's hygiene, the mother and her boyfriend were alleged by the children to fight with one another. Further, the children were settled at their current school and preferred living with the Father. The GAL recommended that the trial court adopt the father's proposed plan. After the GAL submitted his report, the mother filed a petition to modify and a counter-petition seeking sole decision-making and a restriction on the father's parenting time.

The case was far more complex factually and procedurally but should have involved three issues: 1) relocation of the children from Illinois to Indiana; 2) modification of parenting time proceedings; and 3) potential restrictions on parenting time/authority. Following a contested hearing, the trial court ended up accepting Mother's "Agreed Parenting Plan and Judgment" that was presented to the court at the hearing in December 2023.

This is one of the only cases where the court first focused on the language of the Rewrite that provides that a parent's relocation constitutes a substantial change of circumstances for the purposes of Section 610.5. 750 ILCS 5/609.2(a). Yet the mother did not provide notice of her intent to relocate or file a petition seeking relocation. The trial court instead had evidence showing that the mother currently lived in Indiana. The appellate court emphasized that the parent seeking relocation has the burden of proof consistent with the reasoning of *IRMO Levites*, 2021 IL App (2d) 200552, ¶ 66. The appellate court then recited the factors for relocation under

Section 609.2(g), the best interest factors to modify parenting time of Section 602.7(b), and the restrictions on parenting time standards of Section 603.10(a).

The appellate court reversed the trial court's decision to modify parenting time and simply adopt one of the parenting plans without appropriate findings. So far, so good.

But the appellate court mistakenly found the trial court's decision was against the manifest weight of the evidence because the mother was allowed to relocate without filing a petition to relocate. The appellate decision stated, without nuance, that the mother had failed to follow the Act's requirements before moving out of state. In fact, the Section 600 series did not apply to the mother because she was not allocated 50% or more parenting time. Thus, the only requirement on her in terms of providing notice of her move is the language that is supposed to be in all parenting plans under 750 ILCS 5/602.10(f)(8), i.e.:

> a requirement that a parent changing his or her residence provide at least 60 days prior written notice of the change to any other parent under the parenting plan or allocation judgment, unless such notice is impracticable or unless otherwise ordered by the court. If such notice is impracticable, written notice shall be given at the earliest date practicable. At a minimum, the notice shall set forth the following:
> (A) the intended date of the change of residence; and
> (B) the address of the new residence;

The appellate decision emphasized that the date of the mother's relocation to Indiana was not addressed by the trial court and that the father was not provided a Notice of Relocation and thus the written opportunity to object to her relocation. This makes sense from the perspective the what should have happened since the mother was seeking primary parenting time in her petition before the trial court.

Thus, consider the appellate court's language, "Despite this failure to follow the Act, Father allowed the children to visit Mother in Indiana." But allowing out-of-state "visitation" [read parenting time] was required of the father because the non-residential parent (the parent allocated less than 50% of the parenting time) had *no* duty to file a notice of relocation in order to be entitled to parenting time.

Nevertheless, the appellate court's overall reasoning was correct. The mother was actually seeking relocation without having brought the proper petition. It was within this context that the appellate court stated that the trial court failed to "consider the reasons for the mother's relocation." The appellate court correctly emphasized that the mother failed to carry her burden of proof because she was, in fact, seeking relocation. The appellate court then noted the lack of evidence regarding numerous factors that should have been considered under Section 609.2(g).

The appellate court commented on the failures of the GAL investigation and report:

> It is concerning that the GAL focused only on the conditions of Father's house, while the conditions of Mother's house remained unknown. The GAL did not contact DCFS or DCS or complete a case history search regarding any claims of domestic violence involving Mother and her boyfriend. T.G. received telehealth counseling services for a short period with Mother and was seeing a counselor, in person, while residing with Father. Testimony was also presented that T.G. received medical treatment for UTI symptoms, head lice, and dandruff and that there was no medical evaluation for her day-wetting. Yet, no medical records were obtained regarding T.G.'s mental or physical well- being. ¶ 84.

The opinion emphasized the GAL's duties under Supreme Court Rule 907(c):

> The GAL "shall also take whatever reasonable steps are necessary to obtain all information pertaining to issues affecting the child, including interviewing family members and others possessing special knowledge of the child's circumstances." Ill. S. Ct. R. 907(c) (eff. Mar. 8, 2016). The GAL "shall take whatever reasonable steps are necessary to determine what services the family needs to address the custody or allocation of parental responsibilities dispute, make appropriate recommendations to the parties, and seek appropriate relief in court, if required, in order to serve the best interest of the child." Ill. S. Ct. R. 907(d) (eff. Mar. 8, 2016).

The next passage is quoted at length because of the dearth of opinions addressing how the facts of the case apply to the duties of the GAL:

> When investigating the facts in this case, the GAL should have taken reasonable steps to obtain all information pertaining to issues affecting the children, *even if Mother had not filed a counterpetition*. The GAL's investigation did not adequately address the section 602.7(b) best interest factors. The GAL report did not include any prior agreement or course of conduct between the parents, although there was an original parenting agreement that had been modified. The GAL did not meet with the children at Mother's house to consider the interaction and interrelationship of the children with their Mother and half-sibling, Mother's boyfriend, or his children. The GAL did not inquire of Mother regarding the type of residence the children would be living in or inspect the condition of Mother's house. The GAL did not interview teachers or obtain school records in order to consider the children's adjustment to school. No medical records were obtained to determine the mental and physical health of all involved. Neither an Illinois nor an Indiana case history search was performed although there were concerns of possible domestic violence and drug use. The GAL also did not contact DCFS regarding the conditions of Father's home or investigate prior DCFS or DCS involvement with either party.

The appellate court found that the best interest parenting time factors were not thoroughly

investigated–considering the fact that the GAL had no information in his report that cast light on those issues. Further, the GAL report did not include any prior agreement or course of conduct between the parents, although there was an original parenting agreement that had been modified.

Jessica F.

Role of GAL vs. In-Camera Interview.

✓§ 11-5[d] Alternatives to In Chambers Interview with the Child
✓§ 11-8[g][3] Purpose of In-Chambers Interview
✓§ 11-8[g][4] Discretion of Court in Determining Whether In-Chambers Interview Should Be Conducted
✓§ 11-12[b] Role of Guardian Ad Litem

In re Marriage of Jessica F., 2024 IL App (4th) 231264 05/15/2024
✓ [1]-The trial court did not abuse its discretion in denying a father's motion for an in-camera interview with his child under § 604.10(a) because it oversaw the entire proceedings. The trial court heard the testimony, reviewed all the evidence, and apparently decided either there was no purpose to interviewing the child or the real purpose of the requested interview was for reasons other than ascertaining the child's wishes. In this case, it appeared that the father sought an in-camera interview because of vague testimony about one child touching another child inappropriately during the mother's assigned parenting time. The appellate court observed that while this was a serious topic, the father took no action involving his 10-year-old son or offered any other evidence–other than requesting an in-camera interview. The appellate court observed that the purpose of an in-camera interview is to determine the wishes of the child–and not to evaluate factual matters.

Parenting Time Modification
✓§ 17-3[o][2] Historical Presumption in Favor of Present "Residential Custodian"

[2]- The parents entered an agreed upon parenting plan in which the father was allocated parenting time in three weekends per month from 2:00 p.m. on Saturdays to Tuesdays at 8:00 a.m. as well as holiday and summer time. A little more than two years later, the mother filed a handwritten motion seeking to change to a "standard parenting plan," alleging that the plan that had been agreed upon had caused confusion and was not working effectively. The mother had moved from Jacksonville, Illinois (slightly less than 50 miles) to Rushville, Illinois, following her remarriage. The father countered with his own petition to modify parenting time.

The appellate court reasoned that The trial court's decision to grant the mother's petition under § 610.5(a) to modify parenting time and deny the father's competing motion was not against the manifest weight of the evidence because its findings and conclusions were not unreasonable or

arbitrary. The appellate court first observed that the father did not challenge the trial court's determination that his former wife's move had constituted a substantial change in circumstances that necessitated modification to serve the child's best interests. He only challenged the trial court's best-interests determination and conclusion. He repeated his argument involving the failure to conduct an in camera interview while at the same time finding that no party presented evidence of the child's wishes. The appellate court stated that the same argument "begets the same response." The trial court was not mandated to conduct an in-camera interview to consider and weigh what it considers to be the wishes of the child. The appellate court stated, "Applying this principle here, we presume the court took into account G.H.'s age, 'maturity and ability to express reasoned and independent preferences as to parenting time' and found the interview unnecessary, even though the parties presented no other evidence of G.H.'s wishes as to parenting time." See: 750 ILCS 5/602.7(b)(2).

See also ISBA FLS Article:
https://www.isba.org/sections/familylaw/newsletter/2024/10/parentingcoordinatorscoordinatingparentsthroughthe

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Articles of note:

https://www.americanbar.org/content/dam/aba/publications/family_law_quarterly/vol51/1spr2017_morgan.pdf

A Nationwide Review of Alimony Legislation, 2007–2016, by Laura Morgan. It provides an excellent overview of the whys and wherefores of alimony.

The opening paragraph reads:

> Like Pirandello's six characters,1 alimony is in search of an author and its reason to exist. The split between the "Actors" and the "Characters" in Six Characters in Search of an Author represents a division between reality and illusion.2 So, too, in the area of alimony3 is there a split between the reality of alimony and the illusion of what it represents.4 In short, alimony is in the midst of an identity crisis.5 Given this identity crisis,6 it is not at all unusual or unpredictable
> that state legislatures would amend their alimony statutes in diverging ways. Two common themes, however, can be discerned. First, states are searching for ways to make alimony predictable, if not understandable.7
>
> Thus emerged a trend towards guidelines for alimony amounts.8 Second, where permanent alimony had been the most common option,9 many states now restrict permanent alimony to long-term marriages10 and prefer rehabilitative alimony.11 "The last ten years or so has [sic] seen a tide of efforts in various states usually titled as alimony 'reform' initiatives, but really aimed more at eliminating permanent alimony," mostly by allowing termination upon the payor's retirement, or limiting it to the greatest possible degree.1

A Survey of The Meaning of Cohabitation, Matthew P Barach and Francesca M Blazina, Nov 20, 2024.
https://www.americanbar.org/groups/family_law/resources/committee-articles/survey-meaning-cohabitation/

https://www.google.com/search?client=firefox-b-1-d&q=life%27s+too+short+the+verdict+paul+newman#fpstate=ive&vld=cid:d38578a1,vid:nAMPB8gXGVI,st:0
"Lessons from The Verdict"
