2024 SUMMARY OF ILLINOIS DIVORCE AND FAMILY LAW CASES From May 1, 2022, to Current A Review of Critical Cases Developing our Caselaw

By: Gunnar J. Gitlin

For Kane County FLS—Nov. 21, 2023

The Gitlin Law Firm, P.C., Woodstock, Illinois

www.gitlinlawfirm.com

- https://www.illinoiscourts.gov/top-level-opinions/

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 are in the habit of focusing on Illinois caselaw as being persuasive to the exclusion of 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." It's based on this catch-all that caselaw in many states holds that punitive damages are allowed under the UFTA. The appellate court noted that the word "any" has "broad and inclusive connotations" under Illinois law. The appellate court then stated that contrary to one Illinois appellate case cited, opinions from other jurisdictions are shown greater than usual deference when considering a uniform act.

Of the 47 jurisdictions that have adopted the UFTA or the UVTA, at least 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

Graham

§ 21-8[a][5] Extensions of Orders of Protection
✓✓ Domestic Violence: **Extension of Plenary Orders of Protection**
Graham v. Van Rengen, 2024 IL App (2d) 230611 (7/26/2024)
The trial court properly extended the plenary orders of protection under § 220(e) of the Illinois Domestic Violence Act. Because the extensions were contested and for a fixed duration, the court found that petitioners only needed to satisfy the requirements of § 219, not show "good cause."

The decision held that the legislature intended to treat contested extensions of a plenary order of protection differently depending on the duration of the extension. If the extension is contested and is to remain in effect until vacated or modified, i.e., of an unspecified duration, the petitioner must establish good cause for the extension, in addition to meeting the requirements of section 219 of the IDVA. Conversely, if an extension is contested and for a fixed period not exceeding two years, the good cause requirement is not implicated, and the plenary order may be extended if the requirements of section 219 are satisfied. 750 ILCS 60/220(e).

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.

Parenting Time Modification

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 home-school 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).

PC Orders

✓✓ Rule 23: § 11-17 Parenting Coordinators

Rule 23—*IRMO Jones*, 2024 IL App (2d) 240229-U (Order filed 10/15/24).
The father in this case brought a post-decree motion following the effective date of Ill. S. Ct. R. 909 to appoint a parenting coordinator and he appealed the Lake County order appointing a PC and defining its role. He contended that the trial court, in making the appointment, exceeded its authority. The appellate court affirmed in part, vacated in part, dismissed in part, and remanded the case. The judge directed that the parties use the form commonly in use in Lake County. The GAL added that the proposed PC would not accept the appointment if the order did not conform to the one generally in use in the county.

The Father's counsel objected that the order required the parties to waive their right to complain to the ARDC and that it allowed the parenting coordinator to act as an evaluator pursuant to section 604.10 of the IMDMA. The trial court rejected these arguments. Petitioner's counsel noted that the parenting coordinator was not representing the parties and that this provision served simply to prevent them from filing a complaint because they were unhappy with a decision of the parenting coordinator rather than to bar them from filing valid complaints. Respondent's counsel replied that attorneys acting as third-party neutrals (see Ill. R. Prof'l Conduct R. 2.4 (eff. Jan. 1, 2010)) are also bound by the Rules of Professional Conduct.

The appellate court addressed the language of our Supreme Court rule and stated:

> Hence, Rule 909(b) empowers a parenting coordinator to "conduct[]" "decision-making functions." Additionally, the rule specifically contemplates a parenting coordinator "resolving conflicts."

The appellate court then stated:

> Moreover, to the extent Rule 909 speaks of "recommendations," it is clear that the so-called "recommendations" are more than mere suggestions. Rule 909(d) states, "The coparents shall comply with the recommendation(s) made by the parenting coordinator until and unless the court" determines they are not in the best interests of the minors or beyond the parenting coordinator's authority. Ill. S. Ct. R. 909(d).

The father was successful in his claim that the trial court erred in ordering that, in paragraph 26, the parties waive their due process rights. Paragraph 26 states, in pertinent part:

> For the purpose of dealing with the Parenting Coordinator, each party shall waive his or her constitutional due process and statutory rights which would be available in a formal court proceeding, mediation or arbitration."

It continues, "The parties shall use an informal and alternate means of decision-making instead of litigation." The appellate court reasoned that the court could not require the parties to waive due process requirements.

The appellate court also vacated the portion of the trial court's PC Order, setting a higher standard judicial review (clear and convincing evidence standard) for the PC's decisions rather than the *de novo* standard required under R. 909(l).

Comment: This Rule 23 decision should have been published!

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

---

Rule 23: Child Support Modification
§ 17-1[b] Change of Circumstances
§ 17-1[b][3] Changes Anticipated by Judgment or Marital Settlement Agreement

IRMO Svec, 2024 IL App (2d) 220461-U (Aug. 27, 2024)

The trial court erred in modifying the parties' marital settlement agreement to reallocate child tax exemptions between the parties after the children allocated to petitioner for tax purposes reached age 18 and no longer qualified for the exemptions. Since it was contemplated in the MSA that the tax benefit to petitioner would expire first because she was allocated the two older children, there was no substantial change in circumstances warranting a modification of the MSA.

Unfortunately, this case was a Rule 23 because of its timing. It addressed the foreseeability language (contemplation language) of Section 510(a)(1), eff. May 13, 2022. The trial court believed that based upon the amended language, the fact that the MSA contemplated that the minor children allocated to petitioner would eventually grow too old for her to claim them for tax exemptions was no bar to finding a substantial change of circumstances based on her losing.

The appellate court reasoned that there was no need to determine whether the trial court properly construed the amended language because the underlying motion was filed several days before the amendment became effective. So, this is an old-law case.

Rule 23: § 10-3[e] Imputing Income: Unemployed or Underemployed Parent[1]

IRMO Zechman, 2024 IL App (2d) 230003-U 08/21/2024
This unpublished case is the bookend to *Liszka* regarding under-employment, given that the father refused to seek any job other than at an Apple Store following his involuntary termination. Here, recall that Pub. Act 103-967 that provides:

3.2(b) 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 utilizing the above factors.

The following language will be deleted effective 1/1/25:

> A determination of potential income shall be made by determining employment potential and probable earnings level based on the obligor's work history, occupational qualifications, prevailing job opportunities, the ownership by a parent of a substantial non-income producing asset, and earnings levels in the community.

The law requires the court to consider the party's "specific" circumstances and then apply a 10-part test.

---

§ 11-2[c] Hague Abduction Convention

Hulsh

✓✓ Hague Convention Violations:
Appellate court rejects creating a new tortious claim for interference with custodial rights.
Hulsh v. Hulsh, 2024 IL App (1st) 221521 (6/28/24)
This case involved the Hague Convention, and the appellate court was called on to potentially recognize the tort of interference with custodial rights within the context of international child abduction under the Convention. The father had abducted his two children, who were living with their mother in Slovakia pursuant to a court order granting her primary custody, and brought them to the United States. The father's mother and brother allegedly assisted him by paying for a charter plane to take the father and children from Slovakia to England, providing housing for them in the United States, paying their living expenses after they came to the Chicago area, and otherwise secreting the whereabouts of the children from their mother.

Following a trial on a claim brought by the mother against the father under the Hague

[1] Also see: Maintenance Chapter, § 15-7, "Ability to Pay and Imputing Income to Obligor" Modification Chapter: § 17-1[j] "Decrease in Support Because of Change of Employment Status"[44] and § 17-1[k] "Imputed Income to Child Support Obligor."

Convention in federal district court, the father was ordered to return the children to the mother, and the mother was awarded the attorney fees and costs she incurred to get the children back. After the father filed for bankruptcy protection and claimed indigency, the mother sued the father's mother and brother in the circuit court for tortious interference with custodial rights, among other claims. The circuit court dismissed the complaint, and the mother appealed.

The appellate court declined to recognize a new cause of action for tortious interference with custodial rights. It stated that Illinois reviewing courts have repeatedly declined to recognize such a claim. The appellate court reasoned that it is the prerogative of our supreme court or the legislature to create new causes of action, not this court. Finally, and in any case, the opinion found that public policy did not support a new cause of action here–where the mother could have obtained the relief she seeks against her former husband's mother and brother in federal court in the underlying Hague Convention proceedings.

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

The Gitlin Law Firm
Practice Limited to Family Law
Woodstock, IL 60098
815/338-9401
GJG@GitlinLawFirm.com
www.gitlinlawfirm.com