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Family Law

The newsletter of the Illinois State Bar Association's Section on Family Law

Chair's Column

BY JESSICA PATCHICK

BEING THAT WE ARE IN OCTOBER, I thought I would try to give this month's column a bit of Halloween flair. Picking which paternity/child support horror to write about was tricky, but I landed on DNA, with a "Freaky Friday" vibe. The story goes like this:

Mom gave birth to a child in March of 2012. She was not married or in a civil union. There was no Voluntary Acknowledgement of paternity. The alleged dad denied kiddo was his. Mom applied for IV-D child support services. In October of 2012, the State filed a petition seeking to establish paternity. The State served the alleged dad (after three attempts). The alleged dad failed to appear, and the state set it over for default prove-up. Alleged dad showed up on the prove-up date and asked for DNA testing. The court ordered DNA testing. On testing day, alleged dad called the State and said he didn't have a ride, didn't have a photo ID, and couldn't be tested. The State told him to bring whatever form of ID he had, and that a photo would be taken of

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An Overview of Illinois' Law on Reproductive Health

BY ASHLEY D. DAVIS

IN THE POST *ROE v. WADE,* *post Dobbs v. Jackson Women's Health Organization*, 597 U.S. 215 (2022) world, many states are addressing reproductive rights, and several states will have various measures on the ballot in the upcoming November election. The law in Illinois encompasses a range of statutes and caselaw that address the right to make autonomous decisions about reproductive health, including the right to abortion, the handling of pre-embryos, and the rights of nonbiological parents in cases of assisted reproduction. Illinois law provides robust protections for reproductive rights, ensuring that individuals have the right to make decisions about their reproductive health without undue interference from the state.

Abortion

Illinois law provides strong protections for the right to abortion. 775 ILCS 55/1-15 and 775 ILCS 55/1-5 explicitly state that individuals have the right to make autonomous decisions about their reproductive health, including the right to have an abortion, the right to use or refuse reproductive health care including contraception, birthing decisions, and

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An Overview of Illinois' Law

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maternity care. Prior to 2021, Illinois had the Parental Notice of Abortion Act, which required an individual under 18 to notify a parent, grandparent, step-parent who lives with them or legal guardian about their decision to have an abortion. If one of these options was unavailable, the individual could go in front of a judge to show she was mature and well-enough informed to make this decision on their own. In October of 2021, the Illinois General Assemble approved HB 370 – The Youth Safe and Health Act, which repealed the Parental Notice of Abortion Act, and set up an advisory working group to identify resources to youth. As of June 1, 2022, individuals under the age of 18 now have the same right to make confidential decisions about having an abortion and are no longer required to go to court to access an abortion. These Illinois statutes, 775 ILCS 55/1-15 and 775 ILCS 55/1-5, limit the state's ability to interfere with an individual's health rights.

In January of 2023, Illinois passed the Reproductive Rights and Gender Affirming Care Omnibus Bills, which protects health care providers and their patients from legal attacks by neighboring states and expands health care access and options across the state.

Disposition of Pre-Embryos

In Illinois, the disposition of pre-embryos is primarily governed by the parties' prior agreements. The court in *Szafranski v. Dunston* held that such disputes should be resolved by honoring any advance agreement entered into by the parties. If no agreement exists, the court must weigh the parties' relative interests in using or not using the pre-embryos. *Szafranski v. Dunston,* 2015 IL App (1st) 122975-B. This approach ensures that the parties' intentions are respected and provides a clear framework for resolving such disputes.

755 ILCS 55/1-15 directly touches on embryos, as it states that a fertilized egg, embryo, or fetus does not have independent rights under the laws of this State. *In re Marriage of Katsap,* 2022 IL App (2d) 210706, explored the issue of frozen embryos and how to allocate those in a divorce. When there was no written or oral agreement between the parties, the court found that the best approach was a balancing method whereby the Court's balance the parties' interests in seeking or avoiding procreation. The Court looked to consider:

1) The intended use of the party seeking to preserve the frozen embryos, with greater weight being placed on the interest of the party seeking to become a genetic parent through implantation of the embryo than that of one who desires to donate the embryos to another couple;
2) The demonstrated physical ability or inability of the party seeking to implant the embryos to have biological children through other means;
3) The parties' original reasons for pursuing IVF, such as to preserve a spouse's future ability to have biological children in the face of fertility-impacting medical treatment, such as chemotherapy;
4) The hardship for the person seeking to avoid becoming a genetic parent, including emotional, financial, or logistical considerations; and
5) Either spouses demonstrated bad faith or attempt to use the embryos as unfair leverage in the divorce proceedings.

Here, the court provided a framework for courts to consider when no oral or written contract exists.

The Reproductive Rights and Gender Affirming Care Omnibus Bill signed in 2023 allows intended parents or parents to dispose of any cryopreserved fertilized ovum to be governed by the intended parent's or parent's most recent informed consent or under a marital settlement agreement. While parties can contract for embryo use, and even fight over the

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disposition of embryos in a divorce, Illinois caselaw provides that there is no wrongful death act cause of action for the loss of an embryo created by in vitro fertilization that has not been implanted into the mother. In *Miller v. Am. Infertility Group of Ill*. 386, Ill. App. 3d 141 (5th Dist. 2008), the Petitioners underwent IVF, and then sued the clinic for failure to cryopreserve a resulting blastocyst for future use. The Court found that the Wrongful death Act, 740 ILCS 180/0.01 was never interpreted to apply to situations involving the in vitro fertilization process and cryopreservation of blastocysts or pre-embryos. Such a cause of action could only come about through legislative action, not judicial pronouncement. Therefore, there was no cause of action or recovery under the Act for loss of an embryo created by IVF and that had not been implanted.

Parental Rights in Assisted Reproduction

Illinois courts have recognized the importance of providing parental support for children born through assisted reproduction *In re T.P.S.*, 2012 IL App (5th) 120176, *Mitchell v. Banary (In re M.J.)*, 203 Ill. 2d 526. The caselaw, including the M.J. court, emphasizes that children have the right to be supported by their parents, even when only one partner is biologically related to the child. *In re T.P.S.*, 2012 IL App (5th) 120176. This principle is further supported by the recognition of common-law claims for parental responsibility in cases where an unmarried couple has a child through artificial insemination. *In re Dee J.*, 2018 IL App (2d) 170532.

But, there is a caution for unmarried partners, in which at least one partner will not be a biological parent to the child. In *Buchanan v Miller*, 2023 IL App (5th) 220685-U, the petitioner and respondent were in a relationship and agreed to raise a child together via artificial insemination. The child was born, but at no time did the parties get married, nor did the non-biological parent adopt the child. After the parties separated, they agreed to a parenting plan for a time period, but the biological parent eventually stopped allowing the other parent to see the child. The non-parent filed a petition under the Illinois Marriage and Dissolution of Marriage Act. The court dismissed the complaint for lack of standing. This case provides caution for how a non-biological parent should legally address assisted reproduction, especially if the parties are not married.

Illinois provides expansive rights for individuals in regard to reproductive rights. The right to abortion is deeply entrenched in our statutes and caselaw. The new issues before the court are likely to revolve around assisted reproduction, and how those laws should be applied. ■

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him for identification purposes. Later, the State's phlebotomist called the State to say someone purporting to be alleged father showed up for DNA testing and was acting strange. He was wearing a hat and a hooded sweatshirt and kept looking down. He kept pulling the hat over his face, was hesitant to show his ID, and was visibly uncomfortable having his Polaroid snapped. Eventually, he tendered a valid Illinois driver's license to the phlebotomist. While the driver's license bore the name of the alleged father, the phlebotomist believed the man standing before her was not the man pictured on the license. (Cue the Norman Bates music.) The State asked mother to view the photo of the man who was tested, and she confirmed it was not the alleged father. Worse yet, she recognized the man in the photo as someone named "Shorty." To no one's shock, the DNA results yielded a zero percent probability of paternity.

So, what do you do when someone sends an imposter for DNA paternity testing? Unsurprisingly, Article 4 of the Parentage Act doesn't contemplate this particular situation, so I can't tell you that I did the procedurally correct thing. Sometimes as attorneys we do our best with what the statute gives us and hope for a just result. The DNA analysis had been run, so I couldn't leave the results flapping in the breeze. As required by old Section 45/11(e), now Section 46/403(c) of the Parentage Act, the DNA results were mailed to the parties, and the certificate of service was filed. Section 46/403(c) allows a party 28 days thereafter to file a motion challenging the admissibility of DNA results, which is exactly what I did. Simultaneously, I filed a petition for indirect criminal contempt alleging that the alleged father willfully participated in conduct meant to defraud the court. Alleged father hired counsel. Counsel appeared and agreed to submit his client for a second DNA test. The second test yielded a combined paternity index of 172,230,140,897 to 1 and a 99.999999999% probability. Considering Section 404(c) of the Parentage Act requires a CPI of 1,000 to 1 and a 99.9% probability of paternity, the alleged father agreed to enter an order adjudicating paternity. I withdrew the State's Petition for Indirect Criminal Contempt and all parties involved moved along.

As an aside, father's counsel never admitted to any wrongdoing, but the Polaroids attached to each of the two results are *very* visibly of two different men. Different noses, different eyes, different shades of skin. Further, when comparing the two DNA analyses, mother and kiddo are the same on both, while the alleged father column shows completely different allele sizes. Do I believe father sent someone to take the test for him? Absolutely. Do I believe he thought he would get away with it? Of course. Does any of that matter? No, because the end result was just.

As an even further aside, if you are a DNA nerd like me, google "chimerism," then imagine being implicated for a crime your brother committed because your DNA was in *his* semen four whole years after you donated your bone marrow to save his life. It happened in Alaska in 2004. Freaky Friday, right? ■

Support For a Disabled Child Under 750 ILCS 5/513.5

BY ELIZABETH FELT WAKEMAN

I RECENTLY TRIED A CASE IN ROLLING MEADOWS before Judge Daley involving 750 ILCS 5/513.5. This case is an excellent summary of the law of Section 513.5 since there was sadly a lack of agreement or stipulation on so many points.

The background of the family was a couple who lived together in multiple homes from approximately 1994 until 2018. The parties had 3 children together. They had a daughter, a son, the autistic adult child who is the subject of these proceedings and another daughter. During their relationship, father was a pilot and mother was a flight attendant with the same airline. While they were living together, they set their schedules to be opposite of each other so that they could care for the children, particularly, their only son who was diagnosed with autism, hypothyroidism, depression and anxiety. Recently, the subject adult child has also been diagnosed with diabetes with complicated management due to autism.

After the 2018 breakup, father was left with a robust pension and 401k valued at substantially more than a million dollars. Mother's assets were less than an eighth of Father. Father refused to provide any support as he was told that he had no obligation to support an adult.

In October, 2020, we filed our petition on behalf of Mother.

Standing/ Statute of Limitations:

First, 750 ILCS 5/513.5 applies to both married and unmarried couples. It does not require a determination of disability in the probate court. It does not require a guardianship of the disabled person. Pursuant to 750 ILCS 5/513.5, there must be a disability that existed prior to the emancipation of the parties' child. In the present case, Mother has not requested Guardianship as she continues to promote her son's independence although it is clear that Guardianship will be necessary in the future. Despite pleadings and arguments by Father's counsel, there is no requirement that there be a determination by a court of disability to invoke Section 513.5.

Next, the time to file a petition for support for a disabled adult child is not limited to the emancipation age of 18, 19 or graduation from high school. *In re Marriage of Moriarty,* 2024 IL App (1st) 230270.

We were able to prove disability through authenticated medical records from several medical care providers who supplied records with a business record authentication that demonstrated specific diagnoses that existed prior to the child turning 18 and graduation from high school. In most cases, the parties will agree to the presence of the disability as both parties are generally involved in the care and education of the child. In this case, Father disputed disability despite medical records diagnosing multiple conditions before the child turned 18 or graduated from high school. Father also disputed the relevance of the medical records. Father alleged that Mother enabled autism but failed to present any evidence to support that claim. **Practice Pointer**: Do not dispute the relevance of medical records when the medical condition of a party is at issue. Also, do not assert a claim that is not supported by a medical expert i.e. enabling of autism by a party (or anxiety, depression, etc.)

We were able to present medical records that documented the history of the adult child with hypothyroidism, autism, anxiety, and depression predating traditional emancipation and diabetes developing thereafter with treatment complicated by autism. While we had several medical care providers lined up to testify, if necessary. The court allowed the authenticated records to be admitted into evidence and deemed the foundational requirements satisfied with those certifications and that they were relevant to the ultimate issues in the case despite objections from Father's counsel. **Practice Pointer:** Do not simply get the records by authorization or release but obtain them by subpoena so that the authentication as a business record is available.

In addition to the records, we called the disabled adult's siblings as witnesses to the limitations in his abilities and to the inability of Father to be an alternate caregiver due to his lack of involvement in recent years and his hostility to the adult child and Father's continual suggestion that Mother has caused or enabled autism. We also called friends of the family to discuss specific and significant limitations of the disabled adult.

Pursuant to the express language of 513.5, the alleged disability must have existed prior to the emancipation of the child by graduation from high school and/ or turning 19. This is a very important point for a **Practice Pointer**: If you have a family with an autistic/neuroatypical child, cerebral palsy, spina bifida, learning disability, school refusal, depression and so on, please document that in the Marital Settlement Agreement and/or Allocation of Parental Responsibilities. Please note if there is an IEP, a Section 504 plan or medical diagnosis that may impede a child's ability to launch.

Once a disability has been established, the moving party must demonstrate the appropriate level of support. The first place to start is the guideline child support for income shares based upon the overnights and incomes of the parties. This is often not applicable if the disabled child is living in a group home or other housing, but if they are living with a parent, this is a good place to start.

However, what must be considered by the court is the actual cost of the care of the parties' adult child. In many cases, that includes respite care for the primary caregiver. This entire issue becomes complicated and challenging. The most important point for litigation is the question of how to prove this cost to the

Court. For this, I cannot recommend a resource like Henry aka Buddy Brennan from Rehab Assist with more enthusiasm. Dr. Brennan is a highly respected court appointed expert in guardianship cases. He is preeminently qualified to testify as to the cost of care for individuals with disabilities regarding their particular care needs and the related costs. **Practice Pointer:** Do NOT skip this. Yes, it costs money, but it is imperative to have credible expert testimony for the court to consider regarding the cost of future care.

Two things to be mindful of with respect to the determination of disability are the Social Security Disability qualifications and the Illinois PUNS list. Either one of these should be sufficient to determine disability in the more straightforward cases. If the Federal Government has determined that a person is disabled, this should truly end the dispute. Sadly, that was not the case in our case. Similarly, if the State of Illinois determines that a person qualified for the PUNS list, that should also end the dispute as this means that the State has determined that a person is disabled and qualified for expedited housing if a caregiver/parent dies or is unable to provide assistance to the disabled person.

Practice Pointer: To retain credibility, do not dispute disability of the child who has been deemed eligible for either list/benefit.

Since *In re Marriage of Moriarty,* 2024 IL App (1st) 230270 allows support to be awarded at any time, the date for filing the petition is still very important. I do not know of a case that addresses retroactive support for an adult disabled child, however, I anticipate that it would be consistent with *Petersen.* If that is the case, it is imperative to file the petition and your client's financial affidavit as soon as possible. Some trial courts will look at that date of filing the financial affidavit for the date for retroactive support.

Important points:

The obligation to support a disabled adult child does not end at traditional emancipation or the age of 18.

If a child has an IEP or has a documented medical disability, record it in the Marital Settlement Agreement or Allocation of Parental Responsibilities Judgment so the duplicative proof is not required.

File a Petition for Post High School Support as soon as possible so that support arrearages begin to accrue. File your Financial Affidavit immediately.

Prepare your proofs through subpoena so that all records are authenticated for financial resources and medical diagnoses.

Evaluate actual expenses for an adult disabled child to include in your financial affidavit.

Retain an expert to forecast and outline anticipated annual and monthly expenses until and even after an alternative housing plan is available.

Activate your child on the PUNS list immediately. https://www.dhs.state.il.us/page.aspx?item=85196#a_toc2 ■

Parenting Coordinators: Coordinating Parents Through the Day-to-Day Life

BY ERIN M. WILSON

WHAT HAPPENS WHEN ISSUES arise after a final Allocation Judgment or Judgment for Dissolution of Marriage is entered? What happens when the parties are out of court and issues or different interpretations of the final orders arise? Who can the parents reach out to once the ink has dried on their final order?

Enter parenting coordinators (PCs), those entrusted (and appointed) to help parents navigate life once they are out of court and the co-parenting relationship that exists within the parameters of that final order. After a divorce or parentage proceeding is finalized, the general goal is to keep parents from coming back into court. A parenting coordinator can assist the parties with the ultimate goal of minimizing litigation by putting out fires as they come up and before they can escalate into bigger issues. The most common reason a parenting coordinator is appointed is that there is a high level of conflict and often an inability to communicate between the parents, thus necessitating that neutral third-party professional.

PCs were previously governed in Cook County by Local Court Rule 13.10. Outside of Cook County, generally PCs were either not utilized or, if utilized, there was a lack of local court rules to govern PCs in those counties. Due to the increased use of PCs, and the lack of uniform rules and procedure surrounding PCs, in May of 2023, the State of Illinois enacted Illinois Supreme Court Rule 909. Illinois Supreme Court Rule 909 allowed there to be uniformity of the PC process, by setting forth the scope of duties and responsibilities of a PC while also establishing clear parameters regarding their role and its applicability. Illinois Supreme Court Rule 909 also gave "teeth" to the role of a parenting coordinator by setting forth a process where the PC can make binding recommendations which are to be followed absent court order to the contrary or written agreement of the parties.

A PC, and the process of parenting coordination, as set forth by Illinois Supreme Court Rule 909(b), is a child-focused alternative dispute resolution process, which is conducted by a licensed mental health or family law professional, which combines assessment, education, case management, conflict management, dispute resolution, and decision-making functions. Illinois Supreme Court Rule 909 provides that a PC is best for "coparents who are unable or unwilling to cooperate in making parenting decisions, communicate effectively with regard to issues involving their children, implement and comply with parenting agreements and orders, or shield their children from the impact of parental conflict." Illinois Supreme Court Rule 909 establishes that "the purpose of parenting coordination is to protect and sustain safe, healthy, and meaningful parent-child relationships." In practice, the PC acts as a roadblock between the parties and the easy route of retuning to litigation at the first disagreement and offers the parties an outlet to provide each of their perspectives and receive direction from a professional as to how to proceed. Oftentimes, the PC process allows for parties to feel heard and resolve grievances before they snowball into bigger issues or a further breakdown of the coparenting relationship.

Aside from the parties, the perspective of the PC and how they approach their role is equally important to the PC process. A PC has to consider the underlying issues that is causing the conflict between he parties. Oftentimes, the most prevalent problems are hostility, distrust, hurt and anger between the parents. As a result, it is extremely important for a PC to have strong conflict resolution and communication skills. As a PC, I suggest not only working within the constructs ofSupreme Court Rule 909, but also to set your own parameters and guidelines. Once you have your own set of parameters and guidelines that are acceptable within the scope of Illinois Supreme Court Rule 909, make these clear by including them in a written Engagement Agreement that the parties must sign. It is also important to enforce these parameters and guidelines in practice and remind the parties of them when necessary. Some examples of the ground rules I use are as follows:

- Ensure the complaining parent first raised an issue with the other parent and attempted to reach an agreement first. This ensures not only that the other parent is not caught off guard with an issue, but also helps the parents try to communicate and resolve between themselves, if possible.
- Require the complaining parent to include the other parent in all communication to me for full transparency. This allows the other parent to be aware of the issue and the complaining parent's position. It also avoids pitfalls of playing "telephone" and attempting to relay the issues between the parents. It also can reduce the appearance of "favoring" one parent by having all communications being out in the open.
- Allow the receiving party time to respond to the issue raised to ensure that both sides and perspectives are presented. This goes into the idea that it is likely that a party needs to at least feel their perspective is heard and having that outlet alone can reduce some of the tension. This also allows full transparency so that each party is aware of the other's position and can provide their response to those points. This assists in getting to the root of the issue.
- Ask the complaining party to cite the provisions of the order that they believe are relevant to the issue.

This keeps the parents focused on the issue at hand and holds them accountable to know the terms of their own parenting agreement. This not only helps streamline the process, but also makes the parents take a step back to see what, if anything, exists in the final order that supports this position. I also ask them to provide any documentation regarding the issue at hand, if applicable, such as Our Family Wizard or Talking Parents messages.

It is also important to remind the parents that any decisions made are not personal. Tensions can be high between parties in the PC process and oftentimes a parent may lash out if a recommendation is made that they do not align with. A few tips of how to help keep the parties in check and remind them that the recommendation is not personal:

- Present a recommendation as neutrally as possible. I tend to reference the provisions and/or orders that I rely on in my analysis when issuing my recommendations. When my recommendation is especially a "hot button issue" for one parent, I also make sure to address what grants me the authority to issue the recommendation that I did by citing Supreme Court Rule 909 and the engagement agreement.
- Acknowledge and reiterate each parent's perspectives and positions, to make it clear that both parents have been heard. By reiterating each parties' perspective, it makes it clear that you have reviewed all of the information given to you and still reached the ultimate recommendation.
- Avoid having the recommendation presented in a manner than can be construed as favoring or "siding" with one parent or another. Keeping the recommendations straight forward by simply stating the parties' positions, the interpretation, and the ultimate recommendations based on the interpretation can assist in this. Unnecessary comments are not often beneficial and can be construed in different ways even those not intended.
- Cite both the orders relied upon for the recommendation and the authority granted as PC. It is listed above but when a party is unhappy with a recommendation, it is important to reiterate the orders relied upon for the recommendation as well where the PC has the authority to make such a recommendation.

Unfortunately, even with these boundaries and approach, parents ultimately may be unhappy, especially when a recommendation is not what they wanted. As stated, tensions are high, and the parties may be very passionate about an issue that ultimately does not end in a recommendation they agree with. There are parents that are so unhappy with recommendations that sometimes, they will attempt to remove as the PC, whether they ask voluntarily or by filing a motion. This is when the tips and ground rules prove to be especially beneficial. When challenged, having a clear record of recommendations, along with clearly cited authority, analysis of applicable orders and acknowledgement of each parent's position helps demonstrate the neutrality of the recommendation. Often, a parent pursues this route as a reaction to an "unfavorable" recommendation. Other times, parents just become extremely difficult, unpleasant and disagreeable, which leads to an unproductive process and sometimes disrespect. As PC, it is important to not only set boundaries to avoid disrespect, but also call attention to the behavior and advise the discourteous parent of the consequences if such behavior continues. There are recourses such as imposing fines or reallocation of PC fees, especially when the parent's behavior exacerbates the issue.

Ultimately, it is important to remember that as a PC, the priority is helping facilitate that co-parenting relationship as well as what is best for the minor children involved, within the authority granted. Being a PC is not for the faint of heart and can be a very high conflict process, however, if the above guidance is followed, the process can be as smooth as possible and the PC can be protected from some of the inherent conflict within the role. ■

International Custody Disputes: Allocation Judgments Do Not Bind Courts When Determining a Child's Habitual Residence

BY JASON PICA II AND ERIN LYMAN

ON APRIL 30, 2024, THE SEVENTH UNITED STATES Circuit Court of Appeals held in *Baz v. Patterson*, what started off as a typical parentage case, that parental stipulations regarding a child's habitual residence do not conclusively establish residence.[1] The parties had one child together and agreed in their May 2022 Allocation Judgment: Allocation of Parenting Responsibilities and Parenting Plan ("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, but was to primarily live with the mother in Germany.[2] 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, so the father went to the child's school in Germany, removed the child from school, and brought the child back to the United States.[3]

Mother filed suit under the International Child Abduction Remedies Act, which implements the Hague Convention on the Civil Aspects of International Child Abduction.[4] For the 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, orders their return.[5] 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.[6]

In *Baz*, the court ultimately held that the child's habitual residence was Germany. The Seventh Circuit Appellate Court heavily relied on the Supreme Court's decision in *Monasky v. Taglieri*, in which the Supreme Court rejected the view that the habitual residence depended on an agreement between the child's parents.[7] Instead, "[t]he place where a child is at home, at the time of … retention, ranks as the child's habitual residence."[8] In holding that the child's habitual residence was Germany, the Appellate Court stated that they did "not suggest that the habitual-residence provision of the Illinois Allocation Judgment carries no weight," but that it was simply a relevant consideration that was a fact among others.[9]

In their analysis, though, the Appellate Court gave no significant weight to the parents' Allocation Judgment. The purpose of this type of agreement is to allocate significant decision-making responsibilities regarding the child.[10] Allocation judgments commonly resolve issues including schooling, parenting time, and custody. Yet, the Court held that only the parents were bound by the stipulations of the Allocation Judgment and that the court, as a third-party, was not bound nor did it consent to the judgment.[11]

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.[12] 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.[13] In July 2023, when the child was brought back to the United States, litigation to return the child to Germany commenced.[14] The child remained in the United States until April 2024 when it was held that the child was to be returned back to Germany.[15] 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.

How, though, can the courts not be bound by a court entered judgment between two parties? Following this decision, in the event that a child has strong ties to both countries they live in, the courts now must pinpoint a deciding factor that makes one country a stronger habitual residence over the other. In the interest of promoting public policy, the courts should encourage agreements between parents, especially when the courts are involved in the litigation, as such is the case with Allocation Judgments. Not only does this protect parties and courts from the time and expenses of litigation, but it protects the child's best interest by potentially preventing temporary relocations abroad. International custody cases present difficult challenges. Promoting agreement between parents is in the best interests of all involved, including the courts. ■

1. *Baz v. Patterson*, 100 F.4th 854, 867 (7th Cir. 2024).
2. *Id.* at 860-61.
3. *Id.* at 863.
4. *Id.* at 859.
5. *Redmond v. Redmond*, 724 F.3d 729, 737 (7th Cir. 2013).
6. *Id.* at 737-38.
7. 589 U.S. 70, 140 S. Ct. 719.
8. *Baz*, 100 F.4th at 866 (quoting *Monasky*, at 77, 140 S.Ct. 719).
9. *Baz*, 100 F.4th at 868.
10. *Fatkin*, 2019 IL 123602, ¶¶ 28-29.
11. *Baz*, 100 F.4th at 867-68.
12. *Id.* at 861.
13. *Id.*
14. *Id.*
15. *Id.* at 863.

Defending Dissipation: Tips and Common Pitfalls to Avoid

BY JESSICA C. MARSHALL

EVERY FAMILY LAW PRACTITIONER who litigates divorce cases has been there at one point in time or another. You are involved in a case where your client is on the receiving end of a **massive** dissipation claim. Unfortunately, the way that the case law requires dissipation issues to be tried is nearly a guarantee to add days, if not weeks, onto your trial. However, there are some ways to mitigate these claims, and to try and keep the time necessary to try these issues to a minimum.

First, you need to assess whether or not the dissipation notice is properly brought.

Is the Dissipation Notice brought timely?:

Many practitioners will wait until discovery closes before filing dissipation claims, to ensure that all claims are set forth in one notice, rather than subsequently updating dissipation notices as new discovery comes in. In an expedited trial setting, this may mean that the deadline for which a dissipation notice must be filed could be near the time of trial commencing. Take a look at 750 ILCS 5/503(d)(2):

> *(2) the dissipation by each party of the marital property, provided that a party's claim of dissipation is subject to the following conditions:*
>
> *i. a notice of intent to claim dissipation shall be given no later than 60 days before trial or 30 days after discovery closes, whichever is later;*
>
> *ii. the notice of intent to claim dissipation shall contain, at a minimum, a date or a period of time during which the marriage began undergoing an irretrievable breakdown, an identification of the property dissipated, and a date or period of time during which the dissipation occurred;*
>
> *iii. a certificate of service of the notice of intent to claim dissipation shall be filed with the clerk of the court and be served pursuant to applicable rules;*
>
> *iv. no dissipation shall be deemed to have occurred prior to 3 years after the party claiming dissipation knew or should have known of the dissipation, but in no event to 5 years before the filing of the petition for dissolution of marriage.*

750 ILCS 5/503(d)(2).

The statute is clear that the dissipation notice must be "given" no later than 60 days before trial, or 30 days after discovery closes, whichever is **later**. So, for example, if discovery closes within 30 days of trial beginning, you could have a situation where you do not see a dissipation notice until 30 days before trial begins. This gives you very little time to ensure that you have the documentation necessary to defeat a dissipation claim. You also have to, practically speaking, ensure that your exhibit books are ready with all responsive documents, and that your exhibit list is updated. You may also need additional witnesses to refute a dissipation claim, and it is possible that witness disclosures were already due. It is not uncommon to fall into a trap where the dissipation notice is served just on the brink of trial beginning, after other discovery deadlines have passed, and you are stuck scrambling to ensure that you have everything you need to defend it. If you have control over setting trial deadlines in a case management order, this is something to be cautious about. Ensure that your discovery closure date is more than 60 days prior to trial starting; this would then make the dissipation notice filing deadline 60 days before trial, which buys you more time to plan how you will defend your case in the event dissipation is raised at the last minute. Many practitioners will rush through a case management order and fill in dates without thinking about the impact of the deadlines on other things necessary for trial. Many trial orders will close discovery on a date certain (the operative date for the dissipation notice filing purposes) but you can still exchange "discovery updates" at a later date, closer to trial, which can be enumerated specifically in the order. Many practitioners fall into the pitfall of believing a discovery "closure" date means that no more documents will be exchanged after said date. This is typically just the deadline by which you can no longer issue additional discovery and when exchanges *should* theoretically be completed. However, it can be clarified specifically in a case management order that additional updates will be exchanged as the trial date nears, on a date certain, addressing the concern which often plagues practitioners with a "bad" notice of dissipation deadline.

Is the Notice's content appropriate?

The dissipation notice has to abide by the criteria set forth in 750 ILCS 5/503(d)(2), so it must include, at a minimum, "a date or a period of time during which the marriage began undergoing an irretrievable breakdown, an identification of the property dissipated, and a date or period of time during which the dissipation occurred". Additionally, by definition, only **marital** property can be dissipated. So, if a dissipation notice is given to you which claims non-marital property was dissipated, you may have a defense that the property was, in fact, **non-marital**, and not marital. However, the court likely would not yet have adjudicated whether or not the property is marital or non-marital prior to trial beginning, unless someone brought a Motion for Declaratory Judgment during the pre-decree case. So, while the dissipation notice could allege non-marital property, it is still your burden at trial to prove that the property is non-marital as a potential defense. If you know that your client has non-marital property

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Defending Dissipation

CONTINUED FROM PAGE 9

and it is likely that the case would go to trial, consider whether or not a Motion for Declaratory Relief could help earlier on in the process. If there is a dispute about whether or not property is marital and it is possible to have it adjudicated earlier, this will save you time with a very litigious opposing counsel who may try to claim dissipation on top of claiming said property is marital.

Additionally, take notice that the statute indicates that "no dissipation shall be deemed to have occurred prior to 3 years after the party claiming dissipation knew or should have known of the dissipation, but in no event to 5 years before the filing of the petition for dissolution of marriage", so paying attention to the dates of the transactions set forth in the notice will be important. If the dates fall outside of the time frame set forth in the statute, it is important to raise this as a defense, or, ideally, in an affirmative pleading which could dispose of the entire dissipation issue prior to the trial starting.

What to do if the Dissipation Notice is Late or Improper?

Presuming the dissipation notice is filed timely (even if that means that the time in which it was filed affords YOU very little time to prepare), what's next? If it was filed timely, you should immediately ascertain what, if any, additional documentation, testimony or other discovery will be necessary to defeat the claim and get to work on gathering it. If you need something that is only obtainable by subpoena or other formal discovery, it may be necessary to file a motion with the court requesting leave to issue same, especially if discovery is closed.

But, if the dissipation notice was not given timely, there are also options. Instinctively, when family law practitioners don't believe a motion is properly brought, their immediate inclination is to try and get rid of it. This becomes a bit controversial, however, because technically, a Notice of Intent to Claim Dissipation is exactly that – a notification. The case law, at least from prior research, doesn't seem to make it clear whether a Notice of Dissipation could be considered a Motion (*i.e.* leading to an analysis of whether or not you could successfully bring a Motion to Strike, a la *In Re Marriage of Wolff*). However, a Motion in Limine could be appropriate and effective against an improper Notice of Intent to Claim Dissipation. The trouble with this method occurs when you are dealing with tight deadlines, or a trial order which indicates Motions in Limine will be heard before trial begins (but, the same day trial is set to start). This will cause you to incur time and expense preparing for the dissipation notice defense regardless of whether or not it is ultimately necessary, based upon whether or not the Motion in Limine is granted or denied. The best practice would be to try and notice up the Motion in Limine in advance of the trial beginning, so that you know whether or not you need to spend time preparing a defense to the dissipation case before you actually have to begin that process. However, the unfortunate reality is that there is often not time for this by the time your case is this far into the process of beginning trial.

Trial Strategies for a Notice of Dissipation

Making a Motion for a Directed Finding

In the event that the Notice of Dissipation is not otherwise limited or disposed of prior to trial beginning, there are still things you can do as a practitioner to try and limit the time spent on trial. This lies in paying close attention to the opposing attorney's chase in chief.

Filing a Notice of Dissipation in and of itself will not shift the burden of defending a notice of dissipation to your client automatically. The person bringing the dissipation claim must establish a prima face case before the burden shifts to your client. This often means taking testimony regarding the contents of what is set forth in the notice. There could be hundreds or thousands of transactions which are alleged to have been "dissipation". There will need to be adequate testimony to ensure the prima facie case is established. The filing of the notice is not enough.

Once the Petitioner or claimant bringing the Notice of Dissipation rests their case, it is prudent to ask the Court for a directed finding as to the dissipation related issues, to establish whether or not the prima facie case has been proven. If the prima facie case was not made and the Court makes a directed finding in favor of your client, there likely wouldn't be a need to answer the dissipation claims during your case in chief (or rebuttal case, if you are representing the Petitioner). This would likely save you a considerable amount of time. Some reasons why the prima facie case wasn't proven could include (but are not limited to): (1) the property alleged to have been dissipated is clearly non-marital property; (2) the marriage was not undergoing a breakdown during the time period in question; (3) the claims are otherwise outside of the statutory required time frame (this is most effective when there is a stipulation early on as to when the breakdown in the marriage actually first began, if you can get such a stipulation) or (4) the Notice of Dissipation was filed, but no testimony was taken on it at all.

Stipulations

Finally, even in the most contested cases, litigants will want to preserve time and attorney costs by avoiding an ongoing trial. Stipulations can be effective, even in a highly contested dissipation case, and can significantly shorten the time necessary for the Court to hear testimony on these issues.

If it is a dissipation allegation which requires tracing funds through different bank accounts, the parties could stipulate to each other's demonstrative charts, and reserve the right to argue about whether or not the transactions actually constituted dissipation in closing arguments. For

example, if money was transferred by the "dissipating" party into a number of different bank accounts, and then pulled out of said accounts later, but every single transaction is set forth as dissipation, trace it out in advance, and talk to counsel about whether or not they'd stipulate that the money went from account A to account B. For multiple similar transactions, this would save a lot of time and it doesn't preclude the party alleging dissipation from arguing that ultimately it still was dissipation, and it saves the time of flipping back and forth through multiple statements and trial books. Or, perhaps your client took a vacation and paid expenses for that vacation. You could agree to stipulate that on X date, the party went to X location and spent XYZ money. You could agree to stipulate that the transactions happened, but reserve argument as to whether or not it constituted dissipation for testimony, and elicit that testimony from your client, rather than having to itemize the different transactions.

While this is not an exhaustive list, there are many ways to try and condense testimony and exhibit shuffling to try and minimize the length of time it takes to try these types of cases.

Final Thoughts

If you find yourself in a huge dissipation case defense and none of the above methods have worked to reduce the time spent on trying these issues, be sure to prove your case. It is clear from case law that your client must clearly and specifically demonstrate how the marital funds were expended. General and vague statements are typically not sufficient, but the evidence does not have to clear and convincing, and the oral testimony could be enough if it is detailed. (See *In re Marriage of Hagshenas,* 244 Ill. App. 3d 178 (2nd Dist. 1992). A continuation of spending patterns which were used during the parties' marriage, for example, has been found not to be dissipation. (See *In re Marriage of Aud,* 142 Ill. App. 3d 320 (5th Dist. 1986). Additionally, there is no requirement that the Court re-allocate dissipated funds dollar for dollar back to the non-dissipating party, in the event dissipation is found. Dissipation is a factor which the Court may consider when dividing the marital estate in an equitable manner. The Court can consider the assets and resources of the parties when making this determination. Courts have been known to use dissipation as a factor in making a property allocation and considering it, but not awarding it dollar for dollar "back" to the non-dissipating party, so this is also something important to consider when bringing a dissipation case, as well as when defending a dissipation case, especially in closing arguments. ■

Update on Dissipation of Assets

BY LISA M. NYULI

THERE ARE NUMEROUS CASES regarding the dissipation of assets. The last time the statute was amended was in 2016. Although the amendments have answered many questions and addressed previous problems, such as requiring a notice of dissipation, and limiting the period to look back, there are still many unanswered questions and much litigation involving dissipation.

In most cases where there is any level of a marital estate to divide, it is common to find claims of dissipation of assets by one or both spouses. Dissipation can have a significant impact on the division of assets and the overall financial outcome of a case, especially if the amount at issue is great. Even if the amounts are not substantial, the dissipation claims can become a "principle" for a party to fight for, especially since it fundamentally forces the court to consider misconduct or fault by a party in the division of assets. At the same time, many courts seem to be reluctant to delve into an accounting when the stakes aren't that high.

Dissipation refers to a spouse's use of marital property for his or her sole benefit for purposes unrelated to the marriage at a time when the marriage is undergoing an irretrievable breakdown. *IRMO Brown,* 2015 IL App. (5th) 140062. The concept of dissipation is premised upon waste, and contemplates a diminution in the marital estate's value due to a spouse's actions. *IRMO Miller,* 342 Ill.App.3d 988, 994 (2003). Even if the spouse charged with dissipation doesn't personally benefit, if the expenditure has had a detrimental effect on the marital estate, dissipation can be found.

When dividing marital property, the court is charged with considering dissipation as one factor. The Illinois Marriage and Dissolution of Marriage Act, 750 ILCS 5/503(d)(2) states that the court shall divide the marital property of the parties, considering all relevant factors, including, the dissipation by each party of the marital property, and requires:

i. A notice of intent to claim dissipation shall be given no later than 60 days before trial or 30 days after discovery closes, whichever is later;
ii. The notice of intent to claim dissipation shall at a minimum contain a date or period of time during which the marriage began undergoing an irretrievable breakdown, an identification of the property dissipated, and a date or period of time during which the dissipation occurred;
iii. A certificate of service of the notice of intent to claim dissipation shall be filed with the clerk of the court and be served pursuant to applicable rules;
iv. No dissipation shall be deemed to have occurred prior to 3 years after the party claiming dissipation knew or should have known of the dissipation, but in no event prior to 5 years before the filing of the petition for dissolution of marriage.

A sample notice of dissipation, with some examples of types of claims, is provided at the end of this Article.

Dissipation cases are fact-specific. The last amendment to the section of the Act relating to dissipation took effect on January 1, 2016, and since that time there have been 45 reported Appellate and Illinois Supreme Court cases, and of those, only 8 were not Rule 23 opinions, which is an indication of how fact-driven the cases are.

Dissipation can be found with the following behaviors by a spouse:

1. Extravagant Spending - Purchasing expensive items (cars, jewelry, luxury vacations) without the knowledge or consent of the other spouse or spending large sums of money on hobbies or personal interests unrelated to the
2. Gambling Losses - Using marital funds for gambling, leading to significant financial losses has been found to be dissipation.
3. Transfers to Third Parties - Transferring money or assets to friends or family members without a legitimate reason, or gifting substantial amounts of money or valuable items to others. This can include transferring money to children of the parties.
4. Spending on a Paramour – Probably one of the most common claims, using marital funds to support an extramarital affair, such as paying for gifts, travel, or living expenses for another can be considered dissipation.
5. Substantial Cash Withdrawals – When one spouse makes large and unexplained cash withdrawals from joint, or marital accounts, the court may find dissipation.
6. Destroying or Selling Marital Property - Selling marital assets below market value without the other spouse's consent, intentionally damaging or destroying marital property, or allowing a property to go into foreclosure or losing rental income are other forms of dissipation.
7. Business Misconduct – This can include using marital funds to invest in risky or failing business ventures without the other spouse's knowledge, and diverting business income to personal accounts or concealing business assets.

Initially, the party alleging dissipation must file and serve on the other party a Notice of Intent to Claim Dissipation within the timelines set out in 503(d)(2). Although the statute provides that the Notice be given "No later than 60 days before trial or 30 days after discovery closes, whichever is later." Although the

use of the word "or" between the two time frames, coupled with the term "whichever is later" seems to be easy to calculate, what happens when discovery is extended to less than 60 days prior to trial, and the 30 days after the close of discovery expires on the eve of trial, or even during trial? In the case of *IRMO Majewski,* 2023 IL App (2d) 220050-U, discovery was extended to conduct depositions by agreement of the parties. Within 30 days of the extension, which was also 2 days before trial, the dissipation notice was served. The Appellate Court found the notice to be invalid, as it provided no time for the spouse to investigate and meaningfully respond. In the case of *IRMO Tarbouche,* 2023 IL App (1st) 211145-U, the Court reviews and discusses decisions regarding the interplay between the statutory requirements and notions of fairness when dissipation is first found during the discovery process but notice is given within 60 days before trial.

The party alleging dissipation must identify when irreconcilable breakdown of the marriage occurred. *IRMO Sinha,* 2021 IL App (2d) 191129. If there is insufficient evidence of that date, Courts have used the date of separation or the date the petition for dissolution was filed. *IRMO Reed,* 2023 IL App (1st) 220949-U, citing *IRMO Hamilton,* 2019 IL App (5th) 170295.

At trial, the party alleging dissipation needs to make the prima facie showing that dissipation has occurred. In addition to showing the types of conduct discussed above, this can also be done by showing that a spouse's mismanagement of marital assets caused a loss to the marital estate. *IRMO Daily,* 2021 IL App (5th) 160060-U.

Thereafter, the burden shifts to the party charged with dissipation to show with clear and specific evidence how the funds were spent. *Daily,* at ¶25. Alleging that funds were spent on "household expenses" and "repairs" was found to be too vague to meet the burden of rebutting the dissipation claim in *IRMO Carter,* 317 Ill.App. 3d 546 (2000). In *Reed,* the alleged dissipation by husband was $70,000 in withdrawals and payments made by him, that he testimony that the money was used "to make various purchases and provide[d] cash for individuals throughout the marriage" was too vague and did not provide the specific evidence required. *Reed* at ¶43,44.

It is important for a client to understand that once dissipation has been proven, the remedy is not necessarily an award of cash equal to one-half of the amount dissipated to the other spouse. While that is certainly one solution, the court is only required to consider the dissipation in the overall division of property. This can result in no direct compensation at all to the complaining spouse. See for example, *IRMO Tabassum and Younis,* 377 Ill.App. 3d 761,780 (2d Dist, 1999), where the testimony showed husband wrote a check written for $5000.00 to a 3rd party, listed $1,000 per month on his financial disclosure for vacation expenses and testified that he took trips with his girlfriend, and $200 per month for medical expenses, and testified that the expenses included a Viagra prescription. The trial court found that it was unable to accurately calculate the husband's dissipation, but that it was "clearly larger than $5,000". Wife was awarded a larger share of the marital home in part because of the dissipation.

While it is imperative to look at the issue of dissipation in your case, it is also your obligation to fully understand and discuss with your client whether and how it may impact the final property division in their case. In an ISBA Family Law Section Newsletter, vol.60, no.11, June 2017, Judge Arnold Blockman (ret.), urged a discussion with the client regarding all the issues in asserting claims of dissipation: "These issues include, but are not limited to, upsetting the family law judge, the increased costs and fees to be incurred in asserting the claim, the necessity of obtaining expert testimony in asserting the claim, and the danger of the other party asserting a request for additional final contributions to attorney's fees if you are not successful in your dissipation claim."

Dissipation can be a complicated, time-consuming aspect of property division, but one which cannot be overlooked when assessing your case.

Notice of Intent to Claim Dissipation

Now comes the Petitioner, by and through her attorney, LAW FIRM, and in accordance with 750 ILCS 5/503(d)(2), states the following:

1. This Notice of Intent to Claim Dissipation is brought more than the later of (1) 60 days before the scheduled trial date of 2024; or (2) 30 days after discovery closes.
2. The marriage between Petitioner and Respondent was irretrievably broken down on [Date].
3. Respondent has dissipated marital assets since that date and continuing through [Date]; to wit:
   a. Respondent made extravagant gifts to his/her paramour, including a ring on August 21, 2022, a Louis Vuitton purse on December 24, 2021, and a cruise on September 15, 2021. The gifts that Respondent has made to his/her paramour which are known to the Petitioner had a total cost of approximately $30,000.00.
   b. Respondent has traveled extensively with his/her paramour, including trips to Alaska on September 15, 2021, Barbados on January 1, 2022, and Naples, Florida on March 17, 2023. All of the expenses of the travel, including airfare, hotels, meals, entertainment, and the like, were paid by Respondent. The total cost of Respondent's travel with his/her paramour was approximately $15,281.00.
4. Respondent's expenditures for gifts to and travel with his/her paramour were for a purpose not related to the marriage.
5. Additionally, the Respondent has dissipated cash; to wit:
   a. Cash withdrawals from account x1267 from January 1, 2020 to May 16, 2024, in the amount of $77,000.00;
   b. Payment of $10,000.00 to [JOHN DOE] on 12/22/2020;

Continued on next page

c. Payment of $750.00 to [JANE DOE] on 8/6/2021;
d. Cash payment to himself of parties' daughter in the amount of $15,000.00 each on September 30, 2021 and March 22, 2022;
e. Zelle payments totaling $3,010 to [COWORKER] on April 26 and April 27, 2022;

6. Also, the Respondent destroyed the parties' residence, punching holes in the walls and doors, failing to repair or have repaired the water damage to the ceiling, allowing the house to go into foreclosure by failing to make the monthly mortgage payments.
7. The Respondent additionally took a 401(k) loan in the amount of $50,000 on May 1, 2023, and refuses to account for the use or location of the funds.
8. All of the expenditures enumerated herein occurred less than 5 years prior to the filing of the Petition for Dissolution of Marriage and less than 3 years after Petitioner knew or should have known of Respondent's Dissipation.
9. All Respondent's dissipation should be added back into the marital estate, and allocated to Respondent as a part of his/her share of the marital estate [or] Petitioner should be awarded one-half of the Respondent's dissipation, to be paid from Respondent's share of the marital estate [or] Petitioner should be awarded a disproportionate share of the marital estate to compensate for Respondent's dissipation.

Petitioner,
x_____

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A closer look at *In Re Marriage of Zamudio* and the potential impact on the allocation of early retirement subsidies in divorce (PART I) (*In Re Marriage of Zamudio*, 2019 IL 124676)

This article discusses the potential impact on the allocation of an early retirement subsidy when valuing and/or dividing a defined benefit plan in divorce.

Understanding Purchased Service Credit and the Division of Early Retirement Subsidy

When navigating the complexities of pension plans, particularly during divorce or separation, two significant concepts often arise: (1) purchased service credit and (2) early retirement subsidies. Understanding these elements is crucial for ensuring fair and equitable distribution of retirement benefits

Purchased Service Credit (Regular or Permissive)

Purchased service credit refers to the ability of employees to buy additional years of service for pension purposes. This often applies to individuals who want to enhance their retirement benefits by purchasing credit for past service, military service, or other eligible periods of permissive service (40 ILCS 5/1-119(5.5),(7.5)). Purchasing additional service credit can significantly boost retirement benefits, often leading to increased monthly pensions or eligibility for early retirement.

Division of Early Retirement Subsidy

An early retirement subsidy is a financial benefit offered by pension plans to its members who retire before reaching the normal retirement age. This subsidy is designed to provide a financial incentive for earlier retirement, often resulting in increased monthly pension payments. One such early retirement subsidy is the "30 and out" provision offered by many public and private retirement plans around the country. This provision allows a member to retire early without reduction if they have accrued 30 years of service (variations such as the "Rule of 85" and similar provisions also include an early retirement subsidies). If a member's purchase of additional optional/permissive years result in their meeting the "30 and out" threshold, the benefit can be payable immediately without reduction for early retirement (i.e. the subsidy). Enter the *Zamudio* and *Hunt* cases…

***Marriage of Zamudio and Ochoa*, 2019 IL 124676**

***Marriage of Hunt*, 78 Ill. App. 3d 653, 397 N.E.2d 511 (Ill. App. Ct. 1979)**

In summary, the *Zamudio* case determined that if additional years of service credit are purchased during marriage, regardless of when the years may have been attributable, the purchased years are marital property. But what if the addition of the purchased years now puts the participant over the "30 and out" threshold?

In my next article (Part II), I will dig into how the *Zamudio* case may alter the typical "Hunt" formula for characterization of an early retirement subsidy…stay tuned!

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