



Family Law News

A newsletter published by the Section Council of the Section of Family & Juvenile Law

Maryland State Bar Association, Inc.

December 2003

TABLE OF CONTENTS

A Message from the Editor	2
Message from the Chair:	
Paul J. Reinstein	3
Mark your Calendars	4
Why Maryland Needs to	
Update its Child Custody	
Jurisdiction Statute	5
Website of the Month	6
Sports Update	6
Legal Quotation of the Month	6
Case Notes	7
December Birthdays	9
January Birthdays	9

Editor: Walter A. Herbert, Jr.





A Message from the Editor

Your Family & Juvenile Law Section Council is already preparing for the up-coming legislative session. We are grateful to Senator Grosfeld, Delegate Dumais and K. King Burnett, Esquire, for sharing their insights at our recent Section Council meeting, although in truth we heard little of their presentation at our end of the table (Chris Panos slurps his soup and Keith Schiszik snores).

We hope to provide additional information on legislation of interest to the family law bar in a future issue. And no, Chris Panos doesn't really slurp his soup; we don't know, nor do we want to know, if Keith Schiszik really snores.

And speaking of future issues...let us hear from you! Share your knowledge of Maryland family law by writing an article for the newsletter, or send us ideas for articles that you would like to see and we will ship them out to be written (because that's what editor's do).

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Next issue: February 2004

Message From the Chair

Margaret Mead once said: "Never doubt that a small group of thoughtful, committed citizens can change the world; indeed, it's the only thing that ever has."

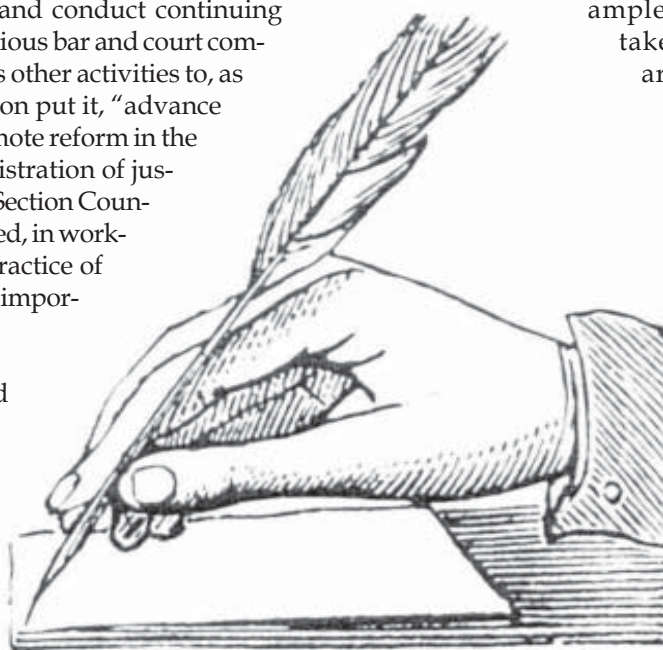
I have been fortunate enough to be a member of the Section Council for the past eight years, and to have played a small part in the great work the Section Council has accomplished in those years. Many members of the Family & Juvenile Law Section are unaware of the enormous efforts undertaken by past Chairs and Council members to address legislative issues, plan, coordinate and conduct continuing legal education seminars, staff various bar and court committees, and undertake numerous other activities to, as the MSBA Articles of Incorporation put it, "advance the science of jurisprudence, promote reform in the law, [and] to facilitate the administration of justice." The Family & Juvenile Law Section Council has prided itself in being involved, in working to change and improve the practice of family law in Maryland, and most importantly, in making a difference.

This year, I have the honor and challenge of carrying on this strong tradition. And despite only being three months into the process, this year's Section Council has already "stepped up to the plate". A number of Council members are currently participating in the Administrative Office of the Courts Custody Subcommittee, and are looking closely at both the American Law Institute's Custody Decision - Making Principles, as well as the American Bar Association Family Law Section's Standards of Practice for Lawyers Representing Children in Custody Cases, (which standards have recently been adopted by the full ABA). This area is of particular concern to me personally, since I strongly believe that state-wide, standardized rules for guardians-ad-litem/attorney advocates are desperately needed in Maryland.

The Section Council is also actively involved in preparation for the 2004 legislative session in Annapolis. Needed reforms to the UCCJA & UIFSA statutes are being studied in conjunction with the State of Maryland Commission on Uniform State Laws, and the Council is also assisting in the

drafting and presentation of proposed bills with members of the Maryland Senate and House of Delegates. As in past years, the Council will strongly advocate for and against legislation which is important to our membership, and we will regularly testify before various Senate and House committees to make our collective voice heard. This work is both necessary and demanding, and the time and effort invested by the council members is substantial.

This Newsletter is yet another example of the work being undertaken by the Section Council, as are the many MICPEL seminars being planned and staffed by Council members. The Family Law Update presented in July and August, the Domestic Violence program in September, the Divorce Tax Workshop in October, as well as the upcoming Family Law University in January, 2004, are all coordinated and taught by past and present Section Council members, and are among the most popular CLE programs MICPEL sponsors.



If all this sounds like I'm "blowing my own horn", it is because I am proud of the energy and devotion of the Section Council, and I believe the membership of our section should be equally proud. I truly believe that we can and do make a difference, and I also believe that more members of the Family and Juvenile Law Section should get involved in helping to improve the practice of family & juvenile law in Maryland. Give us a call, or drop us a letter or email, and let us know that you care as well and want to get involved.

Paul J. Reinstein, Esquire

Paul J. Reinstein, Esquire, is a partner in the law firm of Keiffer, Johnston, Reinstein and Papirmeister.

MARK YOUR CALENDARS:

*The Family Law Committee of the **Prince Georges County Bar Association** meets on the third Wednesday of each month at 4:45 p.m. in the Circuit Court Law Library. Each meeting includes a Guest Speaker...all are welcome. For the first quarter of 2004 the following CLE topics are scheduled:

January 21-Software Technology: Cutting Edge Tools for the Family Law Practitioner;

February 18-The Child Support Courtroom and Job Search Programs for the Unemployed Obligor;

March 17-Co-Parenting Models in Child Custody Cases.

Michele Ferris Hansen, Esquire and Walter A. Herbert, Jr., Co-Chairs

*The Family Law Section of the **Bar Association of Montgomery County** will sponsor its annual Holiday Party on December 18, 2003 at 5:00 p.m. David and Sue Goldberg will host the event at the Kentland Clubhouse in Gaithersburg, Maryland. The cost for attendees is as follows: Judges, Masters, Lawyers and Mental Health Professionals - \$30.00, Courthouse staff - \$15.00. Please send your check by December 10, 2003 to Sue Goldberg at 382 Hart Road, Gaithersburg, MD 20878.

Our next three meetings in the new year will be held in the CLE classroom of the Bar Association Building on January 15th, February 19th and March 18th at 5:30 p.m.. A short program will be presented at each meeting. January's program is titled "Underutilized Trial Techniques: Opening and Visual Aids to the Court" presented by Faith Dornbrand and Scott Strickler. February's program is titled "What to do with the Guardian Ad Litem in the Courtroom" presented by the Honorable Ann Sundt, Stephanie Fink and Vince Wills. And our March program will focus on the Bozman case and the ramifications thereof.

We look forward to seeing everyone attend these wonderful programs and events.

Heather Q. Hostetter and Shelly D. McKeon, Co-chairs

December 25th: (note to self: do not schedule depositions in the morning...).

*****THE FLU IS BACK!!!

Family Law University
Winter Term 2004
Friday, January 30, 2004
8:45 a.m. - 4:30 p.m.
Sheraton Columbia Hotel
10207 Wincopin Circle
Columbia, MD 21044

What You Will Learn & Why You Should Attend...

A tradition of excellence in continuing legal education returns on January 30, 2004 as MICPEL and the MSBA's Section of Family & Juvenile Law present the 2004 Winter Term of the Family Law University.

The Family Law University offers both critically important "core courses" that all family law practitioners should attend, plus a wide selection of "elective courses" that allow you to craft your own curriculum, choosing the subjects that interest you the most.

Brenton G. Burry
Executive Director
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Agenda

8:45 - 9:00 a.m. Welcome, Introductions, Overview:
Stacy LeBow Siegel, Esq.

9:00 - 10:30 a.m. An Evidence Law Update for
Family Law Practitioners
Hon. Joseph F. Murphy, Jr.

(continued on page 10)

Why Maryland Needs to Update Its Child Custody Jurisdiction Statute

In 1968, the Uniform Law Commissioners promulgated the Uniform Child Custody Jurisdiction Act (UCCJA). By 1981, every state, including Maryland, had adopted this Uniform Act. UCCJA was designed to discourage interstate kidnaping of children by their non-custodial parents. Before the UCCJA, it was a common practice for non-custodial parents to take children across state lines. They hoped to find sympathetic courts willing to reverse unfavorable custody orders. In too many cases, they were successful.

In 1981, Congress adopted the Parental Kidnapping Prevention Act (PKPA) to put the weight of full faith and credit behind the principles of the original Uniform Child Custody Jurisdiction Act. There are two main differences between the two acts. The PKPA provides that once a state has exercised jurisdiction, that jurisdiction remains the continuing, exclusive jurisdiction until every party to the dispute has exited that state. The UCCJA simply states that a legitimate exercise of jurisdiction must be honored by any other state until the basis for that exercise of jurisdiction no longer exists. In practice, the two acts confuse the adjudication and settlement of child custody disputes in certain cases.

Neither the UCCJA nor the PKPA address another important issue, interstate enforcement of child custody orders (including visitation provisions). Following universal acceptance of the 1992 Uniform Interstate Family Support Act that provides improved interstate enforcement of child support orders, interstate enforcement of child custody orders remains a last frontier that needs to be crossed in order to make the law pertaining to children's needs complete.

In 1997, the Uniform Law Commissioners promulgated a new **Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)**. It reconciles UCCJA principles with the PKPA and it adds interstate civil enforcement for child custody orders. This new statute has already replaced the UCCJA in 34 states and the District of Columbia. In the upcoming 2004 Legislative Session NCCUSL is planning to introduce the UCCJEA in all the states that have not yet enacted it, with the goal of nationwide uniform enactment by 2005. It is expected that the bill will be prefiled for the upcoming Maryland legislative session.

THE OBJECTIVE OF THE UCCJEA

Interstate child custody jurisdiction statutes are necessary because Americans are a mobile people who seldom stay in one state. Child custody disputes between parents, which arise when there is a divorce or when unmarried

biological parents want to have custody adjudicated in a court, are impacted by that very mobility.

Child custody orders also have a quality that exaggerates the problem. They are modifiable orders, subject to reconsideration and change, until the children subject to them reach the age of majority. Circumstances may change between the parties governed by an order. A common scenario involves a child custody order issued in a state where the parents and the child lived together before the parents divorce each other. Then the custodial parent moves with the child to another state. If there is a need to modify the order, in which state can that modification take place? And if the second state purports to modify the order from the first state, which order is to be recognized and enforced in the first state and in every other state in the United States? The UCCJEA establishes clear bases for taking jurisdiction and by providing rules that discourage competing child custody orders.

HOME STATE PRIORITY

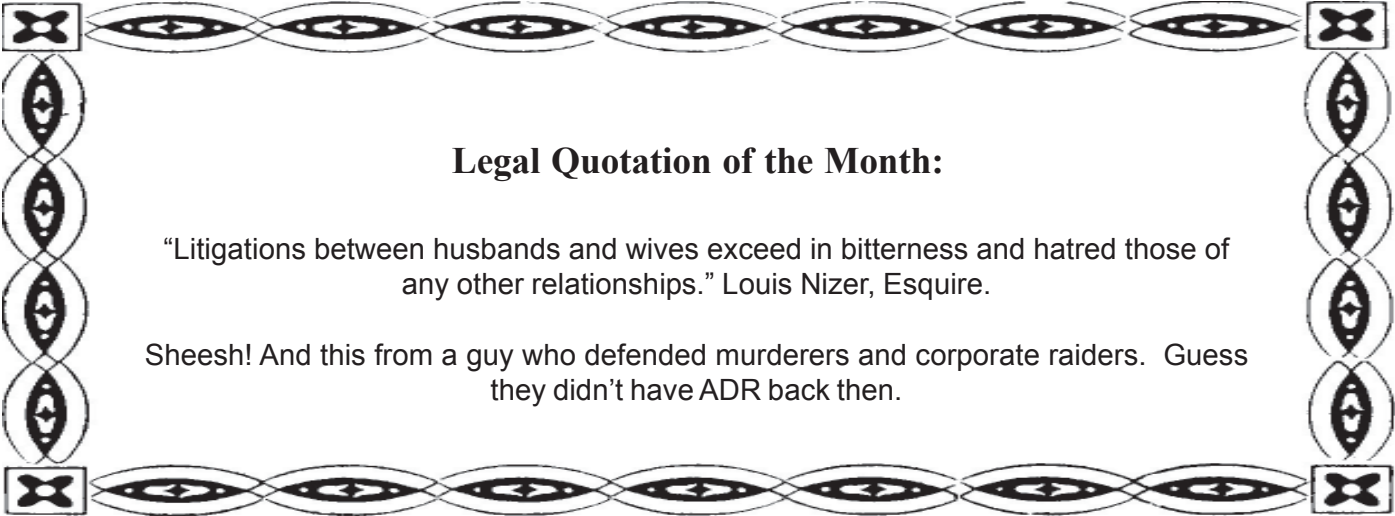
Under current Maryland law (the UCCJA), there are four principles, or bases, for taking jurisdiction over a child custody dispute. These are child's home state; significant connection between state and parties to a child custody dispute; emergency jurisdiction when the child is present and the child's welfare is threatened; and, presence of the child in the event there is no other state with another sound basis for taking jurisdiction.

Under the PKPA the home state always has the first opportunity to take jurisdiction. The UCCJEA supports the PKPA position. Any state that is not the "home state" of the child will defer to the "home state," if there is one, in taking jurisdiction over a child custody dispute. Temporary emergency jurisdiction may be taken, but only long enough to secure the safety of the threatened person and to transfer the proceeding to the home state, or if none, to a state with another ground for jurisdiction.

CONTINUING EXCLUSIVE JURISDICTION

The UCCJEA also provides for continuing exclusive jurisdiction. If a state once takes jurisdiction over a child custody dispute, it retains jurisdiction so long as that state, by its own determination, maintains a significant connection with the disputants or until all disputants have moved away from that state. In contrast, the UCCJA allows jurisdiction to shift if the initial ground for taking jurisdiction

(continued on page 11)



Legal Quotation of the Month:

“Litigations between husbands and wives exceed in bitterness and hatred those of any other relationships.” Louis Nizer, Esquire.

Sheesh! And this from a guy who defended murderers and corporate raiders. Guess they didn't have ADR back then.



Website of the Month:

WWW.PPBFH.COM

A site with attitude...check out the archived Holiday cards.



Sports Update:

The Gunston Venom, a U-11 division 2 team competing in the National Capitol Soccer League, recently completed a successful Fall 2003 season. The Venom, featuring Daniel Herbert in a critical mid-field role, will again compete in division 2 in Spring 2004.

C A S E N O T E S

Issue: Whether nonmodifiable alimony can be terminated by remarriage when not specifically stated in writing.

Moore v. Jacobsen, 373 Md. 185, 817 A.2d 212 (2003).

Facts: The Respondent, Suzanne Gibbs Jacobsen (hereinafter “the Respondent” and/or “Mrs. Jacobsen”) was granted an absolute divorce from the Petitioner, Edwin Gibbons Moore, III (hereinafter “the Petitioner” and/or “Mr. Moore”) on March 13, 2000 from the Circuit Court for Montgomery County. The parties entered into a separation agreement which stated that alimony was to be paid by the husband to the wife until April 1, 2007, or for 84 consecutive months. It was stated that pursuant to § 8-101 through § 8-103 of the Family Law Article, “no court shall have the power to modify this agreement with respect to alimony, support or maintenance of either spouse except as provided herein.” Neither the divorce decree nor the separation agreement contained specific language concerning the effect of remarriage with regard to the husband’s obligation to pay alimony.

The Respondent remarried on September 2, 2000. Petitioner immediately terminated alimony to Mrs. Jacobsen. Mrs. Jacobsen sought relief from the Circuit Court for Montgomery County and the court entered a judgment in the amount of \$8,833.33 plus \$750.00 in counsel fees to Mrs. Jacobsen. Mr. Moore filed an appeal with the Court of Special Appeals, who affirmed the Circuit Court’s decision. Subsequently, the Court of Appeals granted Mr. Moore’s petition for writ of certiorari to consider (1) “whether, under the terms of the parties’ agreement and § 11-108, his obligation to pay alimony terminated when respondent remarried”; and (2) whether termination is not a modification under § 8-103, which would therefore render the nonmodifiability clause irrelevant.

The Respondent argued in response that the Petitioner’s obligation to pay alimony did not terminate upon remarriage because the parties agreed in the separation agreement that alimony was nonmodifiable for a seven-year period. Respondent stated that the clear intent of the parties was that alimony would continue regardless of any subsequent events and that the Court must look at this intent. Mrs. Jacobsen also argued that § 11-108 (termination of alimony) and § 8-103 (modification of agreement or settlement) “must be read together and that termination is a form of modification under the statutory scheme. As such, the nonmodifiability clause prohibits termination of alimony.”

The Court of Special Appeals held that the alimony provision in the separation agreement was nonmodifiable and set

a finite endpoint for alimony payments, thus satisfying the “agreed otherwise” language of § 11-108.

The Court of Appeals “must determine whether respondent’s right to alimony terminated upon her remarriage or whether the parties’ agreement satisfied the ‘agree[d] otherwise’ language of § 11-108.”

Held: The Court of Appeals reversed and remanded the judgment of the Court of Special Appeals. The Court held that if alimony payments are to continue after remarriage, “the agreement must contain express and clear language evidencing the parties’ intent that alimony will continue after remarriage of the recipient spouse; otherwise, pursuant to the language of the statute, remarriage terminates the obligation.” The Court of Appeals believes that “unless the parties agree explicitly, in writing, the statutory presumption that alimony terminates upon remarriage controls.” The Court stated that “[t]he public policy set forth in § 11-108 clearly states that alimony does not survive the remarriage of the recipient. To create an exception to that policy, an agreement must be equally clear. We think a bright-line rule requiring an express provision providing that support shall not terminate upon remarriage fosters certainty, resolves ambiguity and reduces litigation.”

In its opinion, the Court of Appeals distinguished “termination” from “nonmodification”. The Court stated that “[t]ermination is not modification and therefore is not prohibited by the nonmodifiability clause in the separation agreement.” Termination occurs by operation of law and thus does not require court action. “The nonmodifiability clause of the parties’ agreement does not operate to prohibit termination of alimony upon remarriage and is not a substitute for use of the word “remarriage.”

The Court of Appeals’ decision was consistent with other states that have considered this issue. These jurisdictions have recognized the importance of requiring clear and specific language in written agreements or divorce decrees where the intent is for alimony to be nonmodifiable after the recipient remarries.

Chief Judge Bell and J. Battaglia dissented.

Practice Consideration: If alimony is to continue after remarriage, it must be specifically stated in writing. Otherwise, § 11-108 of the Family Law Article will prevail, terminating alimony upon remarriage. It should also be noted that termination is not a modification under § 8-103, and thus, an agree-

(continued on page 8)

Case Notes . . .

(continued from page 7)

ment making support “nonmodifiable” is not the same as an agreement making support “non-terminable”.

By Marjorie Roberts, Paralegal for Christopher R. vanRoden, Esquire

Issue: Whether custody to a third party can be granted over parental custody – best interest of the child.

Shurupoff v. Vockroth, et vir, 372 Md. 639, 814 A.2d 543 (2003).

Facts: Petitioner, Lawrence J. Shurupoff (hereinafter “Mr. Shurupoff”) and Pamela Vockroth (hereinafter “Pamela”) are the biological parents of Kimberly S., born in October 1987. At the time Kimberly S. was born, Mr. Shurupoff lived in Michigan and Pamela and Kimberly S. resided in Maryland with Pamela’s parents, the Vockroths, until December 1988, when they moved to an apartment approximately 10 minutes away. The Vockroths cared for Kimberly, before and after they moved. Mr. Shurupoff did not see Kimberly until she was one year’s old, partly because of not being immediately informed of her birth. Reconciliation was discussed between Mr. Shurupoff and Pamela on a number of occasions. Mr. Shurupoff only had sporadic contact with Kimberly and did not provide regular support for her. The petitioner, Mr. Shurupoff and Pamela married in April 1989, but lived apart for a while. Pamela and Kimberly moved to Michigan in August 1989. The relationship began to deteriorate, apparently over Pamela’s abuse of alcohol and possible manic-depressive state. Without notice, Pamela took Kimberly and left Mr. Shurupoff in May 1990 and moved back to Maryland with the Vockroths. They were subsequently divorced in Michigan in April 1991.

The Michigan court granted them joint legal custody of Kimberly but awarded sole physical custody to Pamela. No specific visitation schedule was assigned, but Mr. Shurupoff was ordered to pay child support. Mr. Shurupoff visited Kimberly very sporadically in Maryland, only when business or something else brought him there. He would only visit for a few hours at a time with no overnight visitations. Between 1992 and 1994, Mr. Shurupoff did take Kimberly on a few trips and one visit in New York in 1995, but had no extended visits with Kimberly from 1995-1998. In 1992, Pamela met and lived with Charles Hall, who had two daughters of his own, one Kimberly’s age, and another a year older. He helped with Pamela’s drinking problems and also in raising Kimberly. The Vockroths continued to remain a part of Kimberly’s life, seeing her several times a week and on weekends. Mr. Shurupoff met and began living with Maria in 1995 and they became parents in September 1996. Kimberly did not know

of this child’s existence until 1998. Kimberly continued to spend a lot of time with the Vockroths.

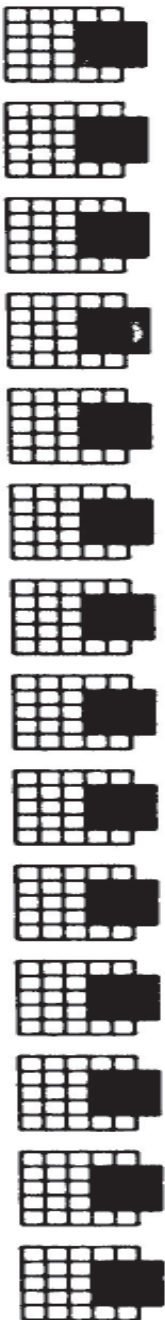
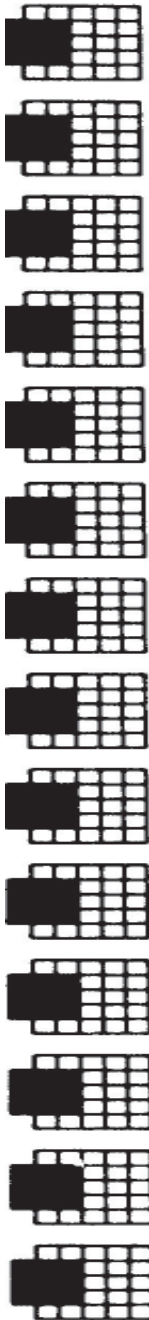
Pamela suffered a stroke and subsequently died 12 days later in August 1998. Kimberly went to live with the Vockroths. Mr. Shurupoff wanted to take Kimberly back with him to Michigan, but the Vockroths filed an ex parte complaint for immediate custody in the Circuit Court for Harford County, as Kimberly was distraught and wanted to stay in Maryland. Without notice to Mr. Shurupoff, the court granted temporary custody of Kimberly to the Vockroths and set a hearing on the matter. Mr. Shurupoff filed a similar action in Michigan, but jurisdiction prevailed in Maryland. Mr. Shurupoff filed a Counter Complaint for custody in Maryland. A guardian was appointed for Kimberly.

Kimberly was nearly 12 years old at the time of trial. The trial court heard seven days of testimony, reviewed many documents, and in considering the wishes expressed by Kimberly herself, the Circuit Court for Harford County granted physical custody of her to the Vockroths. The court would retain jurisdiction for any future modifications.

[T]he court acknowledged that in a dispute between a parent and a non-parent, there is an presumption that the best interest of the child is served by placing the child with the parent and that the presumption could be rebutted only if (1) the parent is unfit, or (2) exceptional circumstances existed so that custody with the parent would not be in the child’s best interest.” Mr. Shurupoff was not an unfit parent, but the child’s best interest was with the Vockroths. The factors used for the court’s decision are stated in *Ross v. Hoffman*, 280 Md. 172 at 191.

Mr. Shurupoff appealed that judgment to the Court of Special Appeals who affirmed the trial court’s decision in an unreported opinion. He then appealed to the Court of Appeals in that: “(1) the court did not apply the proper standard of proof in determining that the presumption announced in *Ross v. Hoffman* had been rebutted, (2) the court misapplied *Ross v. Hoffman* standards in any event, and (3) those standards are in need of some modification and clarification.” Mr. Shurupoff goes by the principle that a parent has a fundamental liberty interest protected by the Fourteenth Amendment to the Constitution, to raise his or her children and that any justification for depriving a parent of that right must be supported by clear and convincing evidence. The court used the best interest standard in its decision.

(continued on page 10)



December Birthdays:

James Thurber: *My World and Welcome to It*

Catherine of Aragon: "Humble & Loyal"...one of three Catherine's (or Katherine's) married to King Henry VIII (and how many times have we seen *that* in our practices?) The divorce/annulment that rocked the Western World... In the separation agreement she got to keep her head (we'd call that winning, under the circumstances...)no word on what happened to *her* lawyer.

Susan Lucci! Oh, to be Erica's divorce lawyer...



January Birthdays:

Moliere and Colette, because no family law periodical is complete without some reference to the French...

W. Mozart and E. Van Halen, perhaps the first time that these names have been linked in the same sentence...

Nolan Ryan



Mark Your Calendars . . .

(continued from page 4)

10:30 - 10:45 a.m. Coffee Break

10:45 - 11:45 a.m. Concurrent Breakout Sessions

Sophisticated Settlement Strategies

*Dorothy R. Fait, Esq.; Thomas C. Ries, Esq.;
Sheila K. Sachs, Esq.; Mary Roby Sanders, Esq.*

Agreements with "All the Usual Provisions" - What You Should Never Forget to Include When You Settle on the Courthouse Steps

*Cynthia Callahan, Esq.; Christopher R. Van Roden, Esq.;
Donna E. Van Scoy, Esq.*

11:45 a.m. - 12:45 p.m. Concurrent Breakout Sessions

Collaborative Lawyering in Divorce:

What It Is and Why You Should Care

*E. Todd Bennett, Esq.; Patricia E. Gearity, Esq.;
Susan J. Land, Esq.; Craig J. Little, Esq.;
Sherri Goren Slovin, Esq.*

What Experts Do You Really Need to Settle a Case?

*Barry J. Dalnekoff, Esq.; Joanne Bailey, CRA;
Lianne Friedman, CRC, CRP; Richard Intner, CPA, CVA;
Francis J. Napfel, III; Stacy LeBow Siegel, Esq.;
Maureen C. Vernon, Ph.D.*

12:45 - 1:45 p.m. Lunch

1:45 - 2:45 p.m. Concurrent Breakout Sessions

Litigation Time & Case Management Standards:
How to be Ready to Try Cases on a Faster Track

*Leslie G. Billman, Esq.; Glenn M. Cooper, Esq.;
Master Mary Margaret Kent; Barbara R. Trader, Esq.*

GAL & Child Counsel Issues:

Getting Appointed, Getting Paid & Everything In Between

*Christopher W. Nicholson, Esq.; Master Christopher L. Panos;
Paul J. Reinstein, Esq.*

2:45 - 3:00 p.m. Coffee Break

3:00 - 4:30 p.m. The Brave New World After *Bozman v. Bozman*:

A Mini-Review of Maryland Tort Law & Pleading Causes of Action for Family Law Practitioners; Post-*Bozman* Implications, Ramifications & Prognostications;

The Family Court Bench Prepares for the Progeny of *Bozman*

*Hon. Kathleen L. Beckstead; Hon. J. Norris Byrnes;
Marc B. Noren, Esq.; Paula J. Peters, Esq.; Paul Mark Sandler, Esq.*

4:30 p.m. Adjourn

(6.0 MCLE hours)

February 2004: Pitchers and catchers report.

MSBA annual meeting, June 16-19, 2004, (featuring, once again, a scintillating, phenomenally entertaining presentation by your very own Family & Juvenile Law Section Council...well, we assume that it will be entertaining, we haven't actually written it yet, but we will finish it no later than... the morning of the 18th).

Case Notes . . .

(continued from page 8)

Held: The Court of Appeals affirmed the trial court's decision. The Court of Appeals did not agree that the court applied an incorrect standard of proof, that it erred in its application of the *Ross* standards, or that its ultimate conclusion constituted legal error or an abuse of discretion. The Court stated that a clear and convincing evidence standard is neither Constitutionally required nor appropriate in custody disputes. The court agreed that it was in the best interest of the child to remain with the Vockroths, as they were regarded as her effective parents and her whole support system. She

barely knew her father and his family. All were subject to modification, as Mr. Shurupoff's parental rights were not terminated.

Practice Consideration: The court will continue to consider the best interest of the child in basing their decision in awarding custody either to a parent or to a third party, even if the natural parent is not unfit for custody.

By Marjorie Roberts, Paralegal for Christopher R. vanRoden, Esquire

Child Custody Jurisdiction Statute . . .

(continued from page 5)

ceases to exist. Thus, if a state takes jurisdiction over a child custody dispute because that state is the home state of the child, and the child subsequently establishes a new home state, jurisdiction can shift to the new home state, even if one parent remains in the child's original home state. The UCCJEA would not allow the jurisdiction to shift in this fashion, keeping it in the original home state so long as the parent remains there.

TEMPORARY EMERGENCY JURISDICTION

Under the Maryland UCCJA, grounds for taking emergency jurisdiction are on an equal footing with the other grounds for taking jurisdiction, including the "home state" ground. The UCCJEA provides for temporary emergency jurisdiction, that can ripen into continuing jurisdiction only if no other state with grounds for continuing jurisdiction can be found or, if found, declines to take jurisdiction. The child's presence and its abandonment, mistreatment or abuse still trigger the taking of emergency jurisdiction, but threats to siblings or a parent (including specifically evidence of domestic violence) also can trigger the taking of emergency jurisdiction. Because of the priority given to the home state of the child, the home state will most often be the state from which continuing jurisdiction is exercised.

The impact of these changes in the UCCJEA from the UCCJA is to reinforce the impact of the PKPA. Priority for home state jurisdiction, continuing exclusive jurisdiction and temporary emergency jurisdiction mean that orders made pursuant to the UCCJEA will have the full weight of the Full Faith and Credit Clause of the U.S. Constitution behind them.

ENFORCEMENT OF CUSTODY AND VISITATION ORDERS

The UCCJEA also adds enforcement provisions to the jurisdictional provisions. Interstate enforcement of custody and visitation decrees has proved frustrating to parents and to the courts. The UCCJEA requires a state to enforce a custody or visitation order from another state that conforms substantially with this Act. An order from a state that has continuing exclusive jurisdiction will surely be enforced.

One enforcement procedure is reminiscent of procedures for enforcement under the Uniform Interstate Family Support Act for interstate spousal and child support orders and the Uniform Enforcement of Foreign Judgments Act, which governs the interstate enforcement of any civil judgment. The basic procedure is to register the out-of-state order. If the registration is not contested, the registered

order may be enforced by any means available to enforce a domestic order. This would ordinarily mean using the contempt powers of the court to assure that the custody or visitation order is honored by the parent subject to it.

There is an expedited remedy, however, that also is available. Upon receiving a verified petition, the court orders the party with the child to submit to an immediate hearing (the next judicial day unless impossible) for enforcement. The court may rule with respect to enforcement at the hearing, although there are provisions to allow for extended hearing and standards to contest enforcement. This remedy operates much like habeas corpus, in which the body subject to the writ must be presented immediately to the court.

If there is danger to a child or if it appears that the child will be removed from the enforcing jurisdiction, a petition may also be filed for a warrant to take physical custody of the child along with a petition for an expedited proceeding. If the warrant issues, law enforcement officers will serve the warrant and obtain physical custody of the child.

As an additional enforcement device, the UCCJEA gives prosecutors the power to enforce custody or visitation orders, and law enforcement officers the power to locate a child under instructions from prosecutors. These powers give parents and others who are the victims (along with children) of parental kidnapping the ability to seek help from those who enforce the criminal law. The effect is to provide a complete group of effective remedies.

CONCLUSION

The UCCJEA does much more to update and streamline the original UCCJA, which was adopted in Maryland in 1984. It will provide much better relief for parents and children who suffer from interstate child-custody disputes, and ought to be uniformly adopted in Maryland as soon as possible. The act has been actively supported by child welfare advocates (including most recently the Polly Klaas Foundation), domestic violence groups, state and national bar associations, and has had no opposition in other states. It has been endorsed as well by the MSBA's Family Law Section. It is an important step forward for Maryland's children and courts.

K. King Burnett, Esquire

K. King Burnett, Esquire, is a partner in the law firm of Webb, Burnett, Jackson, Cornbrooks, Wilber, Vorhis & Douse, LLP, a Maryland Commissioner and immediate Past President of the National Conference of Commissioners on Uniform State Laws

FAMILY & JUVENILE LAW SECTION
Maryland State Bar Association, Inc.
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