

2010 Family Law Case Update

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Child Support

- ▶ Equitable abatement can be shown if parent fails to support the child at relevant times. Insufficient evidence in this case.
 - Weber v. Deming, 292 S.W.3d 914 (Mo. Ct. App. 2009)
- ▶ Child support affirmed after repeated deception to the court concerning income and assets.
 - Downard v. Downard, 292 S.W.3d 345 (Mo. Ct. App. 2009)
- ▶ Maintenance needs to go on to Form 14
 - In re marriage of Souci, 284 S.W.3d 749 (Mo. Ct. App. 2009)

Emancipation

- ▶ Need to prove child is insolvent to continue support
 - Hoffman–Francis v. Francis, 282 S.W.3d 392 (Mo. Ct. App. 2009)
- ▶ Learning disability is not sufficient
 - Sullins v. Knierim, 2010 WL 10137972 (Mar. 23, 2010)
- ▶ Ruling not always appealable.
 - Emmons v. Emmons, 2010 WL 1608673 (Apr. 6, 2010)
- ▶ Breaks from schooling due to financial problems paying for schooling is not emancipation
 - Wilkins v. Wilkins, 300 S.W.3d 594 (Mo. Ct. App. 2009)

Emancipation

Ten week break from post-secondary vocation school between 60 weeks of attendance and further attendance not sufficient to emancipate

Wilkins v. Wilkins, 300 S.W.3d 594 (Mo. Ct. App. 2009)

Civil procedure in family court

- ▶ Summary judgment – agreement on material facts still needed
 - In re: SAS v. MP and TP, 2010 WL 1327660 (Apr 6, 2010) ED93765
- ▶ Contempt can't be appealed until enforced
 - Emmons v. Emmons, 2010 WL 1608673 (Apr. 6, 2010)
- ▶ Work product governs counsel's work and not client's work
 - State v. Tolen, 304 S.W.3d 229 (Mo. Ct. App. 2009)
- ▶ Compliance with contempt order bars appeal
 - Jones v. Jones, 296 S.W.3d 526 (Mo. Ct. App. 2009)

Civil Procedure

- ▶ Jurisdiction objections waived if not timely raised
 - Hightower v. Myers, 2010 WL 785276 (Mar. 9, 2010)
- ▶ Failure to divide pension leads to non-final judgment
 - Nardini v. Nardini, 2010 WK 811125 (Mar. 10, 2010)
- ▶ Commissioner cases – commissioner rules trump new trial rules but NOT motion to amend time frames
 - Eldieb v. Firozi, 300 S.W.3d 264 (Mo. Ct. App. 2009)

Civil procedure

- ▶ In non-family law cases, one doesn't have to argue the motion for new trial to preserve issue for appeal
 - Smith v. City of Hannibal
- ▶ Can't assign medical decisions to team of doctors – too vague to enforce
 - Traxel v. Traxel
- ▶ A trial expert must disclose his whole file upon request.
 - State ex rel. Crown Power & Equip Co v. Ravens

Civil Procedure

- ▶ Must include legal description of real estate. Omission leaves judgment not final for appeal.
 - Maune v. Beste
- ▶ Be careful of invited error in your pleadings – if you call something marital and it isn't....
 - Workman v. Workman
- ▶ In UPA cases make sure you have a next friend order or file with child as Respondent and get a GAL.
 - AMCB by next friend Marty v. Cox

Civil procedure

- ▶ No responsive pleadings required against motion to modify, but if filed, the admissions are binding.
 - In re marriage of Alred, 291 S.W.3d 328 (Mo. Ct. App. 2009)
- ▶ QDRO must conform to judgment and nunc pro tunc years later can't re-write judgment and QDRO must conform to judgment
 - Wilson v. Lilleston, 290 S.W.3d 795 (Mo. Ct. App. 2009)

Civil Procedure

- ▶ No standing for maternity with a same-sex female household
 - *White v. White*, 293 S.W.3d 1 (Mo. Ct. App. 2009)

College issues

- ▶ Student printed transcript equals proof of enrollment
 - Waddington v. Cox, 247 S.W.3d 567 (Mo. Ct. App. 2008)

Contempt

- ▶ Evidence that Appellant concealed earnings supported finding that failure to pay was contumacious. Abatement of support is discretionary with court.
 - *Stuart v. Ford*, 292 S.W.3d 508 (Mo. Ct. App. 2009)

Custody

- ▶ Leaving child alone overnight may be neglect
 - TJ v. Children's Division, 2010 WL 623660 (Feb. 23, 2010)
- ▶ Judgment can use terms "joint" or "sole" and give visitation to the non-custodial parent. Must comply with parenting plan statute or remand.
 - In re marriage of Halford, 292 S.W.3d 536 (Mo. Ct. App. 2009)
- ▶ Burden for change in visitation is different than custody
 - In re marriage of Alred (supra)

Visitation and custody limits

- ▶ Supervised visitation affirmed when father had conviction for sex crime against a child. Various constitutional challenges failed
 - Cannon v. Cannon, 280sw3 79 (Mo. Ct. App. 2009)

Interstate custody

- ▶ UCCJA repealed – we now have UCCJEA – lengthy – you need to read it.
- ▶ Even though judgment titled interlocutory – it wasn't – it was final and provided for child to alternate states every year. Insufficient evidence odd parenting plan in child's best interests.
 - Carlton v. Walters, 294 S.W.3d 513 (Mo. Ct. App. 2009)
- ▶ Brief Missouri residence not OK for jurisdiction
 - Moyers v. Moyers, 284 S.W.3d 182 (Mo. Ct. App. 2009)

Relocation issues

- ▶ Relocation must consider a) best interest; b) child's school adjustment; c) child's need for contact with parents; and d) which parent would allow such contact
 - In re Stegall, 296 S.W.3d 25 (Mo. Ct. App. 2009)
- ▶ When mom sought to relocate and the Court said no, judgment reversed in light of mom's role as caregiver, careful provisions for dad's time; dad's child support arrearages and his criminal record
 - Wightman v. Wightman, 295 S.W.3d 183 (Mo. Ct. App. 2009)

Evidence issues

- ▶ Child abuse exception to hearsay applies beyond child custody
 - Pope v. CANRB, 2010 WL 785276 (Mar. 09, 2010)
- ▶ Child's fear of step-father who spanked with a belt was NOT clear and convincing evidence of abuse without evidence of harm.
 - In re interest of M.N.J. and N.M.D.A., 291 S.W.3d 306 (Mo. Ct. App. 2009)

Termination of parental rights

- ▶ Parent has a right to counsel in a TPR case
 - In re J.S.W., 295 S.W.3d 877 (Mo. Ct. App. 2009)
- ▶ Adoption does NOT terminate grandparent's rights
 - In re CAC and ZC, et al., 282 S.W.3d 862 (Mo. Ct. App. 2009)

Marital property

- ▶ Commingling property in one spouses' name only does not transmute into marital property.
Use source of funds rule
 - In re marriage of Looney, 286 S.W.3d 832 (Mo. Ct. App. 2009)
- ▶ Social security benefits are separate property that can't materially impact property division
 - Litz v. Litz, 288 S.W.3d 753 (Mo. Ct. App. 2009)
- ▶ Forced sale reversed without proof that sale is for property division or to free spouse of debt
 - Pruett v. Pruett, 280 S.W.3d 749 (Mo. Ct. App. 2009)

Maintenance

- ▶ Waiver under oath bars later award
 - *Glascok v. Glascok*, 2010 WL 971395 (Mar. 18, 2010)
- ▶ Motion to amend must cite error regarding findings of fact or waive such error
 - *Coffman v. Coffman*, 300 S.W.3d 267 (Mo. Ct. App. 2009)
- ▶ Contributions from “life partner” may justify modification of maintenance.
 - *Schuchard v. Schuchard*, 292 S.W.3d 498 (Mo. Ct. App. 2009)

Adoptions

- ▶ Two presumed dads with paternity and adoption cases pending – paternity is to proceed
 - Courtney v. Roggy, 302 S.W.3d 141 (Mo. Ct. App. 2009)

Orders of Protection

- ▶ Mootness applies to appeals on expired orders of protection to preclude review
 - Worrell v. Terranson, 302 S.W.3d 779 (Mo. Ct. App. 2010)
- ▶ Fear of Harm required
 - Binggeli v. Hammond, 300 S.W.3d 621 (Mo. Ct. App. 2010)
 - CH v. Wolfe (neighbor stalking), 302 S.W.3d 702 (Mo. Ct. App. 2009)
- ▶ Yelling @ child violates OP against emotional abuse.
 - State v. Moran, 297 S.W.3d 100 (Mo. Ct. App. 2009)

Orders of protection

- ▶ Can only get one against a stalker or present or former adult family member. Parent against step-parent is not permitted
 - Rogers v. McGuire, 288 S.W.3d 328 (Mo. Ct. App. 2009)

Attorney Fees

- ▶ Allowed in motions to modify paternity judgments
 - Weissenbach v. Deeken, 291 S.W.3d 361 (Mo. Ct. App. 2009)
- ▶ Attorney fee REVERSED as unsupported for appellate attorney fees – must use post-dissolution income
 - Andrews v. Andrews, 290 S.W.3d 783 (Mo. Ct. App. 2009)
- ▶ Conduct during discovery merited attorney fees award
 - Andrews v. Andrews, 289 S.W.3d 717 (Mo. Ct. App. 2009)

Termination of parental rights

- ▶ Incarcerated parents who make diligent efforts to maintain contact and failure to send money while in jail is de minimus – TPR reversed
 - In re: ZLR, R.M., 2010 WL 370361 (Mo. Ct. App. 2010)