

Family Law From Around the Nation (March 3, 2008)

by

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Child Support: A California court held that a personal injury settlement - unallocated as to the components of damage it represented - is not income for child support purposes, likening the settlement to a "return of capital" rather than income. *In re: Rothrock*, 70 Cal. Rptr. 3d 881 (2008). A New York trial court correctly included a father's pre-tax health insurance deductions, as well as an alleged "one-time payment" from the father's employer, as income for child support purposes. *Bellinger v. Bellinger*, 847 N.Y.S.2d 783 (App. Div. 2007). The New Hampshire Supreme Court held that the parents' agreement that the father's parental rights be terminated did not constitute a "special circumstance" authorizing the trial court to order less-than-guideline child support. *Carr v. Edmunds*, 938 A.2d 89 (2007). A Minnesota court held that undistributed Subchapter S earnings - which the court pointed out are reported as income on an individual's tax returns although the individual does not actually receive them - are not income for child support purposes, provided that the earnings were retained for a "business reason." *Hubbard County Health & Human Servs. v. Zacher*, 742 N.W.2d 223 (Minn. App. 2007) (collecting cases).

ERISA: A Plan Administrator concluded that a divorce decree ordering a father to designate his son as primary beneficiary of a life insurance policy constituted a QDRO even though the father never made that designation. *Mattingly v. Hoge*, 2008 FED App. 0023N (6th Cir. 2008). The Fifth Circuit reminds us that although child support can be collected from pension benefits, the obligee must obtain a QDRO to get them. *Taliaferro v. Goodyear Tire & Rubber Co.*, No. 06-40570 (U.S. App. 5th Cir. Feb. 7, 2008). When children from a prior marriage sued their father's widow to enforce a prenuptial agreement in which the widow waived any claim to her husband's retirement benefits, a district court properly dismissed the suit because the prenuptial agreement did not meet ERISA's requirements. *Greenbaum Doll & McDonald PLLC v. Sandler*, 2007 FED App. 0822N (6th Cir. 2007).

Marital agreements: A New York court held that threatening divorce to induce a spouse to sign a postnuptial agreement does not constitute duress because spouses have the right to sue each other for divorce. *Garner v. Garner*, 848 N.Y.S.2d 741 (App. Div. 2007). Similarly, an Illinois court held that threatening divorce to induce a philandering husband to agree to convey the marital residence to the wife should the husband stray again did not invalidate the agreement. *In re: Tabassum*, No. 2-06-0843 (Ill. App. Dec. 7, 2007). In Massachusetts, a clause in an antenuptial agreement

forfeiting a wife's right to seek alimony should she oppose "the granting of a divorce" to the husband did not prevent the wife from seeking alimony when she did not oppose the divorce but only the terms of the divorce. *Vakil v. Vakil*, 879 N.E.2d 79 (Mass. 2008). A North Carolina premarital agreement (prepared from a formbook) by which each party released all rights to the other's property - "including all marital rights" - neither divided the parties' property nor waived equitable distribution upon divorce. *McIntyre v. McIntyre*, 654 S.E.2d 798 (N.C. App. 2008).

Same-Sex update: In a split decision, the Rhode Island Supreme Court held that Rhode Island courts are without jurisdiction to grant divorces to same-sex couples because when the legislature enacted the divorce statute in 1961, "marriage" unequivocally meant heterosexual relationships. *Chambers v. Ormiston*, 935 A.2d 956 (R.I. 2007). In New York, an appellate court held a man ineligible for survivor's benefits under the Workers' Compensation Law because that law permits benefits to a surviving spouse, not to the survivor of a civil union entered into in Vermont. *Langan v. State Farm Fire & Casualty*, 849 N.Y.S.2d 105 (App. Div. 2007).

Termination: The Illinois Supreme Court held that termination of parental rights does not automatically dissolve a parent's obligation to pay child support unless the child is subsequently adopted. *Illinois Dep't of Healthcare & Family Servs v. Warner*, No. 103289 (Ill. Jan. 25, 2008). A California appellate court, holding that even "abject poverty" by itself cannot warrant termination of parental rights, reversed a father's termination because the only reason for termination appeared to be the father's "inability to obtain suitable housing for financial reasons." *In re G.S.R.*, No. B197000 (Cal. App. Jan. 8, 2008).

Third parties: In a split opinion, the Connecticut Supreme Court held that *Troxel's* requirements apply to third-party visitation proceedings but not to suits for custody by third parties (in this case, an aunt). *Fish v. Fish*, 285 Conn. 24 (2008) (collecting cases). Departing from rulings in other states, the Hawai'i Supreme Court held a "best interests" grandparent visitation statute unconstitutional rather than judicially amend it to comply with *Troxel*. *Doe v. Doe*, 172 P.3d 1067 (Haw. 2007) (collecting cases). A California court of appeal reversed that part of an order that a child's stepfather and uncle participate in sexual abuse counseling because the trial court lacked jurisdiction to order the child's relatives - other than her parents - to do anything. *In re Silvia R.*, 159 Cal. App. 4th 337 (2008).

Valuation: A Utah trial court correctly valued Mr. Stonehocker's used-car dealership ("Stoney's Motors") when it excluded the value attributable to his personal goodwill. *Stonehocker v. Stonehocker*, 2008 UT App 11. In Tennessee, appreciation in a company's stock, which the husband received by gift from his father, did not constitute marital property because the husband did not "substantially contribute" to the stock's appreciation merely by working for the company. *Keyt v. Keyt*, No. M2005-00447-SC-R11-CV (Tenn. Dec. 19, 2007). A North Dakota did not err when it found the value of an

insurance business to be less than either party (or their experts) claimed. *Evenson v. Evenson*, 742 N.W.2d 829 (N.D. 2007).