

Family Law Newsletter

WATERS TYLER HOFMANN & SCOTT, LLC

October: Domestic Violence Awareness



October is Domestic Violence Awareness Month. Unfortunately, adult domestic violence is one of the most serious public health and criminal justice issues facing women today.

The statistics tell the story. Most victims of domestic violence are women. In fact, between 91-95% of all documented domestic violence cases are women being abused by male partners. About 1-2% is physical abuse of men by their female partners, and 3-8% of the total number reported domestic

violence cases involve same-sex relationships.

If you are in an abusive relationship or situation, you must seek out the resources you need to protect yourself and your children. Please call the **National Domestic Violence Hotline** at 1-800-799-SAFE (7233) or in southern Indiana the **Center for Women & Families** at (812) 944-6743 (24 hours).

While you may not be able to predict or control your partner's violence, you can plan the most effective way to respond to violence. You should make a domestic violence safety plan. Review your plan periodically and modify it according to your needs and circumstances. Carefully choose and guard your hiding place for this safety plan to prevent your partner from learning in advance of your plans.

Fall 2010
Volume 2, Issue 3

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WTHS now offers Surviving Divorce Seminar



Surviving divorce is a fear many people experience when contemplating divorce. The family law attorneys at **Waters, Tyler, Hofmann & Scott, LLC** understand the stress and emotions our clients go through.

In order to help your clients navigate the divorce process, we have developed the seminar **"Surviving Divorce: A guide to help you through an Indiana divorce."** For information about attending the free seminar, please call (812) 949-1114 and ask for Karla.

We also make the seminar available on-line at www.wthslaw.com.

Indiana Family Case Law Update

The latest developments from the Indiana Supreme Court and Indiana Court of Appeals:



✦ **Health insurance premiums as a marital asset**

The Indiana Supreme Court ruled that health insurance premiums paid by a former employer as part of the husband's pension plan is a marital asset in a divorce. In **Bingley v. Bingley**, the parties were divorced after 37 years of marriage. Husband was retired. As part of husband's retirement package, his former employer paid his monthly health insurance premiums and agreed to do so for the rest of his life. The trial court held that the health insurance benefits were not a marital asset at which time wife appealed.

The Supreme Court reversed the trial court reasoning that the health insurance benefits are an asset because they were earned during the marriage. The Court stated that the husband has a right to the medical services his health insurance will cover for the rest of his life. Because his former employer assumed a monthly liability that the husband would otherwise have had to bear, his insurance benefits more closely resemble a right to future

pension payments.

✦ **Child support credit for alimony**

In **Ashworth v. Ashworth**, the Indiana Court of Appeal reversed a trial court's decision enforcing a Tennessee support order and modifying the obligation.

The couple divorced in Tennessee where the father was ordered to pay child support and alimony. Mother later remarried and relocated to Indiana with the children. Meanwhile, father unilaterally reduced his support resulting in mother filing in Indiana to enforce the Tennessee order and asking for a modification.

While there were several issues raised on appeal, the most significant was the treatment of alimony when it comes to calculating child support in Indiana. Father alleged the trial court abused its discretion in failing to deduct his \$1500 monthly alimony payment from his weekly gross income. Father reasoned that the alimony should be treated as a maintenance payment to mother.

The Court of Appeals found that he was entitled to deduct the alimony payment because it was not a property settlement. The decision gives a fairly good analysis in determining whether alimony or maintenance is really a payment for property settlement in a divorce.

✦ **Interference with parental rights and change of custody**

In **Tomasy v. Kovacs**, mother

appealed the trial court's order giving father custody of the parties' three children. In a decision that includes a wide variety of custody issues, the Indiana Court of Appeal upheld the modification.

The parties were divorced in 2000 when they were awarded joint legal custody and mother was given primary physical custody. Shortly after the divorce, mother relocated from Indiana to Massachusetts at which time father exercised visitation. In 2008 father asked the court to grant him custody.

It should be noted that eleven days later mother filed to have the case moved to Massachusetts. But the Indiana court denied her request finding that mother was merely "forum shopping."

This case is an excellent example of where the court will change custody if the custodial parent continues to interfere with the non-custodial parental rights. The trial court found that mother had intentionally refused to give the children internet access to communicate with their father, she taped the children's telephone conversations with their father and would even hide the telephone from the children so they could not call their father.

It is clear the mother's actions were a significant reason she lost custody. Remember the custody standard is the "best interests" of the children. Most of the time judges will find it is in the children's best interests to have a relationship with the non-custodial parent.

Divorce and kids: begin with the end in mind



Steven Coffey's book *The 7 Habits of Highly Effective People* recommends that you develop the habit of "beginning with the end in mind." In other words, think about where you want to be when everything is finished. This principle applies in divorces as well.

If you have children, you should think about a couple of things and maybe even discuss them with your spouse. What do you want

your children to be like when they are 25? Do you want them healthy, happy and well-adjusted? If so, that will guide all of the decisions you must make in the divorce. When your children get married, where will you want to sit at the wedding? In the front row with your spouse (where you belong)? Or standing in the back of the church, maybe even not invited to the wedding? Where you want to be on that day will guide your decisions.

If you have children, you should immediately take advantage of a free and confidential web-site, *Up To Parents*, at

www.uptoparents.org.

Developed by a family law mediator and counselor, this web-site helps parents remember that their children need them during and after the divorce. Countless attorneys and mediators report that if both parents use this web-site and work through its exercises, the divorce is much smoother, less stressful and less expensive.

Getting married - Should you do a pre-nuptial?



A prenuptial agreement is a written contract between two people who are planning to get married. Whether to have a prenuptial depends on each person's situation and finances.

The bottom line is that a prenuptial agreement can save a lot of money, stress and heartache. You should at least talk to a lawyer to see if a prenuptial is a good idea for you.

Be certain you want a divorce

If you are reading this publication, it is likely because either you think you want to get divorced, or your spouse has told you he or she wants to get divorced. If it is your spouse who said something, then there may not be much you can do to prevent it. In fact, if your spouse is certain, then there is nothing at all you can do to prevent the divorce happening.

On the other hand, if you are thinking about divorce, think hard and think carefully. A divorce is a long, stressful and expensive process. Even if the divorce is "amicable," it is stressful. Researches once compiled a list of stressful life events. Ranking first was the death of a spouse. At the bottom of the list were things like retirement or going on vacation (ranking 53rd and 54th respectively). Divorce ranked 9th on the list: higher than the death of a close friend.

Unless you are completely certain, you should not pursue a divorce. Your personal finances will suffer. If you have children, they will suffer – a lot. In fact, the same researchers concluded that on the scale of stressful life events, having your parents divorced is ranked 10th. This is not a decision to make lightly.

If you are certain, speak with a mental health professional or your clergy person. Explore all possible alternatives thoroughly. Once you start the process, it is very difficult to put the genie back into the bottle.

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Waters, Tyler, Hofmann & Scott, LLC, is committed to providing honest, caring, affordable, quality family law services. We understand the emotional nature of family legal matters and realize how important it is that each client receives individual attention to his or her matter in a timely, cost-efficient manner, to help you navigate through the legal process and find the best possible outcome to difficult situations.



Les Merkley in our firm primarily focuses his practice in the area of family law including divorce, custody, support, visitation, paternity, guardianships and domestic violence. We encourage you to contact him for straight answers to your questions.

"BIG ENOUGH TO MEET YOUR NEEDS,

SMALL ENOUGH TO KNOW YOUR NAME"

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Please be advised that this newsletter provides general information only and should not be construed as legal advice.

Helping your divorce attorney represent you

There are a number of things you can do to help your divorce attorney. One of the most important is to always be truthful. Your lawyer has heard many things in the course of his or her career, and you are not going to shock your lawyer. Because Indiana is a "no fault" state, much of what has happened during the marriage may be irrelevant as to property division. Some incidents in the past may be relevant to custody issues. Nevertheless, complete disclosure of all facts can help prevent your attorney from being blind-sided and unable to effectively represent you.

Another important way to help your attorney is by gathering information together at the start of your case. You should locate and make copies of the following:

- Bills (yours, your spouse's and joint bills)
- Tax returns
- Bank statements
- Brokerage statements
- Retirement account statements
- Loan balances (mortgages, cars, etc.)
- A list of your major assets

