

**Family Law From Around the Nation
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by

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Alimony: In Louisiana, fault in the breakup of the marriage prevented a wife from receiving spousal support after divorce when the wife had subjected the husband to "a pattern of mental harassment, nagging and griping which rendered the marriage insupportable." The appellate court agreed that the record contained no evidence that the husband's habit of frequenting "Gentlemen's Clubs" had been "a predicate to marital strife; rather, that seemed to be [the husband's] 'reaction' to a failing marriage." *Wolff v. Wolff*, No. 07-332 (La. App. October 3, 2007). A New York court did not abuse its discretion when it reduced a wife's maintenance award by \$300 per month because the wife, who had taken a second job, earned more money. *Haines v. Haines*, No. 2006-07404 (N.Y. App. Div. Oct. 23, 2007).

Child support: An Indiana court held a father's \$1,000,000 personal injury settlement to be income for child support purposes. *Knisely v. Forte*, 875 N.E.2d 335 (Ind. App. 2007). The Tennessee Supreme Court ruled that income for child support purposes included \$687,550 that the father received from selling property awarded to him upon divorce, as against the father's "double-dipping" argument. *Moore v. Moore*, No. E2005-02469-SC-R11-CV (Tenn. Sept. 5, 2007). The fact that a child who performed poorly in public school after the father withdrew the child from private school supported a New York order that the father's child support obligation would continue to include private school expenses. *Aulicino v. Kaiser*, 844 N.Y.S.2d 457 (App. Div. 2007). Rejecting a substantive due process defense of unreasonableness, the Illinois Supreme Court affirmed a statutory penalty of \$100 per day - totaling \$1,172,100 - against an employer who failed to forward withheld child support to the state. *In re: Miller*, Docket Nos. 104022, 104035 cons. (Ill. Nov. 29, 2007).

Grandparents: Arizona's "move-away" statute, which requires a best interests finding before a custodial parent may move a child, does not apply to a grandparent who has court-ordered visitation. *Sheehan v. Flower*, No. 1 CA-CV 06-0781 (Ariz. App. Nov. 13, 2007). The Illinois Supreme Court held the contention that "a child can only benefit from a relationship with a loving grandparent" insufficient to rebut the presumption that a fit parent's decision to deny grandparent visitation is not harmful to the child, reasoning that otherwise a parent never could deny grandparent visitation. *Flynn v. Henkel*, Docket No. 103946 (Ill. Nov. 29, 2007). A New York court granted custody to the maternal grandmother after finding the father to be an unfit parent when the father,

while intoxicated, killed the mother in a boat accident. *Jodoin v. Billings*, 843 N.Y.S.2d 873 (App. Div. 2007).

Nuptial agreements: A New York court set aside a postnuptial agreement when the agreement was financially lopsided, had been drafted by the husband's attorney, and the wife had signed it while "undergoing treatment and suffering from the mental and physical effects of complications arising from a surgery." *Barchella v. Barchella*, 844 N.Y.S.2d 78 (App. Div. 2007). A wife's claim that she had not understood the terms of a prenuptial agreement was undercut by the fact that "she acted in accordance with the terms of the agreement throughout the marriage, maintaining separate bank accounts in her own name in which she deposited income from properties she inherited from her family." *Stawski v. Stawski*, 843 N.Y.S.2d 544 (App. Div. 2007). A New York court upheld a maintenance award to a wife of \$3,300 per month, despite the wife's argument that the amount was insufficient, when a valid prenuptial agreement required the husband to provide "suitable housing (either rented or owned)" for the wife while the parties' child resided with her and the record supported the trial court's finding that \$3,300 would suffice. *Cerami v. Cerami*, No. 2006-08958 (N.Y. App. Div. Oct. 16, 2007).

Paternity: A California court granted mandamus to retract a genetic testing order when the adjudicated father questioned paternity after limitations had run but failed to invoke the court's equitable jurisdiction when he alleged only that he and the mother had not been "mutually exclusive" sexual partners and that he had "heard" that the child did not look like him. *Orange County v. Superior Court (Rothert)*, 66 Cal. Rptr. 3d 689 (Cal. App. 2007). The Sixth Circuit affirmed a judgment (including attorney's fees) against a father who claimed that permitting a woman, but not a man, to terminate a pregnancy violates the equal protection clause of the United States Constitution. *Dubay v. Wells*, No. 06-2107 (6th Cir. Nov. 6, 2007). An Alaska resident who failed to pay a filing fee when he filed an answer to an Idaho paternity action and subsequently suffered a default judgment was not denied due process under UIFSA upon registration of the judgment in Alaska. *Fowler v. State of Alaska*, 168 P.3d 870 (Alas. 2007). A Florida court held that a man who claimed to have impregnated a married woman while she was separated from her husband could not seek paternity of the child when the husband and wife reconciled prior to the child's birth. *Lohman v. Carnahan*, 963 So. 2d 985 (Fla. App. 2007).

Procedure: A Louisiana trial court, reversed for sealing an entire divorce file, sealed most of the file on remand but was again reversed for sealing information that "would not impinge on the safety or security of the children." *Copeland v. Copeland*, No. 07-CC-0177 (La. Oct. 16, 2007). A stipulation signed by an attorney that California, rather than Texas, would have jurisdiction over child support issues bound the client despite the client's claim that his attorney had no right to waive his "substantial right" to dispute the appropriate forum in which to hear the case. *Knabe v. Brister*, 65 Cal. Rptr. 3d 493 (Cal. App. 2007). In New Hampshire, minor children may not intervene in their parents' divorce even when their guardian ad litem has made a custody recommendation in

conflict with the children's expressed wishes. *In re: Stapleford*, 931 A.2d 1199 (N.H. 2007).

Property: A trial court erred by discounting the value of an S corporation by applying C corporation taxation rules and further erred by applying key man and marketability discounts when the husband intended to keep his corporate interest after divorce rather than sell it. *Bernier v. Bernier*, 873 N.E.2d 216 (Mass. 2007). In Alaska, a trial court may not disregard the value of one spouse's retirement account because the court did not "have a dollar value" for it but must require the parties to produce sufficient evidence to value the asset. *Mellard v. Mellard*, 168 P.3d 483 (Alas. 2007). Comity did not require a Maryland court to apply Pakistani law upon the divorce of Pakistanis who were long-term United States residents when Pakistani law provided that the wife could not share in the husband's admittedly valuable pension. *Aleem v. Aleem*, 931 A.2d 1123 (Md. App. 2007).