FAMILY SUPPORT FORUM

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IDPA Announces Administrative Changes

By Thomas P. Sweeney

The Illinois Department of Public Aid and its Division of Child Support Enforcement will have new administrators in March.

On February 8, 2001, IDPA Director Ann Patla announced that Nancy D. Woodward would succeed Bob Lyons as Administrator of DCSE, effective March 16, 2001. The following day Governor Ryan announced that Ann Patla was leaving her position as IDPA Director at the end of February. Gov. Ryan has nominated Jackie Garner of Springfield to succeed Patla as IDPA Director.

Ann Patla Resigns as IDPA Director

"Ann Patla served this Administration and the people of this State with dedication, responsibility and compassion," Gov. Ryan said in announcing her resignation. "Under Ann's leadership we have enrolled nearly 115,000 kids in the KidCare health insurance program in the last two years and the Department has stabilized operations of the child support payment system," he said.

"I am disappointed to see Ann leave, but I respect her decision," the governor said.

Patla cited "personal reasons" for her decision not to seek reappointment.

"This has been a very difficult decision for me, but one I had to make," Patla said. "It has been an honor for me to serve in the Ryan Administration. I wish to thank the many great people I have had the opportunity of working with in my capacity as Director. Most importantly, I truly appreciate the hard work and dedication of the employees of the Illinois Department of Public Aid. In these two years we have made exceptional progress in providing health care coverage to children and pregnant mothers through the KidCare program – increasing enrollment five-fold. Although I have regrets about the early implementation of the State Disbursement Unit, I am pleased that we were able to bring stability to the system and increase reliability for the families that count on those payments."

Jackie Garner to Succeed Patla

Jackie Garner, 47, of Springfield, currently serves as Senior Policy Advisor to the Governor for Health & Human Services as leader of his Health & Human Services Subcabinet. She advises the governor on state policy, on health and human services issues and specific program initiatives. Garner's career in human services stretches two decades, including not-for-profit work at Prevention First, Inc., a prevention organization, for which she served eight years as CEO and president. Garner also led the Illinois Alcoholism and

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***Depending on contributions*, the *FORUM attempts* to publish four times a year - in March, June, August/September, and December. Items for publication are needed by the 8th of the month. News items and other articles of interest to Illinois family support practitioners are eagerly sought. Contact the Editor for details.**

Please Contribute - its YOUR Newsletter!

Starved Rock Conference a Success

By Jeanne Fitzpatrick

Appellate Court Justice Peg Breslin gives keynote address to IFSEA's 12th Annual Conference

Approximately 165 members attended the 12th Annual Illinois Family Support Enforcement Conference at Starved Rock Lodge in Utica. Starved Rock State Park provided a scenic, rustic setting for the conference. Six sponsor's participated at the conference: LabCorp, LifeCodes, MAXIMUS, Inc., GeneScreen, Lockheed-Martin, and Right Choice Insurance.

The keynote address by Third District Appellate Court Justice Peg Breslin reminded us of the progress made in child support legislation in a relatively short time period. On Monday we heard the Circuit Clerk's perspective on the State Disbursement Unit, learned about enforcement of support in the military and from social security and tried to untangle those new assignment rules, obtained some practice pointers for keeping a positive attitude in the workplace and discussed interstate perspectives with UIFSA staff from Missouri and Iowa.

The liveliest sessions were the Tuesday morning sessions with local state legislators and a panel of judges who braved the foggy weather to discuss child support legislation and application of recent changes in guidelines to hypothetical case situations. IFSEA has commissioned a committee to summarize the ideas discussed at the legislators' session and will forward a summary to each of the participating legislators. Tuesday afternoon, nine participants enjoyed a tour of the historic Third District Appellate Courthouse in Ottawa, Illinois.

In spite of the fog, roaming deer and limited television availability, the conference was fun, relaxing and informative. We look forward to the l3th Annual IFSEA Conference to be held on October 14, 15 and 16, 2001, at the Holiday Inn in Collinsville, II.

State Representatives (l to r) Mary K. O'Brien (D-Coal City) and Donald Moffitt (R-Gilson), and State Senator Patrick Welch (D-Peru) share a lighter moment in their panel discussion of legislation at IFSEA's 12th Annual Conference.

Judges panel ponders a question from the audience at IFSEA's 12th Annual Conference. Panelists (l to r): Judges William Banich (Ottawa), David Fritts (Dixon), Robert Lorz (Joliet), Moderator Eric Blanc (Peoria), Harry Clem (Urbana), Moshe Jacobius (Chicago), and Ronald Dozier (Bloomington).

From the Courthouse . . .

. . .CASES & COMMENTARY

As a regular feature the Family Support FORUM will endeavor to provide timely summaries of court decisions, both published and unpublished, and information about pending decisions of general interest to the support enforcement community. Anyone who becomes aware of significant decisions or cases, whether pending or decided at any level, is encouraged to submit them for inclusion in future editions.

by Thomas M. Vaught *
and Thomas P. Sweeney

County Employee's Unauthorized Personal Use of Confidential State Data is Basis for Federal Civil Rights Claim

McDade v. West, et al., ___F. 3d ____, (9th Circuit, 6/15/00), [reversed dismissal of § 1983 action against county employee, while affirming dismissal against the county and county district attorney.]

Mr. West was trying to locate his ex-wife, McDade, for service in connection with a custody dispute. His current wife located McDade at a domestic violence shelter by using a state computer database available to her as an employee of a county district attorney's child support office. McDada had to leave the shelter when its whereabouts was compromised. McDade brought a 42 U.S.C. § 1983 claim against the current Mrs. West, the county, and the county attorney, alleging various constitutional and state law violations.

It was undisputed that County officials did not have any idea that the current Mrs. West was planning to use her computer password to find McDade's confidential location. All employees of the Child Support Division were required to sign an oath of confidentiality for using the database. The employee handbook and legal policy manual further underscored its confidentiality. When her action became known, West was placed on administrative leave and eventually terminated from employment. The matter was referred for prosecution and West was found guilty of violating a Penal Code section involving the disclosure of private data. In the § 1983 action the District Court entered summary judgment in favor of all defendants, finding as to West that she was "acting in the ambit of her personal pursuits," and not 'under color of law." The Appellate Court reversed as to West and affirmed as to the County and the District Attorney.

The Appellate Court said, "To establish a prima facie case under 42 U.S.C. 1983, McDade must demonstrate proof that (1) the action occurred "under color of law" and (2) the action resulted in a deprivation of a constitutional right or a federal statutory right." Because " . . . .Ms. West's status as a state employee enabled her to access the information, she invoked the powers of her office to accomplish the offensive act. Therefore, however improper Ms. West's actions were, they clearly related to the performance of her official duties." Since she purported or pretended to act as a state officer, her actions were under color of state law.

The Court did not decide whether West's actions resulted in deprivation of a constitutional or federal statutory right. McDade did not state a cause of action against the County. The District Attorney was entitled to qualified immunity.

Federal Child Support Recovery Act Held Unconstitutional – Beyond Commerce Clause Authority (Well, Maybe!)

United States v. Faasse, 227 F. 3d 660 (6th Circuit, 9/25/00), [as first reported, reversed a conviction under the Federal Child Support Recovery Act, finding the Act unconstitutional.] ***[BUT See below.]***

Defendant pled guilty to a violation of the 1994 version of the Child Support Recovery Act of 1992 (CSRA), willful failure to pay past due child support. He was sentenced to six months imprisonment and ordered to make restitution of $28,438.35. He appealed, challenging the constitutionality of the CSRA.

The Appellate Court found ". ..the CSRA is not about recovery of child support payments avoided by interstate flight. Rather, the Act regulates, through the criminal law, obligations owed by one family member to another, using diversity of residence as a jurisdictional 'hook'." The Court held: ". ..the provisions of the Child Support Recovery Act of 1992 contained in 18 U.S.C. § 228 (1994) exceed Congress's authority under the Constitution." While Congress may assist the

(Cont'd. on page 5)

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*(*Indicated summaries drawn from materials presented at IFSEA's 12th Annual Conference on Support Enforcement, October 16, 2000, with headings, up-dated citations and bracketed material added.)*

("Cases & Commentary," cont'd. from page 4)

States in obtaining interstate enforcement of their courts' orders (e.g., Full Faith and Credit for Child Support Orders Act, § 28 U.S.C. 17388 (1994)),

> " . . .Congress may not, under the guise of the Commerce Power, criminalize the failure to obey a state court order when the State itself has declined to do so. Such legislation does considerable violence to state regulation by fragmenting the state courts' ability to announce judgments and their ability to determine the sanction that will attend disobedience of those judgments. Absent a stronger connection with the commercial concerns that are central to the Commerce Clause, this intrusion disrupts the federal balance that the Framers envisioned and that we are obliged to enforce."

[However, on December 1, 2000, this decision was withdrawn and vacated for rehearing. 234 F.3d 234.]

Defenses to State's Jurisdiction No Defense to Extradition from Another State

***Behr v. Ramsey, et al.**,* 230 F. 3d 268 (7th Circuit, 10/2/00), [affirmed denial of a habeas corpus petition filed in federal court by a man facing extradition to Kentucky for criminal non-support.]

Behr was arrested in Kane County on a governor's warrant from Kentucky for "flagrant non-support" of his daughter. His ex-wife had moved to Kentucky, allegedly without notice to or approval by the Illinois court. As his defense to extradition to Kentucky Behr claimed he had never been to Kentucky and that state lacked minimum contacts to assert jurisdiction over him under its criminal non-support laws.

> "Thus, the narrow question before us in this case is whether Mr. Behr is entitled to defeat the pending extradition request on the ground that, were he sent to Kentucky, the state courts there would not be entitled to exercise personal jurisdiction over him because he lacks constitutionally sufficient contacts with the state. We conclude that, in the context of interstate criminal extradition, any defenses Mr. Behr may have to the jurisdiction of the Kentucky courts may be presented only to the Kentucky courts."

No Private Right of Action Allowed Under Federal Child Support Recovery Act

Salahuddin v. Alaji, ___ F. 3d ___ (2nd Dist., 11/13/00), affirmed dismissal of a private action brought by a mother against her former husband for violation of the federal Child Support Recovery Act.

In their 1991 New York divorce Alaji was ordered to pay support to Salahuddin. Alaji fled the state and failed to make payments. Salahuddin sought enforcement through the state agencies and courts, but without success. In 1997 she filed a *pro se* action under the federal Child Support Recovery Act, seeking arrest and imprisonment of Alaji, plus restitution of more than $58,000 in past due support. The District Court dismissed, ruling the CSRA does not authorize a private cause of action. Salahuddin appealed *pro se*, and the Court appointed counsel to present the appeal.

Since the CSRA does not expressly provide for a person entitled to support to bring a private action, "[t]he question thus is whether such a private right of action is implied; that question, in turn, depends on whether it can reasonably be inferred that Congress intended to create such a private remedy. . . . [W]e are unable to conclude that Congress intended to create a private right of action. Although the Act's ultimate goal is to induce parents to support their children, the terms and history of the Act indicate that the mechanism chosen by Congress to achieve that end did not include creation of a private right of action." Legislative debate surrounding the initial 1992 version of the Act focused on intent to "assist" the states' enforcement, and debate on the 1998 amendments indicated only a desire to increase the disincentives against nonpayment of support and to "strengthen the government's ability" and "help the states" to enforce support obligations. "If there is to be a private right of action under the CSRA, it is up to Congress to provide it." Dismissal affirmed.

Disallowance of Evidence on Custody Issues Held Unreasonable Sanction for Failure to File Financial Affidavit

***In re Marriage of Booher**,* 313 Ill. App. 3d 356, 728 N.E. 2d 1230 (4th Dist., 5/3/00), [reversed and remanded custody orders entered when the father was prohibited from presenting evidence on the issue as a sanction for failing to provide a financial affidavit as ordered.]

Supreme Court Rule 219(c) (166 III. 2d R. 219(c)) authorizes a trial court to impose a sanction on a party who unreasonably fails to comply with the court's discovery rules or orders. The trial court had ordered affidavits be filed prior to trial. The trial court's order required the affidavit to contain information regarding income, expenses, and property. The order did not require the affidavit to contain any information regarding custody or visitation. Father Jeffery did not file the affidavit, explaining he did not know how to get a form for the affidavit and that the clerk had told him he could discuss the affidavit in court. The trial court struck Jeffrey's pleadings and barred him from presenting any evidence. Mother Diane was awarded custody and support and visitation was restricted. Jeffery appealed.

The Appellate Court reversed, holding,

> "We conclude not allowing Jeffrey to present any evidence was both unwarranted and unreasonable as a sanction. We understand the potential frustration in dealing with a pro se liti-

(Cont'd. on page 6)

("Cases & Commentary," cont'd. from page 5)

gant, but this sanction effectively determined the outcome. A reasonable sanction for failure to comply with an order for discovery providing information on income, expenses, and property, when much of the information was already disclosed in previous discovery, would be one barring him from contradicting or going beyond the discovery materials provided on those matters; it would not bar any testimony regarding the marriage and, more important, the best interests of the children."

Child Support and Post-Majority Educational Expenses May Both be Due When Order Provides

In Re Marriage of Mulry, 314 Ill. App. 3d 756, 732 N.E. 2d 667 (4th Dist., 6/22/00), [affirmed denial of motions to terminate support because post-majority education expenses were also being paid.]

A judgment of dissolution of marriage was granted the parties in 1986. There were two children, one of whom is now deceased. An agreement incorporated into the judgment provided that Father would pay child support until the child attains full emancipation. "Full emancipation" was defined by the agreement as the child's graduation from college or reaching age 23, whichever shall first occur. The agreement also provided that Father would pay 80% of college expenses.

On April 24, 1998, the surviving child turned 18 years old. She graduated from high school in June 1998, and enrolled in college in the fall of 1998. On September 1, 1998, Father filed a motion for clarification and/or modification of judgment seeking to terminate his child support obligation since he had begun paying college expenses. The trial Court denied the motion.

The Appellate Court affirmed the denial of the motion for clarification. The court noted the

> ".. . . Marriage and Dissolution of Marriage Act (Dissolution Act) specifically provides that 'unless otherwise agreed in writing or expressly provided in a judgment, provisions for the support of a child are terminated by emancipation of the child, except as otherwise provided herein.' 750 ILCS 5/510(d) (West 1998). The legislative purpose behind the adoption of section 510(d) is to allow the parties to a dissolution proceeding to remain liable for the support of children beyond emancipation."

The Court held,

> ". . . the agreement clearly indicates the parties' intent to continue support until full emancipation. Further, the agreement specifically defines emancipation as the child's graduation from college, or reaching age 23, whichever shall first occur. "

The Court affirmed the denial of the motion for modification finding there was not a significant change of circumstances, holding,

> ". . . James' obligation for child support was already set below the statutory guidelines at the time of the last modification of judgment (May 29, 1996) and remains below the statutory guidelines."

A dissenting Justice stated, the ". . . majority's order requires James to pay the same expenses twice."

Income from Invested Life Insurance Proceeds Attributable to Children Properly Excluded From Mother's Income

Slagel v. Wessels, 314 Ill. App. 3d 330, 732 N.E. 2d 320 (4th Dist., 6/27/00), [affirmed exclusion from mother's income used to determine shared support obligation the portion of income derived from investment of life insurance proceeds attributable to children.]

Tamra Slagel was married. She had three children by her marriage. Her husband died and she received life insurance proceeds in the amount of $215,341.76, which she invested. Later she began a relationship with Dale Wessels, resulting in the birth of two children. Eventually there was an agreement to give custody of these two children to each parent for six months of the year. The agreement provided that each parent was required to pay 25% of their net income while the children were with the other parent. The parties were to ". . . calculate a net difference on a calendar year basis, and the parent having the greater child support obligation shall pay to the other the net difference, on a bi-weekly basis."

In making these calculations the trial court concluded that Slagel was receiving only one-fourth of the investment income [shown] on her tax return, attributing the remaining three-fourths to the children from her marriage. Wessels appeals, arguing that the trial court abused its discretion in not taking into consideration Slagel's income from all sources in setting child support.

The Appellate Court said;

> "The trial court properly recognized that the income from the investments was not entirely Slagel's, even though she paid tax on it. The three Slagel children had at least an informal interest in the investment income. The trial court acted within its discretion in allocating the investment income three-fourths to the Slagel children, and one-fourth to Slagel."

Support Modifiable Retroactive Only to Date of Motion; Unallocated Support and Maintenance is Modifiable

In Re Marriage of Semonchik, 315 III. App. 3d 395, 733 N.E. 2d 811 (1st Dist., 6/30/00, [reversed abatement of past due support due to premature modifi-

(Cont'd. on page 14)

Uniform Parentage Act (2000) Introduced

By Jeanne Fitzpatrick

On November 11, 2000, representatives from more than 25 states attended a program presented by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in Chicago to review a substantial new revision of the Uniform Parentage Act. The 2000 revision was approved by NCCUSL on August 3, 2000, at its 109th Annual Meeting in St. Augustine, Florida.

The National Conference of Commissioners works to standardize laws among the states. The Conference is comprised of representatives from al1 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. The Commission drafts uniform, model state laws and works to obtain their enactment.

The UPA of 1973 was a landmark act which abolished all legal distinctions between legitimate and illegitimate children, and provided procedures for determination of paternity where marriage or proof of marriage was lacking. Nineteen states adopted the UPA of 1973, and many more states adopted portions of the act.

Parentage laws have undergone dramatic changes in the last quarter of the century as a result of changes in our society, including reliability of genetic testing and assisted reproduction techniques. Studies show that approximately 30 percent of our children are born out of wedlock. Recent medical evidence indicates that 5 to 10 percent of our children born in wedlock are not the biological child of the husband. Annually more children are now born of assisted reproduction than are placed through adoption.

In many ways the new UPA (2000) is simpler and more streamlined than the original act. The primary focus remains on protecting the child, who had no voice in often complex circumstances giving rise to the child's birth.

1973 Act Updated

The new act updates the 1973 act, including a much more comprehensive section on genetic testing and voluntary acknowledgment of paternity. Improved procedures for genetic testing will expedite identification of the father. Unless the genetic test results are rebutted by another test paid for by the objecting party, the court must determine paternity consistent with the results of genetic testing. Prohibitions are provided against improper disclosure of genetic information. The act encourages adoption of non-judicial means to achieve early determination of paternity. However, the act addresses the problem of rescission of a voluntary acknowledgment and requires that contested paternity matters be handled through the courts.

The revision addresses the issue of standing to challenge the marital presumption of paternity. If a child has a presumed father, i.e. the husband of the mother at the time of birth, issues of paternity can get complex. The right of an "outsider" to claim paternity of a child born to a married woman varies considerably among the states. Some states do not allow such actions while others permit such actions. The revision provides a middle ground. It allows a proceeding seeking to rebut this presumption of paternity, but the proceeding must be commenced no later than two years after the birth of the child. A two-year period allows an adequate time period to resolve the status of a child within the context of an intact family unit; a longer period may have severe consequences for the child.

A paternity registry is provided to facilitate infant adoption. An unwed father can protect his rights by promptly registering his claim of paternity, but failing to do so will cause him to lose his rights and free the child for adoption. The act will not allow for late claims of paternity as such claims would disrupt the child's life in the newly adoptive parent's home.

Surrogacy Issues Addressed

The revision also incorporates provisions from the Uniform Status of Children of Assisted Conception Act (USCACA). Like USCACA, the revision offers validation of surrogacy contracts through court approval. Donors are not parents and the act provides immunity for such persons involved in assisted reproduction. Under strict court supervision, gestational agreements are validated. The surrogate must have given birth to another child and the court must be satisfied that the intended mother has a bona fide medical reason for seeking a child through surrogacy.

The Uniform Parentage Act of 2000 has received wide support in the legal community and the child support community and is endorsed by the ABA Family Law Section, National Child Support Enforcement Association, American Academy of Adoption Attorneys and the National Association of Public Health Registrars.

For more information on this act you may contact the National Conference of Commissioners on Uniform State Laws at 211 E. Ontario Street, Suite 1300, Chicago, IL, 60611, telephone 312-915 0195. 0r visit their website at www.nccusl.org. The full text of the revised act, along with committee comments, can be obtained from NCCUSL by mail or on the Internet at www.law.upenn.edu/bll/ulc/ulc_frame.htm.

("IDPA Administrative Changes," cont'd. from page 1)

Drug Dependency Association as its CEO and President. In the State of California Garner led the development of a $50 million children's health program for the California Endowment, a foundation created by the privatization of Blue Cross of California.

"Jackie Garner's career is one of providing assistance to Illinois families in need of a helping hand," Gov. Ryan said. "Jackie's experience in the human service field includes more than a decade of executive management experience. She understands the great challenges that many of our people face in obtaining access to quality health care, and I have every confidence that she will do a great job for the people of Illinois."

'I am honored and humbled to receive this nomination from Gov. Ryan to work on behalf of families throughout Illinois," Garner said. "Throughout my career I have witnessed the importance of state government programs to improving the everyday lives of our citizens. I understand state government must operate with its head and its heart, and I look forward to helping the families of this state toward a brighter tomorrow. I am honored by the Governor's trust and will work diligently to keep the public's trust."

Woodward Named New DCSE Head

Nancy Woodward has served as Associate Administrator of DCSE since August 1, 1999. Her many responsibilities have included overseeing the day-to-day operations of the Division. She has been with DCSE since November, 1998, when she became the Reconciliation Project Director.

"Nancy was successful in promoting cooperation between the Department and Circuit Clerks with regard to child support enforcement and the Reconciliation Project," Patla stated in announcing her appointment. "She worked closely with the Reconciliation Subcommittee of the Child Support Advisory Committee and kept the Circuit Clerks informed of the Project's progress."

Woodward's public service career began at the Sangamon County Circuit Clerk's office, where she held several positions, including Acting Circuit Clerk. In addition she served as Acting Director of the Community Resource Department for Sangamon County.

New Positions for Lyons, Others

Woodward succeeds Bob Lyons as DCSE Administrator, the position he has held since February, 1998. It has been reported that Lyons is moving to an administrative position involving child support enforcement within the Attorney General's office. More specifics about Lyons' new position were not available.

In other developments, Yehuda Lebovits has left DCSE to become Director of the Expedited Child Support Program of Cook County. DCSE's Yvette Perez-Trevino and Deanie Bergbreiter have taken over responsibilities as judicial liaisons, along with additional duties including responsibilities related to contracts and the state plan. With John Rogers (Belleville) and Laura Otten-Grahek (Peoria) having already left the agency, it appears that the positions of Deputy Administrator and Assistant Deputy Administrator are being abandoned, at least for regions outside Cook County.

Best wishes to all on their new positions.

Check out IFSEA on the Web!

www.illinoisfamilysupport.org

Now improved to include –

- *Direct links to the most recent court decisions,*
- *Links to track legislative activity,*
- *Extensive list of links to agencies, organizations, research sources and other useful information,*
- *And more to come.*

Fathers Honored at Malcolm X Conference

On December 1, 2000, approximately 150 people – 75% of them fathers – attended a conference held at Chicago's Malcolm X College for parents of children in Head Start and Child Care programs and their respective staff to honor fathers and the role of fathers in the lives of children. The "Fathers and Families Forum" was co-sponsored by the Erikson Institute, IDPA's Division of Child Support Enforcement and the Chicago Dept. of Human Services with funding provided by the federal Office of Child Support Enforcement's Head Start/Child Care/Child Support Collaboration grant to Illinois.

The goal of the conference was to honor fathers, recognize the important role of a father as a parent and partner in parenting, and focus on efforts that contribute to both parents' involvement in the financial and emotional support of their children and families. The forum also provided information on parenting, child development and family activities, as well as support and inspiration for the parents and staff of the children's programs.

During a continental breakfast participants had the opportunity to meet with professionals from more than fifteen participating public and private organizations that work with fathers and families. The organizations helped to inform and connect parents to services such as child support, legal services, family health and fun, and others.

Participants also took advantage of viewing selected videos on child support, paternity establishment, parenting education, and child development. The videos included:

- *Dads Make A Difference*
- *Power of Two*
- *Begin With Love*
- *First Person Impressions of Being a Baby*
- *Father's Day*
- *Empieza Ya! Start Now! Baby's Development Depends on You*
- *Catholic Charities WIC Food Centers (Women, Infants and Children) Program*

Representatives of the three co-sponsors provided welcoming statements and the keynote address. Subsequent workshops included topics that encouraged dual parent involvement, supported new fathers, discussed paternity establishment, and encouraged family fun and communication. The specific workshop topics were:

- Read It To Me Again: Helping Children Become Excited About Reading
- Learn To Play, Play To Learn: Ways Fathers Can Be Involved and Have Fun
- Talking So Your Children Will Listen: Listening So Your Children Will Talk
- Activities For Family Fun: Family 4H In Your Home
- Building Leadership Skills In Young Children: Skills Built When They Are Young Last
- Getting Off To A Good Start: A Workshop For New Fathers
- My Child Is Driving Me Crazy: How To Deal With Difficult Behavior
- Breaking Down Barriers: Getting Involved In Your Child's Life
- How We Lost Fatherhood and the Impact On Children
- Father-to-Father: Helping Your Child Succeed in School
- Living Apart: Keeping Communication With Father
- The Father Friendly Assessment Process

The lunchtime program offered presentations by three fathers about the male involvement programs in their communities, a raffle of small items donated by numerous organizations that work with families and an interactive musical piece titled *Making Music and Rhyme for You and Your Child*. This part of the program featured an Erikson Early Childhood Specialist who worked with participants on skills, activities and materials to bring music and rhyme to their children.

At the end of the conference, each participant received a t-shirt with the inscription *Fathers Matter*, the children's book *In Daddy's Arms I Am Tall*, free family passes to the Chicago Children's Museum and Brookfield Zoo, a folder of information, handouts from the workshops, and a certificate of participation. Participant feedback was very positive, giving the conference substantial praise and appreciation for the opportunity to learn more about the important role of the father, child development and family life.

Directors Elected at 12th Annual Members' Meeting

by Thomas P. Sweeney

Approximately 150 members of the Illinois Family Support Enforcement Association attended at least one of the two sessions of the association's Annual Members' Meeting, held October 15 and 16, 2000, in conjunction with the 12th Annual Conference on Support Enforcement. Past Presidents Bill Henry and Deanie Bergbreiter pinch-hit for absent IFSEA President Anne Jeskey in presiding over the sessions.

The primary business conducted was election of Directors for the 2000-2002 term. At the first session on Monday morning nominations were announced and ballots were cast for the ten positions. Including nominations from the floor there were three candidates for the two positions from Region 1 (Cook County), five candidates for the four positions from Region 2, and four candidates for the four positions in Region 3.

Election Results

Results of the election were announced at the second session held at the conclusion of the conference on Tuesday morning. A total of 104 ballots were cast in the election. Elected to two-year terms ending in 2002 were:

- From Region 1: Incumbents Durman Jackson, Cook County Asst. State's Attorney; and Anne Jeskey, Deputy Administrator, IDPA DCSE, both from Chicago;
- From Region 2: Incumbents Deanie Bergbreiter, Asst. Deputy Administrator, IDPA DCSE, Aurora; Jeanne Fitzpatrick, Asst. Attorney General, Ottawa; and Kane County Circuit Clerk Deb Seyller, Geneva; and newcomer Patrick Dunn, Asst. State's Attorney from Kankakee.
- From Region 3: Incumbents Marilynn Bates, Family Support Specialist, IDPA DCSE; and William C. Henry, Asst. Attorney General; "at large" incumbent Linda Engelman, Support Staff Coordinator for the Attorney General's Office; and newcomer Matthew J. Ryan III, Asst. Attorney General, all from Springfield.

Appointments

Appointed by President Anne Jeskey to one-year terms as "at large" directors were Joseph Mason, Community Outreach Manager for IDPA, DCSE, Chicago, and Nancy Woodward, Associate Administrator, IDPA, DCSE, Springfield. DuPage County Circuit Clerk Joel Kagann was appointed to fill the year remaining on the term of Nancy Waites (Region 2) who had resigned her position following her departure from the Lake County State's Attorney's office.

Other Business

In other business Tom Sweeney renewed his annual plea for contributions to the *FORUM*, and announced the creation of IFSEA's web site (www.illinoisfamilysupport.org), asking the membership for their suggestions and patience while it is being developed. Jeanne Fitzpatrick, chair of this year's conference, received a round of applause for the excellent conference. Immediate Past-President Bill Henry presented to Deanie Bergbreiter on behalf of out-going President Anne Jeskey a plaque recognizing Anne's outstanding contributions to the association. To close things out more than 30 participants carried away beautiful "door prizes" provided from contributions by MAXIMUS, Inc. and other participating sponsors.

Officers Elected; Agency Designees Named

At the Board of Directors Meeting held October 16, 2000, the following officers were elected for 2000-2001: President, Jeanne Fitz[atrick; First Vice-President, Madalny Maxwell; Second Vice-President, Yvette Perez-Trevino; Secretary, Tom Sweeney; and Treasurer, Jim Ryan.

At that meeting it was again pointed out that IFSEA By-Laws provide for representatives from the Administrative Office of the Courts, the Clerk's Association and the Child Support Advisory Committee of the Conference of Chief Circuit Judges to serve as designated Directors of the association, but have not done so in years. At the direction of the Board new President Jeanne Fitzpatrick contacted the agencies to designate their representatives.

The AOIC declined to designate a representative. Jeff Benson, Mercer County Circuit Clerk and new President of the Illinois Association of Court Clerks has agreed to represent that association. And Jerome Stermer, President of Voices for Illinois Children, has been designated to represent the Child Support Advisory Committee of the Conference of Chief Circuit Judges. (Mary Donoghue, Bob Lyons and Madalyn Maxwell continue as designated representatives of the Cook County State's Attorney, IDPA, and the Attorney General's office, respectively.)

How to Obtain Military Information *

by Marilyn Michaels

On July 1, 2000, active duty members of the military received a pay adjustment, which amounted to a raise for most members. A new pay chart can be found on the Defense Finance and Accounting Service (DFAS) web site at http://www.dfas.mil.

The web site contains other information on military pay and allowances, plus garnishment of active duty/ retired/reserve/Department of Defense (DoD) civilian pay at http://www.dfas.mil/money/garnish/index.htm.

When military members retire from active duty, garnishments may need to be re-started, as they generally do not carry over to retired pay. If you are aware of a non-custodial parent in this situation, you need to inform DFAS so it can re-start the garnishment. Be sure to have the military member's Social Security number when contacting DFAS. The customer service phone number at DFAS is (216) 522-5301; the fax number that goes directly to its imaging system is (216) 522-6960.

Be sure to have the military member's Social Security number when contacting DFAS.

Most DoD civilians and all military members' garnishment actions are served on DFAS. A comprehensive listing of all federal employer agents for purposes of service of process can be found at http://frwebgate.2.access.gpo.gov/cgi-bin/multidb.cgi (select #10, then Text; 5 CFR 581 at Appendix A).

Freedom of Information Act

When requesting information from DFAS or one of the military services, cite the Freedom of Information Act (FOIA). Examples of FOIA requests are found at Appendix B (military worldwide locator services) and Appendix F (requests for pay information) of the OCSE publication, *A Caseworker's Guide to Child Support Enforcement and Military Personnel*,(February 2000).

The publication is available through the OCSE National Reference Center [370 L'Enfant Plaza SW, Washington, D.C. 20447, tele. (202) 401-9383] and also can be accessed on the OCSE Web Page [at www.acf.dhhs.gov/programs/cse/fct/militaryguide2000.htm].

Using a format other than an FOIA request may result in the request being returned to the caseworker, possibly with a referral to send it to a different address.

When requesting employment verification from DFAS, caseworkers should ask for copies of the member's Leave and Earnings Statement to gain a complete picture of the service member's pay.

Internet Information

Each service has a web site: http://www.army.mil, http://www.af.mil, http://www.navy.mil, http://www.usmc.mil, and http://www.uscg.mil

Those needing information regarding the Veterans Administration can go to http://www.va.gov. Keep in mind that most Veterans Administration entitlements cannot be garnished. Many active duty sailors can be located by checking http://directory.navy.mil, though the addresses of Navy personnel overseas must be requested in writing as they are not available over the Internet.

Military members stationed overseas generally have an address containing an APO or FPO number. The last line of the address will be APO (or FPO), either AE or AP or AA, then a zip code number. If you want to know where the member is stationed, a good listing of APO and FPO locations (in numerical order, by zip code) can be found at http://www.web7.whs.osd.mil/html/45261l.htm

For information on service of process overseas, refer to the Department of State Home Page, Children's Issues section, at http://www.travel.state.gov. Forms and regulations issued by DoD may be accessed at http://web7.whs.osd.mil/dodiss/links.htm. The DoD directive that addresses leave issues involving the Soldiers' and Sailors' Civil Relief Act may be found at http://www.web7.whs.osd.mil/text/d13275p.txt.

If you have any questions regarding military members and child support, you may contact Marilyn Michaels at (808) 692-7139, or by e-mail at *mmichael@pixi.com* or *mmichaels@acf.dhhs.gov*.

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*(*Reprinted by permission from the October, 2000, issue of Child Support Reports, published by the U.S. Dept. of Health & Human Services, Administration for Children and Families, Office of Child Support Enforcement, Washington, D.C.. Marilyn Michaels is OCSE Military Liaison Officer.)*

"Box Scores" from OCSE's 23rd Annual Report to Congress for the FFY Ending 9/30/98

(Compared to FFY '97 Totals)

	Illinois		Nationwide	
	FFY '98 Totals	% Change from FFY '97	FFY '98 Totals	% Change from FFY '97
Collections Distributed				
Total	$300,239,940	12.3	$14,347,706,681	7.4
TANF/Foster Care	$80,565,587	3.7	$2,649,929,623	- 6.8
Non TANF	$219,674,353	15.8	$11,697,777,058	11.2
Total Expenditures	$119,900.000	- 8.3	$3,589,335,000	4.6
Collect./Expense Ratio Total	$2.50	22.2	$4.00	2.6
TANF/Foster Care	$0.67	12.7	$0.74	- 10.9
Non TANF	$1.83	26.1	$3.26	6.3
Paternities Established	82,005	6.9	1,462,565	13.0
IV-D	50,456	6.2	848,178	4.2
Acknowledgments	31,549	8.0	614,387	27.9
Support Orders Established	30,765	3.7	1,147,701	- 0.7
Absent Parent Locations	64,925	- 5.7	6,585,046	2.2
Full Time Equivalent Staff	1,665	0.0	56,232	7.1
Total Caseload	746,331	0.9	19,419,449	1.9
TANF/Foster Care & Arrears	391,137	- 8.9	8,505,804	- 6.6
Non TANF	355,194	6.2	10,913,645	9.7

Source: OCSE's *23rd Annual Report to Congress*, at www.acf.dhhs.gov/programs/cse/rpt/annrpt23.

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More Custodial Parents Receive Full Amount of Child Support, Census Bureau Reports

The proportion of custodial parents receiving all the child support payments they were due increased from 34 percent in 1993 to 41 percent in 1997, according to a report released by the Commerce Department's Census Bureau on October 13, 2000.

Another 27 percent of custodial parents received partial payments in 1997, down from 35 percent in 1993. Overall, two-thirds (67 percent) of custodial parents due child support in 1997 received either full or partial payments, unchanged since 1993. The average amount of child support received by these custodial parents was $3,600, also unchanged since 1993.

"The economic situation of custodial parents showed steady improvement since 1993," said Census Bureau analyst Timothy Grall, author of the report *Child Support for Custodial Mothers and Fathers: 1997*. "For instance, a greater proportion of custodial parents are working full time now, and the likelihood of living in poverty and participating in public assistance programs has declined."

The proportion of custodial parents with full-time, year-round jobs increased from 46 percent to 51 percent between 1993 and 1997. The poverty rate for custodial parents declined between 1993 and 1997 (from 33 percent to 29 percent) as did the incidence of participating in a public assistance program (from 41 percent to 34 percent).

Other highlights of the report:

- As of spring 1998, an estimated 14.0 million parents had custody of 22.9 million children under 21 years of age whose other parent lived elsewhere; 85 percent of these parents were mothers.
- Payment of full or partial child support was most likely when the non-custodial parent had arrangements for joint child custody and visitation. About 83 percent of custodial parents with these arrangements received full or partial support payments, as opposed to 36 percent for those without either shared custody or visitation.
- The 7.0 million custodial parents with agreements or current child support awards received an aggregate of $17.1 billion, or 59 percent, of the $29.1 billion in child support due. Custodial mothers received a greater proportion of the total they were due than did custodial fathers (60 percent versus 48 percent).
- About 7.9 million custodial parents (56 percent) had some type of support agreement or award for their children in 1998. This group comprised 59 percent of custodial mothers and 38 percent of custodial fathers.
- The reason most often cited for not having a legal child support agreement by the 6.6 million custodial parents without them was that they did not feel the need to go to court and make it legal (32 percent).
- More than half (56 percent) of all custodial parents received some type of non-cash support (gifts, clothes, food, etc.) from non-custodial parents for their children.

The report presents data on parents who have custody of their children when the other parent is absent from the home. It focuses on the child support income received by custodial parents with current awards, as well as some provisions of those awards, such as visitation, joint custody and health insurance.

The data were collected from the April 1994, 1996 and 1998 supplements to the Current Population Survey co-sponsored by the Department of Health and Human Services' Office of Child Support Enforcement. As in all surveys, the data are subject to sampling variability and other sources of error. Changes to the 1994 and subsequent supplements mean many of these data are not comparable with data from the April 1992 and earlier supplements.

The report can be found on the internet at www.census.gov/hhes/www/childsupt.html, or, with Adobe Acrobat Reader, directly at www.census.gov/prod/2000pubs/p60-212.pdf.

("Cases & Commentary," cont'd. from page 6)

cation, but affirmed modification of unallocated maintenance and support.]

In May, 1997, Father filed a petition to modify based on his unemployment. In November,1997, he voluntarily dismissed his motion. Within 30 days he filed a motion to vacate the voluntary dismissal, but on February 2, 1998, the trial court denied this motion. On February 20, 1998, Father filed a "supplemental" motion to modify support payments, once again alleging unemployment. On April 3, 1998, the trial court granted this motion and abated his support obligation retroactive to February 20, 1998. On May 1, 1998, Father filed a motion to reconsider, asking that support be abated retroactive to his first motion (May, 1997) rather than his "supplemental" motion (February 20, 1998). On July 27, 1998, the trial court granted this motion, vacated the April 3rd order, and abated support retroactive to May, 1997. Mother appeals.

The marital settlement agreement had a provision for unallocated family support. This covered both child support and maintenance. The unallocated support was to terminate in October of 1998. A separate amount for child support was to continue after that date. On May 21, 1998, Mother had filed a petition to re-establish maintenance and child support. The trial court's action on this had the effect of extending unallocated family support past the date called for in the agreement. Father appeals this order.

The Appellate Court found that the only authority for a court to make the modification is pursuant to the power vested in it by the IMDMA. Section 510(a) of that act gives the court the power to make retroactive modifications only to the notice date of the filing of the motion to modify. "Thus, in order to determine the notice date for purposes of calculating the support amount subject to retroactive abatement, we must determine which of the two motions to modify filed by respondent is the operative motion." The Court then found the denial of the motion to vacate the voluntary dismissal was a final appealable order. Since it was not appealed, the May, 1997, motion to modify remained dismissed.

> ". . . because the trial court did not have jurisdiction to revisit the issue of the motion to vacate the voluntary dismissal of the May 13, 1997, motion to modify, the court's order of July 27, 1998, which granted respondent's previously dismissed motion to modify and abated support arrearage retroactive to its filing date, May 13, 1997, is hereby reversed."

The Appellate Court affirmed the modification of the unallocated family support, finding that,

> ". . . although parties to a dissolution of marriage settlement agreement may negotiate that maintenance payments be nonmodifiable, where the parties choose to lump maintenance in with child support, creating an "unallocated" support payment, that "unallocated" support payment is, by statute, modifiable."

New Spouse's Income Properly Considered in Allocation of Education Expenses

***In Re Marriage of Dryscb**, 314 Ill. App. 3d 640, 732 N.E. 2d 125 (2nd Dist., 6/23/00), [reversed and remanded allocation of post-majority educational expenses based to some extent on considerations of the poor relationship between father and child, but found no error in consideration given to the income of the mother's new spouse in that allocation.]

The marital settlement agreement entered into by the Dryschs included a provision for the payment of future educational expenses. When mom petitioned for educational expenses the court ordered dad to contribute 10% of the expenses. The court considered the income of the mother's current husband and the father's poor relationship with the child. The father and his current wife reported a gross income of $85,269.49. The mother earned an income of $50,000 as a real estate agent employed by her husband, and her current husband reported a gross income of $621,000.

The Appellate Court found no error in the trial court's consideration of the current spouse's income.

> "The plain language of section 513(b)(1) states that the trial court shall consider 'the financial resources of both parents.' 750 ILCS 5/513(b)(1) (West 1998). The term 'resources' has been defined as 'money or any property that can be converted to meet needs' as well as the 'available means or capability of any kind.' Black's Law Dictionary 1179 (5th ed. 1979). Based on the use of the word 'resources,' rather than a more narrow term, such as 'income' or 'salary,' we believe that the legislature intended that the trial court consider all the money or property to which a parent has access. This may include that parent's income, her property and investment holdings, as well as money or property that could be available to her through her new spouse."

The Appellate Court went on to say,

> "In support of her argument, Vicky notes that traditionally the financial status of the custodial parent's current spouse is not considered in proceedings to modify child support. See *Robin v. Robin*, 45 III. App. 3d 365, 371-72, (1977). This rule developed because the new spouse has no legal obligation for the support of his stepchildren. See *In re Marriage of Omelson*, 112 III. App. 3d 725, 734, (1983). However, the law on this subject is evolving as several reviewing courts have found that equitable principles require the consideration of a new spouse's income. See *In re Marriage of Baptist*, 232 Ill.. App. 3d 906, 920 (1992) (trial court properly

(Cont'd. on page 15)

("Cases & Commentary," cont'd. from page 14)

> considered the financial resources of the noncustodial father's new wife because her resources had been commingled with the noncustodial father's); *In re Marriage of Keown*, 225 III. App. 3d 808, 813 (1992) (the financial status of a current spouse may be equitably considered to determine whether the payment of child support would endanger the ability of the support-paying party and that party's current spouse to meet their needs). For the reasons discussed above, we agree with these courts that a trial court may equitably consider the income of a parent's current spouse in determining an appropriate award of child support."

The Appellate Court also noted that section 513 has been amended subsequently to add an additional factor for consideration, the child's academic performance, See 750 ILCS 5/513(b)(4) (West Supp. 1999), but that this provision did not apply to this case.

The Appellate Court reversed the trial court's consideration of the father's poor relationship with the child. The Court recognized that the Fourth District, in *Gibb v. Triezenberg*, 188 III. App. 3d 695, 701 (1989) held that the lack of a parent-child relationship was an appropriate factor to consider under section 513, but took issue with that conclusion.

> "We do not believe that, in making an award for educational expenses, it is appropriate for the trial court to consider a poor relationship between a parent and child. If the trial court were to consider a poor relationship as a factor, the trial court could potentially find that the parent was not required to contribute towards the education of the child due to the existence of that poor relationship. This is clearly contrary to the intended purpose of section 513."

Support Obligor Has Burden to Prove Payment; Obligee Not Required to Prove Non-Payment

In Re Marriage of Jorczak, 315 III. App. 3d 954, 735 N.E. 2d 182 (4th Dist., 8/29/00), [reversed denial of an arrearage claim based on the obligee's failure to prove the extent of unpaid child support.]

Ann appealed from the order of the trial court refusing to award her a child support arrearage. The parties presented conflicting evidence regarding child support payments. Ann's petition claimed an arrearage of $38,700, the approximate arrearage if Rick had not made any payments. Her evidence consisted mainly of her testimony. She admitted at trial that Rick had paid sporadically, but denied that he had paid more than a total of $3,000. Rick claimed that he had paid child support throughout, albeit not strictly according to the terms of the agreement. In response to discovery requests, he had produced several canceled checks totaling approximately $2,700. Rick claimed he had paid much more but had lost the pertinent documentation in the intervening time owing to several changes of residence and other circumstances.

The trial court found that Rick did not make the child support payments ordered, but that, "Petitioner is required to prove, by competent evidence, not only that [r]espondent owes her unpaid child support but also the amount which he owes. . . ." The trial court did not award anything for arrearages

The Appellate Court found the denial of arrearages was inconsistent with the finding that Rick had not made the support payments ordered. "The difficulty may have arisen because the trial court erroneously allocated the burden of proof regarding the alleged arrearage." The court had incorrectly characterized the relief sought as damages

"Strictly speaking, Ann is not an injured party seeking recompense for injury but, rather, an obligee seeking satisfaction of the obligation created by the judgment of dissolution . . .". A variety of statutes operate "to define Ann as a judgment creditor."

> "Thus, Ann need only establish the existence of the obligation itself, i.e., the dissolution judgment and underlying agreement. Rick is an obligor and, inasmuch as he claims to have satisfied the obligation in whole or in part, he is asserting the defense of payment. Section 2-613(d) of the Code of Civil Procedure . . . prescribes that payment is an affirmative defense, to be pleaded as such. The burden of proof is therefore upon the party claiming it; here, Rick."
>
> "Rick clearly attempted to establish a defense of payment. Rick therefore had the burden to establish the extent of payment; Ann did not have the burden to establish nonpayment. . . . On remand, the trial court should specifically find the extent to which Rick proved payment."

Support May be Ordered Commensurate With Obligor's Unrealized Earning Ability

In Re Marriage of Sweet, 316 Ill. App. 3d 101, 785 N.E. 2d 1037 (2nd Dist., 9/5/00), [affirmed modification of support to level commensurate with the obligor's earning ability, an income level exceeding documented income.]

James and Patricia had two Sweet children. Following dissolution of their marriage James was ordered to pay support, modified several times by agreement to $96 per week. At some point James started his own exterminating business. Some years later Patricia filed another petition to modify. At the hearing James testified that his 1998 net profit was $11,187, but admitted making a loan application in which he stated his monthly net income to be $3,600. He stated that he did so in order to qualify for a lower interest rate. At the conclusion of the initial hearing, the court questioned respondent's credibility because he had admitted the

(Cont'd. on page 16)

("Cases & Commentary," cont'd. from page 15)

misstatement of income on the loan application. The trial court noted:

> "He reports an income of $11,187. There are winos and bustouts that appear in this court on Thursday morning that make that kind of money and they get hired, not that you're in that category. But, however, there is no reason that these children should suffer while you drive around in a new truck at a deadend job."

The court took petitioner's petition under advisement, temporarily continuing respondent's child support obligation at $96 per week. The court continued the matter until July 15, 1999, and ordered respondent to apply for employment with at least 10 firms. The court stated as follows:

> "A man of your health and your stature and your ability can certainly make more in today's labor market than $11,000 a year but I'm not going to sit here and have your children suffer because you choose to become involved in such an enterprise that produces so little."

Denying James' motion to reconsider or clarify its order, the trial court further stated:

> "If he wants to have a deadend job that's fine but I'm going to set the support commensurate with his ability. You know, he wants to have a hobby farm going around and spraying roaches for eight hundred bucks a month that's his right, but he's not going to do it at the expenses [sic] of his children."

On July 15, James reported that he had not conducted a job search. Patricia's attorney argued that respondent's support obligation should be based on the income he listed in his loan application, arguing that 25% would be approximately $170 per week. James' attorney argued that the court had already found respondent's income to be as stated in his tax returns. The trial court replied:

> 'Well, as I recall it was not necessarily a finding that his income was as he stated. It was a finding that he either lied in court or lied on a loan application, either one of which is a felony under the laws of the State of Illinois. Further by his own testimony he indicated that he bought a brand new truck to ride around town performing a deadend business that nobody wanted to pay for and that he only according to his testimony netted about nine grand a year. And under the circumstances I advised the defendant [sic] that I didn't think that his children should bear the brunt of his new truck so that he could ride around doing nothing. *** As far as I'm concerned we have an individual here that is either misrepresenting his income or willfully refuses to go to work and support his children even though he is able to do so.'

The court increased respondent's child support obligation to $170 per week, retroactive to the date the petition was filed. James appeals.

James contended on appeal that: (1) the trial court violated his constitutional right to pursue his chosen profession by ordering him to find other employment; (2) the court erred in modifying child support in the absence of evidence of changed circumstances; (3) the court abused its discretion in ordering a fully employed child support obligor to seek other employment; (4) the court failed to state its reasons for deviating from the statutory guidelines; and (5} the court abused its discretion in making the increase retroactive to the date the petition was filed.

The Appellate Court affirmed. There was evidence of increased income and increased need. The trial court had not required James to get a new job, but merely based its support order on his earning capacity. Challenges to the court's order requiring a job search were "essentially moot" because that order had never been enforced. In any event the Appellate Court disagreed with James' argument that the court "could not coerce him into looking for another job because it disapproved of his chosen field of endeavor."

> "Although we have found no Illinois case precisely on point, courts' authority to compel parties to family law proceedings to seek more lucrative employment, or to pay support at a level as if they had done so, is well established."
>
> * * *
>
> "[Cited cases] refute respondent's implicit contention that the trial court is powerless to set child support based on an amount beyond his actual current income. Rather, if a court finds that a party is not making a good faith effort to earn sufficient income, the court may set or continue that party's support obligation at a higher level appropriate to the party's skills and experience."
>
> "The trial court's comments, which we have quoted extensively above, make abundantly clear that the court found that respondent was not acting in good faith. The court strongly suggested that respondent was more interested in being his own boss and in buying a new truck for himself than in supporting his children."
>
> "While a party's desire to remain self-employed is not insignificant, the [cited] cases show that the interests of the other spouse and the children may sometimes take precedence."

While the court must state reasons for deviating from guidelines, the court's oral comments may satisfy this requirement. Because James' income was difficult to determine due to his lack of credibility "the court was justified in eschewing strict application of the guidelines and setting support in a reasonable amount."

(Cont'd. on page 17)

("Cases & Commentary," cont'd. from page 16)

Contempt Finding Not Final, Appealable Without Imposition of Sanctions

Yowell v. Pedersen, 315 Ill. App. 3d 665, 734 N.E. 2d 169 (2nd Dist., 8/1/00), dismissed an attorney's appeal of his being found in contempt as not a final and appealable order.

Plaintiff's attorney essentially requested that he be held in civil contempt for failure to turn over medical records to the defendant as ordered by the court, with the clear intention to challenge that order on appeal. No sanctions were imposed, however. The Appellate Court rejected the appeal, holding that a contempt finding is not final and appealable until sanctions are imposed. "[H]ad counsel in this case focused on the specific supreme court rule supporting jurisdiction in appeals from contempt orders, namely, Rule 304(b)(5) . . . the necessity that the order appealed from contain a sanction in addition to the finding of contempt would have been patently obvious."

While this case has nothing to do with child support, its lesson is nonetheless worth remembering.

Circuit Court Lacks Jurisdiction to Order Return of Improperly Seized Tax Refund

James v. Mims, 316 Ill. App. 3d 1179, 738 N.E. 2d 213 (1st Dist., 9/29/00), reversed – reluctantly – a circuit court order directing IDPA to refund acknowledged overpayments in child support resulting from tax refund intercept.

Defendant Mims was paying support to James through IDPA. When James died Mims assumed custody of the parties' child and had the support and withholding orders terminated. The court's account review disclosed that IDPA had received an overpayment of $660.40 in support resulting from tax refund intercepts that had not been forwarded to James. The circuit court ordered IDPA to refund the $660.40 to Mims. IDPA appeals.

The Appellate Court – reluctantly – reverses. Decisions of IDPA regarding tax refund intercepts may be reviewed only under the Administrative Review Act, and failure to pursue administrative review is jurisdictional. Furthermore the Court of Claims has exclusive jurisdiction over monetary claims against the state.

> "Accordingly, we must reverse the refund order of the circuit court. Yet, we do so with extreme regret in light of the facts of this case. The State has never challenged the trial court's authority to conduct the account adjustment review or to assess the overpayment. It is apparently undisputed that the defendant is entitled to the $660.40 refund ordered by the trial court. On this record, it is manifestly clear that the State is obligated to refund the $660.40 overpayment to the defendant and should do so voluntarily without requiring him to take any further action.
>
> ". . . The State has no right to this money. . . . It would be distinctly unfortunate if the State were to force the defendant, or any citizen of this state, to initiate an entirely new legal proceeding in an admittedly overburdened judicial system in order to recover on a claim which is not in dispute, especially where the State has no colorable argument that it is entitled to retain the support overpayment. The conclusion we are forced to reach today has the unhappy and unintended result of rewarding the State for its failure to treat all of its citizens with fairness and dignity. We can only hope that this decision will not invite similar conduct in the future. Thus, we reach this decision with uneasy reluctance, finding is to be legally correct, but certainly not just."

IDPA had also argued that the trial court lacked personal jurisdiction over it, asserting it had never intervened or otherwise appeared as a party in the case. (But if so, how were payments going through IDPA?) The Appellate Court did not address this claim in light of its dispositive ruling on the issue of subject matter jurisdiction.

Prior Disability Finding Under Probate Act Not Required in § 513 Support Action; Alleged Disabled Adult Child Not "Necessary Party"

In Re Marriage of Lerner, 316 Ill. App. 3d 1072, 738 N.E. 2d 183 (1st Dist., 9/29/00), reversed denial of support for disabled adult child not first declared "disabled" under the Probate Act or served as a necessary party to the petition brought under IMDMA § 513.

In November, 1989, Susannah Lerner filed a petition seeking support from Robert under § 513 of the IMDMA for their adult son Andrew, alleging him to be mentally disabled since prior to attaining majority. When Robert failed to appear or comply with discovery he was defaulted and on October 22, 1990, was ordered to maintain insurance on Andrew, to pay a portion of medical bills then due, and to pay $1,500 per month to Susannah for Andrew's support. In May, 1991, Robert filed a petition to vacate that order, which was granted in August. In an unpublished order the Appellate Court reversed, finding Robert had not exercised due diligence in bringing his petition.

On March 26, 1997, Robert filed another petition to declare the October 22, 1990 order to be void because (1) no notice of the proceedings had been served on Andrew and (2) his disability had not first been determined under the Probate Act. On September 2, 1998, the trial court granted Robert's latest petition, holding that the October 22, 1990, order was not void but was only binding on Robert, that a determination of disability had to be made in probate court before the domestic relations court would have jurisdiction to determine the amount of support, and:

(Cont'd. on page 18)

("Cases & Commentary," cont'd. from page 17)

> "4. The October 22, 1990, order was not binding on Andrew. Until the nature and extent of Andrew's disability was determined, the court would not authorize any support payments for Andrew, past or present, nor authorize any expenses, past or present, to be paid on his behalf or to be incurred on his behalf.
>
> "5. Respondent had no obligation for any expenses incurred for Andrew, including payments to petitioner, pursuant to the October 22, 1990, order, up to July 8, 1998, because the October 22, 1990, order was not binding on Andrew."

The trial court also certified for appeal the question whether an alleged mentally disabled person is a necessary party to a petition pursuant to 513 of the IMDMA to determine the nature and extent of his disability, when it occurred, or whether it is temporary or permanent in nature. Susannah appeals.

Reversed. There is no reference to probate court proceedings in § 513 and nothing to indicate legislative intent requiring a prior determination of disability under the Probate Act. The legislature "intended a distinct proceeding in which a parent can seek support for a disabled adult child even if he has the ability to manage his own affairs. Section 513 implicitly gives the trial judge in a proceeding brought before it the power to determine if a child is disabled within the meaning of the Act. . . . Because of the different purposes of section 513 and of the Probate Act's provision for appointment of a guardian, a child could be disable within the meaning of section 513 and not be disabled within the meaning of the Probate Act."

The trial court had also erred when it refused to enforce the support order that it found was not void. It was binding and enforceable against Robert. And Andrew was not a "necessary party" since his interests were being represented by Susannah. The Court concluded: "The time has come when Robert must begin complying with the support and medical expense provisions of the October 22, 1990, court order. He should no longer delay fulfilling his obligation to support his child."

Incarceration *May* Justify Support Modification

In Re Marriage of Burbridge, 317 Ill. App. 3d 190, 739 N.E. 2d 979 (3rd Dist., 10/23/00), reversed summary denial of a petition to suspend support payments due to the obligor's incarceration.

In the parties' 1988 divorce Rodney was ordered to pay child support of $50 per week, increased to $57 per week in 1992. In January, 1995, he was sentenced to 19 years in the Dept. of Corrections on a plea of guilty to home invasion. Four and a half years later he petitioned to "stay" his child support for the remainder of his sentence and to void arrearages accrued since going to jail. The trial court summarily dismissed the petition without any hearing, finding "that the change in circumstances being his incarceration for a criminal offense, that said circumstance is considered under Illinois law, to be voluntary and not a justifiable basis to modify." Rodney appeals.

Affirmed in part, but reversed in part. Arrearages accrued prior to filing of a petition for modification cannot be excused, so dismissal of that portion of Rodney's petition was proper. "However, we reject the trial court's conclusion that as a matter of law incarceration is a form of voluntary unemployment and therefore does not justify a reduction in child support." A decision to modify in such circumstances is best left to the discretion of the court. "In exercising its discretion whether to reduce or suspend child support payments due to the incarceration of the obligor, the trial court should consider all relevant factors, including: (1) the assets of the incarcerated parent [citation]; (2) the length of incarceration [citation]; the reason the obligated parent entered prison [citation]; and (4) the potential for work release [citation]." Here the trial court abused its discretion in not holding an evidentiary hearing or making any factual findings. Accordingly, that portion of the court's order denying modification is reversed and remanded with directions to consider the relevant factors "including those mentioned herein."

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Participants kick off IFSEA's 12th Annual Conference with Sunday Banquet, October 15, 2000.

Were You There?

Unless you registered for the IFSEA Conference in October, or otherwise sent in a membership renewal form with your dues for 2000-2001, your membership in IFSEA has expired.

Membership Renewals Now Due!

Renew yours TODAY!

ILLINOIS FAMILY SUPPORT ENFORCEMENT ASSOCIATION
Application for Membership / Address Correction

Please: [ ] accept my application for membership in IFSEA. [ ] correct my address as noted below.

[ ] Regular membership - please enclose $20.00 annual dues.
[ ] Subscription membership - please enclose $20.00 annual fee.
[ ] Affiliate membership - (dues to be determined by Directors upon acceptance).

Applicant's Name: _____
Position/Title: _____
Employer/Agency: _____
Office _____
City/State/Zip: _____ Office Phone: _____
Preferred Mailing Address: _____

Is this a [ ] New Application [ ] Renewal [ ] Address Correction ONLY?
Please return with dues to: IFSEA, P. O. Box 370, Tolono, IL 61880-0370

(FEIN: 37-1274237)

(12/00)

Help Wanted

for 2001 Conference Planning

If you are interested in serving on the Agenda/Program Committee for IFSEA's 13th Annual Conference, to be held October 14-16, 2001, in Collinsville, Illinois, please contact conference Chair Madalyn Maxwell at (217) 782-9080. Membership entails help in advance planning, monitoring and possible participation in sessions at the conference. A brief committee meeting will be held at the Board of Directors' Meeting in Collinsville on March 9, 2001.

Suggestions for topics, speakers, etc. will also be welcomed.

Meeting & Conference Calendar

- IFSEA Mid-year Board of Directors' Meeting, 11:00 a.m., March 9, 2001, Holiday Inn, Collinsville, IL. Conference Agenda Committee Meeting to follow. Contact: Madalyn Maxwell, (217) 782-9080.
- Eastern Regional Interstate Child Support Assoc. (ERICSA), 38th Annual Training Conference, "Our County in Harmony with Kids," May 20-24, 2001, Opryland Hotel, Nashville, TN. Information on the web at www.ericsa.org/trainingconference.htm.
- National Child Support Enforcement Assoc. (NCSEA), 50th Annual Conference & Expo., August 12-16, 2001, Hilton New York, New York City, NY. Contact: NCSEA, (202) 624-8180, www.ncsea.org.
- OCSE's 11th Annual National Child Support Enforcement Training Conference, September 10-12, 2001, Hyatt Regency Crystal City, Arlington, VA. Contact: Bertha Hammett, (202) 401-5292.
- IFSEA's 13th Annual Conference, October 14-16, 2001, Holiday Inn, Collinsville,, IL. *More information to follow.*

Illinois Family Support Enforcement Association
P. O. Box 370
Tolono, IL 61880-0370

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