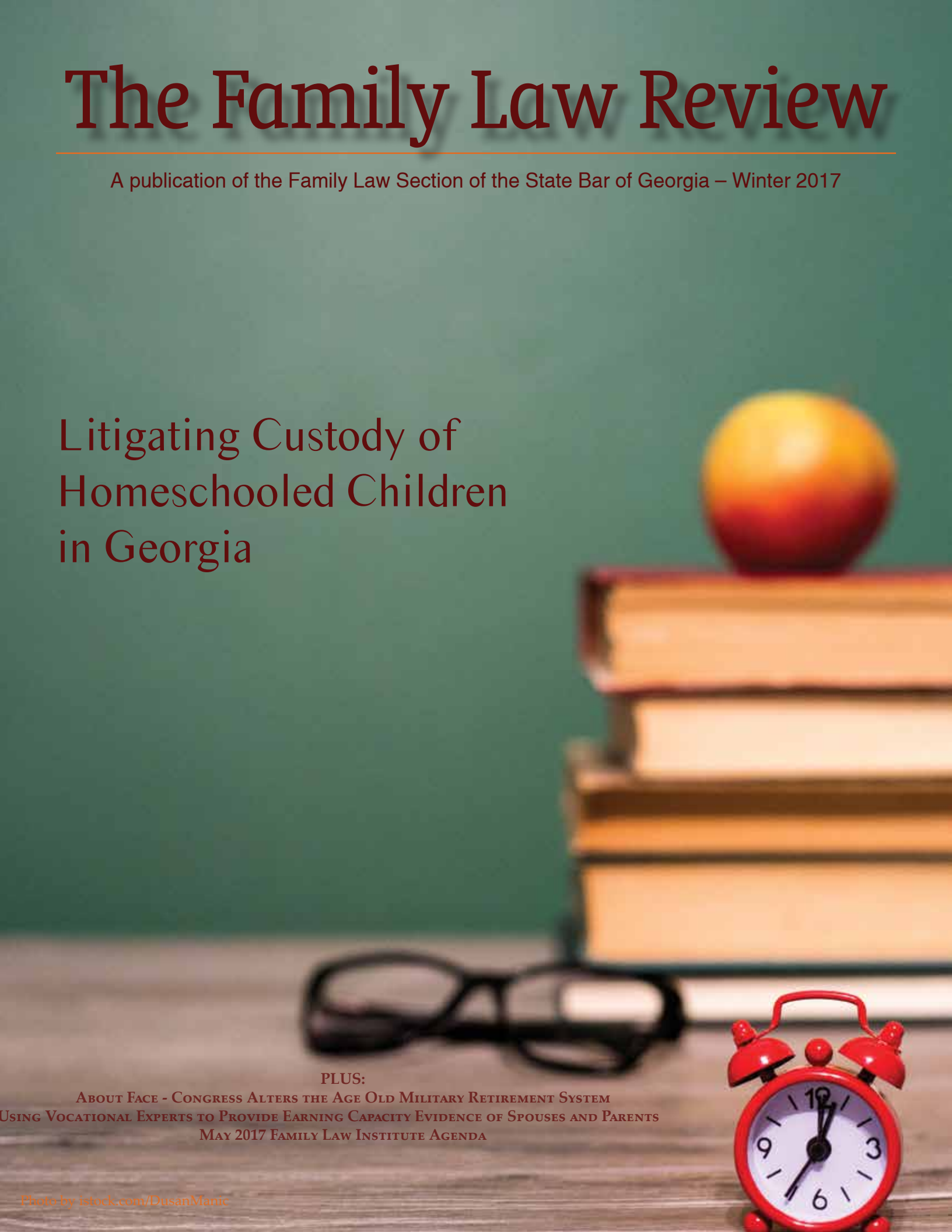
The Family Law Review

A publication of the Family Law Section of the State Bar of Georgia – Winter 2017

Litigating Custody of Homeschooled Children in Georgia



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May 2017 Family Law Institute Agenda

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Editors' Corner

By Kelley O'Neill-Boswell
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I hope you all find this edition of The Family Law Review full of useful information. I also hope that you have all made your reservations to attend the Family Law Institute in May. The Family Law Section continues to provide it's members exemplary education and networking opportunities. Also, please consider submitting an article for publication in our next edition.

The section would benefit from information about family law cases and developments throughout our state. *FLR*

Editor Emeritus

By Randy Kessler
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This has been quite a year. The elections, the Super Bowl and new judges in many different courts. But one thing is constant, the need for good family law representation. I remain honored to be a part of our Section and *The Family Law Review* and know that we will continue to strive to improve our bar to help the people of our state through their family law crises. It has also been an honor to watch the section under Marvin Solomiany's stewardship and our future seems brighter than ever as the line officers move onward and upward, including the newest elected officer, Ivory Brown. Please continue to submit your contributions to the FLR and to make suggestions for topics of interest you'd like to see covered in future editions. And finally, congrats to Kelley O'Neill-Boswell for another fine edition of our number one member benefit, *The Family Law Review*. *FLR*

***The Family Law Review* is looking for authors of new content for publication.**

If you would like to contribute an article or have an idea for content, please contact Kelley O'Neill-Boswell at kboswell@watsonspence.com

Inside This Issue

From the Chair

By Marvin Solomiany
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I want to take this time to thank the Executive Committee for their hard work so far this year. The executive committee meets usually about every 6 weeks. The agendas during those meetings are packed with issues directly relevant to the Section. The members of our executive committee sacrifice a lot of their personal and professional time to work for the Section. While I hate to single out specific members, I do want to highlight some of their efforts in this column.

Pilar Prinz has done an amazing job as our legislative liaison. Even before the start of the General Assembly, Pilar has been working with the State Bar and members of the General Assembly to ensure that they are aware of our Section's opinions as to specific legislation that will be affecting the practice of family law. As the General Assembly is now in session, Pilar is working on such issues on a weekly basis which is extremely time consuming.

Leigh Cummings is heading our first community project. The family law section has partnered with Park Pride (www.parkpride.org) to host an event on April 29, 2017 in which hopefully many members of our Section will be working "hands on" to improve a park in the Atlanta area. Please pay special attention to the emails you will be receiving from the Section surrounding this event in the upcoming weeks. We hope to have a great turnout for this great cause.

Dan Bloom deserves special recognition for planning our mid year seminar which took place the first week in January at the Ritz Carlton during the State Bar Annual meeting. As always, Dan did an outstanding job in moderating a panel consisting of Judge Brasher (Fulton County) and Judge Harris (Cobb County). We would also like to thank Katie Leonard for planning the dinner for the executive members and numerous members of the general assembly following the seminar. It provided a good opportunity for our members to discuss important legislative issues with some of our state senators and representatives.

Gary Graham is presiding over the upcoming Family Law Seminar and the agenda is terrific. Gary is putting the final touches on what will undoubtedly be another successful Family Law Institute. Kyla Lines has worked non stop heading our sponsorship drive for the upcoming Family Law Institute. We rely on the support of our section members and other sponsors so that we can invite Judges to the Institute and cover other expenses such as the two receptions. Kyla did an amazing job last year and is off to a great start this year as well. Anything you can contribute is certainly appreciated.

Do not tell Scot Kraeuter that it is too early to start planning for the 2018 Family Law Institute. Scot has been planning since last year's institute and is extremely excited to bring back the Institute to Jekyll Island, which will even have more accommodations along the beachfront than last year. If you are interested in being a speaker, please contact Scot as soon as possible.

Finally, we want to congratulate Ivory Brown for her election as the upcoming Secretary of the Section. This is the result of her many years of excellent service on the Executive Committee where she has been an active member.

I look forward to seeing you soon and hope you take advantage of all the opportunities and resources provided by our Section. *FLR*

Litigating Custody of Homeschooled Children in Georgia

By Angela Highsmith

From the rural corners of Georgia to downtown Atlanta and the suburbs scattered between, homeschoolers are everywhere. According to the National Center for Education Statistics, some 3.4 percent of children with a grade equivalent of Kindergarten through twelfth grade were homeschooled as of 2012. The number of homeschooled children continues to increase at a rate of 2 percent to 8 percent per year. [Ray, Brian D. "Research Facts on Homeschooling." *National Home Education Research Institute*. March 23, 2016.] With the number of children being educated at home, chances are you may have litigation involving minor children who are homeschooled. Georgia law does provide for children to be educated at home with certain requirements provided at O.C.G.A. § 20-2-690(c).

Who can home educate?

A parent or guardian may choose to homeschool their child and may educate their own children if the parent has at least a high school diploma or general educational development diploma. A parent may choose to engage a tutor for the child; if a party other than a parent educates a child at home, that party must also have a high school diploma or a general educational development diploma. O.C.G.A. § 20-2-690(c)(3).

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What must be taught?

The home education statute states that a home study program shall provide a basic academic educational program. Such a program requires that, in the very least, reading, language arts, mathematics, social studies, and science be taught to homeschooled children. The statute does not specify what method is to be used, what books are utilized, or the specific topics to be covered. O.C.G.A. § 20-2-690(c)(4). Georgia does not require that the available online Georgia public school resources (such as the Georgia Virtual School or Georgia Cyber Academy) be used by parents, but such resources are available with more involvement and oversight of the child by the State of Georgia Department of Education as these are not technically home study programs.

What is the time requirement for homeschool?

Every 12 months, O.C.G.A. § 20-2-690(c)(5) requires the home study program provide 180 school days of education for at least 4 1/2 hours each school day unless the child is physically unable to comply with this requirement.

What must be filed with the State of Georgia?

Within 30 days after the establishment of a home study program and by Sept. 1, each year thereafter, the parent, parents, or guardian must submit a Declaration of Intent to Utilize a Home Study Program to Georgia's Department of Education. That Declaration may be submitted online via the Department of Education's website or by written form to the Department of Education. O.C.G.A.§ 20-2-690(c)(1).

The Declaration of Intent shall include a list of the names and ages of the students in the home study program, the name of the parent or guardian, the address where the home study program is located, and the district (county) where the home study program takes place. Mandatory attendance in a home school program is required for children between their sixth and sixteenth birthdays.O.C.G.A. § 20-2-690.1(a). Thus, if a five year old is educated in a home school program, unless that child had received public education in the past, that five year old does not have to be declared on the Declaration of Intent.

The begin and end dates, "a statement of the 12 month period that is to be considered the school year," are to be included as well. O.C.G.A. § 20-2-690(c)(2). While a home

educator has a twelve-month period in which to implement and teach their home study program, once they meet the 180-day requirement, their educational responsibility for that declared school year is complete.

While a household utilizing a home study program must meet other requirements as stated in O.C.G.A. § 20-2-690(c), this Declaration of Intent is the only item required to be submitted to the state.

What about standardized testing?

Every three years, beginning at the end of thirdgrade, students in home study programs are required to take an appropriate nationally standardized test. "The test is to be administered in consultation with a person trained in the administration and interpretation of norm reference tests to evaluate their education progress" and the scores are to be retained but "shall not be required to be submitted to public educational authorities." O.C.G.A. § 20-2-690(c)(7). While the standardized testing is required, the test scores are not submitted to the state.

Are there any other requirements?

The home educator must write an annual progress assessment report which includes the educator's assessment of each student's academic progress in each of the statutorily required subject areas. O.C.G.A.§ 20-2-690(c)(8). Those progress reports are to be retained by the parent or guardian for at least three years, but there is no requirement that those assessments be submitted to the Department of Education.

Application to child custody cases.

In the context of a divorce case, the children at issue may have been homeschooled prior to the parents separating; however, duringthe pendency of the case, one of the parents may dispute the other parent's decision to continue homeschooling. In a custody case, perhaps one parent wants to begin utilizing a home study program. If the disagreement about educational choice cannot be resolved between the parents, the judge will make the decision based on the best interest of the child. O.C.G.A. § 19-9-3.

Evidence may be presented to show whether the homeschooling parent has complied with Georgia law. An attorney can verify that a parent is acting as home educator by the Declaration of Intent submitted to the Department of Education. Further, the parent or guardian as home educator is required to prepare annual progress assessment reports, teach the required subjects, and triennially subject the child to standardized testing. While a home educator does not have to submit the test scores or assessment reports, an attorney may obtain these documents through discovery because they are to be retained for at least three years by the homeschooling parent. An attorney may also use the discovery process to determine the curricula used in the home study program.

Another factor of concern with regard to the homeschooled child is socialization. Socialization opportunities may include the child's involvement in homeschool groups; classes with other homeschooled children; participation in activities such as sports, theatre, dance, music, or other youth groups; leadership and volunteer opportunities; and work or apprenticeships.

Also, the parenting time to be had by each parent will be at issue. Joint custody of the minor children is probably not a possibility if one or more of the children is homeschooled; however, the non-custodial, non-educating parent may have an argument for an award of more weekend, summer, or holiday visitation time than is standard due to the amount of parenting time enjoyed by the homeschooling parent. The attorney for the educating parent should attempt to secure the right to make educational decisions for the children.

The homeschooling parent should have knowledge of how much time is spent teaching the children each school day and the materials used for each subject taught, along with having the documents required for a home study program utilized in Georgia.

While Georgia's homeschooling laws are not quite as restrictive as some states',O.C.G.A. § 20-2-690 provides a verifiable framework for parents or guardians utilizing a home study program and for attorneys in custody cases involving home educated children. ***FLR***

Angela Highsmith is an associate attorney practicing family law at Richard Tunkle, LLC, in Clayton, Georgia. Angela is also a homeschooling mother of four school-age children in second through ninth grades, along with a preschooler and a one year old.

Child Support Worksheet Helpline

A Call for Volunteers

a service provided by the Family Law Section of the State Bar of Georgia and the Georgia Legal Services Program

Flex your child support worksheet prowess to assist income eligible, pro se Georgians with the completion and filing of child support worksheets!

- Convenient and easy way to serve the community
  - One-time legal assistance – not an ongoing legal relationship with the pro se litigant
  - Contact caller(s) from the comfort of your office or home on your schedule
- Flexible commitment
  - You may volunteer for as many cases as you would like to take
- Simple registration Email the form below to cswgahelp@gmail.com

Child Support Worksheet Helpline Volunteers

Alice Benton
Ivory Brown
John Collar
Katie Connell
Leigh Cummings
Adrianna de la Torriente (Spanish)
Cindy English
Samantha Fassett
B. Lane Fitzpatrick
Brooke French
Adam Gleklun
Gary Graham
Mitchell Graham
Hannibal Heredia (Spanish)
Michelle Jordan
Scot Kraeter
Kyla Lines
Regina Quick
Tera Reese-Beisbier
Rebecca Crumrine Rieder
Dawn Smith
Susan Stelter

I am interested in being a Volunteer for the Child Support Helpline*

1 . Name: _____

2. Bar Number: _____

3. Office Address: _____

4. Phone: _____

5. Email: _____

6. I would like to assist with no more than ____ callers per month.

7. l understand that by signing up for this volunteer position, I am certifying that I have a working knowledge of Child Support Worksheets in the State of Georgia and how to complete them based on information provided to me by a pro se litigant. I also certify that I am a member in good standing with the State Bar of Georgia.

_____ ___Interested Volunteer Georgia Bar Number

***Please email this form to cswgahelp@gmail.com**

About Face - Congress Alters the Age Old Military Retirement System

By Steven P. Shewmaker and Alexa N. Lewis

Many family law attorneys recognize military divorce as a unique subspecialty of family law. This is because military divorce blends state domestic law with several federal statutes applicable only to military service members.[1] [2] If you have handled several military divorces, you probably have become attuned to the major pitfalls and can spot these issues.[3]

Nevertheless, if you don't surf the Congressional Record (or don't have an office right outside Fort Benning) you may not realize that 2015 will go down as a watershed year for the Department of Defense, particularly in terms of Congress' overhaul of the military retirement program. On November 25, 2015, President Barack Obama signed the 2016 National Defense Authorization Act (NDAA) ushering in a new military retirement system beginning in January 2018.[4] Here's what family law attorneys need to know about the new military retirement plan, also known as the "Modernized Retirement Plan."

Background

Congress has funded military retirement programs in various forms dating back to 1855.[5] From the beginning, military retirement programs have been "defined benefit" programs.[6] Congress' original intent was to provide security to senior officers to motivate retirement in order to create vacancies for junior officers to progress.[7] Over time, the retirement system expanded to include enlisted soldiers, and it began to add other enhancements, evolving into the system we have today.[8]

The current military retirement plan, which has been in effect since 1948, is an "all or nothing" plan wherein a service member receives a retirement only if she serves twenty years (or more) on active duty or serves for a period of twenty years in the reserves or national guard that are deemed qualifying for retirement.[9] This is often referred to as a "cliff vesting" plan.[10]

Military retirement is frequently referred to as "half your pay" in retirement after 20 years of service. While this is an oversimplification of a more complex formula, it is quite often close to half the service member's pay in retirement. The current system is a non-contributory defined benefit system. Service members make no monetary contribution to their retirement.[11] They receive a retirement based upon a "retirement multiplier"; this multiplier is the product of 2.5 percent (0.025) and the service member's total years of qualifying service. The service member's final retirement is then determined by the product of the multiplier and the average of the service member's highest three years of base salary.[12]

The Problem

For many years, critics have claimed that the current military retirement system is too expensive to maintain.[13] Today, the cost of the military retirement system exceeds 111 billion dollars annually.[14] Military retirement funding and other military spending is a significant and growing portion of the U.S. annual budget.[15]

Also, as a cliff vesting plan, the service member must serve a full 20 years to receive any retirement.[16] It is estimated that only 17 percent of all enlisted service members and 49 percent of all officers serve long enough to qualify for retirement.[17] Most leave voluntarily before 20 years. Others are not promoted and discharged. Still, others may be administratively separated for misconduct or they may be criminally prosecuted by the military and lose all retirement benefits. One of the current plan's major criticisms is that over 80 percent of all who serve the country - including thousands who actually serve in combat - leave the military without any retirement benefit.[18] Consequently, critics call the current system an impediment to attracting competitive recruits;[19] they also point out that the mediocre mid-career service members are motivated to remain in service under the current plan.

As a result of these and other criticisms, many members of Congress considered the current retirement program too costly and antiquated.[20] Ultimately, in the 2013 NDAA, Congress established the "Military Compensation & Retirement Modernization Commission" to review the current system, consider some of these criticisms, and recommend changes.[21] On Jan. 29, 2015, the Commission released its final report, recommending an overhaul to the current retirement plan, including establishing an enhanced defined contribution plan.[22] In the 2016 NDAA, Congress adopted many of the Commission's proposals.

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The Modernized Retirement Plan

The 2016 NDAA amends the military retirement plan and launches the Modernized Retirement Plan on Jan. 1, 2018. This plan creates three distinct categories of service members:

1. those serving on (and before) Dec. 31, 2017, with more than 12 years of service at that time;
2. those serving on (and before) Dec. 31, 2017, with less than twelve years of service at that time; and
3. those who join on or after Jan. 1, 2018.[23]

Those in the first category (> 12 yeas of service) will remain under the current retirement system, without exception. Those in the second category (< 12 years of service) may opt into the new system or remain under the current system.[24] Those in the third category may not choose; they will only be eligible for the new retirement system.[25]

This is a standard "grandfather" plan established for the sake of equity. Congress estimates that those with more than 12 years of service by Jan. 1, 2018, are strongly vested in the current retirement system and should not be disturbed. Those with less than twelve years of service may do better under either system depending upon how much service they have, how much (if any) "continuation pay" they receive (see below), and how much they desire to remain in the military.

But, what are those in the middle category choosing? And what are our new recruits getting?

The new retirement system includes:

1. an enhanced Thrift Savings Plan (TSP),
2. a reduced defined benefit plan,
3. an interim Acontinuation@ bonus, and
4. an option to receive an immediate partial lump-sum payment against the defined benefit upon retirement.

First, a TSP account will be established for all new service members.[26] After the service member's first 60 days of service, the Government will automatically begin contributing 1 percent of the service member's base pay into this account every month. The Government will match, dollar-for-dollar, the service member's contributions up to 3 percent of base pay. Finally, if a service member contributes above 3 percent, the Government will contribute $0.50 towards every dollar the service member contributes above 3 percent, up to 5 percent. Therefore, if the service member makes a 5 percent contribution, the Government will match it (with a 5 percent maximum contribution). These contributions continue until the service member leaves service, retires, or reaches 26 years of service.[27] The TSP becomes the service member's property after two years of service. These contributions are invested under the direction of the TSP Board in a variety of U.S. Government securities and stock index funds.[28]

Second, the military's defined benefit program remains intact. However, the 2.5 percent constant (addressed above), that couples with the service member's total years of service to create the retirement multiplier, is reduced to 2 percent in exchange for the Government's TSP contribution. Since the 2.5 percent constant had the practical effect of yielding a retirement of 50 percent of the service member's base pay in retirement over a 20-year career, the lower constant yields 40 percent of the service member's base pay in retirement.[29]

Third, for those service members who achieve 12 years of service on or after Jan. 1, 2018, the Modernized Retirement System requires that the active duty service member be paid not less that 2.5 times their monthly base pay (and the Reserve/National Guard service member receive not less than 0.5 times the monthly base pay of an active duty service member of equivalent rank and years of service). At the discretion of the Secretary of the particular service, the active duty service member may also be paid as much as 13 times the monthly base pay (and the Reserve/National Guard member may be paid as much as six times the monthly base pay of his active duty equivalent). The ultimate size of such continuation bonuses are unclear at this time. Congres' intent was to allow the service secretaries discretion in order to "shape" the force.[30]

Finally, the 2016 NDAA allows retirees (under the new system) who are entitled to begin receiving retirement to receive certain immediate "lump sum" payments against the defined benefit portion of their pension.[31] The plan allows for a retiree to receive either 25 percent or 50 percent of the annuity in a discounted present value lump-sum payment. The retiree receives the remainder of the annuity each month, and the annuity returns to the full annuity amount upon the retiree's 62 birthday.

The Defense Finance and Accounting Service (DFAS) administers the military retirement system through its implementing regulation, the DoD Financial Management Regulation. This regulation has not yet been updated to reflect the Modernized Retirement System. Several aspects of the Modernized Retirement System are still uncertain.[32] What is clear, is that the Modernized Retirement System places many important choices into the hands of the service member. Because many service members may be financially naive, Congress mandates that DoD implement financial counseling, beginning in 2018.

Only time will tell whether the Modernized Retirement System will benefit the Department of Defense or its 2.1 million members.[33] For the military family law attorney, the Modernized Retirement System will require her to keep an ear to the ground as the details evolve. It will also require continued competency in division of the military defined benefit annuity, TSP divisions and other ancillary military benefits (e.g. Survivor Benefit Plan and military medical benefits), because none of these programs are going away. Most important, it will require the practitioner to be cognizant of the different classes of service member the Modernized Retirement System creates in 2018 and how their choices and resulting benefits will effect property division in marital dissolution. ***FLR***

Steve Shewmaker is a founding partner of Shewmaker & Shewmaker. SHe attended the University of Alabama. Following his years of active military service, Steve earned his law degree from the Georgia State University College of Law where he graduated with honors.

Alexa Lewis attended the University of Georgia and graduated Cum Laude with a Bachelor of Arts in Political Science in 2009. Alexa received her law degree from Georgia State University College of Law.

(Endnotes)

1 E.g. 10 U.S.C. §1408 (2015) - Payment of retired or retainer pay in compliance with court orders (This statute is more commonly referred to as the "Uniformed Services Former Spouse Protection Act") *See Mansell v. Mansell*, 490 U.S. 581 (1989); *Powell v. Powell*, 80 F.3d 464 (11 Cir. 1996); *Holler v. Holler*, 257 Ga. 27 (1987).

2 Most of the statutes and corresponding regulations regarding "military divorce" apply to uniformed members of the Department of Defense as well as members of the U.S. Coast Guard, members of the National Oceanic and Atmospheric Administration Commissioned Officer Corps and the U.S. Public Health Service Commissioned Corps.

3 For example: (1) The jurisdiction to divide a military pension (incident to a divorce) follows independent jurisdictional requirements over the service member, as defined by 10 U.S.C. §1408, which may be perilously lost if not preserved; (2) The military has regulations regarding interim family support which range from mandating such support to merely encouraging it (e.g. Army Regulation 608-99); (3) TRICARE health benefits granted to a former spouse may be lost if the former spouse remarries; (4) the Survivor Benefit Plan annuity may be lost if the beneficiary remarries; and (5) special residency and stay of proceedings procedures under 50 U.S.C. § 3901, et seq. (The Servicemembers Civil Relief Act), just to name a few.

4 The NDAA is federal law passed each year consecutively since 1963. The NDAA specifies annual budget and expenditures for the Department of Defense. It also fine tunes the operations and business of the Defense Department.

5 U.S. Department of Defense, Military Compensation Background Papers 685 (6th Ed. May 2005). Act of February 28, 1855, Ch. 127, § 1, 10 Stat. 616 (1855).

6 A defined-benefit plan is a retirement plan where the employee, upon retirement, is entitled to a fixed periodic payment. See "Definitions," Internal Revenue Service, accessed December 10, 2014, http://www.irs.gov/ Retirement-Plans/Plan-Participant,-Employee/Definitions; *See also Commissioner v. Keystone Consol. Industries, Inc.,* 508 U.S. 152 (1993). This is in contrast to a "defined contribution plan" in which a certain amount or percentage of money is set aside each year by a company (or the employee) for the benefit of the employee.

7 Advisory Commission on Service Pay, Career Compensation for the Uniformed Forces a Report and Recommendation for the Secretary of Defense (Dec. 1948).

8 Major Wener Vieux, The Military Retirement System: A Proposal for Change, Military Law Review, Volume 218, Winter 2013, U.S. Department of Army Pamphlet 27-100-218, available at https:// www.loc.gov/rr/frd/Military_ Law/Military_Law_Review/pdf-files/218-winter-2013.pdf.

9 The Army and Air Force Vitalization and Retirement Equalization Act of 1948, Pub. L. No. 80-810, 62 Stat. 1081 (1948).

10 Katie Adams, What is Cliff vesting? Investopedia, available at http:// www. investopedia.com/ask/answers /09/what-is- cliff-vesting.asp.

11 Kristy N. Kamarck, Military Retirement: Background and Recent Developments, Congressional Research Service, December 10, 2015, available at, https://www.fas.org/sgp/crs/misc/RL34751.pdf.

12 The product of the multiplier and the average of the service member's highest three years of base pay applies to all service members whose service began on or after September 8, 1980. 10 U.S.C. 1407. For service members who began service prior to September 8, 1980, the multiplier was applied to the service member's final base pay. 10 U.S.C. 1406.

13 Tim Kane, Military Retirement: Too Sweet a Deal? , Charlie Mike, available at, http://warontherocks.com/2015/03/military-retirement-too- sweet-a-deal/; Lawrence J. Korb, Alex Rothman, and Max Hoffman, Reforming Military Compensation Addressing Runaway Personnel Costs Is a National Imperative, Center for American Progress, May 2012, available at, https://cdn.americanprogress.org/ wp-content/uploads/issues/2012/05/pdf/militar y_compensation.pdf).

14 Kristy N. Kamarck, Military Retirement: Background and Recent Developments, Congressional Research Service, December 10, 2015, available at, from, https://www.fas.org/sgp/crs/misc/RL34751.pdf; Major Wener Vieux, The Military Retirement System: A Proposal for Change, Military Law Review, Volume 218, Winter 2013, U.S. Department of Army Pamphlet 27-100-218. Retrieved from, https:// www.loc.gov/rr/frd/Military_Law/Military_Law_Review/pdf-files/218- winter-2013.pdf.

15 Office of the Under Secretary of Defense (Comptroller)/ Chief Financial Officer, Department of Defense Fiscal Year 2015 Budget Request , March 2014, available at, http://comptroller.defense.gov/ Portals/45/ Documents/defbudget/fy2015/fy2015_Budget_Request_ Overview_Book.pdf.

16 Service members may qualify for retirement by serving not less than twenty years on active duty, which may be consecutive service or accumulated service; or they may serve not less than twenty years of qualifying reserve service, meaning that they must earn not less than fifty (50) retirement "points" in a year.

17 Department of Defense, Valuation of the Military Retirement System; September 30, 2012, 24, available at, http://actuary.defense. gov/Portals/ 15/Documents/MRF_ValRpt2_2012.pdf.

18 Report of the Military Compensation and Retirement Modernization Commission, January 2015, available at, http://mldc.whs.mil/public/ docs/ report/MCRMC-FinalReport-29JAN15-HI.pdf ; Department of Defense, Report of the Tenth Quadrennial Review of Military Compensation, Volume II Deferred and Noncash Compensation, July 2008, 12-16, available at, http://www.defense. gov/news/ qrmcreport.pdf; Defense Business Board, Report to the Secretary of Defense: Modernizing the Military Retirement System , November 10, 2014, available at, http://dbb.defense.gov/Portals/35/ Documents/ Reports /2011/FY11-5_Modernizing_The_Military_Retirement_ System_2011-7.pdf; University of Pennsylvania, Wharton School of Business, Public Policy Initiative, An Affordable and Equitable Retirement System for our Veterans , November 10, 2014, available at, http://www.google.com/url?sa=t&rct=j&q= &esrc=s&source=web&cd=1&ved=0ahUKEwj9hr6ln5HLAhXD8z4KHY1vAIIQFggcMAA&url=http percent3A percent2F percent2Fpublicpolicy.wharton.upenn.edu percent2Flive percent2Fnews percent2F317anaffordableandequitableretirementsystemfor&usg=AFQjCNE6D35fFeCCxxxz4Sn7qaZLMjuzmg&bvm=bv.115277099,d.cWw; David B. Newman, Mitigating the Inequity of the Military Retirement System by Changing the Rules Governing Individual Retirement Accounts for Service Members , (Monterey, California: The Naval Postgraduate School, 1997), 31-44.

19 As the Commission indicates in its Report, the Department of Defense has not kept pace with private sector employers where the Internal Revenue Service requires vesting of retirement plans under much shorter time frames. As a result, with an ever younger,

"millennial" generation, Aresearch has shown members of this generation change jobs frequently and tend to favor flexible retirement options, rather than the defined benefit pension plans preferred by previous generations.@ Report of the Military Compensation and Retirement Modernization Commission, January 2015, available at http://mldc.whs.mil/public/docs/report/MCRMC-FinalReport-29JAN15-HI.pdf .

20 Kristy N. Kamarck, Military Retirement: Background and Recent Developments, Congressional Research Service, December 10, 2015, available at https://www.fas.org/sgp/crs/misc/RL34751.pdf.

21 National Defense Authorization Act for Fiscal Year 2013 , GovTrack.us., available at www.govtrack.us/congress/bills/112/hr4310/text .

22 Military Compensation and Retirement Modernization Commission , January 2015, available at http://mldc.whs.mil/reports#final.

23 National Defense Authorization Act for Fiscal Year 2016, available at https:// www.gpo.gov/fdsys/pkg/BILLS-114s1356enr/pdf/BILLS-114s1356enr.pdf.

24 The 2016 NDAA establishes the period from January 1, 2018 through December 31, 2018 as the election period. Id.

25 *Id.*

26 Currently, the TSP is optional for members of the Department of Defense (since 2000), and the Government does not contribute or match contributions. The TSP is not a 401(k) but does bear many similarities. See generally, Mark Sullivan, A Teaspoon of TSP, The Family Law Rev., 6 (Winter 2016).

27 The 2016 NDAA states that the Government will cease making TSP contributions for service members after they have served for 26 years, though the service member may continue to serve.

28 National Defense Authorization Act for Fiscal Year 2016, available at https:// www.gpo.gov/fdsys/pkg/BILLS-114s1356enr/pdf/BILLS-114s1356enr.pdf.

29 For example, today a Lieutenant Colonel retiring after 20 years with a base pay of $8,000.00 (average of previous three years) would compute her retirement as follows: 0.025 x 20 x 8,000 = $4,000.00, whereas under the new retirement system, she would compute it as follows: 0.02 x 20 x 8,000 = $3,200.

30 "Shaping the force" is a term meaning that this continuation bonus may be greater for certain military ranks or occupational specialties (e.g. pilots) where the service may be short qualified personnel; its use is intended to motivate people to remain in service; Kristy N. Kamarck, Military Retirement: Background and Recent Developments, Congressional Research Service, December 10, 2015, available at https://www.fas.org/sgp/crs/misc/RL34751.pdf.

31 This new lump-sum aspect harkens back to an earlier plan, called the Career Status Bonus Redux (CSB Redux). Under CSB Redux, service members who entered the service after July 31, 1986 could elect the "high three" retirement plan or the CSB Redux plan in their 15 th year of service. If CSB Redux were elected, the service member received a $30,000 lump sum payment at that time in exchange for a lower retired pay multiplier and a lower annual cost of living adjustment. 10 U.S.C. §1409; See Defense Finance and Accounting Service website, available at http://www.dfas.mil/retiredmilitary/plan/estimate/csbredux.html.

32 E.g. Will the service member=s spouse be required to concur to elect the Modernized Retirement System for members with less than twelve years of service? How will the Modernized Retirement System account for disability payments such as Combat Related Special Compensation? How much continuation pay will the difference Service Secretaries allot for service members and will they do so based upon military occupational specialty?

33 Office of the Under Secretary of Defense (Comptroller)/ Chief Financial Officer, Department of Defense Fiscal Year 2016 Budget Request , February 2015, available at http://comptroller.defense.gov/Portals/45/Documents/defbudget/fy2016/FY2016_Budget_Request_Overview_Book.pdf

Using Vocational Experts to Provide Earning Capacity Evidence of Spouses and Parents

By Silvio S. Reyes

Introduction

The rising divorce rates in Georgia and other Southern states can be attributed to several factors. Household incomes in the South are lower than the national average and people in the Southern states have been shown to marry earlier in life. Many people are separated from the work force within the State of Georgia due to many reasons that are at times out of their hands. A spouse may be out of work by mutual agreement, e.g., health reasons or raising children, or may be unemployed involuntarily, e.g., job change or downsizing. A spouse may be purposely out of work or underemployed, or hiding income and this is when imputed income is needed. When issues arise regarding support of the spouse or children, determining the earning capacity for which either spouse should be responsible becomes a critical issue which warrants the invaluable services of a Vocational Expert (VE). VE's are an important inclusion in the divorce process as they are a useful tool in providing a litigant's earning capacity. They are professionals that are knowledgeable of the local labor market and possess an expertise that is helpful to the courts as they assess earning potential. They opine on the earning capacity of a person or whether the person is employed in a position which maximizes their earning potential and provide pertinent, foundational information by completing an Employability and Earning Capacity Evaluation.

This evaluation summarizes and documents findings on the cost and duration of needed education and training, availability of geographically appropriate job openings, salary data, and the estimated time it will take a spouse to find a job. The conclusions and opinions in the report are based on an interview, vocational testing (if necessary), and an assessment of his or her career values, marketable skills, and job possibilities. Labor market research is conducted based on the data collected regarding the litigant being examined.

Vocational Expert Qualifications

Vocational experts (VE) are rehabilitation counselors with extensive experience in researching the local and national labor markets. VE's must possess the certified rehabilitation counselor certification (CRC) which is the nationally recognized credential for vocational rehabilitation counselors. VE's must hold a Masters Degree (M.A., M. Ed., or M. S.) in Rehabilitation Counseling or a Doctorate (Ph.D. or Rh. D.) in Rehabilitation Counseling from a Council on Rehabilitation Education (CORE) accredited program. Information regarding the vocational experts qualifications which include any education, credentials (certifications and licenses), employment history, professional association memberships, publications and presentations are found within the expert's curriculum vitae. This information can be furnished upon request for review of the attorney interested in the services of a vocational expert in a matrimonial matter.

Vocational Expert as a Resource

Vocational experts can be invaluable in family law cases. VE's can cast light on a party's earning capacity and whether the person is employed in a position which maximizes their earning potential. A VE may serve as a resource to:

- Skill requirements of past work
- Determining underemployment;
- Effects of injury or illness on the ability to work and spouses earning capacity;

The following are the types of situations that may arise which may warrant the inclusion of a VE:

- **Unemployed Spouse:** A spouse that may have been out of the competitive labor market due to their responsibilities of child care or may have never worked due to other circumstances.
- **Underemployed Spouse:** A spouse that may be presently employed, however, due to layoffs, downsizing or a poor economy, may be working in a job which is not consistent with their past education and/or work experience.
- **Disabled Spouse:** A spouse that is unable to engage in competitive employment due to their medical or psychological disability or may work in a reduced capacity.
- **Change of Financial Circumstances:** After a divorce has been settled, an assessment of a spouse may be made due to a loss of a job, a new career, injury, or relocation.
- **Evaluation of a Lifetime Medical Costs of a Disabled Child:** The lifetime costs of a disabled child are sometimes calculated into the financial settlement in a divorce.

The VE concentrates on determining the type of work and skills the litigants has at the time of the evaluation. This process consists of gathering information, either from the retaining spouse, or by conducting an in person interview of the opposing spouse. Occasionally, when the VE is met with resistance and uncooperativeness, it is necessary to compel the retaining spouses' attorney to file a motion to compel their spouse to appear for an evaluation.

Employability Evaluation in Divorce/Family Law Cases

The Employability Evaluation process in a matrimonial matter consists of the following: The first step is usually a diagnostic interview, which is a question/answer session to gather pertinent information affecting employability (e.g. work/life experiences, health, age, length of absence from the work force, educational background, vocational/career goals or priorities, motivation, and current family/personal situation). As part of the occupational section, the earnings for each job should be reported, if possible, using W-2 or income tax records, employer wage verifications, or union contract information.

The next step is vocational testing, if necessary. There are a wide variety of vocational testing instruments used to assess employability. In general, these instruments cannot be passed or failed but are used to develop a worker trait profile.

The VE then conducts labor market research to produce information as to occupational outlook, earnings, qualifications/training requirements for specific job titles within the appropriate geographical area.

The fourth step is the completion of the Employability Evaluation based on the integrations of all information gained throughout the evaluation process. This includes client self-report, vocational consultants observation, medical/psychological reports, test data, and diagnostic information.

Finally, recommended next steps are made based on both immediate and long-term job/career objectives/goals. These steps are based on ones expressed interests as well as their ability to be employed, whether or not they want to return to a previously held job or career.

Conclusion

Many of these individuals are not in the workforce by choice, although they will give you a list of issues and reasons why they are not working. As the need for information supporting requests for Alimony and Child Support increases, so does the need for assessment of earning capacity and vocational potential. Determining a spouse's earning ability can pose a difficult and complex dilemma. A spouse may be out of work by mutual agreement, e.g., health reasons or raising children, or may be unemployed involuntarily, e.g., job change or downsizing. A spouse may be purposely out of work or underemployed, or hiding income and this is when imputed income is needed. When issues arise regarding support of the spouse or children, determining the earning capacity for which either spouse should be responsible becomes a critical issue.

An employability evaluation completed by a Vocational Expert in Matrimonial matters can assist in the determination of the person's highest earning capacity in the labor market. The evaluation determines the spouse's highest level of employability and future earning capacity in the local labor market given their past education, work history, skills, and vocational capacity.

This assessment consists of a review of the medical records, a vocational diagnostic interview, if determined, vocational testing, analysis of the spouse's transferable skills, and research as to what the person can earn in the competitive labor market.

An evaluation of the effects of these life changes on the spouse's employability and earnings can be made based on a transferable skills analysis and local labor market research which will document the spouse's new earning capacity.

In cases involving permanent medical conditions associated with children, the Vocational Expert can evaluate the long-term medical costs of the child's disability by researching the cost of the required medical services in the local area. This may result in the development of a Life Care Plan which can assist the court in adjudicating this complex issue. ***FLR***

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Introducing: the Trust Protector

By George M. Fox

Trust Protectors can clean up substance abuse situations. Changes in families. Unexpected health care issues. Anything else which was impossible to anticipate when the words hit the paper and the trust was created.

You can provide for Trust Protectors in virtually any kind of trust: revocable trusts, living trusts, irrevocable trusts, insurance trusts, credit shelter trusts, marital trusts, QTIP trusts, elder care trusts, special needs trusts, et al.

And having the Trust Protector solution has nothing whatsoever to do with estate taxes. It's not what the Trust Protector is about.

What is this thing?

"Trust Protector" is actually a title for someone who's going to solve a problem in a trust without the trustee or beneficiaries having to go to court to get it done. You save legal fees, filing fees, court calendars, presenting evidence and more. Trust Protector opens the door to updating a trust to fit what's really happened since it was signed.

Stop a substance abuse problem from getting worse. Example: a Trust was drafted to ultimately benefit grandchildren. They get their share of what's left in the Trust when each turns 21. Makes sense, and it's a common pattern.

But what if one of the grandchildren has a drug problem? The Trustee is between the proverbial rock and a hard place. The Trustee has a strong legal duty to do what's best for the grandchild, and a duty to abide by the trust's specific terms.

So does the Trustee give the grandchild her share, obeying the Trust terms but knowing it's a waste of money and probably dangerous? Or does the Trustee go against the Trust terms and flat-out refuse to give that beneficiary what she's supposed to get?

In the old days (i.e., pre-Trust Protector), the Trustee would file alawsuit, explain the circumstances, and ask the court to let the Trustee do something other than make that distribution to that 21-year-old grandchild. But how long is this going to take? And of course, there's the financial and emotional burden.

However, if the trust contains Trust Protector terms, the Trustee can appoint anybody – a lawyer, accountant, doctor, or someone else – to amend the Trust terms to fit the situation. Without going to court.

The person selected can get input from the trustee, the family, the healthcare providers, and from anyone else who's concerned with that beneficiary's well-being.

The Trust Protector can then shape a solution. Should the distribution get delayed until the grandchild tests drug-clean? Should the Trustee be able to dip into that beneficiary's share to pay for treatment? Should the Trustee pay something each month to allow that grandchild to rent a place and pay for food?

Once the decision is made, the Trust Protector writes it up and it goes into effect. And that's that.

Other situations.

- A trust says that after the spouse has died, the children only get income, and when they're all gone, the grandchildren get allthat's left. It's great generation-skipping strategy. But it doesn't do anything because given the size of the assets, there's no reason not to give everything to the children, and let them judge what they need, let them take care of their children, etc.
- The Trustee needs to be changed. The named person was the logical choice once upon a time. But now there's a question of the Trustee's mental capacity.
- A beneficiary is living in the house and the Trust says the house needs to be sold. But nobody wants that to happen, despite what the Trust says.

Now authorizing Trust Protector powers takes some very specific, careful drafting. There's no one-size-fits-all. Nothing to download that's safe.

And using Trust Protector powers is not a blank check to do anything: the Trust Protector's ultimate goal is to divine how the donor – the person who created the trust – would have handled the situation.

Of course, sometimes a trust can't be amended. It all depends. But sometimes, even irrevocable trusts can be updated.

Trust Protector can apply to trusts you've drafted in a will or elsewhere, but haven't started operating yet. And Trust Protector can frequently be used for trusts that are already operating. But someone who knows the trust landscape should see what your opportunities are.

It's worth taking a look if there's a trust in your past, present or future. ***FLR***

George Fox is CEO of Fox+Mattson, P.C., a Sandy Springs law firm specializing in assets, businesses and estates. He writes a column for Smoke Signals, the newspaper of Big Canoe which are circulated in North Georgia, and at www.GaLaw.com/blog. Foxis on the board of many volunteer organizations, and has handled the legal side of creating Endowments, Supporting Organizations and other Section 501(c) entities. He spends his spare time with his wife Michele, four children and nine grandchildren. For fun, he directs musicals.

The Weather Report and the Wingman

By Mark E. Sullivan

Introduction

Conditions were dark and stormy at the end of the second day of the Coons divorce trial.[1] Then the judge invited the attorneys back into his chambers for "a weather report."[2] For Ms. Coons, it turned out to be a cloudburst with no warning.

The judge advised the parties' lawyers that there was a problem. Mr. Coons' military retirement was not vested. The judge stated that the court

> *"… would not and could not distribute [husband's] military retirement because he had not yet served the requisite number of years to vest in the system. In short, there was not yet anything to distribute because [husband] had no entitlement to the benefit." The trial court indicated that the benefits could be distributed only once they vested; because husband was ten months shy of a full twenty years of service as of the final hearing date, there was nothing to distribute.*[3]

Following this in-chambers "weather report," the parties entered into a stipulation resolving all issues. This included the wife's acceptance of $15,000 in exchange for her waiver of any claims to the husband's military pension.

The court was wrong. It's clear that Vermont law does not require the vesting of marital assets as a prerequisite to their division in equitable distribution.[4] Only Indiana, Arkansas and Alabama require a pension to be vested before division as marital property.[5] The wife realized this and filed a motion to alter or amend under Rule 59, asking the court to set aside the stipulation but to retain the rest of the settlement. The judge, who still maintained that the unvested pension couldn't be divided, denied her motion. As described in the Vermont Supreme Court's opinion, the judge ruled that the wife

> *… "could have rejected the proposed stipulation"; had an "opportunity to argue before the [c]ourt that the benefit should be included in the property settlement"; had an attorney throughout the entire proceedings whom she could have consulted; and could have reserved the right "to litigate or appeal the issue of the unvested military pension." Since wife did "none of those things," the trial court denied the motion.*[6]

The Supreme Court affirmed that ruling, stating that there was no mutual mistake of fact, and that "mistake of law" does not constitute a reason for setting aside a stipulation. It noted that lawyers are charged with knowing the law and that stipulations are generally set aside only when there is no failure to exercise due diligence.[7]

What the Supreme Court didn't say is also important. It didn't say, "When you're flying in bad weather, you need a wingman."

Defining the "Wingman"

What is a wingman? Let's do a little historical research. Fans of Top Gun, the 1986 movie by Paramount Pictures, may remember this epic scene – and the lines that go with it.

The flight test was just completed. The locker room held a dozen pilots, with Tom Cruise as "Maverick" in the center, towel wrapped around his waist. The flight evaluator – "Jester" – enters the room. He's just watched Maverick and "Goose," his RIO (Radar Intercept Officer) rush to score a "victory" and in the process leave their wingman vulnerable. In the end, they too fell victim to Jester, who took them out.

Jester addresses Maverick: "That was some of the best flying I've seen yet… right up to the time you got killed. Never, ever leave your wingman!"[8]

How the Wingman Can Help

When a servicemember, spouse or retiree needs help in understanding the INs and OUTs of military pension division, it's time to look for a "wingman." Hiring an expert to assist the primary attorney can bring a much higher level of knowledge and expertise to the divorce case. This is especially true when the judge, taking a line from Bob Dylan, tells you that "You ain't goin' nowhere"[9] with your military pension division case and the attendant military benefits for the spouse or former spouse.

Who can act as your wingman? The expert might be a former JAG officer, a Guard/Reserve judge advocate, a retired JAG, or a lawyer with prior military experience. If the expert has specialized knowledge in the area of military divorce, then he or she can make the difference between a poor and a good settlement. And a wingman is essential if the case is headed for trial.

Asking for information on who in the local or state bar has written or spoken on military family law issues will usually reveal one or two attorneys in a given state who could be consultants for the divorce attorney. You don't even have to get a wingman from the city or county where your divorce is taking place. A good consulting expert can be from Texas or Tennessee, North Carolina or North Dakota. The important point is to have someone who knows the statutes for pension division (the Uniformed Services Former Spouses' Protection Act, found at 10 U.S.C. § 1408) and the Survivor Benefit Plan (10 U.S.C. § 1447-1455), the retired pay center rules (the Department of Defense Financial Management Regulation), and the specific issues which often arise in the military divorce case.

Questions for the Wingman

Having a wingman is of significant help when "brainstorming" on settlement options and information for trial. Such advice can make a real difference when it comes to common questions that are vital for the parties. The military member or retiree might ask, for example:

- How is the Guard/Reserve pension divided, by points or by years acquired while married?
- Does my former spouse get Survivor Benefit Plan (SBP) coverage? If so, who pays for it? Can the judge order my soon-to-be-ex to pay for the cost, since only she benefits from it?
- Is my expected pension divided according to my rank and years of service when the divorce occurs, or will it be pegged to my pension check when I retire?
- Does the SBP premium have to be deducted from the pension? Can the court require DFAS[10] to deduct the SBP premium from the former spouse's share of the pension?
- Can my pension be divided in a state which is not my legal residence?
- Can we reduce my former spouse's share of SBP so that it mirrors her share of the pension?
- Does the pension share have to be paid through the military retired pay center?
- Can we value the pension and give my ex other marital or community property to offset the value of the pension, which I intend to keep?
- Should we also value the SBP coverage which my spouse hopes to obtain?
- What can my ex do if I elect disability pay (VA disability compensation or Combat-Related Special Compensation) and that wreaks havoc on her share of the retired pay?
- Similar questions will arise when the former spouse is the client, especially in the area of SBP coverage, indemnification for pension share reductions due to disability payments, and military medical care and coverage.

The Skilled Wingman: Cost and Benefits

Faced with this prospect, the client will sometimes say, "But can't I find a military divorce specialist who can handle my case alone? I really don't want to hire two lawyers!"

While there may be a chance that the client can find a lawyer who is a specialist in family law and who is also an expert on military divorce issues, that outcome is rare. Other than lawyers in a few major military cities, it's hard to locate lawyers who combine both family law and military divorce in their portfolios. There's no demand for military divorce expertise in Waukegan or Walla Walla.

Past Family Law Section Chairs

Regina M. Quick	2015-16
Rebecca Crumrine Reider	2014-15
Jonathan J. Tuggle	2013-14
Kelly Anne Miles	2012-13
Randall Mark Kessler	2011-12
Kenneth Paul Johnson	2010-11
Tina Shadix Roddenbery	2009-10
Edward Coleman	2008-09
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Thomas F. Allgood Jr.	2003-04
Emily S. Bair	2002-03
Elizabeth Green Lindsey	2001-02
Robert D. Boyd	2000-01
H. William Sams	1999-00
Anne Jarrett	1998-99
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John C. Mayoue	1992-93
H. Martin Huddleston	1991-92
Christopher D. Olmstead	1990-91
Hon. Elizabeth Glazebrook	1989-90
Barry McGough	1988-89
Edward E. Bates Jr.	1987-88
Carl Westmoreland	1986-87
Lawrence B. Custer	1985-86
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C. Wilbur Warner Jr.	1983-84
M.T. Simmons Jr.	1982-83
Kice H. Stone	1981-82
Paul V. Kilpatrick Jr.	1980-81
Hon. G. Conley Ingram	1979-80
Bob Reinhardt	1978-79
Jack P. Turner	1977-78

This "heavy lifting" isn't simple, and it isn't cheap. Retirees, spouses and servicemembers should expect to pay seriously for serious legal advice and representation. But it often boils down to this – do you want to be cheap or be safe? Take your pick! Way too many clients after a disastrous divorce will readily admit that they never should have tried to do the divorce paperwork, go through a trial, or attempt a settlement without an expert at their side.

Some lawyers choose to go it alone. They might feel that they know enough to carry the day. They might believe that they know the weather and can survive the storm. They may even believe that "You don't need a weatherman to know which way the wind blows."[11]

Don't be swayed by false confidence and assumptions. A wingman can take the worry out of the significant issues in military divorce cases. Clients have a lot at stake in a divorce proceeding, and you only have one chance to get it right. ***FLR***

Mark Sullivan is a retired Army Reserve JAG colonel who practices family law in Raleigh, North Carolina. He is the author of THE MILITARY DIVORCE HANDBOOK (Am. Bar Assn., 2nd Ed. 2011) and many internet resources on military family law issues; most of these are at the website of the N.C. State Bar's military committee, www.nclamp.gov. and the ABA Family Law Section's military committee, www.abanet.org/family/military. A Fellow of the American Academy of Matrimonial Lawyers, Mr. Sullivan has been a board-certified specialist in family law since 1989. He works with attorneys nationwide as a consultant on military divorce issues and in drafting military pension division orders. He can be reached at 919-832-8507 and mark.sullivan@ncfamilylaw.com.

(Endnotes)

1 *Coons v. Coons*, 2016 VT 88, 2016 Vt. LEXIS 84.
2 2016 VT 88 at [*P1], 2016 Vt. LEXIS 84 at **1.
3 2016 VT 88 at [*P2], 2016 Vt. LEXIS 84 at **1-2.
4 *Golden v. Cooper-Ellis*, 181 Vt. 359, 924 A.2d 19 (stock options which are deferred compensation for past and present performance must be considered marital property even though they are not yet vested).
5 Mark E. Sullivan, THE MILITARY DIVORCE HANDBOOK 505-506 (ABA, 2nd Ed. 2011).
6 2016 VT 88 at [*P4], 2016 Vt. LEXIS 84 at **4.
7 2016 VT 88 at [*P10], 2016 Vt. LEXIS 84 at **6.
8 Watch the video at this link: https://www.youtube.com/watch?v=eEMqL0JQUKU
9 "You Ain't Goin' Nowhere," from Bob Dylan's Greatest Hits Vol. II (Columbia Records, 1971).
10 For the Army, Navy, Air Force and Marine Corps, the retired pay center is DFAS (Defense Finance and Accounting Service) in Cleveland, Ohio. Pension garnishments for the Coast Guard and the commissioned corps of the Public Health Service and of the National Oceanic and Atmospheric Administration are handled by the Coast Guard Pay and Personnel Center in Topeka, Kansas.
11 From "Subterranean Homesick Blues" on Bob Dylan's album, Bringing It All Back Home (Columbia Records, 1965).

Caselaw Update

By Vic Valmus

AGGRAVATED STALKING

The State v. Davis, **A16A1006 (**Oct. 28, 2016)

In 2013, the Wife sought a Temporary Protective Order against the Husband (Davis) alleging he had approached her vehicle and tried to break out the window while the two minor children were in the vehicle. An ex parte order was entered. At the same time, a divorce was pending between the parties and a final judgment was entered in March of 2014, dismissing the Temporary Protective Order against the Father. The divorce order stated that the Father could not come within 150 yards of his ex-wife or their oldest child except for parental visitation or certain events such as school functions. In March of 2015, the Father was indicted on two counts of aggravated stalking under O.C.G.A. §16-5-91 and one count of possession of controlled substance. The aggravated stalking counts alleged that the Father had violated the divorce decree by contacting his wife and their oldest son at a restaurant for the purpose of harassing and intimidating them. Following the hearing, the Trial Court granted a motion to dismiss finding that the violation of the divorce order is not listed in O.C.G.A. §16-5-91(a) and the State could not premise an aggravated stalk charge on a violation of the Husband's divorce decree. The State appeals and the Court of Appeals reverses.

The State argues that the relevant provisions of the divorce order constitutes a protective order consistent with the terms of O.C.G.A. §16-5-91 and thus an aggravated stalking charge was proper. This is an issue of first impression and the sole question for consideration is whether a violation of the language of a divorce order limiting the Father's contact with his ex-wife and their older child constitutes aggravated stalking within the meaning of O.C.G.A. §16-5-91(a). The Trial Court relied at least in part on the legislature's failure to include divorce orders in the list of orders found under O.C.G.A. §16-5-91(a). The proper inquiry is not whether the title of the order matched a statutory list, instead the question is whether the relevant provisions of the divorce order falls within the scope of any of the type of orders listed in the statute. This Court concludes that the language in the divorce decree clearly constitutes a permanent injunction within the meaning of O.C.G.A. §16-5-91. The pertinent language of the divorce decree prohibits the Father from future acts of specific contact against named persons thereby constituting an injunction within the plain meaning of the term. To refuse to treat the pertinent language in the divorce decree as an injunction because it is not specifically labeled as such would permissively elevate form over substance. Therefore, the provisions of the divorce decree that the Father is accused of violating constitutes a permanent injunction within the meaning and the Trial Court erred in dismissing the charge of aggravated stalking.

ATTORNEY'S FEES

Russell v. Sparmer, **A16A1001 (**Oct. 28, 2016)

In an effort to dissolve both her domestic and business partnerships, Russell (herein referred to as Wife) filed suit against Sparmer (herein referred to as Husband) asserting claims for divorce, breach of contract, fraud, and conversion of partnership assets. The Trial Court granted summary judgment to the Husband on the claim for divorce finding the parties were not legally married. The remainder of the Husband's claims proceeded to a bench trial resulting in a final order that a business partnership existed and equitably divided the assets. Thereafter, the Husband filed a motion for attorney's fees under O.C.G.A. §9-15-14 seeking to recover the attorney's fees allegedly expended in defending Russell's claim for divorce. Following the hearing, the Court awarded $39,000 in attorney's fees under 9-15-14. Wife appeals and the Court of Appeals reverses.

The Wife was not contending there was a common law marriage, rather that the parties had an unlicensed ceremonial and self solemnized marriage. While in Greece in 1998, they decided to marry in an informal ceremony, bought matching rings and exchanged vows in front of the church. When returning to the United States, they told several people they had married and introduced each other as Husband and Wife. The Trial Court granted the Husband's motion finding that pursuant to O.C.G.A. §19-3-1.1, Georgia law did not recognize common law marriage entered into after January 1, 1997 and the parties had not obtained a marriage license and were not married by officiant. The Court made an award of attorney's fees under 9-15-14. The mere fact that the Husband receives summary judgment on a divorce claim without more will not support an award of attorney's fees. There is some supporting authority to support the Wife's position. The Court must keep in mind that 9-15-14 tends to discourage the bringing of frivolous claims and not the presentation of questions of first impression about which reasonable minds might disagree or the assertion of novel legal theories that find arguably support in existing case law and statutes. In addition, the Wife asserted a claim for divorce in an effort to insure that all aspects of a relationship with the Husband were legally dissolved given that the Wife was terminating her business relationship with the Husband and she did not want to leave open the possibility that she and Sparmer might legally be married.

A valid marriage in Georgia requires (1) the parties be able to contract, (2) an actual contract, and (3) consummation according to law. Here, there is no

suggestion the parties are not able to contract and the record contained some evidence of an actual contract and a present intent to be married. In addition, there is no binding authority that not procuring a marriage license renders a ceremonial marriage void. The Trial Court's assertion that Russell testified she knew full well the parties were not married is not supported by the record. Finally the Trial Court's observation that Russell's divorce claim was heavily litigated also serves to demonstrate the claim was not frivolous. This Court concludes that given the particular facts of this case, Russell's claim for divorce was not frivolous under 9-15-14 and she did not lack a justiciable issue of law or fact nor substantial justification.

COLLATERAL ESTOPPEL

Allen v. McGuire, Miller v. McGuire, A16A1301, A16A1302 and 1303 (Oct. 28, 2016)

Allen (Father) and McGuire (Mother) were divorced in Fulton County in 2007. Pursuant to the divorce decree, the parties shared joint legal and physical custody and neither parent was the primary parent. Thereafter, the Mother moved to DeKalb and the Father remained in Fulton County. In 2010, the Mother filed a petition seeking modification of child custody and support, the Father answered and counterclaimed. After a hearing, the Court entered an order granting primary custody to the Father. However, on the Mother's motion for new trial, the Court vacated its judgment finding that it lacked jurisdiction to address the Father's counterclaim because it was not brought as a separate action in the Mother's county of residence which was DeKalb. While the case was pending in Fulton County, the Father filed a separate action for change of custody in DeKalb County and moved to transfer the case to Fulton but DeKalb Superior Court denied the motion. In 2013, the Fulton Superior Court issued a final order denying the Mother's petition for modification finding that the terms of the parties' 2007 divorce decree were no longer in the child's best interests and there had been a substantial change of condition, but the award of primary custody to the Mother would not solve the problem and the Father had demonstrated a more ability to facilitate and encourage a close and continuing parent child relationship.

In January of 2015, the Father filed a motion for partial summary judgment in DeKalb County contending he was entitled to primary custody by virtue of the Fulton County custody action and filed a motion in limine seeking a pretrial ruling that all evidence from the time of 2007 divorce decree should be admissible at trial. The Trial Court denied both motions in finding that the Mother had presented evidence that a material change in facts and circumstances occurred since the Fulton County custody action which created a genuine issue of fact and only the facts and circumstances occurring after the Fulton County order would be admissible at trial. After the evidentiary hearing and at the conclusion of the Father's case, the Mother moved to dismiss and/or directed verdict for which the Court granted and dismissed the action finding that the Father had failed to establish there had been a material change of condition affecting the welfare and the best interests of the child since the order in Fulton County. Later the Court granted attorney's fees to the Mother from the Father and the Father's attorney under 19-9-39, 11 37 and 9-15-14. The Father appeals and the Court of Appeals affirms in part and reverses and remands in part.

The Father contends the Trial Court erred by denying his motion for partial summary judgment. The Fulton County custody action was based on facts and circumstances that existed at that time and the Mother had presented evidence of additional facts and circumstances occurring after the Fulton County custody action which precluded summary judgment.

The Father also argues the Trial Court erred in granting the Mother's motion for a directed verdict. In the Fulton County action the Superior Court concluded that the custody provisions of the parties' 2000 decree were no longer workable and the award of primary custody to the Mother would not solve the problem and therefore had been a material change of circumstances since the last custody award. The doctrine of collateral estoppel also known as issue preclusion prevents re-litigation of an issue actually litigated and adjudicated on the merits between the same parties. Unlike res judicata, collateral estoppel does not require identity of the claim. Furthermore, collateral estoppel only precludes those issues that were actually litigated and decided in a previous action. Therefore, the DeKalb Trial Court was bound by the ruling of the Fulton County custody action that the Father was entitled to rely on that ruling to establish that there had been a material change in circumstances since the last custody award and the Father was not required to present additional evidence in his case in chief to avoid a directed verdict.

The Father also contends the Trial Court erred in limiting the scope of the evidence at trial to the facts and circumstances that arose after the disposition of the Fulton County action. In a petition for modification of custody, the Trial Court must determine whether there has been a material change of condition affecting the welfare of the child since the last custody award, and last custody award was in 2007, which awarded joint legal and physical custody to the parties. There was no custody award in the Fulton County action as the Mother's petition for modification of custody was denied. The Trial Court would need to be apprised of the facts and the circumstances upon which the Fulton County Superior Court relied its ruling on. In other words, the admission of evidence concerning the circumstances that existed between the parties in 2007 and the denial of the Mother's petition to modify custody in 2013, placed all of the parties' evidence into context. With regards to attorney's fees, since the Trial Court erred in not allowing the Father's trial on his modification, the award of attorney's fees are reversed until after the conclusion of the new trial.

CONTEMPT

Brown v. Brown, S16A1677 (Jan. 23, 2017)

The parties were divorced in June of 2011 and both were pro se. The Final Decree was a 1-page document which incorporated a separation agreement signed by both parties which required the Husband to pay $513 per month as alimony and $647 as child support. There is also a 2-page unsigned typed document drafted by the Husband which was filed with the Court at the same time as the separation agreement which stated the parties wished to hold the marital home until the economy improves and the Wife will occupy the house and that the combined alimony and support payments is of sufficient amount to pay the mortgage on the home. This document is not referenced or incorporated into the Final Decree of Divorce. At some point, the Husband stopped making mortgage payments and the bank foreclosed on the marital home in February of 2015 and the Wife was evicted. Wife filed a contempt shortly after, alleging the Husband was required to make alimony and child support payments directly to her rather than depositing the money into a joint bank account.

The Court found the Husband had deposited a total of $59,459.52 into the account and the combined alimony and child support obligation was $55,680 for the same time period. The Trial Court did not hold the Husband in contempt for making the payments into the bank account and the 2-page document was too vague to be enforceable. In addition, since the minor child was no longer living with the Wife and was in the Husband's custody, the Trial Court ordered the Husband's child support payments to be immediately extinguished. The Wife appeals, and the Supreme Court affirms in part and reverses in part.

Neither the divorce decree not the separation prohibited the Husband from depositing his alimony and child support payments into the joint bank account. In fact, both documents were silent as to what manner the payments are to be made. The informal agreement made outside of the divorce separation agreement discussed how the money should be spent. Those informal agreements however do not support a contempt action because the documents were not incorporated into the final decree. The Trial Court found the Husband paid the full amounts of his child support and alimony obligations under the order. However, the Trial Court did err by extinguishing the Husband's child support obligation. A Court cannot modify a divorce decree in a contempt action whether or not the Trial Court holds the spouse in contempt.

Stanford v. Pogue, A16A1823 (Jan. 20, 2017)

In 2009, the Trial Court established paternity, awarding to the parties joint legal custody and granted the Father visitation rights. In 2015, the visitation schedule was modified by a consent order. In 2016, the Father filed a motion for contempt complaining the Mother willfully failed to comply with the consent order and had frustrated the Father's attempts to exercise his visitation rights. After the hearing, the Trial Court found the Mother had failed to comply with the order and found her in willful contempt. The Court modified the consent order to allow the Father to pick up the child from school rather than from the Mother's house and ordered the Mother incarcerated for a period of 20 days in jail in order to purge herself of her willful contempt. Mother appeals and the Court of Appeals affirms.

The Mother argues that the Trial Court erred by modifying visitation without making findings of facts that there had been a material change of conditions or that the modification was in the best interests of the children. Under 19-9-3(b) the Court may periodically review and modify visitation portions of a custody judgment without a showing of a change in material conditions or circumstances. In addition, the Trial Court is expressly authorized to modify visitation rights on the motion of any party or on the motion of a Judge during a contempt proceeding. Since the Mother was pro se and did not include the transcript this Court must presume that the evidence supported the Trial Court's ruling.

The Mother also argued the Trial Court erred by imposing an unconditional incarceration for violation of visitation. Since the Trial Court did not specify whether it found the Mother in civil or criminal contempt, one must look to the purpose of the order. If the contemptor is in jailed for a specific unconditional period of time (not to exceed 20 days), then the contempt is criminal. If the contemptor is jailed only until he performs a specific act, the purpose is remedial and hence the contempt is civil. Here, since the contempt order unconditionally directed that the Mother be incarcerated for 20 days the Court found the Mother in criminal contempt. The Trial Court has the power the punish contempt by imprisonment not to exceed 20 days and because the punishment imposed did not exceed which is authorized, the Trial Court did not err.

CONTRACT CONSTRUCTION

Christian v. Christian, **S16F1160** (Nov. 21, 2016)

The parties were married in 1993. In 2006, they signed a separation agreement. In 2013, the Wife filed for divorce, and in 2014 she filed a motion for partial summary judgment asking the Court to rule on paragraph 7 of the separation agreement which stated the parties acknowledge that, should they divorce, the Wife shall be entitled to one-half of Husband's retirement, 401(k) or other employment benefits. The Wife contended that the separation agreement entitled her to one-half of the Husband's retirement, 401(k), and other employment benefits, but the Court denied the Wife's motions as an attempt to replace "or" with "and". At the final hearing, the Court found, as a matter of law, that paragraph 7 requires that the date for valuing and dividing the retirement, 401(k) or other retirement benefits is the date of the separation agreement and not the date of divorce. The Court further held the Wife is not entitled to any premarital value of those accounts and she was only entitled to choose one of the three

benefits described in paragraph 7. The Wife appeals and the Supreme Court affirms in part, reverses in part, and vacates and remands with discretion.

The Wife first argues that the Court erred in concluding that her portion of the benefits under paragraph 7 should be based on the value of the date of the agreement was signed rather than the date of divorce. This Court has explained that the last date for acquiring marital assets is the date of the final decree and such a date is certain rather than subject to manipulation by one of the parties. Here, the Wife would only receive the property under paragraph 7 only if and when the parties divorced. Therefore, the triggering language is at the time of divorce. Therefore, the Trial Court erred in using the separation agreement date rather than the date of divorce.

The Wife argues that the Trial Court erred in holding that she is only entitled to one-half of only one of the three benefits listed in paragraph 7. The Trial Court's holding that the language in paragraph 7 is unambiguous as a matter of law indicates the Court's belief that it did not need to consider other parts of the separation agreement or could not consider parol evidence. Paragraph 7 has two reasonable interpretations and therefore the Trial Court's analysis is incomplete. The Court should have looked beyond paragraph 7 to determine if the ambiguity was clarified when viewed in the context of the entire separation agreement and if not, should have considered parol evidence in determining the meaning of paragraph 7.

Finally, the Wife argues the Trial Court erred in deducting the premarital value from her share of the paragraph 7 benefits. There was approximately 13 years of premarital or accrued benefits in his pension which were not marital property and not subject to equitable division. However, the Wife contends that the fact that paragraph 7 does not mention premarital value means the Husband intended to waive his right to keep that amount separate, even though spouses can bargain away their separate properties as part of a contract or settlement agreement, but there is no such language in paragraph 7. In absence of any such language, the presumption is that the separation agreement is dividing only property subject to equitable division. The Wife points to nothing in the separation agreement which indicates that a failure to mention the Husband's premarital interest in his employment benefits should be viewed as a waiver of that interest.

DEPENDENCY EXEMPTION

Hulsey v. Hulsey, **S16F0904** (Oct. 31, 2016)

The Father was awarded custody of the couple's children for the greater portion of each calendar year. However, the Trial Court provided the Mother could claim the three minor children as dependents on income tax returns in alternating years. The Father appeals and the Supreme Court reverses.

It is well established that Georgia Courts do not have the authority to award the Federal income tax dependency exemption to a non-custodial parent. The Internal Revenue Code provides that the term "custodial parent" means the parent having custody for the greater portion of the calendar year. It is undisputed that the Father has custody of the couple's children for the greater portion of the calendar year. Therefore, the Trial Court erred in preventing him from claiming the children as dependents.

FRAUD

Myles v Myles, **S16F1062 (**Nov. 21, 2016)

The parties were married in 1978 and were divorced in 2009. In 2013, the Wife filed a motion to set aside the 2009 judgment under O.C.G.A. §9-11-60(d) claiming, among other things, that the Husband's 2008 financial affidavit failed to disclose his interest in certain real properties. The Trial Court entered an order in September of 2014 granting the motion to set aside and in August of 2015, entered an order finding that prior to the Final Judgment and Decree of Divorce, the Husband made misrepresentations about supplemental income as an electrician and he failed to disclose his ownership interest in real property. The Trial Court found these acts satisfied the fraud provisions of 9-11-60(d)(2) and held that the three-year statute of limitations was tolled until the Wife became aware that the Husband possess certain previously undisclosed facts. The Husband appeals and the Supreme Court reverses.

The motion to set aside the judgment under 9-11-60(d) was filed in the Trial Court more than three years after the 2009 judgment. 9-11-60(f) establishes exclusive time limitations when a judgment is attacked by a motion to set aside which provides that a judgment void for a lack of subject matter or personal jurisdiction may be attacked at any time. All other instances of a motion to set aside a judgment must be filed within three years of entry of the judgment. There is no contention the Trial Court lacks subject matter or personal jurisdiction when it issued the 2009 final judgment and decree. Therefore, the motion to set aside judgment was filed outside the exclusive time limitation for such a motion.

POSTNUPTIAL AGREEMENT

Murray v. Murray, **S16A0857** (Oct. 3, 2016)

The parties have been married for 34 years and began discussing the prospects of divorce. The Wife wanted to save the marriage and, to that end, wrote the Husband of a letter of apologies renouncing her rights in the marital estate. The Husband subsequently engaged counsel to draft a formal Postnuptial Agreement providing for the disposition of the couple's marital property upon dissolution of the marriage which was favorable to the Husband. Several months later, the agreement was executed. After the failed attempt at reconciling, the Wife filed for divorce. The Husband moved to enforce the agreement. The Wife objected and claimed the agreement was a product of fraud, that the Husband induced her to sign the agreement with the promise that he would tear it

up as soon it was signed making her believe her execution of the agreement was merely a symbolic gesture of love and devotion. The Husband, on the other hand, contended that he merely promised to destroy the agreement if and when he was comfortable they were in love again. The Trial Court found the agreement unenforceable and credited the Wife's testimony in its entirety. The Husband appeals and the Court of Appeals affirms.

In deciding whether to enforce a Postnuptial Agreement, the Court relies on the three factors set out in Schere, (1) was the agreement obtained through fraud, duress, or mistake or through non-disclosure of material fact, (2) is the agreement unconscionable, (3) had the facts and circumstances changed since the agreement was executed so as to make its enforcement unreasonable. Here, the Husband's promise to tear up the agreement amounted to fraud. When the failure to perform a promised act is coupled with the present intention not to perform, fraud, is in the legal sense, is present. In addition, spouses enjoy a confidential relationship entitling one to repose confidence and trust in the other. The Wife testified that she signed the agreement because the Husband represented he would understand that she loved him and he would not divorce her and he would tear up the agreement. The Husband procured the Wife's signature on the agreement under the pretense that the agreement would never be enforced and the agreement would be destroyed. In light of the confidential relationship between spouses, the Wife was entitled to trust the Husband's representations. The Husband's promise to destroy the document as soon as the Wife signed it coupled with the subsequent attempt to enforce it, though slight, is sufficient to establish existence of fraud especially in light of the relationship between the parties and the nature of the agreement.

THIRD PARTY CUSTODY

Marks v. Soles, et al., **A16A0723 (**Nov. 10, 2016)

Marks (the Mother) and Soles (the Father) have two children and were divorced in 2005. The divorce decree awarded child support to the Mother in the amount of $100 per week. Then the Mother had a third child with Lane in 2007 with the Mother having primary custody. In 2013, the Mother was arrested for failure to keep animals in a sanitary condition. The Sheriff came into the Mother's home and found three children living with dog feces throughout the house including on their clothes, shoes, and bedding of the children and rat droppings were found on the kitchen counter. The Court granted Lane temporary custody of the third child and the Father temporary custody of the first and second child. The Mother claimed the filthy conditions of the home were created by an unknown person who broke in while she and the children were asleep.

In March 2014, the Trial Court ordered the Father to pay an arrearage of $5,000 at the rate of $597 per month. The Court also ordered the Mother to pay the Father $597 per month and Lane $523 per month in child support retroactive to March 1, 2013. In September of 2014, the paternal grandparents of the third child moved to intervene. At the final hearing, the Court dismissed the Mother's garnishment on the grounds that any child support the Father owed was eliminated by the child support she now owed. The Court found joint legal custody of the first and second child to the Father. The Court awarded joint legal custody of the third child to Lane and the paternal grandparents with the paternal grandparents receiving primary physical custody. The Court also found the Mother was unfit for custody. The Mother appeals and the Court of Appeals reverses.

The Mother appeals, among other things, that the Trial Court erred in considering evidence from the temporary hearing during the final hearing. The nature and quality of evidence presented at a temporary hearing is likely to be different than what was presented at a final hearing. Absent an express notice to the parties, it is error for the Trial Court to rely on evidence from a temporary hearing in making its final custody determination. There was testimony from the Mother, two children, counselors, the Guardian Ad Litem and the paternal grandparents. In addition, the Court gave the Mother notice of its intention to consider all evidence before it at the outset of the hearing without objection. Therefore, the Mother cannot show that the Court relied on evidence from any of the temporary hearings nor did the testimony of the numerous witnesses presented at the final hearing was insufficient to support the Trial Court's findings.

The Mother also argues the Trial Court erred when it granted joint legal custody with the third child to Lane and the child's paternal grandparents. O.C.G.A. § 19-9-3(b) includes grandparents with parents for the purposes of contact (visitation) with the minor child, but when the rights and responsibilities (custody) are in consideration, the statute excludes grandparents. Grandparents may have sole legal custody of a child when no parent is suitable for custody, but only parents may have joint legal custody. Since the Court did not find Lane unfit, the Trial Court was not authorized to award any legal or physical custody to the third child's paternal grandparents.

The Mother also argues the Trial Court erred by imposing child support payments on the Mother retroactive to March 2013. Although the Trial Court's second order in December 2014 sets new and apparently a prospective child support awards from the Mother to the Father, the order did not vacate the Court's March 2014 imposition of child support on the Mother retroactive to 2013. Since there is no evidence the Mother owed child support before March of 2014 the Trial Court erred in requiring retroactive payments to March of 2013. ***FLR***

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35th Annual Family Law Institute Agenda

Anatomy Of A Divorce And Family Case From Start To Finish – Basic And Advanced - May 18-20

Thursday

- Getting the Phone to Ring – Basic and Advanced Marketing for Family Law Attorneys
- Connecting and Communicating with Clients from an Attorney and Psychological Standpoint
- Conducting Discovery and Depositions– Basic and Advanced Tips on Winning a Case in Discovery
- How to Effectively Prepare and Present DRFA and CSW
- Temporary Hearings – When you need them, effective preparation and presentations and what Judges want to hear.
- Mediation – An Attorney's Effective Use and What the Neutral Wants and Needs
- Evidence – Part 1 –Evidence Rules Every Family Law Attorney Should Know Before Going to Court
- Optional Break-Out Sessions

Friday

Advanced Divorce Issues Breakout

- Complex Assets
  - Businesses and Valuations, and Securing Payments
  - Executive Compensation Plans
  - Options and Units
  - Pension Plans and Valuations
  - Backing into a Thomas Calculation
- Custody – Issues Beyond the Best Interest Analysis
  - Looks like parental alienation/estrangement, but isn't
  - Age appropriate visitation
  - Relocation
- Advanced Tax Issues in a Divorce and How Judges View Same
- Trusts in your Divorce Case

Basic Divorce Issues Breakout

- Divorce Case 101 from Start to Finish – Forms, Identifying Basic Issues, and Running a Vanilla Divorce from Start to Finish
- Equitable Division of Property (and Debt?!)
- How to Review and Understand a Personal and Business Tax Return
- Custody – Best Interest and Basics of a GAL, Psychological Evaluation and Custody Evaluation

Return to Plenary

- Trying your Divorce Case Jury and Non-Jury– What Works from Attorneys with 35+ Years of Experience and From a Judges' Perspective
- Developing Themes
- Effective and Efficient Opening Statements
- Direct Examination
- Cross Examination
- Closing Argument
- Optional Breakout Sessions
  - Use of a Financial Advisor in a Divorce Case
  - Support Options and Obligations for Children with Disabilities including Considerations for Post Majority Support
  - Prenuptial Agreement Workshop

Saturday

- Case Law Update
- Evidence Part 2 – Advanced Evidentiary Issues in Family Law
- Basic and Advanced Issues in Adoption
- Appeals – The New Rules
- How to Survive and Manage the Practice of Family Law from an Attorney with 35+ Years of Experience and from a Mental Health Perspective
- Ethics and Professionalism vs. Advocacy for a Client
- Rapid Fire Trial Practice Hot Tips from the Judges
- The Frontier of Family Law

The FLI will be held at the Ritz Carlton in Amelia Island from May 18 - 20. Our room allotment at the Ritz is sold out. However, you may call the Ritz to be put on a wait list. Alternatively, we do have available overflow rooms available at the Omni. You may call the Omni at 866-669-2520 and reference our (Family Law Institute) room block. The rooms are $299 for guaranteed Oceanfront within the Omni resort or $279 for Oceanfront rooms that might be in the resort or in the Sandcastle Villas next door. We look forward to seeing you at the beach in May.

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