



April's Best of the Listserv

Q: *I have an interesting hypothetical. Paternity action establishes Man as dad by consent (no blood tests) over 12 years ago. Mom was next friend for child in the action at the time. Mom represented and convinced man that he was "dad". Child and Man have discovered Man is not biological dad. Man discovered this was true over 10 years ago, so Man cannot set it aside now per our statute of limitations. Biological Dad is still around and kicking. Child is a teen. Can the child at some point set aside the paternity order and establish his true paternity? Can any one serve as next friend to establish this for him while he is still a minor or must he wait until he can file as adult? Can mom serve as next friend for this again-we do not believe so? Any thoughts would help.*

A: Try a twist. In the matter of *Stitham v. Henderson*, 768 A.2d 598, the Maine Supreme Judicial Court permitted bio dad to sue to establish his paternity, and ruled that a paternity judgment (in this case, a divorce judgment) finding legal dad as dad was no bar. Legal dad was involuntarily disestablished.

There are cases in other states that bar a third party from attacking a paternity judgment, so you might want to check locally, but you have at least one decision on which to hang your case.

Stephen T. Hayes, Esq.
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Dear colleagues,

Here's a tip that I got from Kevin Flood, Chief of the Naval Legal Services Ofc, SE in Jacksonville, FL. The info given shows all branches of the armed forces or, if you wish, can be tailored to show only Navy, Army, Air Force, etc.

You can find at <http://assistance.law.af.mil/> any military legal assistance office in the US, either according to Zip Code or state. If you are representing an eligible client (one with a military ID card), you can often hook up with a JAG officer who can help you with... locating the service member (SM), identifying his/her unit so you can send a nonsupport complaint, explaining what amount of support he/she is required to pay by armed services regulations, etc.

Mark Sullivan
Chair, Military Committee
Section of Family Law
Raleigh, NC

Q: *Post judgment. My client wants to know if he can take his 7 year old son to Europe for his two week vacation without mom's consent. The parents have an antagonistic relationship. The judgment states that as part of joint legal custody the parties are supposed to cooperate in making certain decisions together...including obtaining a passport for the child. Each party is entitled to take the child for two weeks over summer so long as they give notice by May 1. My client told mom and she would not give a definitive answer to ok passport. If my client gives proper notice and address and phone number in Europe, can he take the child to Europe. Isn't there some general rule that mom has to give written permission. Could mom call customs on my client and get him charged with some kind of crime? Financial resources are limited. He does not want to file a motion. Thanks for any help*

A: This question comes up all the time in the context of removal from a state. The laws of the various states prevent removal without consent of the other party or a court order -- but courts have said this means a "permanent" move and not a 2-week vacation. In New Jersey for example a weekend to Philadelphia or New York is no violation nor is a week or two at Disney World. Custodial parents who have tried to block this have been universally shot down.

There is no law preventing taking children out of US -- other than the removal law. However, to prevent removal the State Department now requires consent of the other parent to get passport and to travel out of the U.S. Gary's example of Mexico is something started by Mexico but now imposed both ways. Thus dad is blocked administratively.

Gary suggested that you need a motion. Unless you can create a miracle and get a consent order this is true. Incidentally, you did not mention if Dad was US born and bred or an immigrant. That would make a big difference with the Court.

Glen Smith

Here's a website I saved from the US Dept of State relating to out-of-state travel with children:

http://travel.state.gov/pia_program.html

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