



## Best of the Listserv for May

Ladies and Gentlemen of the List:

This may have been posted before but I submit it a proposed thread on relocation. The article describes a study purporting to show that relocation of a child more than an hour's drive from the parent who remains behind has long-term deleterious consequences. Maybe Illinois is right and California is wrong.

[http://www.apa.org/journals/fam/press\\_releases/june\\_2003/fam172206.html](http://www.apa.org/journals/fam/press_releases/june_2003/fam172206.html)

Timothy B. Newitt  
Johnson, Westra, Broecker, Whittaker & Newitt, P.C.  
Carol Stream, Illinois

\*\*\*\*\*  
*Q: Is my client entitled to claim father's receipt of social security for the benefit of his other two children as income to father for child support purposes? It seems intuitive to me she should be able to do so if he is entitled to the benefit of a multi-family adjustment, but I can anticipate father's argument that the social security is for his other two children, and is not his money.*

*I have read Laura Morgan's child support book, but cannot find this exact issue covered. Any thoughts?*

A: While I don't cover the interplay of social security and the multi-family adjustment, I do cover the situation you describe, i.e., a custodial parent is receiving social security benefits for the benefit of children not at issue on the proceeding.

Here, the father is receiving ss death benefits on account of the children's dead mother. It's simply not income to him; he holds it in trust for the children. It doesn't matter that he's getting the multi-family adjustment; the money is not received on his account, so it's not income to him. Take another look at the Social Security section, where this point is made.

Laura Morgan  
Charlottesville, VA

\*\*\*\*\*  
For those of you interested in Professor Hagen's "Whores of the Court," there are similar sentiments raised by Canadian psychologist Tana Dineen, "Psychologists and Family Law: What if the clothes have no emperor?"

<http://www.tanadineen.com/COLUMNIST/Writings/FamilyLaw.html>

Margaret Dore  
Seattle, WA

\*\*\*\*\*

*Q: Can any of you New Yorkers tell me whether it is illegal under NY state law for a husband to tape record his own telephone conversations with the wife - if she is not aware he is recording. (Assume that this hypothetical individual has not and would not record conversations to which he was not a party)*

A: I found a resource for information on taping conversations on the internet. Hope this helps.

<http://www.rcfp.org/taping/index.html>

Rick A. Mickelson  
Sioux Falls, SD

\*\*\*\*\*

*Q: Can anyone provide me with a cite to a reported decision [any jurisdiction] or law review [or other] article addressing inclusion or exclusion for divorce purposes of assets in an "off-shore" trust?*

*Many TIA.*

A: Just as courts have pierced the corporate veil in those cases to examine the income potential of the parent, this Court should pierce the veil of mother's trusts here to accurately examine her income potential. The issue here should not be whether the assets are held in mother's name or in the name of the trust but rather whether the assets are within her control. See also *In re Dick*, 15 Cal.App.4th 144, 18 Cal.Rptr.2d 743, 752 (1993) (affirming trial court award of spousal support based on income imputed to obligor from various off-shore trusts and corporations, although not in obligor's name, in his control). Because mother here has control of the assets in both trusts, this is an appropriate case to impute a reasonable rate of return from her low-yield investments.

*Clark v. Clark* 172 Vt. 351, \*364-365, 779 A.2d 42,\*\*53 (Vt.,2001)

Kathy Hogan  
McGuane & Hogan, LLP  
Denver, CO

\*\*\*\*\*

*Q: What is the most recognized (read, not discredited) authority on parental alienation?*

A: I'd opt for "Divorce Casualties" by Douglas Darnall. It's a far more "mainstream" than Richard Gardner's work. Darnall uses descriptions of specific parental behaviors (rather than labels) which tend to affect some (not all) children on a spectrum from subtle, unconscious behavior to overt, intentional behavior. You might also check out "Divorce Poison" by Richard Warshak.

Dianna Gould-Saltman  
GOULD-SALTMAN LAW OFFICES, LLP  
Los Angeles, CA

I think the most thoughtful book on the topic is "Divorce Poison" by Dr. Richard Warshak. Dr. Warshak is regarded in this part of the country as the expert on the subject of parental alienation.

Charles H. Robertson

Dallas, Texas.

*Q: Wife discovers after several years of marriage that Husband is infertile. During courtship, Wife made clear she desperately wanted to have children and only agreed to marry after H said yes he too wanted children. During marriage H carried on charade of wanting to have children too but it turns out [wife learns after separation] he was infertile throughout and knew it.*

*QUERY: does Wife have a claim against husband for fraudulent concealment of his infertile status? Wife is furious at husband's deceit and feels like she should have some compensation for the many years of her life she gave up to him.*

*Cases, fact scenarios to which one could draw analogies? Thank you,*

A: You may have a claim for annulment instead of divorce (fraud in the inducement grounds). Check your causes of action for annulment. Also check out the consequences of annulment versus divorce, e.g., you may not get equitable distribution in an annulment action. That could be good if W's assets are worth more than husband's, not so good if H has greater valued assets than W.

You could have a good tort claim for fraud which could involve punitive damages as well as compensatory damages. For compensatory damages you would need a fertility or other OB-GYN expert who could testify about the increased chances of complications with older pregnancies (unless that is considered speculative damages for which there might not be a cognizable damage claim), decreased chance of conception, effect of older eggs decreasing chance of a healthy child, etc.

There also is the increased difficulty of "coupling up" with someone who wants children as one gets older and the pool of eligible spouses-to-be without children decreases. Hmmmm.... Interesting case with many interesting issues, especially damages issues. It could become quite a complicated piece of litigation.

GARY L. BORGER  
BORGER, JONES and KEELEY-CAIN, P.A.  
Cherry Hill NJ 08003-2177

\*\*\*\*\*