

The use of Facebook in child custody cases

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Despite the fact that technological advances have made our lives easier in many ways, they can make issues such as divorce and custody cases more complicated. Recently, a Westchester judge allowed a father to use his wife's Facebook profile as evidence in their custody case.¹ In *A.D. v. C.A.*, Anthony DiMartino claimed that a review of his estranged wife, Christina Antoine's, Facebook page would prove that she was frequently out of state while she was raising their now 4 year-old son.² DiMartino asked the court for an order directing Antoine to turn over the printouts of all pictures, posts and information posted on her Facebook pages over the past 4 years.³ Antoine argued that her profile is private and that she unfriended her husband when they split.⁴ She assumed that she would succeed in blocking the move because there were no previous rulings granting access to Facebook pages in New York state custody cases.⁵

The court ordered Antoine to produce the requested postings which included photographs of Antoine, vacationing in various cities such as Boston, and as far away as Milan, Italy without their 4 year-old son.⁶

Judge Ecker held that "[t]he court finds that the time spent by the parties with the child may be relevant and material to its ultimate determination of custody."⁷ This ruling has set a precedent for the use of social media to identify the appropriate custodial parent in these cases.⁸

According to a survey conducted by the American Academy of Matrimonial Lawyers among its members, 81% reported using evidence from social networking sites in their cases.⁹ This has a

¹ Julia Marsh, *Facebook Profile is fair game in custody battle: judge*, New York Post (Aug. 25, 2015, 12:47 AM), <http://nypost.com/2015/08/25/facebook-profile-is-fair-game-in-custody-battle-judge/>.

² *Id.*

³ *A.D. v C.A.*, 16 N.Y.S.3d 126, 127 (Westchester Cty. 2015).

⁴ *Id.*

⁵ *Id.*

⁶ *Id.* at Julia Marsh, New York Post.

⁷ James Geddes, *NY Judge Orders Facebook Profile Can Be Used in Custody Battle*, TECH TIMES (August 25, 2015, 10:08 PM), <http://www.techtimes.com/articles/79306/20150825/ny-judge-orders-facebook-profile-can-be-used-in-custody-battle.htm>.

⁸ *Id.*

⁹ John Browning, *It's Complicated: Ethical Concerns in the Age of Social Media*, 31 *The Comput. & Internet Law.* 1, (2014) (1-2).

profoundly negative effect on Facebook users in litigation. For instance, the mother in Bates made negative comments about her children's father on Facebook, stating that the children "have a really bad father."¹⁰ The court took into account the mother's emotional and physical reactions to stress and found that they were relevant in determining whether she could support the father's relationship with the children.¹¹ The Court's finding that the posts revealed a physical and emotional inability to care for her children was critical to its decision to place the children with their father.

With technological advances and the pervasive presence and use of social networks like Facebook, the first thing some lawyers may ask their clients is whether they have a Facebook page and then advise clients to deactivate it.¹² Lawyers should advise clients against discussing cases with friends and relatives through social networks. When clients remain active on social networks, lawyers should review postings, especially in divorce and custody cases where social network content has been widely used for evidentiary purposes.¹³

A client's social media profile can end up affecting his or her custody case. Clients who are involved in child custody cases should be careful about posting information on social media. Clients should only post something they would feel comfortable seeing printed in their local paper.¹⁴ Other things that can be done include unfriending one's spouse, ex-spouse and their friends and family on Facebook.¹⁵ Clients can always keep track of their spouse or girlfriend's/boyfriend's account as they themselves may not be getting this good advice about social media.¹⁶ Or, clients can tell their friends not to post anything about themselves or their family.¹⁷

¹⁰ Bates v. Bates, 817 N.W.2d 32 (Iowa Ct. App. 2012)

¹¹ Id.

¹² Kathleen Vinson, *The Blurred Boundaries of Social Networking in the Legal Field: Just "Face" it*, 41 U. Mem. L. Rev. 355, 398 (2010).

¹³ Id.

¹⁴ Michele Bowman, *Social Media Wins – and Loses—Family Law Cases*, LAWYERS.COM (Oct. 5, 2015), <http://blogs.lawyers.com/2012/10/social-media-wins-and-loses-family-law-cases/>.

¹⁵ *Will Facebook Posts Help or Hurt my Custody Case?*, RPSLAWYERS.COM, <http://www.rpslawyers.com/Firm-Blog/2013/April/Will-Facebook-Posts-Help-or-Hurt-my-Custody-Case.aspx> (last visited Nov. 4 2015).

¹⁶ Id.

¹⁷ Id.