Best of the ListServ June

Q: *Ladies and Gentlemen of the List,*

Here's an interesting question for you. Mom and Dad divorce. Decree imposes child support obligation on Dad. Mom dies. Child lives with Grandma (Mom's mother). Grandma wants to enforce obligation. Can she? Does it make any difference if she is trying to enforce an arrearage? Can anyone cite any authority or suggest any alternate theories on which to proceed? Does the Goddess have any insight here?

A: The arrears belongs to her estate. The arrears is a judgment, creating a judgment lien, and the estate is entitled to be reimbursed for the money the mother expended when she was alive.

As to future support, yes, the grandmother can get child support. A guardian of a child has the right to collect child support from the child's parents. You may have to get a modification of support so that the order states the child support is payable to grandma.

Laura Morgan

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Q: *I have had this issue come up more and more in recent years: Client-wife, separated from husband, had mail addressed to H delivered to her residence by Postal Service. In one case USPS mistakenly forwarded some mail to Wife's new address even though her forwarding order was only for her name and H continued to live in former.marital residence. In another case H requested records from a bank and apparently in error bank mailed it to him at former marital residence where client W. continues to reside (this several mos. after sep.); apparently letter carrier didn't forward it to H.*

I would appreciate any thoughts, comments about how to handle these situations. Thank you,

A: It is a federal offense to open mail addressed to someone else. Do not open it. Do not have the client open it. Give it to the other attorney. Get a receipt for it. Then do a discovery request to get the papers you want.

Many years ago, I opened an envelope from a bank addressed to the husband. I represented the wife. She got it after they separated because the usps forwarded it to her rather than him. He had denied any bank accounts. The 1099 proved he had one. I got nailed by the atty. registration commission for opening the mail.

Do not repeat my long ago mistake.

Gary L. Schlesinger
Libertyville, Il

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Q: *Can any of you tell me if there is something in the immigration law that would prevent changing the surname of an adopted child under state law?*

SCENARIO: A friend approached me about changing the name of a child which she recently adopted (international adoption). My friend wants to change the child's surname to her own. My friend stated that when she adopted her first child (also international adoption), all documents were set up so that the child had her surname from the "get go". With the latest child, apparently the immigration law has changed such that the child kept her own surname.

Any advice or assistance you can give me would be appreciated.

A1: I do not believe that is accurate, and the new name should have been listed on the final order of adoption. She can do a procedure called a readoption in her home state, and change the name at that time.

Steven Liss
La Jolla, California

A2: Immigration law has nothing to do with a name change. The country from which the child was adopted has its own rules and regulations that could determine what name is shown on the birth registration. When papers are filed with Immigration [BCIS] the name on the birth registration is what is used. Some people adopt abroad. Here the country may or may not change the child's name on the adoption judgment. Many people prefer to re-adopt here so that they are assured of the legality, to obtain a U.S. birth certificate, and/or to change the child's name(s)...When an adopted child is brought into the United States it now is a citizen. A Certificate of Citizenship is issued. The parents will have to coordinate with BCIS to insure that this Certificate is issued in the correct [post-adoption] name.

I do international adoptions and readoptions and am a member of the American Immigration Lawyers Association.

Glen Smith

Q: *I have an interesting situation. I represent Father, who is married with children (all from his wife). He had an affair with a married woman, who became pregnant as a result. Her husband is the presumed father. Father wants to establish paternity, be involved with child (his wife is ok with this), pay child support. "Other woman" is an illegal alien is likely to be deported in the next few months. We filed a motion to determine paternity. "Other woman" wants to avoid court and will do whatever it takes to cooperate. BTW, she has assured Father is indeed the father and they look much alike. My question is how can we effect a paternity determination (with no presumption that he is the biological father) and set up Father's rights and child support? Will a mere stipulation accomplish this? Thanks in advance*

A: It depends on your particular jurisdiction, but especially in the case you outline, the only way to do it is through court. Private agreements don't have any value when you are dealing with a child that is not "legally" that party's child. States have a huge interest in making sure that children are protected in these situations (think inheritance rights, protecting against selling children, etc.) Only a court can establish paternity where there is otherwise a legal presumption that someone else is the father. The parties can make an agreement, but that agreement is probably not enforceable (and will not be enforced) unless timely application is made to a court of competent jurisdiction to approve that agreement.

Ronald W. Nelson
Overland Park, Kansas

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Q: *I have lost my forms for a Qualified Medical Child Support Order due to computer virus. Does anyone have a good form for such orders? Would you mind emailing it to me???*

A: The Department of Labor has forms:

http://www.dol.gov/ebsa/publications/qmcso.html/

Laura Morgan
Charlottesville, VA

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Q: *Does anyone know if a "modular" home is real or personal property? Can't seem to find a legal description in Property Records, so I am thinking maybe it is personal property. Any help would be appreciated.*

A: imple answer - If it is in a mobile home park it is personal property as it cannot be permanently affixed to the ground as the owners of the mobile home do not own the land. Further if it is on rented or leased land it will always be personal property.

The only time a mobile home can be real property is when the people who own the home also own the land. Then, if they pay DMV taxes for it and it has a DMV sticker it is personal property. Once it is permanently affixed, there is no longer taxation through DMV and it is paid through a property tax. Even if it appears to be permanently affixed, if the correct procedures to have it declared permanently affixed are not followed, it remains personal property. (So speaks the woman whose client had to buy the permanently affixed mobile home back from the bankruptcy trustee because they all just assumed it was permanently affixed and all the correct procedures were followed, so "heck! we don't need to include a description of the mobile home on the deed of trust cause it part of the property. Guess what was still personal property?)

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