



Best of the Listserv – March

Q: *At separation, one party takes the CP car and the car is used only by that party (it was used only by that party during the marriage as well). Because the car is a depreciating asset, could I argue that the car should be valued at the time of separation instead of the time of trial? Does anyone have any support for that theory? If the car is supposed to be valued at the time of trial, could I make a "Watts" type of argument and argue that the party owes the community for the use of the car? Any support for that theory? Lastly, is Kelly Blue admissible to value the car? Thanks for your help!*

A: The date of valuation will depend upon your jurisdiction. I suspect it will be the date of trial, but that does not deny you the opportunity to argue that because of excessive use, etc. it should be the earlier date.² As for Kelly Blue Book, or the NADA, etc., I have successfully argued its admission under Rule of Evidence 803(17) as a market report or commercial publication, albeit in WEB format. Be aware that there are several valuations (retail, trade-in and private party) that are substantially different, and each has options for various inputs that you will need to support with other evidence (e.g. milage and options).

Steve Hayes
Augusta, ME

Q: *Any ideas on the enforceability of a "requirement" for a future prenup -which some might view as a thinly veiled restriction on the ability to remarry?*

A: I have not seen cases on the issue . . . but I could imagine there could be policy reasons for not favoring such agreements or construing them narrowly. A loosely analogous situation is a contract (usually by a married couple) to make mutual wills and limit the ability of either spouse to modify their wills. I am reasonably sure that practitioners specializing in wills and estates generally think mutual wills are a poor idea. I suspect courts also do not favor mutual wills .. but might enforce them in right circumstances. As an alternative in your case, would it make sense for each spouse to take out a big life insurance policy with the other as beneficiary? . . . Or . . . if they want to stay entangled . . . maybe they could buy an investment property together . . . perhaps placing the property in a trust with right of survivorship. (My hunch is what is really going on here is a desire of the wife to maintain links with the husband and interfere with his ability to get on with his life.)

Jeff Atkinson
Chicago, IL

Q: *Good Morning. I have a case wherein the custodial parent is seeking a court order that the non-custodial parent not expose the children during periods of visitation to practices which are contrary to the religious beliefs of the custodial parent and children. The religion is a fundamentalist Christian faith. Does anyone have cases and/or a web site to aresearch site which could be of assistance to me?*

A: See Laura W. Morgan, "Post-Divorce Disputes Concerning the Religious Upbringing of Children," 9 Divorce Litig. 135 (July 1997) (attached). There have been a number of law review articles after this you may want to check out. You should also check out Jeff Atkinson's Modern Child Custody Practice at section 4-37.

Laura Morgan
Charlottesville, Virginia

Q: *I have a Chiropractor client who has several Harleys, as well as a 6 ½ year old son. He's divorced and Mom wants an order, among other things, that the child can't ride on the back of Dad's bike, even though it is legal in California, the kid has a helmet and full leathers, and likes hanging out with the new breed of Harley folks (Toys for tots, fundraisers, community events, etc.) I know everyone has a personal opinion on the alleged safety, or not, of motorcycles, but is anyone aware of specific case law dealing with a parent not being able to legally take their child on a motorcycle?*

A: I litigated this issue a couple years ago when Dad (not my client and definitely one of the OLD breed of Harley riders) was transporting the 3 year old child on the back of his bike on Interstate 25 for visitation drop offs. Dad lost and the court's decision (unreported) says no bike rides for the kid until she's 12 - which even Mom thought was a little extreme. I had a state trooper testify as to the high incidence of passenger injury in cycle vs. car accidents, lack of real protection provided by helmets etc. Possibly you could find a motorcycle cop to give the other side of the coin - or at least to alert you the gory kinds of claims Mom might raise.

Kathy Hogan
Denver, CO