NFLR
NEVADA FAMILY LAW REPORT

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KILLER EYEBROWS
THE PERILS AND PASSIONS OF DIVORCE PARENTING

By Seymour Wheelock, JD

I have worked with families in divorce as a court appointed lawyer for children (Guardian *ad litem*) for the last 5 years, before that as counsel for divorcing adults and as a deputy District Attorney in the Juvenile Prosecution Division of two Colorado jurisdictions. In my own life, and as a lawyer, I have been deeply touched by how much children can learn from their parents if a divorce is "done right." They learn forgiveness, compassion, to transcend life's difficulties and how to keep growing all through life.

I'm also personally and professionally concerned about the damage a divorce "done wrong" can do to a child, both in terms of what the child goes through as the divorce progresses and for years afterward.

In the early and mid-80's I prosecuted delinquent, sometimes violent kids. Every one came from a dysfunctional home. In many cases the "only" dysfunction was a divorce: no alcoholism, no drugs, no *physical* violence. Yet the effects on children of an angry and bitter divorce were as, or more, devastating. Statistics show that one of the most reliable predictors of juveniles' problems with the law is an acrimonious divorce and those children I prosecuted deserve to receive nurturance, structure, security and predictability from their parents. Instead they experienced chaos, emotional violence and loyalty tugs-of-war. So they looked to the "system" for what they needed. The system's resources hardly make a dent.

Parents are the natural source of a child's need fulfillment. It is parents, even parents who are divorcing, who must satisfy their childrens' critical emotional needs.

What children see their parents doing, what they feel radiating from their parents' relationship and how they are treated, they respond to in many complex, sometimes unhappy, ways. They are also absorbing those patterns as instructional "tapes" for later life playback. These will be their own adult patterns of individual, parenting and intimate behavior. If the patterns are healthy, all the better; if they are not, the shrinks will see them, or the cops, or the DAs.

Children take in the most emotional information during the first 36 months of life. Yes, we did hear what our parents were saying and our children do hear what we're saying to each other. More accurately, before learning complex speech, children are feeling how parents are relating to each other and that's how

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Fall, 1994

From the Editor

IT'S UP TO THE JUDGES

My last editorial invited the judges to take control of their own dockets by refusing to allow attorneys who churn cases from being financially rewarded for doing so.

To illustrate the point, I cited three particularly egregious recent examples, without mentioning the names of my opponents. As noted last time, the judge in one of those cases actually *defended* the office doing the churning, under the rubric of "doing their job." That practitioner has since called me, giving notice that I was "not doing anything to ingratiate yourself with your fellow practitioners" by protesting fee-churning. He added, correctly, that "the proof of the pudding is the judge's order" refusing to sanction him.

In other words, that attorney, and the others that care less for their clients' financial well-being than in keeping their billables up, are not idiots; they will continue the process of maximum litigation as their normal method of doing business until and unless the judges stop letting them get paid for doing so. From his perspective, the behavior is correct because the judges allow it.

The gauntlet is thrown down. Judges, what do you want?

PRO BONO DEVELOPMENT

Despite grumblings from some that the Thirteenth Amendment is under attack, it is very likely that there will soon be *mandatory* pro bono in this state. There will be a lot written about this elsewhere in the near future, but the bottom line is that it is an attempt to stave off the so-called "scriveners" or "independent paralegals" who are seen as over-charging, irresponsible, not subject to professional discipline, and mucking up people's legal matters left and right; the demand for such persons is supposedly growing out of attorneys being considered too expensive for the middle and lower class, and the "un-met legal needs of the community." As in the old chinese curse, it appears that we are living in interesting times.

CERTIFICATION OF SPECIALIZATION

There is a lot going on in the area of certification of specialization, nationally and in Nevada. It now appears that there *will* be at least one family-law-related certification available soon. The National Board of Trial Advocacy (the same group that now certifies "trial advocates" in civil and criminal law) will soon be

Articles, Case Summaries Wanted for NFLR

The Nevada Family Law Report seeks to provide interesting and substantive family law material to educate both the bench and the bar. NFLR needs articles for upcoming issues. If you are interested in writing critiques of pertinent cases, reports/opinions of family law legislation or discussions of family law trends and issues, please request authors guidelines from Editor Marshal Willick, 330 S. Third St., #960, Las Vegas, NV 89101. Telephone, 384-3440.

Articles published in the NFLR are eligible for continuing legal education credits. Contact the MCLE Board, 329-4443, for applications.

The Section's publication needs your input and contributions. Please contact an editor to discuss any article topic, critique or book review.

adding a "family law trial advocate" certification to their offerings. The NBTA, which grew out of the American Trial Lawyers, is more focused on trial advocacy than on substantive expertise, so their certification will be quite different than the kind of credentials offered by organization such as the American Academy of Matrimonial Lawyers. There will probably be a more substantive certification program offered by the ABA Family Law Section itself in the near future.

On the state side, it is very likely that the Board of Governors will ask the Nevada Supreme Court to amend the SCRs to specifically permit public advertising of certification, as essentially mandated by *Peel v. Attorney Registration and Disciplinary Committee of Illinois*, ___ U.S. ___, 110 S. Ct. 2281 (1990). The bottom line is that very soon now, there will probably be certified family law specialists in this state.

TONOPAH

The Executive Council has requested input from the membership as to what changes are needed in the annual Tonopah Showcase — substantively, procedurally, administratively, etc. If you have any opinions — if there are things you do or do not want to see done there — please respond directly to any member of the Council and we will try to comply.

A WORD ABOUT BANKRUPTCY

If you have not heard, be aware that H.R. 5116, the "Bankruptcy Reform Act of 1994," slid through Congress recently, and made many changes. Alimony, maintenance and support now have a priority. The automatic stay no longer applies to a proceeding seeking to establish paternity, or to establish or modify alimony, maintenance, or support. Bankruptcy may no longer be used to avoid judicial liens securing alimony or support (so you must draft your documents *carefully* to so indicate). There is a new exception to discharge — maybe — for property divisions between spouses, or obligations owed to third parties through the decree. Its not clean, neat, or certain, but it is an improvement, and we all need to know the changing shape of what bankruptcy law can do for, and to, our clients.

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they will set about to feel as adults. Kids subconsciously want to grow up to be just like mommy and daddy, and very often do so, even if it means being just as unhappy.

There are many more influences in a child's life, or course, including organic causes of mental disturbance, but observed and felt parental behavior and relationship patterns impress a child's mind, emotions and body very, very powerfully, even to the point of determining what kind of history and behaviors the child's later partners will bring to their relationship and how the grown up child will unconsciously seek to be (mis)treated. Look back honestly in your own life and test this reality.

The exciting news is that all detrimental patterns are subject to change. If we are willing to put in the time to learn new skills and the emotional energy to bring it about, old patterns, useless and damaging tapes, can be replaced with healthy ones.

The first big steps are to clearly recognize how we create our lives and to own our own contributions to relationships which aren't working or didn't work. As G.I. Joe says: "Knowing is half the battle."

But there isn't any blame to place. We must know that what didn't work we helped to create largely or completely unconsciously because of old tapes playing themselves out, over and over again. Do any of us really <u>want</u> to be unhappy or to ruin a relationship? It may look like it, but the truth is that we are all running old tapes based on old fears if we are being less than completely loving.

Another necessary step for those dedicated to releasing old patterns is to make the conscious and sometimes difficult choice to let go of the past. We can <u>forgive</u>, not necessarily forget, those who have "wronged" us, including, and especially, our parents and our partners. Here, it is critical to understand that the others, the parents or the partners or whoever, were also playing out *their* tapes, as out of control in the relationship as we were. Knowing and feeling this truth, if we honestly, compassionately and *non-judgementally* look at ourselves and others, we release chronic resentment and anger. Those feelings are poisonous to ourselves and to our kids, even when we think they're "hidden." They do more damage than physical violence can.

The old adage is true: "If you do what you always did, you'll get what you always got." It isn't always easy to look closely at and change what isn't working, but we must get on with our <u>own</u> lives. We must <u>not</u> be living out our parents' ghost lives; we must <u>not</u> be the perpetual victims of our own and others' tapes.

A common pitfall is to undertake change or healing to "make" someone also change, or to condition our own change on the changing of the other. This is a manipulation and not a real change. If you're healing all by yourself, you're healing, and that's enough. It is powerful when both parents make the decision to heal. If just one does, however, it is far better than none; it can literally save your child's life.

If marital partners can go through and beyond the limitations of their tapes, a previously not working relationship might be salvaged. Also, a not working relationship which has become depressing and stale and has been allowed to live beyond its true usefulness can be lovingly ended. "Staying together for the kids" is as damaging a message tot hem as a bitter divorce. Each person must look into his or her own heart to determine if the choice to divorce should be the gentle end to one of life's completed lessons. The goals, after all, are growth, health, consciousness and love. Neither fearfully running away from, nor slavishly conforming to, a social norm of "staying together" is appropriate.

A divorce tests a person's information, resolve, determination and discipline. Not everyone has enough access to these resources at all times (such as when under stress) to keep a divorce calm. Seeking the help of those who have been through it, or whose training gives them insight into how to make more skillful choices, will reduce an on-purpose person's likelihood of backsliding. To look for and accept help is a sign of real humility. Where, after all, did we learn to parent well or to divorce well?

Therapy, support groups, seminars and workshops can all provide help. Other community resources may be offered by

womens' organizations, churches, and healthy friends who aren't afraid to tell you what they really see. What we need to grow are mirrors which show us what we really look like, not how we hope we're seen.

Again, the good news is that children who are young enough to be in the formative stages of their personality development when their parents make the conscious decision to look at, own and let go of old patterns, get to see and feel powerful new models of what it means to be Adult people. What greater gift can children receive from the Universe than one or two happy, conscious and responsible parents to look up to and to copy into their own future?

Parents who humbly see their marriage as an opportunity for growth and their divorce as a learning experience, who do not raise a disapproving eyebrow at the mention of the other parent's name, who know divorce is a recognition that a part of life is over so that a new one can begin and who embrace even this difficult life change with exquisite balance, teach their children miracles by living their truth.

Meet the Executive Council

We are continuing the series introducing members of the Family Law Section Executive Council.

PETER B. JAQUETTE

Peter Jaquette is the Chairman of the Family Law Section. He has served in this capacity since March, 1993, and has served on the Executive Council of the Family Law Section since July, 1989. Mr. Jaquette has been practicing family law in Carson City for eighteen years. He is a Fellow of the American Academy of Matrimonial Lawyers and is a member of the Alimony, Maintenance and Child Support Committee of the Family Law Section of the American Bar Association. Mr. Jaquette has been married to his wife Menna for eighteen years. They have four children: Abigail (14), Claire (12), Edward (9) and Emma (6).

ISRAEL "ISHI" KUNIN

Ishi Kunin is the sole owner of the Law Offices of Israel L. Kunin where she employs one associate and four supporting staff members. She has practiced solely in the area of domestic relations and probate for the past 8 years. Prior to this, she was a Deputy Attorney General for the Welfare Division, dealing in child related issues. Ishi also sits as an alternate Referee for the Juvenile Court.

Ishi graduated from California Western School of Law in 1979. In 1980, she was admitted to practice law both in California and in Nevada.

For the past five years, Ishi has been a member of the Executive Council of the Family Law Section of the State Bar of Nevada. From 1991 to 1993, she was the Chairperson of this Section. She also served on the Local Rules and Procedures Committee and the Child Support Guideline Committee. She currently serves as Chairperson of the G.A.P. Program of the State Bar of Nevada, Attorney for the CASA program, a Member of the Non-Lawyer Research Committee, a Member of the Children Cope With Divorce Education Program Committee, and a Member of the Bench/Bar Committee.

In addition to her involvement in the Family Las Section, Ishi is one of only two Nevada attorneys to belong to the American Academy of Adoption Attorneys. She has an active practice representing both birth parents and adoptive parents, and has completed many interstate, as well as some intercountry, adoptions.

Ishi's office does a large amount of pro bono work. With the assistance of her legal assistant, Dawna, and Dawna's commitment as well to child issues, they have completed over fifty guardianships for the Division of Child and Family Services, and another forty are almost completed. This takes the children out of the Juvenile and foster care system. Ishi was honored by the CASA program with the 1991 G.A.L. (Guardian Ad Litem) Award.

Ishi is also involved in the community, donating her time to child related causes. She is a Board Member of the Nevada Association of the Handicapped, and a member of the National Association Against Domestic Violence, Nevada Network Against Domestic Violence and the National Association of Counsel for Children.

In addition to her professional and social affiliations, she has taught a probate course at the Clark County Community College. She has spoken statewide in many forums on adoptions and terminations.

The vast majority of time outside the office is consumed with the activities of her children, Shoshana, age 9, and Ariana, age 2, along with her husband, Terry Leavitt, a bankruptcy attorney. Ishi's office includes a nursery staffed with a full-time nanny, who cares for Ariana during each day, and tends to children of clients while their time is spent in consultation.

It is Ishi's hope that the new Children Cope program implemented by Rule in Clark County will result in more parents realizing the battle between them is extremely detrimental to the children.

ALIMONY FACTORS APPARENTLY RELIED UPON IN NEVADA SUPREME COURT

CASE NAME	SPRENGER 07/26/94	GARDNER 09/26/94	RUTAR 03/05/92	HEIM 10/28/88	FONDI 12/7/90
AGE OF WIFE	44	At least 43? (not recited in opinion)	45	57	45?
PROPERTY TO WIFE	Unspecified, but including at least $800,000 partnership interest	Not specified in opinion	Equal division of about $1.5 Million; reserved jurisdiction ordered on remand	$10-20,000 + future ½ interest in Husband's pension (amt. unknown)	$91,000 + future part interest in Husband's pension (amt. unknown)
HUSBAND'S CAREER DEVELOPED WHEN	"Developed business acumen" during marriage; business was pre-marital	During marriage, military flight training, two degrees, and commercial pilot's license	Both completed technical school (dental technician) before marriage	During the Marriage (acquired Ph.D.)	Pre-marriage (law degree & "standing in the legal community")
HUSBAND'S INCOME	About $100,000 per year	B.A. in Education	$155,000 + expenses per year	$60,000 per year	Not recited (but known to be over $60,000)
WIFE'S PREMARITAL JOB TRAINING	Practical nurse license	None; couple married while in college	Dental technician school grad; 11 years work as dental technician	Very Little	As legal secretary; Wife has "marketable skills"
WIFE'S JOB & INCOME POTENTIAL	Wife stopped work about 20 years ago to raise kids; had 90 college credits	Wife a career teacher throughout the marriage; making about $43,000	Not worked in 15 years; studying accounting, headed for law school	Unemployed. Could earn $600.00 per month	Working at time of trial; $1,383.00 per month
KIDS	Two; wife raised	None	2 Step-kids (H's) + 2 natural; Wife raised	Six; Wife raised	None; not "required" to care for stepson
MARRIAGE DURATION	21 years	27 years	18 Years	35 Years	17 Years
ALIMONY AWARDED	$1,500 for 2 year maximum reversed and remanded "to increase and extend" alimony consistent with opinion	$1,300 for 1 year and $1,000 for second year reversed; extended by 10 years at $1,000 with reservation of jurisdiction	$1,000 rehab. for 3½ yrs. reversed; $1,700 for 8 yrs. on remand, with reserved jurisdiction (H to pay upkeep, with reimbursement after sale)	$500 Reversed; $1,500 min. on remand	$0 ($3,000 rehabilitative)

In *Sprenger*, the Nevada Supreme Court listed seven alimony factors as:

(1) the wife's career prior to marriage;
(2) the length of the marriage;
(3) the husband's education during the marriage;
(4) the wife's marketability;
(5) the wife's ability to support herself;
(6) whether the wife stayed home with the children; and
(7) the wife's award, besides child support and alimony.

Case Summaries

Foreign Judgment May Last Longer Here Than In the State From Which It Came

Trubenbach v. Amstadter, 109 Nev. ___, ___ P.2d ___ (Adv. Opn. No. 41, Mar. 24, 1993) Nevada statute of limitations commences against a foreign judgment registered here starting on the date on which a valid foreign judgment is registered in this state. NRS 17.330 to 17.440 (Nevada Uniform Enforcement of Foreign Judgements Act) construed.

Lawyers Duck the Bullet Despite Damage to Other Party

Elliott v. Denton & Denton, 109 Nev. ___, ___ P.2d ___ (Adv. Opn. No. 142, Oct. 4, 1993) Law firm held not liable for "wrongful levy"; dissent by JJ. Steffen and Young, who protest innocent party being forced to bear full cost of wrongful levy.

Apparent Change of Custody for Violation of Court Directive Not Permitted

Sims v. Sims, 109 Nev. ___, ___ P.2d ___ (Adv. Opn. No. 170, Dec. 22, 1993) Motion to change physical custody filed by father one year after divorce on ground of leaving child unsupervised; then-Referee Sanchez recommended order that if child was left home alone again, "even for 5 minutes," custody would be changed to father. Motion renewed a year later on same ground. Mother conceded child had been left home alone for three one-hour periods while home sick, with a phone near her bed to call her mother if necessary. Referee interviewed child, determined that child had been left alone, was scared on one occasion, and that the mother "flagrantly" violated the earlier order. Referee recommended immediate change of custody; District Judge (Gates) adopted recommendation.

Trial court enjoys broad discretionary powers in determining questions of child custody (citing *Primm v. Lopes*, 109 Nev. 502, 853 P.2d 103 (1993). "However, this court must be satisfied that the court's determination was made for the appropriate reasons." Court repeats that "sole consideration is the best interest of the child" under NRS 125.480, but adds that here "it appears that the determination that the custody should be changed was made, not because it was in the best interest of the child, but because the mother admittedly did not obey a questionable, if not absurd, court order."

Supreme court reiterates that change of custody may not be used "as a sword to punish parental misconduct."

Here, requiring a "normal, intelligent ten-year-old" to be within vision range of the responsible adult at all times and not be left alone for even 5 minutes "seems an absurd order. It is even more absurd that the penalty for violating that order is to lose custody of one's child." The trial court "should not translate impractical parental advice into impractical court orders."

Supreme Court did not believe Referee actually found that mother's leaving child alone was "reprehensible" as stated in order since decision took six months to issue. Court further recited that it was even more telling of decision's "arbitrariness" that child is not being raised by father (an airline pilot), but his mother.

Turning to delay, the Court rails against "inadequate attention to the real impact that these decisions, and particularly the delay in these decisions, have on children's lives. . . . Time is more of the essence in these cases involving children than in any other cases and decisions should be made promptly after the close of evidence. Otherwise irreparable harm can be caused to the entire family, and especially the children." Case remanded "for a full presentation of evidence and a redetermination of custody."

A Methodology for Splitting Property Interests of Unmarried Cohabitants

Sack v. Tomlin, 110 Nev. ___, ___ P.2d ___ (Adv. Opn. No. 24, Mar. 30, 1994) To pay off community property interest of former husband, former wife refinanced house awarded in divorce decree; new title held with boyfriend as tenants in common. Later, boyfriend moved out, and former wife made payments on her own for five months, and then sold the house. District court's 82%/18% split gave former wife $37,947.96, and boyfriend $8,330.04.

Property rights of unmarried cohabitants can be determined under the doctrine of *quantum meruit*, following up on the holdings in *Hay v. Hay*, 100 Nev. 196, 678 P.2d 672 (1984) and *Michoff v. Michoff*, 108 Nev. ___, ___ P.2d ___ (Adv. Opn. No. 144, Nov. 5, 1992). Trial court can find an interest of the untitled party in property by reason of "quantum meruit for the reasonable value of household services rendered less the reasonable value of support received if he can show that he rendered services with the expectation of monetary reward." Here, no agreement for household services was at issue, so doctrine of quantum meruit does not apply.

Rather, case involves doctrine of contribution; he asserted that they "pooled" income; she asserted he paid rent and a fair share toward joint ex-

penses. *Malmquist v. Malmquist*, 106 Nev. 231, 792 P.2d 372 (1990) not applicable because parties neither married nor holding themselves out to be so, there was no community property and house was deliberately held as tenants in common.

Where tenants contribute unequally, presumption is intent to share in proportion to amounts contributed. Further, in the absence of an agreement between two unmarried parties living together to pool their incomes and share equally in joint accumulations, each party is entitled to share in the property jointly accumulated in the proportion that his or her funds contributed to the acquisition. Where record does not show money going into asset, but only funds deposited into account from which mortgage was paid, "the only logical way to determine" contributions is to look to amount of debt acquired by the new mortgage and to the market value of the house on the date of the conveyance to the boyfriend, following *Kershman v. Kershman*, 13 Cal. Rptr. 290 (Ct. App. 1961). Formula is sale price, less selling expenses, to get net proceeds. Former wife's share is her equity before re-finance plus half the new mortgage. Boyfriend's share is half the new mortgage. No offset for cohabitation where both benefited. Here, formula gives former wife $45,490.46, and boyfriend $787.60.

No estoppel under NRS 111.170 of former wife from claiming equity existing on date of deed to self and boyfriend, since statute does not require grantor to convey equal interests. Under NRS 47.250(2), "it is a disputable presumption that a person intends the ordinary consequences of his voluntary act. Boyfriend's assertion that transfer to tenants in common has the ordinary consequence of an equal interests by purchasers accepted, but can be rebutted where there are unequal contributions toward acquisition of property by co-tenants who are not related and show no donative intent. Here, there is substantial evidence in record to sustain district court's finding that former wife did not intend to make gift of half of accumulated equity to boyfriend, and her contributions exceeded his by some $100,000.00, so presumptions of equal ownership overcome, and presumption of unequal ownership by unequal contribution controls.

When denying attorney's fees to prevailing party under NRS 18.010(2), district court must state its reasons for doing so; failure to state reasons is abuse of discretion. In partition of real estate suit under NRS 39.010, where former wife wanted 99% of proceeds, boyfriend wanted 50%, and district court determination was for 82%/18% split, boyfriend was not prevailing party.

Where one cotenant is in sole but not adverse possession, other co-tenants are liable for their percentage of mortgage payments, and remaining cotenant not liable for use of premises per *Laniger v. Arden*, 85. Nev. 79, 450 P.2d 148 (1969). Since there was no "ouster," boyfriend liable for half of five mortgage payments made entirely by former wife. There was no agreement that former wife pay rent after boyfriend left house.

Fourteen Year Delay In Seeking Child Support Was Not Waiver; No Equitable Defense to Arrearages Established; Elimination In Statute of Limitations For Child Support Was Not Retroactive

McKellar v. McKellar, 110 Nev. ___, ___P.2d___(Adv. Opn. No. 23, Mar. 30, 1994) Approving *Parkinson*, equitable defenses such as estoppel or waiver may be raised in proceeding by other party to reduce child support arrearages to judgment. The party asserting the defense must show that there has been an intentional relinquishment of a known right. Waiver can be proven by express agreement, or by conduct which evidences an intention to waive a right, or by conduct inconsistent with any other intention other than to waive a right. The question is one for the trier of fact. Here, custodian waited 14 years to initiate action, but delay itself is not dispositive. Time elapsed is one factor, but here she made consistent requests for payment. At one time, custodian offered swap of arrears and future support for consent to adoption. There was no error in the district court finding no intentional relinquishment on these facts.

July 1, 1987 amendment to NRS 125B.050 eliminating statute of limitations on child support arrearage actions was not retroactive. NRS 11.190 six-year limitation applies to preclude recovery of any support that was time-barred at the commencement of the action. There is a general presumption in favor of prospective application of statutes unless the legislature clearly manifests a contrary intent or legislative intent cannot be otherwise satisfied. Legislature's elimination of provision in bill draft is not dispositive as to intent, but it is instructive.

Appellants Beware

City of Las Vegas v. Int'l Assoc. Firefighters, 110 Nev. ___, ___P.2d ___ (Adv. Opn. No. 53, May 19, 1994) Responsibility for pursuing filing of the Record ultimately falls on Appellant.

Murphy Test Does Not Apply Unless There Has Been a Determination of Primary Custody

Truax v. Truax, 110 Nev. ___, ___P.2d ___ (Adv. Opn. No. 51, May 19, 1994) NRS 125.510(2) states that standard for modification of joint custody arrangement is "best interest of the child". Court (then-Referee Marren, affirmed by Judge Sobel) used that standard to change arrangement to primary custody to mother. Father argued that court should have used standard of *Murphy v. Murphy*, 84 Nev. 710, 447 P.2d 664 (1968) (modification of custody requires circumstances be materially altered and a change would substantially enhance the children's welfare).

Father failed to preserve argument in district court by objecting to application of best interest test rather than *Murphy* standard. Court found *Murphy* test does not apply, since the statute at issue was enacted after *Murphy* and the case by its own terms relates only to modifications of primary custody. Court adds that issue

was not preserved, and failing to object at district court precludes appellate consideration.

Court reiterates that trial courts are vested with broad discretion concerning child custody matters under NRS 125.510, and the lower court's findings will not be disturbed absent a clear abuse of that discretion. Here, CASA and one examining expert (Etcoff) saw no parental alienation or coaching, although another expert (Richitt) did see such. No evidence of abuse of discretion.

Counsel Slammed For Appellate Attack on Trial Judge; Where Counsel "Invited Error," No Reversal May Be Sought

Pearson v. Pearson, 110 Nev. ___, ___ P.2d ___ (Adv. Opn. No. 35, Mar. 30, 1994) Nevada Supreme Court rebuffs claim of due process violation by district court judge (Whitehead) for custody determination made on basis of report that was not provided to the parties, and without a hearing. Per NRS 125.490(3), district court was entitled to appoint an independent expert to assist it in reaching custody decision. Counsel did not request a hearing or copy of report after learning of its delivery to the judge. Counsel's characterization of the district court judge during appeal called "unsupported, strident and reckless," and "unseemly, effusive, and irresponsible." Court determined that "if indeed there were any deficiencies in the proceedings below, they were clearly invited by Young's acts of commission and omission." Doctrine of "invited error" prevents reversal on appeal, but case remanded to Family Court anyway "given the seriousness of issues of custody of children and the fact that Lawrence did not previously take advantage of seeking a hearing prior to the court's decision...." JJ. Shearing and Rose, dissenting, feel that district court failed to follow its own procedures, and violated mother's constitutional rights to due process and fundamental fairness.

Trust Where Non-Paying Husband Was Hiding Assets Not Subject to Divorce Court's Orders because Not Properly Joined

Gladys Baker Olsen Family Trust v. District Court, 110 Nev. ___, ___ P.2d ___ (Adv. Opn. No. 69, May 24, 1994) Note: This is the second time around for this case; see 109 Nev. ___, ___ P.2d ___ (Adv. Opn. No. 128, Aug. 25, 1993), summarized at Nev. Fam. L. Rep., Fall, 1993, at 6. Parties divorced in 1985. Former husband never paid money judgment or alimony to former wife as ordered. Former husband's mother set up trust, worth two million dollars, bought and allowed former husband to live in a condominium, bought former husband a car, etc. Family Court (J. Fine) ordered former husband imprisoned and allowed former wife to execute against condominium and car. Trust filed writ of prohibition in Supreme Court under NRS 34.320. The purpose of a writ of prohibition is not to correct errors, but to prevent courts from transcending their jurisdiction. A writ may only issue where there is no plain, speedy, and adequate remedy at law. The trust was not a constructive party just because its attorney was the same lawyer that represented former husband; it was not obligated to intervene under NRCP 24(a)(2) just because it knew of the action. All "persons materially interested in the subject matter of the suit be made parties so that there is a complete decree to bind them all. If the interest of absent parties may be affected or bound by the decree, they must be brought before the court or it will not proceed to decree." Under NRCP 19(a), a party must be joined if he claims an interest in the subject matter of the action.

Decree Ordering "Permanent" Alimony Construed as Ordering Irrevocable Alimony That Did Not Terminate Upon Remarriage

Waltz v. Waltz, 110 Nev. ___, ___ P.2d ___ (Adv. Opn. No. ___, July 7, 1994)

Divorced decree awarded entire military retirement to husband, but ordered him to pay to former spouse, by military allotment, the sum of $200.00 plus cost of living adjustments, as "permanent alimony." Facts showed that military service overlapped marriage by just less than ten years, precluding direct payment of a property award through the military pay center. NRS 125.150(5) provides that specified periodic payments to a former spouse must cease unless "it was otherwise ordered by the court." In the context of this case, parties' use of phrase "permanent alimony," in conjunction with the COLA clause, showed intent to link it to the military retired pay. In conjunction with the testimony below as to intent, this leads to the conclusion that the court "otherwise ordered" within the meaning of the statute. Payments to a former spouse do not terminate upon her remarriage when the payments are clearly a property settlement.

Husband Cannot Undo Divorce In Order to Be a Wealthier Widower Rather Than a Poorer Divorcee; Modification of Terms Did Not Set Aside Divorce Itself

Milender v. Marcum, 110 Nev. ___, ___ P.2d ___ (Adv. Opn. No. ___, Aug. 10, 1994) Wife obtained default divorce in 1990. When husband did not pay under decree terms, wife filed motion for order to show cause, resulting in order for husband to pay sums to wife, plus interest and attorney's fees. Husband moved to set aside default decree under NRCP 60(b)(1). Wife sought reconsideration of the costs and attorney's fees incurred in the original default divorce, resulting in attorney's fee award to wife. When husband failed to pay that sum, wife again moved for order to show cause, but died before her motion was heard. The court held that its own order setting aside the default decree was void for husband's non-payment of the later-ordered attorney's fees, and re-instituted original decree. On appeal, husband sought to have court find the parties remained married so that wife's property transferred to

him, which Supreme Court called an attempt to "engage the judicial process in an elevation of greed and an affront to equity." The Court held that the trial court could modify property or alimony terms without vacating the divorce itself, under the concept of divisible divorce, without violating NRS 125.130. To justify decision to leave divorce intact by finding the lower court exceeded its jurisdiction in setting that decree aside, court also noted that "equity considers as done that which ought to be done." Partial dissent by JJ. Young and Rose, who would hold that setting aside a default decree of divorce does leave the parties married, along with providing a variety of quotable dicta on the oppressiveness of attorney's fees.

MISSION AND GOALS OF THE STATE BAR OF NEVADA
FAMILY LAW SECTION

The mission statement:

THE MISSION OF THE STATE BAR OF NEVADA FAMILY LAW SECTION IS TO SERVE AS THE LEADING FORCE IN THIS STATE FOR THE PROFESSIONAL AND ETHICAL ADVANCEMENT OF POLICIES, PROCEDURES, AND ACTIONS IN THE FIELD OF MARITAL AND FAMILY LAW.

To accomplish its mission, the Council has adopted the following six goals for the Section:

I. TO PROMOTE AND IMPROVE THE FAMILY.

II. TO BE THE PRE-EMINENT LEGAL VOICE IN THE STATE ON MARITAL AND FAMILY ISSUES.

III. TO SERVE OUR MEMBERS.

IV. TO IMPROVE PUBLIC AND PROFESSIONAL UNDERSTANDING ABOUT MARITAL AND FAMILY LAW ISSUES AND PRACTITIONERS.

V. TO INCREASE THE DIVERSITY AND PARTICIPATION OF OUR MEMBERSHIP.

VI. TO IMPROVE PROFESSIONALISM OF ALL PARTICIPANTS IN THE ADMINISTRATION AND PRACTICE OF MARITAL AND FAMILY LAW.

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