Maryland Domestic Law Report

Comprehensive Coverage of Maryland Family Law **January, 2017**

2017 Maryland General Assembly

Changes Proposed to Mutual Consent Divorce

Legislators are back in session in Annapolis and already 40 family law-related bill have been filed, as of the end of January.

Sen. Wayne Norman (R-Harford) has proposed a bill that would alter procedures for divorces based on mutual consent.

Under SB 499, if a couple files for divorce under the mutual consent grounds, only one party must appear in order for the court to issue an absolute divorce.

Del. Kathleen Dumais (D-Mont.) has introduced a measure that would change evidentiary law. Under HB 293, a court would now be permitted to consider a court's domestic violence order in all divorce hearings.

Currently, those decisions and orders are inadmissible as evidence under Fam. Law § 7-103.1.

The bill would also permit a court to consider whether a party has complied with a domestic violence protective order, in a divorce proceeding.

Del. Dumais has also introduced HB 508, which would eliminate the term "child custody" and replace it with "legal decision making," and delete the term "visitation" and replace it with "parenting time."

And Del. Michael Malone (R- Anne Arundel) has introduced a bill allowing a court to decide pet ownership.♦

Family Law Bills Introduced

- SB 499 - Mutual Consent Divorce - Change in Court Appearance Requirement
- HB 293 - Allowing Domestic Violence Order to be Admissible in Divorce Proceeding
- HB 508 - Legal Decision Making and Parenting Time

THIS MONTH IN FAMILY LAW:

■ CUSTODY Jurisdiction to determine the custody of a child, or to establish visitation or support, exists even if a couple is unmarried, and living in the same home, the CSA has ruled in *Holbrook v. Newell.*

■ GENERAL ASSEMBLY Legislators introduced 40 family law bills in the first two weeks of the 2017 session. Our annual family law bill tracking is on page 15.

■ CERT PETITIONS The Court of Appeals did not accept any family law cases in January.

Commentary

Jackson v. Sollie - Examining the Treatment of Social Security Benefits

By Harry B. Siegel
Attorney at Law

Since the release of *Milton E. Jackson v. Gayle S. Sollie* by the Court of Appeals in July of 2016, judges, attorneys and litigants have wondered about its practical effect.

In the case, the Court of Appeals, on a 5-2 vote, created a new specific requirement for trial judges.

Now, when a monetary award is sought in a family law trial, the trial judge must consider the effects of each party's present or future rights to Social Security.

On the surface, it feels like a ground-breaking alteration to Maryland monetary award law. But is it? Let's explore together.

The Ruling

In a nutshell, the Court of Appeals was faced with a limited matter, where the parties had waived alimony, split all of their other assets equally and went to court solely on the issue of how to equally divide their retirement assets.

Milton Jackson, the petitioner, argued that his fed-

RULING continued on page 4

CSA Extends Ricketts Holding to Unmarried Parents

Circuit courts have the authority to resolve custody disputes between unmarried parents, even when the parents are living together, the Court of Special Appeals has ruled in *James Ricky Holbrook v. Hannah*

CHILD continued on page 6

January, 2017 Indexes

Topics

Cases

■ FEE FAILINGS Attorney Rhonda I. Framm found herself in murky ethical waters while representing a mentally incompetent husband between 2010 and 2013, in *Rhonda I. Framm v. Robert L. Wilson, et al.*, (CSA No. 15-1655, Jan. 13, 2017)(Unreported). Framm, admitted in Maryland in 1981, represented Robert Wilson in an attempt to vacate a settlement agreement and divorce decree, reached in 2010 in Baltimore County. The husband had agreed to pay his former wife $55,000 as a marital award. Framm filed a motion, claiming the husband lacked basic mental competency to enter into that agreement, but did little else to advance the case. She billed the husband $58,748 and collected $54,000 to vacate the $55,000 divorce judgment. And in the end, the circuit court granted the motion to vacate the divorce decree, based on the court's decision to appoint a psychiatrist to evaluate the husband, not any actions by Framm. Meanwhile, in the district court, Framm filed a fee petition and took a position starkly different from that in the divorce case. She argued that the husband only suffered from a "general incompetence" in the divorce case, but had the capacity to enter into an attorney-client agreement with her. She maintained the husband's limitations only concerned complex matters, even though she was aware of a physician's report that said the husband "was unable to recall and understand basic information," count backwards to 20, recite the alphabet or name the current president. Framm got into further trouble when she represented Wilson in a guardianship proceeding, but then also represented the guardian, while billing the husband for all of her work, despite the conflict of interest. The Court of Appeals found that Framm's "misrepresentations were made intentionally" and that she "cherry-picked" information to help her fee case, while aware her adversary was a former client with diminished capacity who was representing himself. In Aug. 2016, the Court of Appeals disbarred Framm, indefinitely.


Brad Kukuk

■ CERT. GRANTED The U.S. Supreme Court granted certiorari in *Sandra Howell v. John Howell*, 361 P.3d 936 (Ariz. 2015). The question: Whether the Uniformed Services Former Spouses' Protection Act preempts a state court's order from directing a veteran to indemnify a former spouse for a reduction in the former spouse's portion of the veteran's military retirement pay, where that reduction results from the veteran's post-divorce waiver of retirement pay, in order to receive compensation for a service-connected disability. So the issue is whether a trial court can divide a military disability retirement award, against the wishes of the military spouse by either a monetary award or alimony. In the case, the couple divorced in 1991 and agreed that the wife would get 50 percent of his Air Force retirement pay. He retired in 1991, after 25 years and payments to the wife, began. But in 2005, the Dept. of Veteran Affairs ruled that the husband had degenerative joint disease in his shoulder, assigned him 20 percent disability, and authorizing tax-exempt VA disability payments. The husband signed a waiver of his military retirement pay. As a result, he began collecting disability benefits of $1,219 per month, with $609 going to the wife. But for the waiver, the wife would have received $127 more. In 2013, the wife filed a complaint, seeking a judgment for the reduced amounts, which the court granted. The Arizona legislature had passed a statute, prohibiting a court from awarding additional assets in these situations. The Arizona court ruled that since the court awarded the wife half of his pension before he elected to receive disability pay, it did not violate the law because it did not treat his military retirement pay as divisible property. If the case is reversed, a military spouse may elect to receive disability pay, reducing the former spouse's share, without any recourse.♦

MARYLAND DOMESTIC LAW REPORT

MARYLAND DOMESTIC LAW REPORT (ISSN 1594-5462) is published monthly by THE FAMILY LAW NEWS CO.

Vol. XX No. I

STAFF
EDITOR-IN-CHIEF ..... BRADLEY A. KUKUK
COPY EDITOR ..... GARY NG
PRODUCTION ..... ADVANCED QUICKPRINTING, INC.

ADDRESS
Please address subscriptions and correspondence to:
MARYLAND DOMESTIC LAW REPORT
203 SKYHILL ROAD, SUITE 10
ALEXANDRIA, VA 22314
PHONE: ..... (703) 212-4833
INTERNET: B.KUKUK@VERIZON.NET
FAX: ..... (703) 522-1229

Cite as: 1 Md. Dom. L. R. ___ (2017)

POSTMASTER
Periodicals postage paid at Arlington, VA and additional post offices.
Postmaster: Send address changes to: MARYLAND DOMESTIC LAW REPORT, 203 SKYHILL ROAD, SUITE 10, ALEXANDRIA, VA 22314-5111

SUBSCRIPTION PRICE
Magazine only ..... $260/yr.
Magazine with full text reprints ..... $315/yr.

RULING (from page 1)

eral Civil Service Retirement System or CSRS retirement plan included an embedded Social Security amount, so that if the parties split the retirement assets equally, the husband would actually receive less money than the wife, Gayle Sollie, since she would receive half of the retirement assets and all of her Social Security, while he would receive half of the retirement assets yet no Social Security.

The Court of Appeals, in a majority opinion written by Judge Clayton S. Greene, stated that there is no embedded Social Security benefit in a CSRS pension, and therefore, the job of the trial judge was to treat the disparity in Social Security benefits as an other factor under Fam. Law § 8-205 as a condition precedent to crafting a monetary award.

The Statute

The Fam. Law § 8-205 required factors before issuing a monetary award, are well known.

The "other factors" category contained within the statute has always been of interest, although judges and family law attorneys know very well that catch-all's are rarely interesting, except on a case by case basis.

So in *Jackson* you learn that the case is a 5-2 decision, with a strong minority view that once the court opined that Social Security considerations are pre-empted by Federal law, the Court of Appeals had no authority to further act in any regard.

The minority forcefully argued that the decision by Harford County Circuit Court Judge Mary M. Kramer, should have been affirmed.

Commentary

The Majority

What you might not know is that the author of the majority opinion, the Hon. Clayton S. Greene, charged with the responsibility for crafting the opinion, initially agreed with the minority.

> *"Once the court opined that Social Security considerations are pre-empted by Federal law, the Court of Appeals had no authority to further act in any regard."*
>
> *-Harry B. Siegel*
> *Law Offices of Harry B. Siegel LLC*
> *Jackson v. Sollie*

At a recent continuing legal education seminar, Judge Greene revealed his struggle to determine his own views on the topic.

Judge Greene offered that while poring through his research, he became persuaded to change his mind by looking at the issue of inheritance and monetary awards.

He reasoned that because a trial judge must consider the non-marital asset of an inheritance before issuing a monetary award, how was evaluating present or future Social Security rights any different?

This inclusive view represents the proper existing analytical structure within Fam. Law § 8-205, of course.

The additional statements in *Jackson* were actually not even necessary. Their importance illustrates the court's view that (a) the topic of present and future Social Security benefits is extremely important, and (b) the other factors embedded within the statute need to be applied liberally.

In other words, a trial judge will rarely get into trouble with an appellate court by addressing all of the topics raised by the parties at trial.

The Interpretation

One of the first questions that arose after the court issued the opinion was interesting: does present or future Social Security benefits have to be considered by every trial judge in every case involving a request for a monetary award? If you said yes, you would be wrong.

Why? That is simple. The trial judge can only analyze this issue if the parties place the issue before the court.

If the parties do not provide any evidence of present or future Social Security rights, why should the court hear argument and be required to add it within the court's analytical framework of its opinion?

The Benefits

So, that takes us to the issue of how, and when, to incorporate the issue of present and future Social Security entitlement into your client's claim for a monetary award.

We should address the "when" issue first for good reason.

Let's take several examples, focusing on the ages of the parties at the time of their divorce trial: their 30's, 40's, 50's, 60's and 70's.

For divorcing couples in their thirties, it is highly unlikely that future Social Security issues will be helpful to the trial judge.

However, let's suppose that one spouse, who is 38 years old, has earned six or seven

RULING (from previous page)

figures in income during a 15- year marriage, while the other spouse has not worked outside the home.

The dependent spouse has decades to earn income and be eligible for maximum Social Security benefits.

Is that helpful to the Court?

Perhaps and perhaps not.

Many judges truly believe that the younger you are, the more speculative future Social Security benefits may be.

Let's look at a couple in their mid to late forties. Yes, they are at least 20 years away from realizing Social Security payments, (if the program is still available). Once again, there is a true speculative aspect to the analysis at trial.

The analysis begins to get more real once the parties are in their fifties, when Social Security benefits are getting closer to realization.

It is more likely at this age that each spouse's future entitlement can be calculated, especially if one spouse has a long track record of high earnings, while the other spouse does not, nor does the other spouse have the earning capacity or potential to likely earn more than 50 percent of the dominant wage-earner's income.

In this instance, the future benefit can be argued as no longer speculative and likely to be half of the other spouse's.

This difference can be used at trial, by introducing each spouse's Social Security earnings history.

Commentary

The Stipulation

Judge Greene encouraged attorneys litigating Social Security to seek to stipulate to the entry of earning history documents to avoid potential future admissibility issues.

Depending upon the overall assets of the parties — retirement assets in particular — as well as the current income issues, this difference could lead a judge to award (1) higher alimony, (2) alimony for a longer period of time, (3) an unequal pension or defined retirement benefit, and/or (4) an unequal division of non-retirement assets.

Once a divorcing couple hits their sixties or seventies, Social Security is either on the horizon or already being paid. In these cases, the factor can be quite important, especially when the retirement assets, overall assets and any income is more limited.

Imagine the situation where both parties are retired, they have no assets, each has limited retirement assets, one spouse is taking the maximum Social Security and the other spouse is taking 50 percent of the other spouse's Social Security. What are a judge's options? They can be quite limited.

> *"What has resulted from Jackson v. Sollie is a renewed vigor of the required thought process preceding a monetary award."*
>
> *-Harry B. Siegel*
> *Law Offices of Harry B. Siegel LLC*
> *Jackson v. Sollie*

The Question

Here is a question for you. In the above situation, can a judge award alimony based on the unconscionable disparity between the parties?

The answer is *not* a resounding no, which means that based on the other statutory factors for both alimony and a monetary award, the answer could be yes.

What has resulted from *Jackson v. Sollie* is a renewed vigor of the required thought process preceding a monetary award.

While *Jackson* specifically dealt with an old Federal Government retirement plan where the employee did not participate in the Social Security program, those retirement plans are waning and not likely to continue.

Judge Greene's true contribution to Maryland law was to remind counsel of the importance of analyzing all of the factors under Fam. Law § 8-205.

During his process of writing his opinion, he actually changed his mind, convinced a majority of judges to join his view, and thus, when the parties place evidence before a trial court regarding present or future Social Security benefits, the trial court must determine what effect, if any, this has on its monetary award.

Harry Siegel has been a member of the Maryland bar since 1990 and maintains a statewide family law practice in Ellicott City. He has tried dozens of appellate cases in state and federal appellate courts. He is the founder and chair of the Family Law Section of the Maryland Association for Justice, as well as an experienced family law mediator in Maryland. ♦

CHILD (from page 1)

Newell, __Md. App.__ (CSA No. 16-1006, filed Feb. 1, 2017).

In 2006, the Court of Appeals decided *Robert Ricketts v. Mary Ricketts*, in which it held that a court had jurisdiction in a divorce action, even if the parents were sharing the same household, and even if the circuit court did not grant a divorce.

This couple are the biological parents of K., and were never married.

In Jan. 2015, the circuit court entered a consent order in which the parties agreed to joint custody of K.

But in Sept. 2015, the father filed a motion to modify custody. In May 2016 he filed an *ex parte* custody petition, claiming that the mother could no longer care for K., and that the child had been living with him for several months because the mother was homeless.

At the hearing, the maternal grandmother testified that her daughter had a mental condition and could not care for K.

The father testified that both the mother and grandmother were living with him, while they sought treatment for the mother.

When the chancellor heard that all four people were living together in the same home, she stopped the proceeding and ruled that because they were all together, she did not have jurisdiction to hear the custody case.

The father filed a motion for reconsideration, but the court denied it, so he appealed.

On appeal, the CSA panel said the issue was whether the circuit court had subject matter jurisdiction.

Two statutes were pertinent, the CSA said.

Under Fam. Law § 5-203(d)(1), a circuit court is authorized to award custody "if the parents live apart."

And under Fam. Law § 1-201, an equity court has jurisdiction over the custody and visitation of a child, except for a child under the jurisdiction of a juvenile court.

The CSA panel said the two statutes were "admittedly ambiguous."

Fam. Law § 5-203(d) authorizes a court to decide custody if the parents live apart, while Fam. Law § 1-201(b) does not contain the same limitation.

In *Ricketts*, the Court of Appeals examined those two statutes. It found that the original version of Fam. Law § 1-201 contained the provision that courts had the power to determine custody, support and visitation, "without regard to the question of whether or not the parents of said child or children have been divorced or are living apart."

The Court of Appeals interpreted that provision as "declaratory of the inherent power of courts of equity over minors" and that "it should be exercised with the paramount purpose in view of securing the welfare and promoting the best interest of the children." (quoting *Barnard v. Barnard*, 157 Md. 264 (1929).

The state high court concluded that a trial court can decide custody, support, and visitation, even if it declines to divorce a couple.

Though the current case did not involve divorce, the CSA panel said the state's interest in protecting the best interests of a child should not depend on the marital status of the parents.

Therefore, the panel said it would extend the holding of Ricketts to cases in which the parents are not married.

The panel noted that the circuit court had previously granted the parties joint custody of their child, and retained that jurisdiction, even if they resumed cohabitation.♦

➤ CECIL COUNTY

Case Analysis

James Ricky Holbrook v. Hannah Newell

CHILD CUSTODY: JURISDICTIONAL DISPUTE: COURT HAS AUTHORITY OVER UNMARRIED PARENTS LIVING TOGETHER

Appellant's attorney: Kevin B. Urick, Elkton. Appellee's attorney: Pro se.
Case status: Appeal of trial court's custody ruling.

Trial court erred in dismissing the parties' *ex parte* custody petition, for lack of subject matter jurisdiction, because the mother and father were living in the same home, with the child. "The case before us is not a divorce proceeding, but we can conceive of no reason why the state's interest in protecting the welfare of a child should depend upon the present or former marital status of the parents. Therefore, we think it is appropriate to extend *Ricketts*' holding to cases in which the parents are not married. …Moreover, as we have noted, in 2015 the circuit court entered an order granting the parties joint custody over K. The court retains jurisdiction over custody, even if the parents subsequently live under the same roof, or, if they resume cohabitation. Upon remand, the circuit court must consider the merits of Mr. Holbrook's petition for custody." Slip op. at 4. *Judgment reversed; case remanded.*

CSA No. 16-1006, filed Feb. 1, 2017. Opinion by Christopher B. Kehoe, with Charles E. Moylan, Jr., (specially assigned), and Kathryn Grill Graeff, JJ., on appeal from the Circuit Court for Cecil County, (Brenda A. Sexton, J.).

Editor's Note: Unreported opinions of the state courts of appeal may not be cited in any paper, brief or motion, or other document filed in this court, or any other Maryland court, as either precedent within the rule of stare decisis or as persuasive authority. See Md. Rule 1-104. (Unreported Opinions).

ANNE ARUNDEL COUNTY

Karen Renee Lowman v. Richard Lowman

Child support: voluntary impoverishment by mother: no error

No. 15-1624, filed Jan. 11, 2017. Unreported. Opinion by Robert A. Zarnoch, J., (specially assigned), with Kehoe and Meredith, JJ., on appeal from the Circuit Court for Anne Arundel County. (Harris, J.) Judgment affirmed.
Attorney for Appellant: John Ryan. Attorney for Appellee: pro se.
Case status: Appeal of child support order.

Trial court did not err in finding that the appellant-mother had voluntarily impoverished herself. This couple had two children and divorced in July 2008. Until 2014, the father paid $600 per month in support. In Aug. 2014, he filed for a modification based on his unemployment and that one of their children had graduated high school and the other child had begun residing with him. The court relieved him of his obligation as of Jan. 2015. In May 2015, the court indicated the mother would begin paying support, but asked for information on a liquor store business she partly owned in South Carolina with her husband. She testified that she earned $7.25 an hour. The father argued that she had been earning $45,000 per year and could find another job with that salary. The court agreed and found that she had been making $3,750 per month in her previous position, but had been fired for gross misconduct — using a company credit care to pay for personal expenses. The court ordered her to pay $564 per month in child support. "Taken all together, the evidence available to the court showed that mother lost her job without explanation, and responded by taking a job working for her fiance where she had control of the books and decided to pay herself minimum wage. This was sufficient to show a 'free and conscious choice' to render herself 'without adequate resources.' *Goldberger v. Goldberger*, 96 Md. App. 313 (1993)." Slip op. at 10.

Roberto L. Molina v. Kelly J. Molina

Alimony: indefinite award of $1,000 per month to wife: no error

No. 15-2707, filed Jan. 4, 2017. Unreported. Opinion by Berger, J., with Glenn T. Harrell, (specially assigned), and Kehoe, JJ., on appeal from the Circuit Court for Anne Arundel County. (Asti, J.) Judgment affirmed.
Attorney for Appellant: Robert Erdman. Attorney for Appellee: Samuel Brown.
Case status: Appeal of alimony order.

Trial court did not abuse its discretion in awarding the appellee-wife $1,000 per month in indefinite alimony. The two married in 1995 and had three children. Both are graduates of the U.S. Naval Academy. In 2000, the mother left the Navy to take care of their children. In 2013, after the parties separated, she took a part-time job earning $20,000 yearly, doing administrative work at a doctor's office. The father worked for a communications company, earning $110,000 per year. In Aug. 2015, the court placed the children, ages 8, 13 and 16, in the primary physical custody of the mother. The court attributed a $45,000 annual salary to the mother as her maximum earning potential. Comparing actual gross earnings, the court found the mother earned only 18.2 percent of the father's income. After factoring in expenses, the mother would earn only 6.5 percent of the father's income, based on net monthly figures. "Critically, the trial court found that, at the court's projected maximum earning capacity of $45,000 per year in her current occupation, mother would earn only 28 percent of the parties' total income. The compared this disparity to previous cases noting that 'the Court of Appeals has found that an unconscionable disparity exists when the recipient spouse of a similar age as mother earned the same percentage of income, or more, of the parties total income. Further, the court found that even after assuming mother is capable of obtaining full-time employment in her current occupation earning as much as $45,000 per year and becoming partly self-supporting, the respective standards of living would remain unconscionably disparate." Slip op. at 30.

BALTIMORE CITY

In Re: Adopt/Guard. of E.G. & J.G.

Adopt/Guard.: TPR: sufficient evidence

No. 16-0552, filed Jan. 5, 2017. Unreported. Opinion by Leahy, J., with Woodward and Arthur, JJ., on appeal from the Circuit Court for Baltimore City. (Kershaw, J.) Judgment affirmed.

Attorney for Appellant: Nenutzka Villamar. Attorney for Appellee: Joan Little.
Case status: Appeal of termination of parental rights.

Trial court did not abuse its discretion in terminating the parental rights of R.G. to her three sons. The mother, age 23, had three boys, born in 2010, 2012 and 2015. The mother herself had been found CINA after physical abuse by her step-father. She had her first child when she was age 16, and dropped out of high school in grade nine. In Jan. 2014, the mother left E.G. and J.G., then ages 4 and 1, with their grandmother. When she failed to return, the grandmother notified social services, and they removed the children. The mother agreed to leave the boys in the care of social services after they were found CINA in May 2014. The mother still did not have appropriate housing, and suffered from several mental disorders. With the mother's consent, the state placed the boys with a maternal aunt in New Jersey in Feb. 2015, but were returned to Maryland in June, where the state placed them in separate homes that could focus on their care. The final TPR hearing was held in May 2016, when the mother was age 22. The court found her to be an unfit parent, that exceptional circumstances existed, and terminated her rights. "We, therefore, find the record provided sufficient evidence to support the circuit court's findings that R.G. was unfit because she was unable to maintain regular contact with [her children] and failed to avail herself of DSS services that would have facilitated a continued parental relationship with E.G. and J.G. and that terminating [her] parental rights was in their best interests." Slip op. at 28.

In Re: Adopt/Guard. of I.M.

Adopt/Guard.: TPR: sufficient evidence

No. 16-0798, filed Jan. 6, 2017. Unreported. Opinion by Woodward, J., with Berger and Shaw Geter, JJ., on appeal from the Circuit Court for Baltimore City. (Cox, J.) Judgment affirmed.
Attorney for Appellant: Nenutzka Villamar. Attorney for Appellee: Janet Hartge.
Case status: Appeal of termination of parental rights.

Trial court did not abuse its discretion in terminating the parental rights of M.M., the mother, to her child, born in Dec. 2008. The child had been found CINA three times in her first seven years because of the arrest and incarceration of the mother. Social services did not return the child to her mother after the third proceeding, because the child's infant sister, had been killed when the mother rolled over on her, in her sleep. A court convicted her of manslaughter. The court held hearings in Mar. and April 2016. The child had been in foster care for more than five years, or almost 75 percent of her life. The mother has given birth to seven children, two of whom are deceased, and none of the surviving children live with her. She suffers from PTSD and a propensity for violence. She also has a long criminal history including parental kidnapping and assault. The court found no bond existed between the mother and child in that she had about five to 10 contacts per year with the child. "The court's finding of a lack of a bond between I.M. and mother was supported by evidence of mother's failure to provide residential stability, caretaker consistency, security and nurturing. We conclude the court was not clearly erroneous in adopting this finding. …We also hold that the juvenile court did not err in finding exceptional circumstances existed warranting the termination of mother's parental rights. Thus, the juvenile court did not abuse its discretion by terminating mother's parental rights over I.M." Slip op. at 33-34.

BALTIMORE COUNTY

Rhonda I. Framm v. Robert L. Wilson, et al.

Agreements: claim of lack of capacity of husband: approval by court

No. 15-1655, filed Jan. 13, 2017. Unreported. Opinion by James R. Eyler, J., (specially assigned), with Berger and Krauser, C.J., on appeal from the Circuit Court for Baltimore County. (Bailey, J.) Judgment affirmed.
Attorney for Appellant: Richard Berwanger. Attorney for Appellee: Jason Ostendorf.
Case status: Appeal of order, vacating divorce decree.

Trial court did not err in finding the appellee-husband, to be mentally incompetent. Robert and Jennifer Wilson married in 1995 and sometime later, (around 2007), he suffered a stroke. In 2008, through counsel, the husband filed for divorce. They reached a settlement on all issues except for the issuance of a $55,000 marital award. In June 2010, the court ordered the husband to either make one payment of $50,000 to her within 60 days, or five payments of $11,000, beginning July 1, 2011. Days later, the husband began an effort to vacate the agreement and divorce. He hired Rhonda Framm to help him and she filed a motion to vacate the judgment of divorce and settlement agreement, claiming the husband was not competent to enter into any agreements because of the stroke. In Feb. 2013, the circuit court granted that motion from the bench, finding the husband was "incompetent to enter into a legal agreement" or to even file for divorce. In Aug. 2015, the court entered a written order vacating the divorce, *nunc pro tunc*. Later, in a district court, attorney Framm filed suit against Wilson for

legal fees, and a court eventually awarded her $55,000, in part, because Framm maintained that the husband was competent to enter into an attorney-client relationship and fee agreement, an opposite position from the one she took in the divorce case. Under the doctrine of judicial estoppel, the circuit court denied Framm's argument in the fee case, in which sought to minimize the extent of the husband's mental health issues. "By failing to advise the court in the fee action that Mr. Wilson had been recently found incompetent, Ms. Framm allowed the court to proceed as if there was no significant issue pertaining to his competence. By failing to disclose to the court, the prior finding that Mr. Wilson was incompetent, Ms. Framm intentionally misled the court in order to gain an unfair advantage for herself. Accordingly, we hold that Ms. Framm is judicially estopped to make any argument on appeal with respect to Mr. Wilson's competence, or lack thereof." Slip op. at 16.

CAROLINE COUNTY

Kayla B. Rex v. Matthew L. Rex

Custody: primary physical to father: no error

No. 16-0051, filed Jan. 3, 2017. Unreported. Opinion by Wright, J., with James P. Salmon, (specially assigned), and Beachley, JJ., on appeal from the Circuit Court for Caroline County. (Murphy Jensen, J.) Judgment affirmed.
Attorney for Appellant: Cynthia Young. Attorney for Appellee: Sharon Jennings.
Case status: Appeal of divorce and custody order.

Trial court did not abuse its discretion in placing the couple's son, Jackson, in the primary residential custody of the father. The parties married in Jan. 2012 and separated in 2014. Their son was born in Aug. 2011. Conflict arose in 2015 after the mother moved in with a new boyfriend. The mother enrolled the boy in public school without obtaining the father's approval or even listing him as an emergency contact, with the school. The mother believed the father planned to remove their child from Maryland and filed for protection. In Dec. 2015, the circuit court held a hearing and found that the mother manipulated the child's schedule for no reason, except to limit the father's visitation, and they lacked the ability to effectively communicate. The court placed the boy with the father during the school year, with shared custody during the summer, and granted joint legal custody. "We believe, that the circuit court appropriately focused its attention on Jackson's best interest.…The circuit court relied on *Taylor*, where the Court of Appeals stated that the capacity of the parents to communicate 'is relevant to a consideration of shared physical custody.' *Taylor*, 306 Md. at 304. Rather, we reiterate the Court of Appeals' position 'that no single list of criteria will satisfy the demands of every case.' *Taylor*, 306 Md. at 303. Here, the circuit court clearly evaluated a number of relevant factors named in *Sanders*, and then reasonably prioritized a key factor later named in *Taylor*. The decision to do so is within the court's discretion, and one that we affirm." Slip op. at 9-10.

CECIL COUNTY

Donna J. Ivery v. Gary L. Washington

Appeal: denial of motion for reconsideration: no final judgment

No. 15-2197, filed Jan. 3, 2017. Unreported. Opinion by Lynne A. Battaglia, J., (specially assigned), with Deborah S. Eyler and Andrea Leahy, JJ., on appeal from the Circuit Court for Cecil County. (Murray, J.) Judgment affirmed.
Attorney for Appellant: Nathaniel Bowen. Attorney for Appellee: Christie Rea.
Case status: Appeal of denial of motion for reconsideration.

Appeal must be dismissed for lack of a valid appealable judgment. In Oct. 2015, the circuit court directed the parties to gather the appropriate language and information to include in a QDRO, dividing the appellee-husband's Exelon Corporate Cash Balance Pension Plan. The two had agreed to divide the asset in their separation agreement. The appellant-wife filed a motion for reconsideration of the court's oral ruling, which the court denied. Under Md. Rule 8-603(c), the appeal did not contain a proper final judgment, was not an appealable interlocutory order, nor did it meet the requirements of the collateral order doctrine. *Dawkins v. Balt. City Police Dept.*, 376 Md. 53 (2003). "In order to constitute a final judgment, a ruling of the court must have various attributes, among them that the judgment must be intended by the court to be an unqualified, final disposition of the matter in controversy and it must adjudicate all claims against all parties. *Rohrbeck v. Rohrbeck*, 318 Md. 28 (1989). The circuit court's ruling in the instant case was not an unqualified final disposition of the matter in controversy and did not adjudicate any claims." Slip op. at 1.

CHARLES COUNTY

Melissa Ann Bearden v. Steven W. Bearden

Agreements: motion by wife to vacate child support agreement: no error to deny

No. 15-2452, filed Jan. 18, 2017. Unreported. Opinion by Meredith, J., with Moylan, (specially assigned), and Nazarian, JJ., on appeal from the Circuit Court for Charles County. (Simpson, J.) Judgment affirmed.
Attorney for Appellant: Linda T. Spradlin-Dahn. Attorney for Appellee: Jon Erly.
Case status: Appeal of child support order.

Trial court did not err in granting the father's motion to enforce the couple's settlement agreement regarding child support. The two married in 1987 and separated in 2014. They had three sons, one of which was emancipated at the time of trial, one of which was an adult destitute child, and one who was born in 2003. The wife did not work outside the home while the husband was part-owner of a printing company. The wife filed for divorce based on adultery in 2015. After 10 hours of mediation, the two agreed the father would pay $3,000 per month in child support and $5,000 per month in alimony for 12 years. The wife would receive the family home and cars, and $152,401 from the husband's IRA. Just more than a month and a half of signing the agreement, the wife filed an amended complaint, seeking to increase child support to $7,500 per month. The wife alleged the husband was earning $661,000 per year, more than she had previously known. The husband responded by filing a motion to enforce agreement. The court ruled that $36,000 per year to support the children was adequate for two children, and the amount would always be open to modification in the future, if circumstances changed. The court granted the husband's motion to enforce their agreement. "Wife urges us to rule that the trial court erred in enforcing the agreement because 'the Maryland Child Support Guidelines do not support the $3,000 per month figure the parties agreed to.' We are not persuaded. The trial court correctly recognized that this is an above-guidelines case. As we said in *Malin v. Mininberg*, 153 Md. App. 358 (2003), 'An award of child support in an above-guidelines case will not be disturbed unless there is a clear abuse of discretion.' (Quoting *Voishan v. Palmer*, 327 Md. 318 (1992)). Given the information that was presented to the court in this case, it was not an abuse of discretion for the court to grant husband's motion to enforce the agreement." Slip op. at 13.

In Re: Ralph B.

Juveniles: delinquency: insufficient evidence for fourth degree burglary

No. 15-2592, filed Jan. 17, 2017. Unreported. Opinion by Lynne A Battaglia, J., (specially assigned), with Deborah S. Eyler and Nazarian, JJ., on appeal from the Circuit Court for Charles County. (West, J.) Judgment reversed.
Attorney for Appellant: Marc Colvin. Attorney for Appellee: Leslie K. Ridgeway.
Case status: Appeal of delinquency finding.

Trial court erred in finding the juvenile involved in the crime of fourth degree burglary under Crim. Law § 6-205(a), and conspiracy to commit the burglary. Prosecutors alleged that on Sept. 17, 2015, the boy broke into a home on Wendy Lane in Waldorf. Police arrived and found the home to be vacant and abandoned. Officers went to the back of the house and found three juveniles near an open door, on a second-floor back deck. The boy moved for acquittal, arguing that the deck was open and the home was not a "dwelling" because no one lived in the house. The court found that a door that opened onto the deck was open, and that the boy had run out of the house by opening another interior door. Though a bank now owned the house, the court found that it was a dwelling. However, the statute under which the boy was charged, requires an actual "breaking in." "Officer Logsdon only testified that he observed the three juveniles push open a door on the bottom level and run out of the house. Even taken in the light most favorable to the state, there is no proof of 'unloosing, removing, or displacing any covering or fastening of the premises' as *Jones v. State*, 395 Md. App. 356 (1967), requires. As a result, there was no proof that Ralph B. broke into the house when he entered it.…Our recognition in Jones that existing a home is not proof of a breaking and entering, had already been acknowledged by this court in *Reagan v. State*, 2 Md. App. 262 (1967), in which we stated: '[b]reaking out of a home is not a burglarious breaking.'" Slip op. at 7-8.

MONTGOMERY COUNTY

Randall B. Roe v. Mary Lou Roe

Alimony: motion to reduce by husband: proper denial
Fees: $50,000 award to wife: no error

No. 15-2155, filed Jan. 24, 2017. Unreported. Opinion by Beachley, J., with James R. Eyler, (specially assigned), and Leahy, JJ., on appeal from the Circuit Court for Montgomery County. (McGann, Savage, J.) Judgment affirmed.
Attorney for Appellant: Walter W. Johnson, Alec M. Lewis.
Attorney for Appellee: Prudence Upton, Suzanne Ryan.
Case status: Appeal of order, denying request for reduction in alimony.

Trial court did not err in denying the husband's motion to modify or terminate his alimony obligation. The parties divorced in 2006, and the court awarded the wife indefinite

alimony of $8,000 per month. At the time, the husband earned $255,600 per year, after taxes. In Sept. 2014, the husband filed his motion to modify, claiming the loss of his job, and reduced his alimony payments to $2,500. After an Oct. 2015 hearing, the court found his income had indeed declined, but to $125,904 per year. He continued to live a "lavish" lifestyle, with memberships in multiple country clubs. It was revealed at trial that a family trust provided him with $11,000 per month. His net worth increased to $7.1 million in assets and the court found he had $1.5 million in cash. Adding that to his regular income, the court found he was actually earning $257,904 and found the husband in arrears by $134,500. The trial court correctly concluded that he had not met his burden under Fam. Law § 11-107(b) to demonstrate that "circumstances and justice" required a reduction in alimony. "Here, the trial court properly granted Mary Lou's motion for judgment on Randall's motion to modify and terminate alimony. …In its analysis, the court focused on Randall's lavish lifestyle and substantial assets. …The circuit court's determination that Randall was able to maintain a lavish lifestyle is supported by the evidence that his income was $21,492 per month, or $257,904 per year. Indeed, Randall's income in 2015 is not materially different from the $255,600 per year he earned in 2006. " Slip op. at 5.

Trial court did not abuse its discretion in awarding the appellee-wife $50,000 in attorney's fees and $13,500 in expert witness fees under Fam. Law § 11-110(c). The husband argued that the court did not consider the reasonableness of the fees, but the wife's counsel submitted an affidavit, describing professional services rendered. "The trial court, therefore, had sufficient information for it to conclude that Mary Lou's attorney's fees were reasonable and reasonably necessary." Slip op. at 10.

Wayne R. West v. Helga E. Leust

Torts: malicious use of process: claims dismissed

No. 15-2548, filed Jan. 30, 2017. Unreported. Opinion by Graeff, J., with J. Frederick Sharer, (specially assigned), and Woodward, JJ., on appeal from the Circuit Court for Montgomery County. (Rubin, J.) Judgment affirmed.
Attorney for Appellant: Alan Wright. Attorney for Appellee: John Lomar.
Case status: Appeal of denial of tort claims.

Trial court did not err in granting the appellee-wife's motion for summary judgment. The parties married in April 2001, and a year later, founded a non-profit called "Witness Justice." They had two children in 2003, and divorced in 2009. In Oct. 2014, the former husband filed a four-count complaint against the ex-wife for malicious prosecution, malicious use of process, interference with contractual relations and invasion of privacy. He said the wife filed criminal charges, alleging he had driven drunk, while their children were with him and that he had burglarized her home. She filed child abuse charges, and claimed the father was having a homosexual relationship with the children's godfather. She also reported that he was terminated from Witness Justice, and had declared bankruptcy, during a background check by OPM. The husband submitted an affidavit to support his claims, but it did not comply with Md. Rule 2-501(c). The wife argued that his complaint lacked any facts to support the claims. On the claim that the wife filed proceedings without probable cause and with malice, the husband failed to provide details that a prior civil proceeding had been instituted, without probable cause, with malice, that they were terminated in his favor, and that he suffered damages, such as arrest, imprisonment, or seizure of property. "Here, the circuit court found that Mr. West's affidavit was invalid because he averred that his statements were made on 'information, knowledge and belief,' instead of 'personal knowledge' as Md. Rule 2-501(c) requires.…Under these circumstances, where Mr. West did not show any facts supporting his allegations, the circuit court properly granted summary judgment., " Slip op. at 24.

Nannette Nickole Langford v. James J. Lewis, Sr.

Custody: joint legal, with tiebreaker to father: no error
Fees: $3,500 bad faith award to husband: no error

No. 16-0951, filed Jan. 24, 2017. Unreported. Opinion by Graeff, J., with Kehoe and Friedman, JJ., on appeal from the Circuit Court for Prince George's County. (Northrup, J.) Judgment affirmed.
Attorney for Appellant: Dorothy Fait. Attorney for Appellee: Maureen Glackin.
Case status: Appeal of custody rulings.

Trial court did not abuse its discretion in granting the father tie-breaker authority in all decisions regarding their younger child, except education. This couple married in 2009, and had two children, born in 2005 and 2011. In 2013, the husband, who was a registered nurse, pled guilty in Ohio to patient abuse, after charges were filed that he drugged and sexually assaulted a woman during childbirth. As a result, he is required to register as a sex offender. In 2015, the wife filed for divorce. The court granted it, and gave both parties joint legal custody and shared physical custody. In Feb. 2016, the wife filed a motion to amend the judgment of divorce, alleging that he had misrepresented the Ohio crime and that shared physical custody was no longer in the children's best interests. In response, the husband filed an emergency request, seeking sole

custody of their younger child, based on the mother's unilateral decision to remove him from his usual daycare and enroll him in a new facility, and her refusal to allow the father's new girlfriend to pick up the child. The court granted his motion, *pendente lite*. After a May 2016 hearing, the court continued shared custody and joint legal custody, but gave the father tie-breaker on medical and daycare decisions, and the mother on educational decisions. The father would have final tie-breaker on all other disputes. "Moreover, given that the younger child was terminated from daycare due to [the mother's] refusal to allow [the father's] girlfriend to pick him up, and that the father's sex offender status potentially prevented him from picking up the child, the court reasonably concluded that the father should have tiebreaking authority regarding daycare matters to prevent future problems with daycare. The court's factual findings were not clearly erroneous, and it was not an abuse of the court's discretion to award the father joint legal custody and tie-breaker authority with respect to these two matters." Slip op. at 25.

Trial court did not abuse its discretion in awarding $3,500 in attorney's fees under Md. Rule 1-341 to the father. The court found the mother acted in bad faith by requesting a new divorce trial and in her opposition to the father's request for sole custody of their minor children. At the time she filed a motion to dismiss the father's motion to modify custody, she had already filed a motion in opposition. Also, she claimed "new evidence had arisen" regarding the father's sexual abuse conviction, but in fact, all of the information was readily available in their first divorce trial. "Here, we conclude, as did the circuit court, that Ms. Langford's motions were meritless. Accordingly, the circuit court did not abuse its discretion in awarding Mr. Lewis attorney's fees as compensation for the time that his counsel spent responding to Ms. Langford's baseless motions." Slip op. at 29.

Rod Schwartz v. Freeda Isaac

Visitation: modification of father's time: error

No. 15-0877, filed Jan. 11, 2017. Unreported. Opinion by James R. Eyler, J., (specially assigned), with Arthur and Reed, JJ., on appeal from the Circuit Court for Prince George's County. (Ali El Amin, J.) Judgment vacated.
Attorney for Appellant: Pro se. Attorney for Appellee: Harry Siegel.
Case status: Appeal of visitation order change.

Trial court erred in modifying the appellant-father's visitation schedule with their son. The child, J., was born in 1999. The court issued its first custody order in 2000. In the most recent order, 2014, the court granted the father routine visitation with the boy every other weekend, five weeks in the summer and alternating holidays. In June 2014, the court found the father had committed domestic violence and issued a one-year protective order. It limited the father's visitation to four hours of supervised contact, per week. In Oct. 2014, the father filed a petition to modify custody, but the court denied it. In Oct. 2014, the father filed an amended contempt motion, alleging the mother had violated the court's visitation order, but he voluntarily withdrew it in May, 2015. In June 2015, the circuit court held a hearing, but the father did not attend. At that hearing, the circuit court gave the mother sole legal and physical custody of their child, and that all visitation would be solely at the mother's discretion. The father appealed, arguing that no request to modify custody or visitation was before the court at the June hearing. "Accordingly, because there was no request for modification of custody or visitation before the court, and because the parties did not have notice that the court would address the issue of access or visitation at the June 23 hearing, the court erred in issuing an order modifying custody to change the father's visitation from the schedule included in previous orders to 'limited access/visitation at the sole but reasonable discretion' of the mother. See also, *Burdick v. Burdick*, 160 Md. App. 519 (2004)." Slip op. at 7.

QUEEN ANNE'S COUNTY

Faith East v. George Krug

Custody: request for modification by mother: error to dismiss

No. 16-0047, filed Jan. 13, 2017. Unreported. Opinion by Shaw Geter, J., with Graeff and Berger, JJ., on appeal from the Circuit Court for Queen Anne's County. (Ross, J.) Judgment reversed; case remanded.
Attorney for Appellant: Fred Cohen. Attorney for Appellee: S. Craig Sewell.
Case status: Appeal of order dismissing custody complaint.

Trial court erred in dismissing the mother's custody modification complaint and petition for contempt. The couple are divorced parents of twin daughters, born in 2010. Though they initially agreed to shared custody, by 2013, the parents no longer agreed on custody. The mother filed a custody modification complaint in 2013 and the father, in 2014. The circuit court heard the case in Sept. 2014 and after a two-day trial, denied both custody complaints. In Mar. 2016, the mother again filed a custody complaint, objecting to the father having custody every weekend. She asked for changes in legal custody and visitation. She also claimed parental alienation. The visitation schedule had been set to allow for the father's work schedule. He was a Howard County firefighter. But his work

schedule had changed. In April 2016, the court again dismissed the complaint, without a hearing. The court directed the parties to consult with a parenting coordinator to resolve their differences. However, it erroneously found no material change in circumstances. "As such, the assertion that Krug's changed work circumstances resulted in a significant variance from the court's original intent and order was sufficient to warrant a hearing. Furthermore, East's contention that Krug's conduct has caused the children to seek assistance from their school guidance counselor on a regular basis was new information and, viewed in the light most favorable to East, also warranted a hearing to determine whether the children's best interests were affected. The dismissal of the complaint, without first conducting a hearing on the merits, was error." Slip op. at 6.

TALBOT COUNTY

In Re: Adopt/Guard. of D.M.

Adopt/Guard.: TPR: sufficient evidence

No. 16-0959, filed Jan. 13, 2017. Unreported. Opinion by Deborah S. Eyler, J., with Reed and Beachley, JJ., on appeal from the Circuit Court for Talbot County. Judgment affirmed.
Attorney for Appellant: Nenutzka Villamar. Attorney for Appellee: Hubert Chang.
Case status: Appeal of termination of parental rights order.

Trial court did not err in terminating the appellant-mother's rights to her five children, ages 13, 10, 9, 7 and 3. The mother, age 33, was born in Guatemala, does not speak English, and has significant cognitive issues. In Dec. 2012, social services began to assist the mother and the children, providing basic supplies and care. The children had health issues that were not being treated and in 2013, the mother stopped receiving mental health services, causing an increase in her cognitive issues. In an incident at her brother's home, police were called an arrested her for burglary, assault and child neglect. In June, the court placed the children in shelter care and in August, found them all to be CINA. While in jail, doctors diagnosed the mother with a psychotic disorder and major depression. They declared her incompetent to stand trial and placed her in a psychiatric ward at the Eastern Shore Hospital Center. Her last visit with the children was in Dec. 2015. The trial court found the mother had neglected the children by failing to provide medical care, proper housing, and then abandoning them at her brother's home. Because of her mental issues, she could not meet the children's emotional and intellectual needs. The children had bonded with their foster family and any short-term distress in terminating rights would be outweighed by the stability of their foster placement. "In light of these non-clearly erroneous factual findings, the juvenile court determined by clear and convincing evidence that exceptional circumstances made the continuation of the parental relationship, detrimental to the best interests of the children. The court plainly did not abuse its discretion in so ruling." Slip op. at 10.

WASHINGTON COUNTY

In Re: Adopt/Guard. of R.R.

Adopt/Guard.: TPR: sufficient evidence

No. 16-0529, filed Jan. 17, 2017. Unreported. Opinion by Kehoe, J., with Lawrence F. Rodowsky, (specially assigned), and Graeff, JJ., on appeal from the Circuit Court for Washington County. (Wright, J.) Judgment affirmed.
Attorney for Appellant: Juan Reyes . Attorney for Appellee: Janet Hartge.
Case status: Appeal of termination of parental rights order.

Trial court did not err in terminating the rights of the mother, Ms. L., to her daughter, who was age 7. She suffered from autism, had very little verbal skills and needed constant adult supervision. Social services first came into contact with the mother in 2011, after police found the child, strapped into a stroller, with the stroller tied to a door. Doctors diagnosed the mother with delusional disorder. She was allowed to keep custody because she agreed to live with her mother. But she moved out and the mother then refused to worth with social services or cooperate in any way. In Dec. 2012, the court found the child to be CINA, and placed her in foster care in 2013. The court eventually found her to be an unfit parent. On appeal, the mother claimed the state did not provide her with sufficient services. "The department attempted to involve Ms. L. with five separate mental health care providers. Ms. L. was unable to remain in any program long enough to realize meaningful progress toward being able to care for R. At the TPR hearing, Dr. Munson testified that, in his opinion, Ms. L.'s mental health status had actually deteriorated and that she would not be able to care safely for R." Slip op. at 13.

In Re: S.B. & C.T.

Adopt/Guard.: CINA finding: no error

No. 16-696 & 697, filed Jan. 12, 2017. Unreported. Opinion

by Reed, J., with Robert A. Zarnoch, (specially assigned), and Nazarian, JJ., on appeal from the Circuit Court for Washington County. (Wright, J.) Judgment affirmed.
Attorney for Appellant: Tamara Sanders. Attorney for Appellee: Janet Hartge.
Case status: Appeal of CINA order.

Trial court did not err in finding C.T. to be CINA and ordering his placement in foster care. Ms. T.'s two sons, S.B., born in 2006, and C.T., born in 2009, were living with her when social services first intervened. In May 2015, child protective services became involved. The mother agreed to place the children with family members. S.B. went to live with his paternal grandparents while C.T. went to her sister. The mother admitted to the use of heroin, but declined treatment options. In Aug. 2015, social services removed C.T. from the sister's home after allegations of physical abuse. In Oct. 2015, the court sustained allegations of child neglect and found the mother had a history of domestic violence. The court concluded the children were not safe in her care because of her drug addiction. The court placed S.B. with his father. The mother appealed, arguing that no "actual harm" had happened to C.T. "In light of all the evidence, the juvenile court's factual finding that the severity of Ms. T.'s heroin addiction negatively impacted her children, before their voluntary placements, was not clearly erroneous." Slip op. at 14.

WICOMICO COUNTY

In Re: D.M.

Juveniles: restitution: error in making $1,075 award

No. 16-0700, filed Jan. 26, 2017. Unreported. Opinion by Arrie W. Davis, J., (specially assigned), with Leahy and Woodward, JJ., on appeal from the Circuit Court for Wicomico County. (Seaton, Sarbanes, J.) Judgment affirmed in part, vacated in part.
Attorney for Appellant: Brian Saccenti. Attorney for Appellee: Richard Catlin.
Case status: Appeal of restitution order.

Trial court erred in ordering the appellant-juvenile to pay $1,075 in restitution. While the evidence was sufficient for the lost cash, cards, driver's license and purse, testimony from the victim was not sufficient to value two-year-old smartphone. Prosecutors charged the boy in two cases, alleging he had committed armed robbery, robbery, theft of goods valued under $1,000, second degree assault and reckless endangerment. At an adjudicatory hearing on May 17, 2016, the boy pled involved to one count of robbery. At a subsequent sentencing hearing, the circuit court committed him to the Dept. of Juvenile Services and ordered him to pay restitution. In the first case, the boy put a BB gun to the head of Jennifer Mak as she walked home on the evening of Mar. 22, 2016. She gave him her cell phone, and a purse that contained about $200 in cash and some gift cards. At the restitution hearing, she said the Samsung Galaxy S4 cost almost $600 when new. The court found the fair market value of the phone to be $299. It found her purse contained $250 in cash, $258 in gift cards, plus $100 for replacement of the purse, wallet and driver's license. On appeal, the juvenile claimed the court erred in ordering him to pay for the phone when it was still in police possession and that the court arbitrarily came up with values of the stolen items. However, the court did not err in its valuation of fair market value, without direct evidence on the non-technological items. It properly relied on the victim's testimony. *Wallace v. State*, 63 Md. Supp. 399 (1985). However, the court did err in relying only on the victim's testimony to determine the price of a technological device. The phone in question was a smartphone, or a portable computer, which in the current market, often become obsolete within a short time. Testimony solely on the purchase price of computer equipment is generally insufficient because used equipment depreciates in value over a very short period of time. "Accordingly, we hold that appellant's smartphone does function like a computer for evidentiary purposes under *Champagne v. State*, 199 Md. App. 671 (2011), and therefore, testimony or evidence pertaining to the depreciation of the value of the device was warranted. We note that price listings for two-year-old smartphone models are readily available online and would have sufficed to fulfill the state's burden." Slip op. at 10-11.

2017 Maryland General Assembly

Editor's Note: The following are summaries of family law legislation introduced in the 2017 Maryland General Assembly. All House bills originate in the Judiciary Committee and all Senate Bills regarding family law originate in the Judicial Proceedings Committee unless otherwise noted.

ADOPTION/GUARDIANSHIP

HB XX - XX
Expanding the duties.
Sponsor: Del. XX

HB 428 - Child Conceived Without Consent - Termination of Parental Rights (Rape Survivor Family Protection Act)
Authorizing a court to terminate the parental rights of a person found to have committed an act of non-consensual sexual conduct against another person, resulting in the conception of a child.
Sponsor: Del. Dumais

CHILD CUSTODY

HB 508 - Legal Decision Making and Parenting Time
Repealing all references to "child custody" and "visitation" from Maryland law and substituting "legal decision making" and "parenting time."
Sponsor: Del. Dumais

HB 15 - Destitute Adults - Extraordinary Medical Expenses for Developmental Disabilities and Civil Action
Providing for the payment of extraordinary medical expenses of an adult destitute child if the parent has the means to provide support.
Sponsor: Del. Chang

CRIMES

HB 256 - Adult Protective Services - Investigation - Time Period Increase
Increasing from 30 to 60 days, the period of time during which a local department of health and human services must complete an investigation, after receiving a report of suspected child abuse or neglect.
Sponsor: Del. Carozza

DIVORCE

HB 749 - Divorce - Ownership of a Pet
Authorizing a court to grant a decree regarding ownership of a pet, when considering an annulment or divorce.
Sponsor: Del. Malone, Atterbeary, Dumais, McComas and Moon.

HB 793 - Divorce - Restoration of Former Name
Authorizing a court, on a motion of a party, to change the name of the requesting party, if the request is filed within 18 months after a final divorce decree is issued.
Sponsor: Del. Angel

SB 499 - Divorce on Grounds of Mutual Consent - Court Appearance
Repealing the requirement that both parties appear before the court, if the proceeding is filed as divorce on the grounds of mutual consent.
Sponsor: Sens. Norman and Lee

DOMESTIC VIOLENCE

HB 293 - Divorce - Domestic Violence Order
Repealing a provision that a domestic violence protective order is inadmissible as evidence in divorce proceedings. Repealing the prohibition that a court cannot consider compliance with a domestic violence order as grounds for granting a divorce.
Sponsor: Del. Dumais

HB 803 - Education and Definition of Abuse
Requiring the State Board of Education to encourage county boards to incorporate age-appropriate lessons on domestic violence into the curriculum. Altering the definition of "abuse" to include harassment and malicious destruction of property.
Sponsor: Del. Angel

MARRIAGE

HB 484 - Marriage - Age Requirements
Prohibiting a person under age 18 from marrying; authorizing a person 16 or 17, to marry under specified circumstances.
Sponsor: Del. Atterbeary

VISITATION

HB 812 - Grandparent Visitation
Providing that a court may grant visitation rights to a grandparent, over the objections of one or both parents, if exceptional circumstances exist that demonstrate future detriment to the child, absent the visitation, and that visitation would not interfere with the parent-child relationship.
Sponsor: Dels. Jalisi, Beitzel, Buckel, McComas, Miele and K. Young