

# Family Law Section

# NEWSLETTER

Summer 2006

## Family Law Newsletter

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## EDITOR'S NOTE

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## VIEWS FROM THE CHAIR

*By Carla G. Holste, Jefferson City*

Dear Members:

For those of you were unable to attend the Family Law Section meeting at the Spring Committee Meetings in May, there were some important decisions made of which you should be aware. There are three uniform laws which the Section decided to present to The Missouri Bar's Board of Governors. Those proposed bills include uniform laws that have either been passed by a majority of other states or which address areas that are currently not addressed by Missouri statutes at all.

The first proposed bill was the Uniform Child Custody Jurisdiction and Enforcement Act, otherwise known as the UCCJEA. Almost all of the other states have passed the UCCJEA, including all of the states bordering Missouri. Because there are significant differences between the two statutes and because Missouri needs to be in harmony with the other states, the Section membership in attendance at the meeting voted unanimously to propose this uniform law. There are some provisions in the UCCJEA that would assist counsel when dealing with challenging and complex jurisdictional issues. For one, the UCCJEA provides that counsel can request that a formal record be made of any communications between the courts of the jurisdictions involved. This could assist counsel if an appeal is subsequently filed and counsel wants to argue that the court erred in its ultimate ruling on the jurisdictional issue.

Those in attendance also voted to propose that the legislature enact the 2001 amendments to the Uniform Interstate Family Support Act (UIFSA). Missouri has already adopted the original UIFSA, but has not yet adopted the amendments thereto. Given that there are many times in which family support issues cross state lines, it is important that Missouri continue to stay as current as possible in those laws seeking to enforce our courts' judgments related to both child support and maintenance.



Finally, those at the meeting decided that it was time for the Missouri legislature to address the issue of antenuptial agreements. There is a uniform law that sets forth certain requirements for a valid antenuptial agreement. This same uniform law also addresses how and when the courts should find an antenuptial agreement invalid, or at least unenforceable. As there is no current statute addressing the issues surrounding antenuptial agreements, the Section has now proposed this uniform law to the Board of Governors. In fact, all three proposed bills went to the Board of Governors on June 15. Stay tuned for more information.

### Family Law Conference—August 3-6

Be sure to register now for the annual Family Law Conference at the Lodge of the Four Seasons. There will be many exciting and informative seminar presentations. This year, the committee decided to try and present some new topics, such as international adoptions, international custody cases, virtual visitation, and forensic accounting. If you have not yet registered, do so now (see additional information elsewhere in this newsletter). The conference is always well attended and extremely enlightening. I look forward to seeing you there!

## QDROs: Before the Barbeque Grill Negotiations

by David Jay Krauss  
St. Louis

I am not a family lawyer. I admire all of you who have the professional skills to deal with the complex array of legal issues relating to divorce while, at the same time, retaining the appropriate interpersonal skills, empathy, and Solomon-like judgments that your generally troubled clients should expect only of Dr. Phil. For more than 20 years, I have assisted family lawyers, partially on tax-related issues concerning the division of property, but also – and more germane for this article – as an ERISA attorney either overseeing the preparation of qualified domestic relations orders (“QDROs”) or evaluating their compliance with legal requirements at the direction of a plan administrator.

My family law colleagues tell me that they can predict that a draft property separation agreement is about to be approved by the divorcing parties when they start arguing about who is to get the portable barbeque grill and its equipment (or some other randomly unimportant item). These “heated” discussions seem to serve as a harbinger of the final agreement that oftentimes has been so “hotly” contested. But somewhere in this process – and with all due respect to these colleagues – I have become increasingly concerned that the all-important division of retirement benefits has never risen to the same level of attention. With possibly more than 60 million individuals participating in some form of qualified retirement plan and with more than \$3.5 trillion of benefits associated with these plans, the natural assumption is that the division of retirement benefits would (and should) have taken on a higher level of priority. The ultimate financial impact of a defective QDRO is on the divorcing parties – particularly the non-participant spouse (the “alternate payee”). But a latent, and potentially emerging, impact may be felt by many family law practitioners who participated in the drafting of QDROs and who long ago confidently sent the file off to the “basement cold storage.” As divorced spouses reach retirement age or die, the terms of the QDRO (which has been authorized since 1984) may prove to be more than just a professional nuisance.

The purpose of this article is to highlight –

based upon my experiences in the QDRO area – some of the more important considerations, principles, and issues that family lawyers need to (better) understand, recognize, and address – before the barbeque grill discussion – as part of the QDRO process. This material is not intended to require a calculator or the immediate assistance of an actuary. While allegations about the adequacy of professional representation likely will focus on whether the alternate payee received the promised level and duration of retirement benefits, counsel for the “participant spouse” also should have an interest.

### **Do The Parties Really Need A QDRO?**

In many instances, the parties (and counsel) may simply assume that a QDRO is necessary because of the existence of a qualified plan benefit enjoyed by one or both of the parties. While retirement benefits (and residential real estate) may be one of the larger marital assets, the “have-to-have a QDRO” mentality may not always be accurate for the following reasons: (1) the alternate payee may not see the need for a retirement fund and would prefer to “offset” (i.e. trade) that marital asset against other items of marital property; (2) the participant’s 401(k) plan has a specific value that can be easily offset against other marital assets; and (3) the participant spouse and alternate payee have IRAs that can more effectively be used to “even up” retirement benefits (without the hassle of a QDRO). While I do not naively suggest that the “no QDRO” answer will appear in most cases, it is important to go through this baseline analysis. In some cases the decision to forego a QDRO may be to everyone’s advantage – including the attorney.

### **Dividing Retirement Benefits Starts With The Separation Agreement**

A typical separation agreement often contains the following generic text: “*Alternate payee is entitled to receive 50% of the retirement benefit.*” In virtually all the divorce cases that I have seen (probably more than 500), the QDRO has not been

## QDROs: Before the Barbeque Grill Negotiations

(Continued)

even initially drafted by the time the separation agreement has been negotiated and signed. In most states – including Missouri – the separation agreement controls the terms of the disposition of marital property and may not be revisited (except when found to be unconscionable). Regrettably, the hypothetical text quoted above doesn't adequately address the formula for dividing benefits: In the case of a defined benefit (pension) plan, (1) what happens when either the participant spouse or alternate payee dies; (2) whether early retirement benefits are shared; and (3) whether cost of living adjustments are to be allocated; and in the case of a defined contribution (profit sharing/401(k)) plan, whether and how post-date of divorce earnings are to be allocated.

In a perfect world, the QDRO should be drafted and pre-approved by the plan administrator before the separation agreement is signed and then incorporated by reference into the separation agreement. The well-prepared separation agreement will include reasonably detailed provisions as to: (1) in the case of a defined benefit plan: (i) the percentage of the "accrued benefit" being assigned, (ii) the formula for determining that assignment, (iii) the impact of death (on the surviving spouse), and (iv) any adjustments to the assigned accrued benefit; and (2) in the case of a defined contribution plan: (i) the formula, (ii) allocation of gains and losses, and (iii) form and commencement of benefits.

In too many cases that I have seen, there is a significant time lag – sometimes years – between the date of the separation agreement and divorce and the submission of the QDRO. During this period, too many events may occur that could alter the disposition of retirement assets: e.g., one of the parties may die; the participant spouse may retire and take one's retirement benefits; or the participant spouse may apply for an in-service withdrawal of benefits. While the professional advisor should not be held accountable for the occurrence of these events, such person should be held to a standard of whether he/she planned for these not-unlikely events. At a minimum, the separation agreement should be as broad-based as possible and reflect a comprehensive understanding of the benefits

available to the parties. "50% of participant spouse's retirement benefit" just won't meet the standard. Finally, if a QDRO cannot be completed before or at the time of divorce, the attorneys may want to consider a "QDRO-Express" – an abridged QDRO document – that only addresses the important "what-if" question surrounding the death of the participant spouse. If this were to occur, you have adequately protected the alternate payee during the pre-QDRO approval process. Remember that only survivorship rights are addressed and that once the more complete document is prepared it should be submitted to the plan administrator and the court so that it can supplant the previously filed QDRO-Express.

### Model QDROs – Time Saver Or Buyer Beware?

For many family law practitioners, there is often a collective sigh of relief to learn that the plan administrator provides a "model" QDRO. Many models are very useful and efficient tools to achieve qualified status for an order. In these cases, the plan administrator has made available a mechanism that allows the parties to accomplish their desired result within the context of a model. But this "fill-in-the-blanks" should never be used without a careful analysis of the terms and available options. Never assume that the QDRO is "one size fits all." Model QDROs can be designed to be less than neutral in application. Distributions options may be limited; death benefit provisions may be missing; important nuances, such as early retirement subsidies or allocation of earnings provisions, also may be missing; and there may be subtle fee incentives offered to encourage the use of the model. Finally, the model may differ from what the parties had initially negotiated and put into the separation agreement – yet another reason to have the QDRO prepared in conjunction with the separation agreement. The Department of Labor has ruled that a plan may not mandate the use of a model QDRO. The underlying message is that such an instrument is merely a tool that should be used with caution and only after appropriate due diligence.

## QDROs: Before the Barbeque Grill Negotiations

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### Dividing The Defined Contribution Plan Benefit

Dividing a defined contribution (profit sharing/401(k)) is generally easier than its defined benefit plan counterpart. But the following drafting errors still occur frequently and can cause problems:

- The QDRO should avoid the use of terms such as “accrued benefit” and “actuarial equivalence.”

- The often used “coverture approach” of dividing pension plan benefits attributable to the period of marriage does not have the same level of importance in the defined contribution arena and its use may cause confusion.

- Dividing an account balance according to the participant’s “vested” account balance may not be appropriate if the participant was less than 100% vested at the time of divorce.

- The QDRO should be clear whether the amount assigned also includes the investment gains and losses to the date of distribution.

- The date the amount assigned is to be determined should be consistent with a date that works under the valuation terms of the plan. For example, not all plans use the “daily valuation” approach.

- The QDRO should address whether the alternate payee is entitled to a share of any profit sharing contribution that may be made later in, but with respect to, the plan year in which the assignment occurs. The alternate payee has lost many dollars in these situations.

- If there is a “before-tax” and “after-tax” portion of a participant’s account, the QDRO should address how these sub-accounts with very different tax results will be divided.

### Dividing The Defined Benefit (Pension) Plan

Defined pension plans can be challenging. Any retirement program that requires the sophistication of an actuary to explain presents some fundamental demands upon the practitioner. The following items often make the watch list of drafting errors to avoid:

- Pension plans do not have “account balances.” Instead, they have “accrued benefits.” This drafting error is the most frequent cause of a QDRO rejection notice.

- A commonly seen provision that simply

provides for the assignment of an accrued benefit as of the date of divorce is an automatic sign that the alternate payee’s counsel is not paying attention. Instead, the QDRO should incorporate the “coverture approach” that reflects the relative number of years of service earned during the marriage compared to the total service at the time the alternate payee chooses to begin receipt of the assigned benefit. This is an infinitely fairer approach that reflects how benefits in a pension plan grow over time and provides inflation protection to the alternate payee.

- Assignment of benefits can be achieved through either a “separate interest” or “shared interest” approach. These alternative means of assigning benefits can substantively impact entitlements at both the time of benefit commencement and the death of either party. In the later scenario, the death of the participant can cause financial grief for the alternate payee if the survivorship provisions are not adequately addressed.

- The QDRO should specifically address issues relating to potential cost of living increases, early retirement windows, supplemental benefits, and early retirement subsidies. These potential benefits can be lost to the alternate payee without proper attention.

- In this age of “troubled pension plans” and plan sponsors declaring bankruptcy, the QDRO should address what happens if the Pension Benefit Guaranty Corporation assumes responsibility for benefits on a reduced basis.

### Don’t Forget That QDROs Can Be Used In Child Support Situations

One quick note: Don’t forget that QDROs are not just for splitting retirement benefits. They can also be used for the payment of child support, both future payments and arrearages. This may be an easier solution than chasing the responsible spouse through a wage attachment process. Since the QDRO is accomplished through federal law, state law issues will not apply. You will need to determine if the distribution provisions of the plan will allow immediate payment. Finally, be careful about the tax consequences. While

## QDROs: Before the Barbeque Grill Negotiations

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child support payments to the custodial parent are not taxable, the distribution to such person likely will be treated as being taxable. If that will be the case, then the custodial parent should request a greater amount in order to take the tax consequences into account.

I hope this discussion has been helpful. While these suggestions are not necessarily new, they should serve as a good reminder of the issues that surround the drafting of a “good QDRO.” If followed, and if you are lucky

enough to represent the spouse who got the barbeque grill, you should be able to enjoy the post-divorce barbeque with the comfort that your services will not be challenged in the future.

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## Tax Issues in Regard to Divorce Settlements

by Joan B. Warning, CPA  
Humes & Barrington, LLP

Attorneys and accountants should recognize the common tax issues that occur in a divorce. These issues include filing status and dependency matters, alimony and child support, and property settlements. Each of these issues impact how a settlement is reached in each individual case.

### Filing Status

It is imperative that parties to a divorce have a clear and concise understanding of what filing status is available to them during the divorce and after they divorce. Filing status for tax purposes is determined on the last day of a tax year, generally December 31. During the divorce proceedings, a couple – although they may be living in separate households – for tax purposes may still be considered married at year end.

There are four filing statuses an individual may use while going through a divorce. Married individuals may choose between married filing jointly, married filing separately or head of household if the requirements to choose this status are met. Divorced individuals have a choice between single or head of household. In making the filing status choice, it will be determined based on whether the divorcing couple is still married on the last day of the year.

A marriage is considered terminated for tax purposes when a final decree of divorce has been issued by a family court or if the family court has issued a final decree constituting a legal separation under state law. Therefore, if a legal decree has not been

issued, a taxpayer may file either married filing jointly or separately.

Married filing jointly generally produces the lowest tax burden; however, it will be crucial that both parties cooperate in providing information to provide a complete and accurate tax return. If there is underreporting of income, the Internal Revenue Service could assess underpayment penalties and interest in addition to tax. In addition, if a divorce is finalized toward year end, both parties should review whether it may make sense to have the divorce become final in January so they can file a return using the married filing jointly status, as it may be advantageous to both parties.

After the divorce, an individual who has custody of a child may qualify to use the head of household filing status. To qualify to use head of household status, the taxpayer must meet the following requirements:

- a. Be unmarried for tax purposes
- b. Maintain a home for an unmarried qualifying child for more than half of the year. That home must be the child’s principal home; and
- c. Pay more than half of the cost of maintaining the home

In addition, to qualify for head of household status, the custodial parent does not have to claim a dependency exemption for the child.

A planning tip for practitioners to consider, if there is more than one child from the marriage, is to include language in the divorce agreement that suggests each spouse is the

## Tax Issues in Regard to Divorce Settlements

(Continued)

custodial parent of one child so both parties can qualify to use head of household status.

### Child-Related Deductions and Exemptions

When children are part of a dissolving marriage, there are a few issues that need to be considered and addressed. The following is a list of custody decisions:

- a. Dependency exemptions for custodial and non-custodial parents
- b. Child care credits
- c. Child tax credits
- d. Medical deductions for dependent children
- e. Education tax credits – Hope and Lifetime Learning credits

There are certain tests that need to be satisfied to have a child qualify for a dependent. The following requirements must be met:

- a. Residency
- b. Relationship
- c. Age
- d. Self-support

Custody is determined by the parent who has physical custody of the child for the greater portion of the year. In some cases, it may be more advantageous to allow the spouse with a higher income tax rate to claim a child as a dependent if they meet the other income limitations to claim the child as a dependent.

Form 8332 (Release of Claim to Exemption for Child of Divorced or Separated Parents) may need to be included in a non-custodial parent's return. However, a tax law change in the Working Families Tax Relief Act of 2004 no longer requires Form 8332 if the non-custodial parent is entitled to the child exemption.

Many of the above exemptions, deductions and credits have income limitations associated with them. Each individual's tax situation should be carefully analyzed to produce the best tax result.

### Property Settlements

A divorcing couple have to decide how to divide property. Many factors are involved with this decision. First, ownership needs to be determined, as assets are accumulated before and during the marriage. Property settlements incident to a divorce are tax free transfers under Internal Revenue Code 1041. Therefore, no gain or loss occurs that triggers a taxable event. Basis of the property is important, as well as whether any liability is attached to an asset when a divorce occurs. In the event property received in a divorce is sold following the divorce, a taxable event could occur if a gain is recognized. A spouse who receives an asset with a low cost basis compared to its fair market value (for example, shares of stock that have appreciated) needs to be informed of the tax liability that they assume by receiving this type of asset.

### Planning for the Marital Home

A personal residence frequently is one of the most valuable assets of a couple. Careful consideration should be exercised when deciding who receives this asset. As real estate prices have increased, some couples may have a gain on the sale of their home. While a law change in 1997 helped ease this burden, it should be considered in the property divisions. Married couples who sell their personal residence do not recognize a gain on the sale if the gain is under \$500,000, as long as the residence was their principal residence in two of the prior five years. However, single individuals or those filing married filing separately can defer only \$250,000 of the gain. There is no step up in the cost basis of the home at the time of the divorce.

### Alimony

Another consideration in a divorce is whether alimony may occur. The spouse who receives alimony has taxable income. The spouse who pays the alimony receives a deduction. Child support is not included in income, nor is a deduction allowed for its payment. The spouse who receives alimony may qualify to contribute to an IRA (individual retirement account). An allocation between

## Tax Issues in Regard to Divorce Settlements

(Continued)

alimony and child support will need to be evaluated to each individual situation.

### Taxes and Tax Carry Forwards

A well written decree should clearly state each spouse's responsibility in regard to the tax liability, and a clause should be included in regard to indemnifying each spouse to the other spouse's tax liability. In addition, the decree should include the division of how the couple should handle income, capital gains or losses, mortgage interest, real estate and property tax, and charitable contributions in the year the divorce is finalized so they may use it for their tax returns. Also, if there are any tax carry forwards – for example, a capital loss carry forward, a charitable contribution carry forward, a net operation

loss carry forward or a minimum tax carry forward – these tax attributes must also be considered. In the event a couple owned passive income producing property, there could also be suspended passive activity losses that could be carried forward to another year. Generally, a tax carry forward is awarded to the party who received the property. Many planning opportunities arise in regard to property settlements regarding this type of property.

As a reader, one can see that there are many tax-related issues that arise from a divorce. It is important that any couple who goes through a divorce seek qualified advisors who can interpret these issues and provide the best and most equitable settlements to both parties.

## Case Summaries

by John W. Dennis, Jr.  
Independence

**Criminal non-support. *State ex rel. Michael Sanders, Prosecuting Attorney of Jackson County, Relator v. The Honorable Margaret L. Sauer, Respondent, No. 86955 (Mo. banc, January 31, 2006), Limbaugh, J.***

An action for criminal non-support was being prosecuted by the prosecuting attorney of Jackson County. The defendant in the case sought a blood test to determine his paternity. However, a judgment had been entered against him in 1991 declaring him to be the father and ordering him to pay child support. The trial court ordered blood testing and the prosecutor sought a writ of prohibition to prevent same.

Held: Preliminary writ made absolute. "It is not that the defendant is the biological father of the child that matters, but whether the defendant is the father of a child because the child was 'legitimated by legal process.' As such, the state need only prove beyond a reasonable doubt that a judgment was entered establishing that the child was 'legitimated by legal process:' whether the defendant is truly the biological father of the child is irrelevant."

Dissent by Chief Justice Wolff: The dissent identifies the issue as being whether a judgment of paternity means that a child has been "legitimated by legal process." "It is true that the law has tended to remove the stigma of

illegitimacy by treating illegitimate children the same as children born of a marriage. The treatment of illegitimate children the same as other children, for many purposes, does not establish that the definition of the word 'legitimate' has been changed."

The dissent states that the defendant can be held criminally responsible for non-support "if the state establishes that he is the biological father of the child." The prior default judgment did not do so.

**Obligation of notice for college student child support. *Brenda D. Owsley f/k/a/ Brittain, Appellant v. Clayton J. Brittain, Respondent, No. 64812 (Mo. App. W.D., February 7, 2006), Newton, J.***

The parties divorced in 1993. Since then, custody and support obligations shifted between them periodically. In 2003, the parties' child entered college. At that time, father had sole legal and physical custody, but the child was actually living with the mother. Mother was obligated to pay \$249 per month in child support, and father was ordered to pay her child support of \$196 per month during the summer visitation.

Mother filed for a transfer of custody and child support in September of 2002. "The parties stipulated that neither (Mother) nor

## Case Summaries

(Continued)

(the child) provided written notification to (Father) regarding college enrollment, the courses, or his grades for semesters beginning in fall 2003 and ending in summer 2004. On August 24, 2004, *one day after the new semester began*, (Father) did receive the documentation necessary to continue his support obligation under section 452.340.5.” (Emphasis added.)

The trial court found that child support should abate between September of 2003 (fall freshman year) through December of 2004 due to the failure of notice of enrollment, classes and grades. Mother appealed on six grounds. This summary addresses the lone point upon which the trial court was reversed.

Held: Reversed as to abatement of support for the fall 2004 semester, the semester upon which father received notice one day after it began. “We do not find that the statute requires the child to submit the documentation to each parent *before or on the exact day* the semester commences. The statute simply states that such information shall be submitted to the parents ‘at the beginning of each semester.’ Section 452.340.5.”

Dissent by Judge Howard: “In stating that the phrase ‘at the beginning of each semester,’ which tells a student when to submit the information, is merely directory and not mandatory, the majority is removing timeliness as a reporting requirement of section 452.340.5, and is seriously undermining the ability of a parent to receive meaningful and useable information.”

The dissent suggests that the abatement would apply to the fall 2004 semester unless the mother could show that: (a) the documentation provided complied with the statute; and (b) there were manifest circumstances sufficient to explain why the necessary documentation was provided late.

**Hearing not necessarily required to modify child custody. *In re: the Marriage of Lewis Hendrix and Kimberly Ann Hendrix, Lewis Hendrix, Respondent v. Kimberly Ann Hendrix, Appellant, No. 86938 (Mo. banc, February 14, 2006), Stith, J.***

This was an action to modify child custody

provisions to reflect that father’s home was the child’s residence for mailing and educational purposes. The parties reached an agreement. A stipulation and proposed judgment entry was submitted to the court, and a judgment was entered without an evidentiary hearing. Subsequently, mother sought to set aside the judgment as “void” because of the lack of an evidentiary hearing. The motion to set aside was denied and mother appealed.

Held: Affirmed. “[T]o the extent that some of the cases cited by Mother suggest that a hearing is *required* by section 452.410 even where the court finds that the stipulated facts are sufficient to allow it to determine that a change of circumstances has occurred and that a modification of custody is in the best interests of the children, they are incorrect and should no longer be followed.” See *Riley v. Riley*, 643 S.W.2d 298 (Mo. App. W.D. 1982); *Fleming v. Fleming*, 562 S.W.2d 168 (Mo. App. W.D. 1978).

**Order of Protection. *Barazi v. Eckoldt, No. 85510 (Mo. App. E.D., December 20, 2005)***

This was an action for an adult abuse order of protection. This summary is provided because of dicta within the opinion. The case itself simply affirms the fact that “. . . a trial court commits reversible error when it fails to hold an evidentiary hearing in an order of protection case involving a contested issue.”

The petitioner sought an order of protection in Missouri. The case was dismissed without giving the petitioner a hearing.

The petitioner had previously obtained an order of protection in the State of Alaska. It appears the trial court believed that the registration of that foreign judgment would adequately remedy the petitioner’s claim. Dicta: “White it is true that a person protected by an order of protection from another state may register that order in Missouri, the Adult Abuse Act does not contain any provisions that would prevent the entry of an order of protection in this state simply because an order of protection has already been entered in another state.”

## Case Summaries

(Continued)

**Responsibility for Non-Covered Health Care Expenses for Children. *Dinella v. Atkinson*, No. 86857 (Mo. App. E.D., March 7, 2006), Shaw, J.**

The parties were divorced in 2001. The decree was silent about responsibility for payment of non-covered health care expenses. In November 2003, the mother filed a motion to modify requesting that the non-covered health care expenses for the children be shared equally by the parties. In October 2004, a judgment to that effect was entered. The mother then sought a determination of the amount for non-covered health care expenses due from father. The father filed a motion to dismiss for failure to state a claim. The mother's motion had asserted that there were \$8,270 in such expenses and asked for a judgment for one-half thereof. The trial court granted the father's motion to dismiss, and this appeal followed.

Held: Reversed.

It should be noted that the father raised the argument on appeal that the mother's claim was precluded by res judicata. However, that was the first time he raised the point. Therefore, it was deemed waived without explanation of how it may have impacted the case had it been timely raised.

Section 454.633.3, RSMo. 2004, states in pertinent part: As between parents, responsibility for the child's care expenses that are not covered by a health benefit plan may be equitably apportioned between the parents by the court..., in percentage shared based on their income, or based on a written agreement of the parties. If the order or agreement fails to designate the shares applicable to the parents, then each parent shall be liable for fifty percent of such expenses.

Pursuant to the statute, the mother's motion stated a claim upon which relief could have been granted. Therefore, summary dismissal was erroneous.

**Insurance Coverage: Insufficient Evidence of Value of Property. *Canady v. Canady*, No. 26766 (Mo. App. S.D., January 10, 2006), Garrison, J.**

This was an action for dissolution of marriage. The appellant owned real estate at the time of the marriage, which he had purchased 10 years prior to marriage for \$5,000-\$7,000. The real estate remained in appellant's name throughout the marriage. There was evidence that the value of the property had increased during the marriage, at least partially due to renovations made thereon. The appellant testified that the property was worth \$20,000 at the time of marriage. The appellant testified that the property was worth \$38,000 at trial. The Wife did not testify as to the value of the real estate, but she did state that the property was insured for \$60,000. The trial court found that the value of the property at time of marriage was \$5,000 and at time of trial was \$60,000. It determined that the increase in its value during marriage entitled the respondent to \$27,500 of its equity. This determination was appealed.

Held: Reversed.

"The amount of insurance coverage, while perhaps relevant, does not in and of itself establish the fair market value of the home at the time of dissolution. As (appellant) points out, insurance coverage could encompass, among other things, replacement and repair costs, which do nothing, alone, to shed light on what a potential buyer would pay for the home.

"...[T]he record clearly shows that Wife was not testifying as to her opinion of the fair market value of the home."

The purchase price of the real estate 10 years prior to marriage is insufficient for valuation purposes at the date of marriage.

Therefore, the judgment as to those values was not supported by substantial evidence.



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## 2006 Annual Family Law Conference

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\_\_\_ quantity Friday Reception - \$20 each

\_\_\_ quantity Saturday Breakfast - \$20 each

**Child (ages 5-12)**

\_\_\_ quantity Thursday Reception - \$10 each

\_\_\_ quantity Friday Reception - \$15 each

\_\_\_ quantity Saturday Breakfast - \$15 each

**Special Dietary Needs**

## Conference Highlights

- Basic and Advanced Skill Tracks
- Pre-Conference Workshops on Legislation, QDROs, Psych Evaluations & Mental Health Experts, Adoption and Fees
- GAL Training
- The Committed Unwed
- Virtual Visitation with Nationally Recognized Advocate Mike Gough
- Family Law and the Elderly Client
- International Adoption and Custody
- Military Personnel and Family Law Issues
- Hard-Core Mediation
- The Paternity Case
- Forensic Accounting
- Culture Clash: When Clients from Other Countries Meet Missouri Law
- Bankruptcy and Family Law
- Motion Practice
- View from the Bench
- Tax Matters
- Prenuptial Agreements
- Trial or Settlement
- Judgments

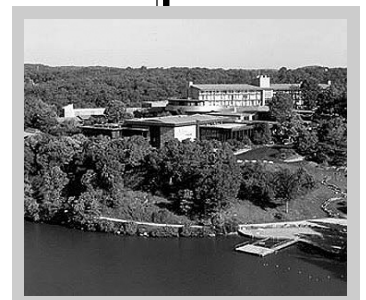
### **G**rand Prize!

**A 2-Night Stay for two at The Lodge of Four Seasons, Lake Ozark**

Courtesy of The Lodge of Four Seasons and subject to availability

The Grand Prize will be drawn at the conference close.

**Enter to win on program evaluation forms. Must be present to win!**



***Interested in becoming a part of the Family Law Section?  
Return completed application and membership fee to:***

The Missouri Bar • P.O. Box 119 • Jefferson City, MO 65102-0119  
Attention: Committees

Lawyer No. \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_

County \_\_\_\_\_

State \_\_\_\_\_ Zip \_\_\_\_\_

Membership in the Family Law Section is \$20 per year.  
Please include membership fee with your application.

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**Family Law Section Newsletter**

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