

All in the FAMILY

July 2008



Message From the Chair

Included in this month's newsletter is a link to a very **BRIEF SURVEY** for our section members. The executive board is considering printing a new edition of the Academy's Family Law: Practice and Procedure. This excellent resource book is now out of print and the last edition, edited by Mark E. Sullivan and Bailey J. Farrin, was printed in 2000.

The Academy's Family Law: Practice and Procedure is fondly known in my law office as the Bible and I have used it time and again since I began practicing family law in 1999 to draft legal documents. It would be a major undertaking for our section to put out a new edition and we cannot ignore the new kid on the block. In 2004, the North Carolina Bar Association published the first edition of North Carolina: Family Law Marital Claims. The 2008 second edition of this resource book will be available in September for \$174.00.

Both resource books cover, by and large, the same topics. The Academy's manual has chapters on discovery, name change, legitimation and paternity, annulment, separation and premarital agreements, and family law practice management that the Bar Association manual does not. Vice-versa, the Bar Association manual covers topics missing in our manual, including collaborative divorce, mediation, ethics, federal taxes, the full range of marital torts (our manual includes only the marital torts of alienation of affections and criminal conversation), and attorney's fees. The Bar Association manual also has chapters that serve purely practical needs such as providing lists of books, websites and newsletters useful in family law, a telephone directory, and local court rules.

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The major difference between the two resource books is in their format. The basic format for each chapter in the Academy's manual is to begin with a Commentary, ranging from a 1-5 pages in length, that deals exclusively with the chapter's topic. The

Before embarking on this major project of printing a new edition of the Academy's **Family Law: Practice and Procedure**, the executive board would like to survey our section members to determine what changes you would like made to our manual and if there is market for a new edition. Let me add here, that there is no cost to the Academy or our section to publish a new edition. And the Academy will derive royalties from the sale of the new edition. The amount of royalties will be based on the number of sales. Please provide your feedback on this very important issue and take this **BRIEF SURVEY**. Thank you.

- Jeanne B. Ford

(919) 859-5585

jeanne@jeannefordfamilylaw.com

Family Law Section 2008 Pro Bono Award Winners

Meredith McGill and Kristin Hampson, partners in the law firm of **McGill & Hampson, P.A.**, are the winners of the Family Law Section 2008 Pro Bono Award. Sheryl Friedrichs, Family Law Section Secretary, interviewed Meredith and Kristin about their pro bono work.

Sheryl: Congratulations on winning the Pro Bono Award! 102 is an impressive number of hours! Where is your office located?

Meredith and Kristin:

Our office is located in downtown Raleigh.

Sheryl: In which counties do you typically represent clients?

Meredith and Kristin: Wake, Johnston, Franklin and Columbus Counties.

Sheryl: Does your firm practice family law exclusively?

Meredith and Kristin: Yes.



Sheryl: Were all 102 hours devoted to a single case?

Meredith and Kristin:

Yes.

Sheryl: What kind of case was it?

Meredith and Kristin: It is a Columbus County case involving complex equitable distribution issues and child support.

Sheryl: Did you represent the Plaintiff or the Defendant?

Meredith and Kristin: We represent the Plaintiff.

Sheryl: What can you tell us about the case?

Meredith and Kristin:

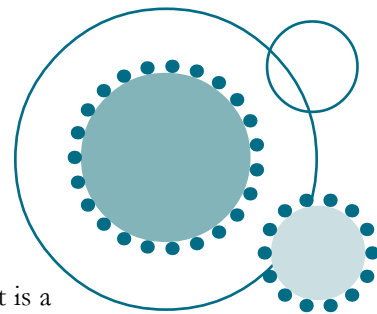
The case initially involved child support and equitable distribution issues between husband and wife. We represented the wife, who is the primary custodian of the three children, ages 10 – 17. The husband was employed with his brother in a closely-held corporation, so there became discovery issues for financial information. The Husband failed to pay court-ordered child support and made a Motion for Modification of Child Support. We then took his deposition to gather information about his income, assets and expenses. We also assisted local counsel in the show cause hearing to collect the child support arrears.

Our plan was to go to mediation and resolve the equitable distribution issue. We had just begun the equitable distribution part of the case when the Husband's brother died in a tragic accident. The entire case changed at that point, since the brother's estate became involved, along with another law firm.

The interesting legal issue was this: The corporate shareholder's agreement provided for the life insurance on the shareholder's lives to be paid to the decedent's spouse, and then the spouse was to relinquish the stock shares back to the corporation.

The decedent's spouse refused to relinquish the stock shares although she had collected the life insurance proceeds. We then made a Motion for Declaratory Judgment. Since there were many witnesses for the Declaratory Judgment hearing, and we did not have access to those witnesses, we took depositions of the corporate accountant, corporate bookkeeper, and the life insurance agent who issued the shareholder insurance policies.

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This case is still on-going. The Declaratory Judgment hearing was held July 16 -17, and the judge will issue his ruling in August. At that point, we will move to resolve the equitable distribution, which will also involve the valuation of the corporation. If the declaratory judgment decision is appealed, of course there will be further delay in the case.

Sheryl: When did your representation start?

Meredith and Kristin: Our representation started in January 2006.

Sheryl: What was it about this client, or this case, that motivated you to donate your time?

Meredith and Kristin:

The client was referred by another attorney. The client was working two jobs, and was unable to provide adequate support for her children unless she received the court-ordered child support. Further, opposing counsel was unwilling to provide information necessary to proceed with equitable distribution. The family-owned corporation was the only asset in equitable distribution, and the client's share of the marital interest in the family corporation would be the only way for her to provide college educations or other security for the family.

Sheryl: Did you understand from the beginning how much time would be required?

Meredith and Kristin: No, we did not.

Sheryl: With respect to pro bono representation, did you learn anything from your experience in this case that you will apply to future pro bono cases?

Meredith and Kristin:

Yes. It is important to set out in advance how any out-of-pocket expenses, such as court reporter costs, deposition transcript costs, travel costs, and expert costs for business valuation and other related issues will be paid, so that information can be gathered and the case can proceed without delay.

Sheryl: What advice do you have for family law attorneys who have never done pro bono work and are hesitant about taking on a pro bono case?

Meredith and Kristin:

It is important for attorneys to give back to the community. Pro bono representation will give you an opportunity to use your professional skills to help someone in need. Also, you will, no doubt, learn quite a bit that will help you in other paying cases. You may even find that

helping someone else enriches your personal and professional life!

You should consider talking with another attorney or two about their experiences with pro bono representation prior to taking on your first pro bono case, so you can clarify the parameters of your representation. This will likely create a more enjoyable and meaningful experience for both you and your client.

Recent Family Law Case Summaries

Woman Denied Custody and Visitation Rights to Former Partner's Biological Children *By Rashmi Iyer and Judy Tseng*

Estroff v. Chatterjee, 660 S.E.2d 73, was decided by the Court of Appeals on May 6, 2008, denying joint custody between the two parties over two children. This case involved an appeal by the plaintiff from orders entered by Judge Joseph Moody Buckner in Orange County District Court .

In this case, the custody dispute arose from the relationship between Sue Ellen Estroff and Srobona Tublu Chatterjee, who were partners for around eight years. They met when Chatterjee was in graduate school taking a seminar taught by Estroff. Upon culmination of the seminar, the two entered an intimate relationship. At the time, plaintiff Estroff was forty-four years old, and the defendant Chatterjee was thirty years old. Both women lived together from June of 1996 to January of 2003. When purchasing the residence, the two signed an agreement clearly enumerating the rights and responsibilities to the property as well as each woman's individual property ownership. Despite never engaging in an official commitment ceremony, both parties, known to families and friends, identified themselves as a couple in an intimate relationship.

In 1997, Srobona Chatterjee decided that she wanted to have a child. She initiated the conversation with Estroff and asked if Estroff had any objections. Estroff felt that "because it was Chatterjee's body, it was her choice." The trial court phrased it: "[u]ltimately, [Estroff] agreed that [Chatterjee] could raise a child within the context of their relationship and in their jointly owned home." In September 2002, through artificial insemination, Chatterjee became pregnant with twins.

After delivering the twins, Chatterjee vehemently objected to Estroff being referred to as "mom," so Estroff asked the hospital staff to stop referring to her as "mom." Both Estroff and Chatterjee contributed financially to the welfare of the children. Over time though, Chatterjee continuously

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reminded Estroff that she was not the children's mother.

Chatterjee decided to put an end to her relationship with Estroff and started to look for residence elsewhere. In January of 2003, Chatterjee began to settle in her new house and created a schedule granting Estroff custody of the children for half of every week. The trial court found that it was Chatterjee's "intent to gradually reduce the time the children would spend with [Estroff] as they became settled and at ease in their new home."

In the spring of 2005, Chatterjee told Estroff that she would only be allowed to spend one night a week with the twins. On May 26, 2005, Estroff sued to seek joint custody, recognition of her parental status, as well as reinstatement of the initial visitation schedule of half week custody. Chatterjee moved to dismiss for lack of standing and failure to state a claim. On August 3, 2005, the trial court denied this motion to dismiss. Then on April 17, 2006, the trial court held a two-week trial which concluded in a dismissal of Estroff's claims.

The trial court found that while Estroff had "played a unique and special role in the lives of [Chatterjee's] children, she is neither a biological nor an adoptive parent of [the twins]. [Estroff] is neither a "parent by estoppel" nor a "de facto parent." There was never a legal or contractual written or verbal agreement between the parties that Estroff was a parent, custodian or legal guardian. Moreover, the parties never discussed entering into a parenting or custodial agreement or filing a friendly lawsuit to attempt to formally provide Estroff with parental or custodial rights. The Court stated that Chatterjee "never would have agreed to such a request if it had been made by [Estroff]. [Chatterjee] would never have agreed to bestow on [Estroff] or anyone else any parental or custodial rights with regard to her children."

The Court proceeded to state that under the Fourteenth Amendment to the Constitution of the United States, Chatterjee, the biological parent of the twins, had a constitutionally-protected right to the care, custody, and control of her children. Then the court concluded that Estroff had failed to establish by clear and convincing evidence that Chatterjee "engaged in conduct inconsistent with her constitutionally-protected status as a parent or otherwise forfeited her constitutionally-protected status as a parent."

On November 27, 2006, Sue Ellen Estroff filed another motion for a new trial and relief from the initial judgment. She stated that a new trial was necessary due to obvious misconduct on Chatterjee's part. Estroff argued that although Chatterjee had "repeatedly and consistently represent[ed] to the Court throughout the proceedings until June 5, 2006 that she would never cut off contact between

the Minor Children and [Estroff], [she] cut off all contact between the Minor Children and [Estroff]" as soon as dismissal of the case was indicated by the trial court. The trial court denied the motion and Estroff appealed.

Citing *Price v. Howard*, the Court of Appeals noted that "this case is not, however, a contract or tort action, but rather involves a legal parent's 'constitutionally protected paramount interest in the companionship, custody, care, and control of his or her child.'"

The Court stated that the focus "must be on whether the legal parent has voluntarily chosen to create a family unit and to cede to the third party a sufficiently significant amount of parental responsibility and decision-making authority to create a permanent parent-like relationship with his or her child.... The parent's intentions regarding that relationship are necessarily relevant to that inquiry."

The focus was not on what others thought of the couple or what responsibility Estroff elected to assume, but rather whether Chatterjee chose to cede to Estroff a sufficiently significant amount of parental responsibility and decision-making authority to create a permanent parent-like relationship with her child. The Court of Appeals, in affirming the trial court's rulings, explained that the findings were sufficient to support the court's determination that Estroff did not establish that Chatterjee engaged in conduct inconsistent with her paramount, constitutionally-protected status as a parent.

Parker v. Scott
Trial Court's Ruling on Child Custody Affirmed
By Rashmi Iyer and Judy Tseng

Parker v. Scott, 2008 WL 2415975, was decided by the Court of Appeals on June 17, 2008 in an unpublished opinion, ultimately awarding primary physical custody of a minor child to the plaintiff-mother, Patricia Corelle Parker. The father, Byron Keith Scott, was awarded secondary physical custody of the child. This case involved an appeal by the defendant from orders entered by Judge April C. Wood in Davie County District Court.

The plaintiff and the defendant were the biological parents of the child but had never married. The child was born on June 10, 2002. From November of 2003 to April of 2004, Parker, Scott, and the child resided with the defendant's family. It was during this period of time when the relationship between the plaintiff and the defendant greatly devolved.

The plaintiff-mother, allegedly due to the defendant's physical abuse, fled with the child to Florida in April of

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2004, telling the defendant that she was “going to the store.” Scott followed her to Florida where both engaged in a physical conflict, eventually culminating in the plaintiff obtaining a domestic violence protective order against the defendant. Despite the fact that the child’s residence was in North Carolina, the Florida court granted the defendant-father temporary custody pursuant to an Ex Parte Order entered in Davie County, North Carolina. The defendant and the child then went back to North Carolina.

The plaintiff-mother wrongly believed that the injunction prohibited her from visiting the child back in North Carolina. From September 13, 2004 until May 17, 2005, she did not travel to North Carolina nor see the child. At the temporary custody hearing on May 17th, the trial court ordered, *inter alia*, essentially joint custody of the minor child. Although the minor continued to stay in the home of the defendant-father, Parker was granted visitation with the child during the first week of every month.

The defendant-father denied the plaintiff-mother’s visitation rights during the months of September, October, and November. Despondent, the plaintiff approached the trial judge, who then ordered the defendant to appear to show cause to determine why he should not be held in contempt of court for failing to obey the May 17, 2005 custody order. The defendant was not found in contempt of the court, but the plaintiff was granted twenty-four “make-up visitation days.” Again, in 2006, the defendant failed to take the child to visit with the plaintiff in the months of February, March, June, September, and October.

On October 30, 2006, a hearing took place in order to effectively determine custody and support matters. At that time, the defendant-father was living with his grandmother. The plaintiff-mother was living in a house with her fiancé, worked at a daycare while attending nursing school, and had a baby, with whom the minor child was very close.

Judge Wood granted primary physical custody to Parker and secondary physical custody to Scott. All of Parker’s previous child support arrearages were stricken, and the trial court ordered child support payments to be paid by the defendant to the plaintiff.

The defendant appealed, contending that (1) there was not adequate evidence to support the trial court’s findings that plaintiff was more likely to promote visitation and that he had interfered with the plaintiff’s visitation, and (2) the trial court erred in its conclusion that it was in the best interest of the child to reside with the plaintiff.

However, the Court of Appeals overruled both of Scott’s assignments of error, stating that “competent evidence exists in the record to support the trial court’s findings of fact and

its conclusions of law that it is in the minor child’s best interests for plaintiff to have primary physical custody and defendant secondary custody of the minor child.”

Citing *Cox v. Cox*, 133 N.C.App. 221, 228, 515 S.E.2d 61, 67 (1999), the Court of Appeals noted that the trial court is granted a rather broad discretion in regard to determining what custodial setting essentially advances the welfare and best interests of the minor children. The Court also cited *Raynor v. Odom*, 124 N.C.App. 724, 729, 478 S.E.2d 655, 658 (1996), which held that a trial court’s findings of fact are conclusive even if the evidence gathered maintains a finding to the contrary as long as there is supporting evidence in place.

Events Corner

Save the Date! More information will be available in August!

September 12, 2008

CLE - Family Law: Paralegal Training,
Raleigh, NC

October 17, 2008

CLE - Parental Alienation: Signs & Solutions,
Greensboro, NC

October 23-26, 2008

Mountain Magic, Grove Park Inn, Asheville, NC



October 23-26, 2008

**Grove Park Inn
Asheville, NC**

“I **LOVE** going to Mountain Magic in October every year. Fall scenery is gorgeous and the cool air is fabulous after long hot summers in Greenville. I learn so much practical and usable information, not only from the excellent seminars, but also by networking with other Academy members. Wouldn’t miss it!”

-Debi Welsh

Come learn and network in the beautiful and scenic mountains of Western Carolina!

Mark your calendars for Mountain Magic!

More detailed information will be available in August!

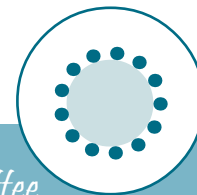
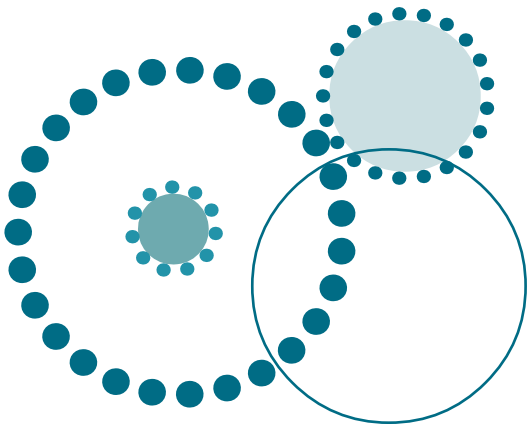
Technology Corner

When in Need, Use the Family Law Listserv!

The Family Law listserv is an invaluable tool that is available to Family Law members 24 hours a day, seven days a week. Listserv is a great way to receive responses to legal practice matters and issues, distribute information on important topics, survey members and distribute event information.

The listserv also has a search function that allows the user to search the Family Law listserv archive to find answers to topics.

The Family Law listserv is a free-of-charge “opt in” membership service. To join the Family Law listserv, please contact Andrea Davis of the Academy at andread@ncatl.org.



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