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Relocation to Columbia Allowed

The parties were never married. The mother became pregnant and gave birth to the child, now 7 years of age. The father signed a Voluntary Acknowledgment of Parentage. The mother filed a Petition for Temporary Relocation to move with the minor child from Chicago, Illinois to Colombia, South America. Judge Andrea M. Schleifer granted the mother's Petition. After considering all factors outlined within 750 ILCS 5/609.2 and the case law related to relocation, she found that it was in the best interest of the minor child to remain primarily within the mother's care. Additionally, the Judge found that the minor child's quality of life would be enhanced and enriched by having the opportunity to reside abroad on a temporary basis.

The mother was represented by Simul S. Jhaveri of Beerman LLP. The father was represented by Ruth Watson of the Law Office of Ruth Watson. The Guardian Ad Litem was David M. Sternfield.

The parties had one child, now age 7. The mother was the primary parent. In contrast, the father played a minor role. The mother received a two year job offer in Colombia from February 2020 to February 2022. She requested to temporarily relocate with the minor child for this period of time. The father formally objected on grounds that Covid played a predominant role.

A Guardian Ad Litem, David Sternfield, was appointed in January 2020 to begin his investigation. Unfortunately, the mother had to make a decision on this career advancing job prospect in Colombia. From March 2020 until the end of June 2020, the mother moved to Colombia and left the minor child in the father's care full time.

Upon his initial investigation, the GAL strongly recommended against relocation and indicated that a move to another county (even a temporary two-year move) would not be in the child's best interest.

However, the entire case changed when the father was given full time responsibility over the child from March 2020 to June 2020. The mother had been given leave to return to the United States to work from home and prepare for trial.

During the father's time with the child, although he was not working at the time, he failed to meet the child's needs. He continued to rely on the mother to coordinate the child's homework, attend zoom classes, exercise or do much of anything. Under the father's care, the child stayed up until 2 a.m. on school nights, had no structure, no activities, watched the father sleep all day, and relied on the mother for every aspect of his life. The mother coordinated school, extracurricular activities, and all aspects of the child's life while working full time in another country.

Finally, the father refused to allow the GAL into his house after the GAL's first home visit, citing Covid concerns. During the father's case in chief, he was impeached on this issue. The father repeatedly testified that no one was allowed in the house, that he did not take the child outside the house and remained indoors due to Covid concerns. The father was impeached with a photograph showing him having multiple guests in his house for a social gathering.

The GAL testified that it was the father's apathy and own actions that caused him to lose the case. The father's refusal and inability to properly care for the child, even when given a chance to do so, sunk the case for him.

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The following are excerpts from the findings of Judge Andrea M. Schleifer:

> *"Well, as we know Section 20 609.2 of the IMDMA provides in relevant part: a parent who has been allocated a majority of parenting time or either parent who has been allocated equal parenting time may seek to relocate with the child. As is always true the best interest of the child controls. However, in relocation the best interest of the child is not looked at in isolation. But also whether any changes in the general quality of life for both the custodial parent and the child would be improved by the removal."*
>
> *"We look at the motivation of the person who is attempting to relocate as well as the motives of the person who is objecting to the relocation. If the court was satisfied with the motives of the custodial parent in seeking the move and reasonable visitation was available, removal should be granted."*
>
> *"The Eaton Case in 1995 stated that a move that enhances the life of the custodial parent may also indirectly enhance the life of the child and, therefore, may be considered in the child's best interest. Collingburn, a Supreme Court case, held that ultimately the distinction between direct and indirect benefits to the child was not particularly helpful in assisting the court to determine whether removal was in the child's best interest. The court must instead consider the likelihood that the proposed removal would enhance the quality of life for both the custodial parent and the child. The child's relationship with both parents can never be the same after they are separated and both parents should be permitted to go on his or her own way."*
>
> *"In this case we are not asking that each parent should go on his or her own way. Instead the proposal that has been set forth would, in fact, expand by a large part or large percentage the time that the child would have with his father. In each case it was a totality of the circumstances that must be looked at. In this case the mother was not moving to specifically enhance the child's circumstances but rather to enhance her own circumstances and her potential for improving those circumstances in the future by having broader skills, experience and increased income. All of that would enhance the options and the opportunities for the child in the future."*
>
> *"The mother was clearly not motivated by her dislike of the father. Nor was it an attempt to impede the relationship between the child and the father. In fact, the proposed schedule will substantially increase the opportunity of the father to spend quality time with the child and, in fact, to do real parenting with the child and not limit him to a weekend, good times that guy, as was true in so many other situations when there was only weekend visitation. It would substantially increase the parenting time that the father would have."*
>
> *"The move would also immerse the child in another culture. That's enriching for the child. That's why colleges and universities*

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have semester abroad programs where a student gets credit for living in another country and possibly learns another language while in college. I appreciate the GAL observations and his opinions. Maybe he gave more importance or weight to a question of neatness or hoarding than I might have or what he might consider hoarding."

"The child's comments that were reported were credible both regarding the hoarding or mess and that dad spent much of his time sleeping and that he doesn't do homework with him. Even if the sleeping was not as extensive as the impression that Mr. Sternfield had, the fact was that it's quite apparent that the father was not the only one that's spending time with the child; but his mother and that he doesn't if the child says he doesn't do much homework with him. It does seem, however, that the child lacks discipline and structure regarding his activities when he's with his father. We have to look not only at the mother's motivation but at the father's motivation in opposing a move. He says that he will have less frequent parenting time. But, in fact, he will have substantially more parenting time under the proposed schedule."

"Moreover, mother will pay the travel expenses for the child to go back and forth. And she's not asking anything of the father or anything extra of the father. In fact, I do believe he truly loves the child and he's to be commended for the good relationship that he has with the child. But he wouldn't be able to have that good relationship with the child were it not for mother's willingness to accommodate him both in terms of allowing the every other weekend visitation without a court order, allowing summertime visitation last year without a court order, allowing holiday visitation without a court order."

"And father says he didn't have visitation last Christmas or New Year's or Thanksgiving but that was belied by the text messages that we saw where he didn't follow through on what he confirmed would be extra visitation time over the holidays. His testimony was very earnest and moving. His tears were clearly heartfelt. But it seemed to me that he was crying more about his lack of having a father in his life than he was about the child's relationship with him and his being a father to the child. I think he has been a father to the child. And the son was enriched because of that. I was disturbed and was not pleased that so much of his testimony was contradictory. He obviously had not taken advantage of the time he was given on some holidays. He complains that the mother is 8 controlling and that she makes all the decisions. But it is the conclusion of the court that he lacked initiative. He had not been proactive in seeking time. If she offered him last summer, it was not because he asked for it, it was because she offered it to him. Maybe he did ask for it. But she did accommodate him without the need to go down to the court and fight over it. Again, he complained of her having the last word and being controlling. When people don't agree somebody had to have the last word. In this child's life the mother had been the

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primary parent and she has made most of the decisions. But to her credit, at least in regard to this move, she had given him options. She sent to him information regarding three different schools. And he was the one who selected the school he chose that the child would be going to which was not the same school that the mother would have chosen had she made the decision by herself."

"I think it is in the best interest of the child that he spend the time as proposed in Columbia, that he will be enriched by learning about another culture and learning another language, which is not some obscure language that he'd never have use for elsewhere, but it is the language that will probably soon be a majority language in Chicago, if not elsewhere."

"I will enter the order allowing her to remove the child through June of 2022 even if that means that she had to stay there in Columbia longer than she wanted. I should not say June, I should say the end of the school year because I want this child to be able to finish the school year with his class."

"The court found that the mother's request to temporarily relocate with the minor child was not motivated by an intent to impede the child's relationship with his father. The mother was allowed to remove the minor child from the United States and to Colombia, South America upon entry of the court order. The minor child shall remain in Colombia, South America (subject to trips back to the United States) from September 18, 2020 through the end of the child's school year at San Jose Colegio in Colombia, South America in June 2022. The mother would be solely responsible for the cost of the child's attendance at San Jose Colegio in Colombia, South America. While the child resided in Colombia, South America, the parties were to coordinate parenting time between the minor child and the father, which would occur in the United States."

Comments of Attorney Simul S. Jhaveri:

"The Guardian Ad Litem initially openly objected to the relocation and did a 180 [degree turn] when the father had the opportunity to care for the child and did not meet any basic needs for the child. Relocation granted."

Denial of Motion to Vacate Default Judgment

The husband filed a Petition to Vacate the Default Judgment the Court entered on October 29. 2018 to dissolve the marriage pursuant to 735 ILCS 5/2-1401, 735 ILCS 5/2-1301, 735 ILCS 5/2-1302, 750 ILCS 5/405, Illinois Supreme Court Rule 105, Illinois Supreme Court Rule 13 and the inherent equitable powers bestowed upon all courts of general jurisdiction. Judge Lionel Jean Baptiste found that the husband failed to bring forth new facts not known to him at the time the Default Judgment for Dissolution of Marriage was entered on October 29, 2018, that would have precluded the entry of the Default Judgment for Dissolution of Marriage and thereby failed to establish a meritorious claim upon which relief may be had under Section 2-1401 of the Illinois Code of Civil Procedure. 735 Ill. Comp. Stat. 5/2-1401 (2020).

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He further found that the husband had failed to show due diligence in resisting the entry of the Default Judgment for Dissolution of Marriage and had failed to show due diligence in filing his Petition to Vacate Default Judgment for Dissolution of Marriage and for Other Relief. Judge Lionel Jean-Baptiste denied the husband's petition and granted the wife leave to file for attorney's fees and costs.

The wife was represented by Bryan J. Wilson and Kathleen Short of Kogut & Wilson, LLC. The husband was represented by Ron A. Cohen of Slavin & Slavin, LLC.

The parties were married on December 11, 2004. The wife filed her Petition for Dissolution of Marriage on January 7, 2016. On October 29, 2018, the matter was set for prove-up, but the husband failed to appear. No attorney of record appeared on his behalf. The court entered a Default Judgment for Dissolution of Marriage on that day. More than a year later, on November 14, 2019, the husband, filed a Petition to Vacate the Default Judgment. From the time the Petition for Dissolution of Marriage was filed on January 7, 2016, to the entry of the Default Judgment for Dissolution of Marriage on October 29, 2018, this matter was extensively litigated.

During the parties' dissolution proceedings, the husband refused to substantially comply with the orders of the court as was evidenced throughout the court's record. On June 2, 2016, the court entered an Order requiring the husband to pay $3,000.00 as and for temporary maintenance and to pay fixed household expenses. In August 2016, the husband stopped paying for health insurance without informing the wife. On November 14, 2016, the court entered an Agreed Order requiring the husband to pay temporary maintenance in the amount of $4,000.00 per month, pay fixed household expenses, pay monthly expenses for the parties' vehicles, and pay for the car, health, and dental insurance premiums.

On January 26, 2017, the court entered an Agreed Order extending the maintenance and support provisions of the November 14, 2016 Agreed Order. On March 17, 2017, the wife filed her Petition for Rule to Show Cause for the husband's failure to comply with the orders of the cCourt, failing to comply with discovery requests, and failure to pay the wife's attorneys the $7,500.00 ordered by the court.

On April 13, 2017, the court entered an Agreed Order extending the support provisions of the November 14, 2016 Agreed Order. On May 17, 2017, the wife came before the court for her Emergency Petition for Rule to Show Cause to address the husband's non-compliance with health insurance provisions of the November 14, 2016, Agreed Order that caused the wife's insurance to be discontinued. On May 19, 2017, the court ordered the husband to secure new health insurance for the wife.

In June 2017, the husband stopped paying the homeowners association fess, utility bills, and property taxes for the parties' marital real property, in direct non-compliance with the November 14, 2016, Agreed Order.

On October 19, 2017, the court entered an order requiring the husband to pay $5,000.00 as and for temporary maintenance and to comply with the November 14, 2016, Agreed Order.

On March 16, 2018, the court held the husband in indirect civil contempt of court. Additionally, he was ordered to pay $5,000.00 toward the outstanding real estate taxes for the parties' marital residence, to produce documents related to the sale of the parties' California property, and to pay $25,000.00 toward the wife's interim

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attorneys' fees and costs. On May 17, 2018, the husband failed to appear and was held in contempt of court. On June 19, 2018, the court entered the Order of Adjudication of Indirect Civil Contempt and/or Order of Commitment. The court ordered the husband to pay $25,000.00 as and for the wife's interim attorneys' fees and costs.

On July 11, 2018, the court entered the Rule to Show Cause and issued a body attachment for the husband's arrest in the event of his non-compliance with the June 19, 2018, Order.

On August 7, 2018, the court entered an order stating "[i]n the event the husband failed to appear in court on 8/17/18[,] the court might hold him in default, strike all of his pleadings and award all marital property to the wife."

On August 8, 2018, the Second Judicial District Court of the State of Minnesota entered a Default Judgment against the husband in favor of his former employer, Water Gremlin Company, in the amount of $5,776,502.00 after the husband stopped participating in the action filed April 12, 2016. *(See Water Gremlin Company v. Robert W. Neal, Michael A. Garin and MarcTech Innovative Design, Inc, 62-CV-16-2131).*

On August 17, 2018, the husband appeared in court and was again ordered to pay $25,000.00 Toward the wife's interim attorneys' fees and costs. The court required that he pay $10,000.00 by August 31, 2018. The court also ordered him to appear on October 1, 2018, unless he made payment toward the interim attorneys' fees and costs previously awarded to the wife in a timely manner. The August 17, 2018, Order was entered in the husband's presence.

On September 28, 2018, the husband's attorneys, Ventrelli Simon, L.L.C., filed their Motion to Withdraw. On October 1, 2018, the court again entered an Order of Adjudication of Indirect Civil Contempt and/or Order of Commitment. Additionally, on October 1, 2018, the court entered an Order stating, "[s]hould the husband fail to personally appear in open court on that date, a default order would be entered against him and the case will be assigned out on that date for a default prove up without further notice."

On the same date, Ventrelli Simon, L.L.C., attorneys for the husband, was granted leave to withdraw as counsel. On October 29, 2018, the court entered an Attachment Order for the husband's arrest.

On October 29, 2018, the Court assigned this matter out for a default prove up pursuant to the October 1, 2018 Order and entered the Default Judgment for Dissolution of Marriage ("Default Judgment"). On November 5, 2018, Laura Black Rector, attorney for the wife at the time of the default prove up, filed her Affidavit of Service regarding the service of the Default Judgment for Dissolution of Marriage upon the husband.

As grounds for vacating the Default Judgment, the husband's Petition to Vacate Default Judgment for Dissolution of Marriage ("Petition to Vacate the Default Judgment") relied upon Section 2-1401 of the Illinois Code of Civil Procedure, 750 Ill. Comp. Stat. 5/2-1401 (2020), which stated, in pertinent part, that "[r]elief from final orders and judgments, after 30 days from the entry thereof, may be had upon petition as provided in this Section." The Illinois Appellate Court had held that: The purpose of [Section 2-1401] is to allow a party to alert the court to facts that, if known at the time, would have precluded judgment from being entered. A proceeding pursuant to section 2-1401 does not provide the

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litigant a new opportunity to perform a task that should have been completed early in the proceeding, nor does it allow a litigant relief from the consequences of his mistake or negligence.

The husband had not presented facts that, if known at the time, would have precluded the entry of the Default Judgment. *In re Marriage of Benjamin, 2017 IL App (1st) 161862.*

The husband offered only that he did not have an interest in a Nicaraguan coffee farm and alleged that the Default Judgment allocated "substantially all of the marital assets to the wife and substantially all of the marital debt to the husband" as a means of punishing him. The alleged inequity arises not out of newly discovered facts but instead out of the husband's persistent refusal to produce discovery during the pre-decree litigation in this matter. In fact, the allocation of marital assets enumerated in the Default Judgment is predicated upon the little discovery produced by the husband, making any inequities present in the Default Judgment the direct result of his non-compliance the wife's discovery requests and the orders of this Court. The husband had the ability to produce and provide discovery prior to the entry of the Default Judgment to provide the court with more information, but he chose not to do so. Because the facts relied upon by the husband were available at the time the Default Judgment was entered and because the husband failed to bring them forward, again despite being ordered to do so, the husband had not established a meritorious claim upon which Section 2-1401 relief could be granted.

The husband cited 735 ILCS 5/2-1301. Under 735 ILCS 5/2-1301, the only section that could possibly be applicable was Section 1301(e) which stated that: :"[t]he court may in its discretion, before final order or judgment, set aside any default, and may on motion filed within 30 days after entry thereof set aside any final order or judgment upon any terms and conditions that shall be reasonable." Obviously, Section 1301 was not applicable because the husband's Motion to Vacate the Default Judgment was not filed within 30 days.

Fee Reduction Denied

The mother who was currently representing herself requested a re-allocation of the Child Representative's fees which were ordered to be paid to Joel Levin. Judge Ellen L. Flannigan denied the mother's request and ordered her to pay $21,184.38 to Joel Levin as her share of the outstanding fees.

The mother represented herself Pro se. The father was represented by Rachel Kolesar of Birnbaum, Haddon, Gelfman & Arnoux, LLC. Joel Levin was the Child Representative.

Joel Levin brought his Petition for Setting of Attorney's Fees and Costs of Child Representative pursuant to Sections 501 and 506 of the IMDMA. The parties agreed that the child representative fees were justified in light of the total circumstances. See *In re Marriage of Soraparu, 147 Ill. App. 3d 857, 864 (1st Dist. 1986).* Therefore, the only issue before the court was whether the portion of the child representative's fees that each parent was required to pay should be reallocated.

The mother presented two arguments to support a reallocation of the child representative fees. First, she alleged that, in connection with Judge Vega's October 31, 2016 Fee Allocation Order, the father provided fraudulent financial disclosures, made gross financial misrepresentations, engaged in deliberate efforts to conceal his financial information, and shared fabrication[s] and lies about the same. Similarly, the mother alleged the

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father fraudulently omitted various assets from a Financial Affidavit he tendered in April of 2018. Second, the mother argued that she was entitled to a reallocation of fees because she could no longer afford to pay her share.

Regarding the mother's first argument, the court construed her reply, and her statements at the hearing on the Petition, as alleging the father committed fraudulent concealment. Fraudulent concealment occurs when a person intentionally conceals information and another person relied to their detriment on that "silence." *Abazari v. Rosalind Franklin Univ. of Med. & Sci., 2015 IL App (2d) 140952, ¶ 27.* The party alleging fraudulent concealment has the burden of proving that:
(1) the defendant concealed a material fact under circumstances that created a duty to speak; (2) the defendant intended to induce a false belief; (3) the plaintiff could not have discovered the truth through reasonable inquiry or inspection, or was prevented from making a reasonable inquiry or inspection, and justifiably relied upon the defendant's silence as a representation that the fact did not exist; (4) the concealed information was such that the plaintiff would have acted differently had he or she been aware of it; and (5) the plaintiff's reliance resulted in damages.
Here, to prevail on her allegations of fraudulent concealment, the mother must show that the father intentionally misstated or concealed a material fact about his financial condition in the course of discovery into his finances. *In re Buck, 318 Ill. App. 3d 489, 494 (1st Dist. 2000).*

The mother referred at the hearing to, and subsequently attempted to provide the court copies of documents which she asserted the father had not disclosed before Judge Vega entered the fee allocation order in October 2016 or when the father executed a financial affidavit in April 2018. At that hearing, the mother was represented by Grund & Leavitt. The mother alleged that these documents painted a different financial picture than the picture the father presented to Judge Vega in 2016 and during the course of discovery in 2018. However, many of these documents were not admitted into evidence at the hearing due to the mother's inability, on several grounds, to lay a proper foundation on several grounds.

The mother failed to establish proper authentication of the various financial documents as business records. She did not provide, through either a custodian of records or other appropriately qualified witness, any evidence of the financial records being made in the regular course of the respective financial institutions' business. Further, she did not provide any written certification from a custodian of records or other qualified person from the respective institutions stating that the documents were made in the regular course of business. Without either the testimony of a qualified witness or the certification, the court did not have a basis for accepting that these documents were authentic. Be that as it may, as the mother was self-represented, deference would have been afforded to her in regard to authentication and admissibility of financial documents had they not been incomplete, tainted, or contained hearsay. As the mother attempted to admit fatally deficient documents, including financial statements with missing pages, personal notations and highlights, and self-serving hearsay, the financial documents were inadmissible and the court granted the father's objections to admissibility.

Although these documents reflected the father's financial status, the mother had not shown that the father withheld them, intentionally or otherwise, from earlier disclosure that would support her claim of fraudulent concealment. In this regard, the father's counsel argued to the court that the mother's counsel, in their discovery

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transmissions, included cover letters which would document the date of the transmissions and the particular documents included. The mother could conceivably have supported her claim of fraudulent concealment by producing those cover letters to show when she received documents. However, each time the issue of a cover letter from the father's counsel's firm arose during the hearing, the court inquired as to whether the mother had such a letter with her. Each time, the mother replied that she did not have them with her, though she admitted she did receive them.

Therefore, based upon her testimony lacking credibility and the lack of credible documentary proof, the mother failed to show fraudulent concealment on the part of the father and, thus, her claim failed.

Regarding her second argument, the mother claimed that, regardless of whether the father fraudulently concealed his assets at the time Judge Vega entered his order, the father now has greater assets and was able to pay all of the child representative fees, including those that the mother had not paid.

The mother argued that she was entitled to a full reallocation of the child representative fees because she now could no longer afford to pay any of her share. She testified that although she previously borrowed money from both her brother and her employer, she no longer had this money as she had since repaid them.

However, neither her brother nor employer were present at the hearing to testify about these supposed loan transactions. Also, said witnesses, if disclosed and identified pre-hearing and/or produced at trial for cross-examination, would have assisted the court in finding these alleged transactions credible. The mother made no argument as to these witnesses' unavailability and no trial subpoenas were issued.

The mother attempted to introduce emails from her brother regarding her repayment of loans he allegedly provided her. The court was asked to admit these emails containing the mother's brother's out-of-court statements. These statements were offered to prove not the mere fact that they were said or written, but the truth of what they assert—namely, the mother's alleged repayment of the alleged loans and, thus, her inability to pay Levin's fees currently. Accordingly, the mother attempted to admit hearsay statements. Therefore, the court could admit these emails if they fell into the unavailable declarant exception to the hearsay rule.

But the mother also had the burden of showing her brother's unavailability. *Burton, 53 Ill. App. 3d at 350.* In particular, the mother had to demonstrate that she exercised diligence and a good faith effort to have him present in court. She testified that her brother lived in New York. She merely explained that her brother was not present in court but did not disclose what efforts she made to have him attend the hearing.

The mother testified she was financially incapable of paying her share of the fees. However, the court noted that she did not attempt to admit documents, such as her complete and current tax returns from 2016 to the present, her family trust documents, or bank statements, that could corroborate her claimed financial difficulties. On the contrary, her financial affidavit reflected that she owned a condo worth $158,000 and had over $230,000 held in IRAs.

While the mother was not employed full-time, she received some income every month from her parents, owned a home, and owns substantial assets. She also received child support from the

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father. The mother's circumstances were quite different from those of a parent completely unemployed and without any assets having to pay half of the child representative fees. *See In re Custody of McCuan, 176 Ill. App. 3d 421, 427-28* (finding that the trial court abused its discretion in ordering a mother to pay half of the Guardian Ad Litem's fees when the mother was unemployed and had no assets). The court found that the mother failed to establish that she was unable to work; moreover, she owned a condominium and had nearly a quarter-million dollars in retirement funds which she could access to pay her share of the child representative fees.
The court found that the mother did not testify credibly at the hearing on the instant Petition regarding her past and present financial and employment circumstances. The court further found that the documents she submitted after the hearing would not rehabilitate her incredible oral testimony. *See In re Marriage of Manker, 375 Ill. App. 3d 465, 477 (2007)* ("The trier of fact was charged with assessing the credibility of testimony at trial."). Throughout the litigation, both parties were distrustful towards each other and accused the other of concealing assets and financial documents.

The court had previously observed that "[i]t is undisputed that this has been a highly contentious case regarding the minor child, child support, [and] payment of expenses." The court also recognized "the parties' continued dispute over parenting time" and noted that "both parties were complicit in the parenting issues and contentious litigation." Such actions caused an escalation of attorney's fees, including Levin's fees. Consequently, based on the evidence before the court and the similarly litigious conduct of the parties during these proceedings, and the mother's incredible testimony, the court found that an equal division of the child representative fees was still appropriate.

Maintenance Modification Allowed

The husband was able to show that his change of employment was made in good faith. Also, the wife had increased her earnings significantly. However, Judge Matthew Link refused to consider her inherited funds but nevertheless, granted the husband's Petition to Modify Child Support and Maintenance.

The wife was represented by Matthew C. Arnoux of Birnbaum, Haddon, Gelfman, & Arnoux, LLC. The husband was represented by Pepi Camerlingo and Jennifer A. Parks of Dussias, Wittenberg, Koenigsberger, LLP.

The parties were married for 20 years prior to their divorce. The parties had three children, namely: a son, age 16; a son, age 14; and a daughter, age 11.

The husband worked in interactive website design. He was self-employed at the time the Judgment was entered. He incorporated the business in December of 2017 and began working for himself in April of 2017. He formed his own LLC to take advantage of an opportunity presented by a close contact at NorthStar Travel Media ("NorthStar"). The contact had assured the husband that he would receive website redesign and other major projects from NorthStar. The husband began seeking other employment options in 2018 following the contact's resignation from NorthStar in August of 2018. The husband's work from NorthStar began to diminish following the contact's resignation and he failed to retain any new clients. He also found running his own LLC to be more challenging than he had expected. Additionally, changes in the website design industry limited the husband's ability to attract new clients and led him to explore opportunities to gain employment as a salaried employee.

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The husband's girlfriend worked at T.A. Digital. She introduced him to her boss because T.A. Digital was looking to expand. He also had worked for T.A. Digital on free-lance projects since 2017. He began employment discussions with T.A. Digital in January of 2019. On February 15, 2019, he commenced employment with T.A. Digital as a full-time, salaried employee. He was currently T.A. Digital's Director of User Experience and earned an annual base salary of $170,000 with a discretionary bonus of up to 20% of his base salary.

The husband testified that he had only been able to fund his current support obligations by using the funds he received for his equity in the marital home and credit. At the time trial had commenced in January of 2020, his Citi Mastercard had a balance of $39,997. He also had recently opened an American Express card, which had a balance of $4,293. In late 2019, he failed to remain current on his agreed child-related expense obligations. On January 1, 2020, he sent a Talking Parents message to the wife indicating that he was prioritizing the maintenance and child support payments but would be unable to reimburse the wife for the shared expenses, which approximated $1,600.

At the time of the Judgment, the wife was employed part-time and performing consulting work. In April 2019, she commenced employment with Dairy Management Inc. She was a W-2 employee and currently receives an annual salary of $113,300.

From May through December 2018, the wife received $180,068 in trust distributions, inheritances and gifts. She received the checks in the amounts of $76,403 and $1,125.85 following the death of her paternal grandmother. She testified that she inherited the money because her father passed away and her father was a beneficiary of her grandfather's trust. She was not a named beneficiary of any trust associated with this inheritance. Approximately $54,000 of the inheritance funds remained in her bank account at the time of the hearing. She received the $10,000 and $53,000 trust distributions and the $27,000 gift from her mother shortly after the Judgment. The wife used the funds to pay off the HELOC on the marital residence, which was necessary to refinance and remove the husband's name from the mortgage. The wife received the remaining gifts of $7,200 and $5,338.83 from her mother to help make her mortgage payments on the marital residence until she downsized to a more affordable home.

Under the Illinois Marriage and Dissolution of Marriage Act (Act), "an order for maintenance can only be modified upon a showing of a substantial change of circumstances." 750 ILCS 5/510(a-5) (West 2018). Illinois courts have held that "substantial change in circumstances" as required under Section 510 of the Act means that either the needs of the spouse receiving support or the ability of the other spouse to pay support has changed. See e.g., *In re Marriage of Anderson, 409 Ill. App. 3d 191 at 198 (1st Dist. 2011).* The party seeking modification has the burden of establishing the change. *In re Marriage of Shen, 35 N.E.3d 1178 (1st Dist. 2015).* Moreover, Section 510(a-5) of the Act sets forth several factors that the trial court must consider when deciding whether to modify maintenance.

Section 510(a-5) also required that the court consider the factors relevant to a determination of an initial maintenance award set forth in section 504(a) of the Act. Those factors included the parties income, property, and needs; the parties realistic future earning capacities and any impairments to those earning capacity; the time necessary for the party seeking maintenance to acquire appropriate education, training and

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employment; whether the party seeking maintenance is able to support himself or herself through appropriate employment; the effect of parental responsibility arrangements on the party seeking employment; the standard of living during the marriage; the duration of the marriage; each party's age, health, station, occupation, amount and source of income, vocational skills, employability, estate and liabilities; tax consequences to each party; contributions and services by the party seeking maintenance to the education, training, or career of the other party; any valid agreement of the parties; and any other factor that the trial court finds just and equitable. 750 ILCS 5/510(a-5) (West 2018).

The Judgment was res judicata as to the facts that existed at the time of the Judgment. The wife argued that the husband was earning more income now than he was when the Judgment was entered.

Pursuant to the Judgment, maintenance and child support was calculated based on the husband earning an annual gross income of $250,000 and the wife earning an annual gross income of $60,000. Therefore, for purposes of this child support and maintenance modification proceeding, the husband's annual gross income was $250,000 and the wife's annual gross income was $60,000 at the time of the Judgment.

The husband had met his burden to establish that his job change from a self-employed owner of his own LLC to a W-2 wage earner at TA Digital was made in good faith. No evidence was introduced that his job change was prompted by a desire to evade his financial responsibilities to the wife. Rather, he testified credibly that he took advantage of the opportunity to work at TA Digital after his contact resigned from NorthStar in November of 2018. NorthStar was the husband's major source of revenue when he operated his LLC and the contact was responsible for sending the husband work from NorthStar. The husband testified credibly that his work with NorthStar tapered off following his contact's departure and that he had difficulty securing new clients. Importantly, NorthStar and T.A. Digital were the husband's only clients.

The husband also testified about the operational challenges he faced operating his own LLC. He testified that being the sole owner and employee of his LLC was more challenging than he originally anticipated and that he lacked the knowledge to properly run a business. He additionally testified that his industry was undergoing significant changes such that new technology was eliminating the need for individuals like him to create websites for companies, which affected his ability to secure new clients. In October 2018, he began working on a project for TechAspect Solutions ("T.A. Digital"), an opportunity he secured through his connection with his long-time girlfriend who had been working with T.A. Digital since 2017. This led to him commencing employment with T.A. Digital as a full-time, W-2 wage-earing employee on February 15, 2019.

The husband currently earned a base salary of $178,000.00. Additionally, in April of 2020, he received a bonus in the amount of $28,000.00. The court found that his current gross annual income was $206,000.00.

It was undisputed that since entry of the Judgment, the wife had gained full-time employment and was currently earning a base salary of $113,300 per year. No credible evidence was introduced that the parties contemplated the wife's salary increasing from $60,000 to $113,300.

The husband argued that the court should consider the funds that the wife had received as beneficiary

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of certain trusts and the gifts that the wife received from her mother as income for purposes of recalculating child support and maintenance.

Net income includes "the total of all income from all sources" (i.e., gross income), excluding funds received from public assistance programs or benefits received for other children, less certain tax deductions and adjustments for spousal maintenance or multifamily support obligations. 750 ILCS 5/505(a)(3)(A) (West 2018). Although the Act itself does not define income, the Supreme Court stated, based on the plain and ordinary meaning of the word, income includes "'a gain or recurrent benefit that is usu[ally] measured in money.'" *In re Marriage of Rogers, 213 Ill. 2d 129, 136-37 (2004) (quoting Webster's Third New International Dictionary 1143 (1986)).* Income was also defined as " '[t]he money or other form of payment that one receives, usu[ally] periodically, from employment, business, investments, royalties, gifts and the like.'"

The husband stressed that from May through December 2018, the wife received $90,000 in trust distributions and gifts, which should be considered income to her for purposes of recalculating child support and maintenance. However, the parties agreed that certain trust distributions received by the wife would not be considered income to her for purposes of recalculating child support or maintenance. The Judgment stated, in relevant part, that the parties acknowledged and agreed that the wife would receive certain funds to buy out the husband's interest in the marital residence.

The wife received $90,000 shortly after the Judgment was entered and the funds were to pay off the HELOC on the marital residence. She testified credibly that the mortgage company required her to pay off the HELOC in order to refinance and remove the husband's name from the mortgage. Therefore, since said funds were received shortly after the Judgment was entered and were used exclusively to fulfill the wife's obligations under the Judgment, the court declined to consider the $90,000 received as the wife's current income. The husband also stressed that between June of 2018 and July of 2019, she received loans and gifts from her mother, which should be considered income to her for purposes of recalculating child support and maintenance.

For the purposes of determining support, significant gifts, whether recurring or a one-time benefit, are considered income. *Mayfield v. Mayfield, 2013 IL 114655, ¶ 24,; Rogers, 213 Ill. 2d at 139.*

However, the court declined to consider the funds that the wife received from her mother in 2018 and 2019 as current income. Importantly, the gifts stopped in July of 2019, shortly after she found full-time employment and before the husband filed his motion to modify support. The gifts were temporary and she testified credibly that the money was used to pay her mortgage while she was unemployed. There was no prior history of the wife receiving monetary assistance from her mother and the evidence was insufficient to establish that said funds represent a steady source of dependable annual income to her.

Finally, the court declined to consider the wife's inheritance funds received in 2018 as current income. Approximately $54,000 remained in her bank account at the time of the hearing. No evidence was introduced regarding any income produced by the wife's inheritance. Therefore, said funds would be classified as an asset of the wife when considering the factors relevant to this child support and maintenance modification proceeding.

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The court found that the wife's current gross annual income was $113,000.00. Section 510(a-5) and 504(a) Factors Sections 750 ILCS 5/510 and 5/504 provide the factors for the court to consider in maintenance modification proceedings. In considering the relevant factors, the court found that this was a long-term marriage and the parties agreed that the husband would pay maintenance for a term of nine years (108 months). He had paid maintenance for approximately 28 months.

The court found that the wife had met her burden to establish that her failure to notify the husband of the above referenced trust distributions was not willful and contumacious and that she had a valid excuse for her failure to do so.

The husband conceded that he failed to make two support payments. Additionally, he admitted that he chose to pay several non-court ordered obligations rather than become current on his support obligations. Therefore, he had failed to meet his burden of showing that his failure to comply with the order to pay support was because he was unable to pay.

The husband's Amended Petition to Modify Child Support & Maintenance was granted. He was ordered to pay maintenance in the amount of $1,216.17 per month and child support in the amount of $597 per month. He was to contribute 57% and the wife was to contribute 43% toward the payment of agreed child-related expenses. His maintenance payments would continue to be taxable.

The husband's Amended Petition to Modify Child Support & Maintenance was granted retroactive to the date of filing (August 6, 2019). The issue of calculating his overpayment of child support and maintenance was reserved. The parties were granted leave to provide the court with proposed calculations based on evidence admitted at trial. The issue of the wife's repayment of the husband's overpayment of child support and maintenance was also reserved.

Weekdays with the Father, Proximity to School Crucial

The mother sought to have the court determine the allocation of parenting time between her and the father. For the 24 months prior to the commencement of the paternity action, the mother was the primary parent. Currently, and by agreement, the child was attending school in the district where the father resided. Judge Neal W. Cerne allocated the father the weekdays and the mother weekends so as to allow the child to continue to attend school in the father's district. He analogized the parenting schedule to a child who was living with his mother but was going to "boarding school" during the week and coming home on weekends. He also provided that the need for "boarding school" could be reviewed if the child's reading ability improved to a grade appropriate level. Otherwise, all parenting decisions were to be joint.

The mother was represented by Todd D. Scalzo of Mirabella, Kincaid, Frederick Mirabella, LLC. The father was represented by Roy P. Amatore of the Law Office of Roy Amatore. Chantelle Porter was the Guardian Ad Litem.

The parties were the natural parents of one child, a son, now age 10. Paternity was established by acknowledgment pursuant to a Court Order of June 17, 2020. The mother had a child from a subsequent relationship.

The father was 31 years old, lived in Itasca, IL in his own two bedroom condominium. He worked as a warehouse manager in Bensenville, IL. He worked 40 hours per week but with flexible hours.

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He had a starting time of between 6am and 10am, and an ending time between 8pm and 10pm. He earned $40,000 per year.

The mother was 29 years old, currently lived in Lombard, IL with her father, her two brothers, her husband, and a two year old daughter from another relationship (a total of 7 people). The Lombard home belonged to her father. The mother worked as a server at Ra Sushi Bar in Lombard. Due to COVID she worked diminished hours and was now earning $8,400 per year.

The parties did reside together for a short time with their child having separated in 2011. There had been two previous parentage actions but they both were voluntarily dismissed. But no order for support was ever entered until the current case, and no scheduled parenting time until this case.

Since the child was born he had been in the primary care of the mother. Both parties admitted that the mother had been the primary parent and without a need for a court order, until this year. They had been exercising parenting time for the past ten years and had relied heavily on the father's mother to facilitate exchanges and parenting time. The child had no special needs. The child had been attending schools in Lombard until the Fall of 2019 when the child started to attend school in Medinah, IL, the school district in which the father resided. This was by agreement of both parties and supported by the father's mother. The parties differed on the reasons for the change, but that was irrelevant. The child had missed a lot of school while in Lombard and had difficulty reading. The GAL indicated that the child, now in 5th grade, could not read. In addition, the Lombard school was now doing virtual class while the Medinah school was meeting in person. The change in school was for the benefit of the child. The court found it incredible that the father did not know his child could not read until September of 2019 when the child came to him to attend the Medinah school, despite his self-proclaimed high involvement.

This third filing of a paternity petition was apparently initiated on June 16, 2020 when the father refused to have the son move back to the mother's residence and attend the Lombard schools. The minor child commenced the 5th grade in Medinah in the fall of 2020, although the child had been living in Lombard during the week with the mother taking him and bringing him home every day for school.

Each parent had expressed a desire to have parenting time with the child. The child had not expressed a preference for either parent. The GAL opined that the child was bonded with both parents, and that he felt caught in the middle between his parents. For the 24 months preceding the commencement of the paternity action, each had been the primary parent. The mother initiated this action in June, 2020. The child had been with the mother until September, 2019. From September, 2019 until June, 2020 he had been with the father. However, pursuant to both parties testimony, the mother had been the primary parent for the vast majority of the child's life, and it was not until September, 2019 that the father served as the primary parent. Since this cause was initiated the mother was the parent with majority of parenting time. Since shortly after June, 2020 when the mother filed this action, she had been the primary parent. The actions of the parties indicate that the child has a positive relationship with both parents and this was confirmed by the GAL.

There was no indication that the child was not adjusted to his home and mother. However, there was concern about the chaotic living arrangement of the mother. There were many people residing in the residence. While living there, the GAL

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reported that the child was tardy and missed many days of school while attending the Lombard school. In addition, she believed that the child was not sleeping well at the residence. There was also the huge problem that the child could not read. Whether this was a result of a poor school and/or the living arrangement, or a problem with the child was of little consequence. The court believed that something had to change to get the child to read.

No mental health issues were raised relative to the parties. No professionally diagnosed condition was offered relative to the mental health of the parties. The court presumed that each was mentally stable. The short distance between the parties promoted parenting time.

The father resided in Itasca, and the mother resided Lombard. This was a relatively short distance as evidenced by the mother taking the child and picking him up from the Medinah school each school day, so there was not a need to restrict parenting time.

The mother appeared to put the best interest of her child above her own. She voluntarily allowed the child to live with the father and attend school in the Medinah school district. This appeared to have been for the benefit of the child. Both parents had the ability and willingness to facilitate a relationship between the other parent and the child. Until June, 2020 the parties were able promote parenting time with the other parent without the need for court intervention.

The child expressed no preference as to whom he wanted to be the decision-maker. No evidence was tendered to suggest the preference of the child as to who should be the primary decision-maker. The child was adjusted to his home, school, and community. There was no indication that the child was not well adjusted to his home with the father. The child did not have any health issues. No evidence was offered to suggest that the child suffered from any health conditions that would impact the allocation of parental responsibilities. The parties had the ability to cooperate in making decisions relative to their child. The parties have been able to successfully cooperate. However, the mother did recently commence therapy for the child without telling the father or the Guardian Ad Litem. That secretive action did raise some concern. Both parents expressed a desire to be involved with the decisions affecting their child. Neither party indicated that they wanted a decreased role in their child's life, and each expressed that they both wanted to be part of the decision-making process. There were no external factors (geographic, cost, travelling inconveniences, schedules, or personality traits) that adversely impact the ability of the parties to participate in decision making. The parties lived close to one another. Neither party engaged in any conduct that would endanger the child, and therefore be a basis for restricting the parental responsibilities. As indicated above, neither party had demonstrated an inability to make proper decisions for their child. Each parent had demonstrated a willingness to encourage a close and continuing relationship between the other parent and the child.

There was no physical violence or the threat of physical violence by a parent directed at the minor child. There was no abuse directed at the child or other member of the household.

The parties were to jointly make major decisions concerning the child. Parenting time was to be allocated between the parties as follows: The mother was to have every weekend from Friday at the conclusion of school until Sunday at 6:00pm and as otherwise outlined by the court.

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Child support was set at the statutory amount of $323.80 per month effective July 1, 2020. The division of an uncovered medical expense, extracurricular, and school expenses, was 80% to the father and 20% to the mother.

Permanent Maintenance Reduced to Zero

The parties were married for 26 years and had four children. The husband was ordered to pay permanent maintenance of $2370 per month. At the age of 63, the husband retired as an executive and sought to modify his obligation. Judge Thomas J. Kelley found that based on his reduced income and the wife's increase in both her income and assets, the husband's obligation was reduced to zero.

The husband was represented by Renee J. Rempert of the Law Office of Renee Rempert. The wife was represented by Sean M. Hamann and Alexandra Perraud of Lake Toback DiDomenico.

The parties married on July 20, 1985. The husband was 29 years old and the wife was 24 years old at the time they married. They had four children, all now emancipated.

The MSA provided that the wife was to have sole custody of the then 17 year old minor child, a daughter, as the three older children were emancipated. The issue of child support for the minor child was reserved because the daughter was emancipating in June of 2012. The MSA provided that both parties equally pay the extra curricular expenses and health care expenses not covered by insurance.

The MSA provided that beginning with the first day of the first month following entry of the Judgment for Dissolution of Marriage and ending on June 1, 2012 or such time as the house was sold but no later than September 1, 2012, the husband was to pay to the sum of $2,370.00. Beginning September 1, 2012, he was to pay the sum of $1,750.00 per month as and for permanent maintenance

The husband was to maintain a life insurance policy on his life with death benefits in the amount of $200,000.00 naming the wife as the irrevocable beneficiary, at his sole expense, until his retirement or when maintenance otherwise terminated.

At the time of the Judgment for Dissolution, the husband was 55 years old and was the Executive Director of the Hoffman Estates Park District and his gross earnings were approximately $143,876.00 for the year 2011. The wife was 51 years old and was a teacher for School District 54 and her gross earnings were approximately $64,369.00 for the year 2011.

The wife had not remarried since the entry of the Judgment for Dissolution of Marriage. Subsequent to July 2013, she had been employed as a librarian for School District 54 and not as a teacher.

The husband filed a Petition to Terminate Maintenance and Life Insurance on January 24, 2018, in anticipation of his retirement. He retired on April 27, 2018. He stopped paying the wife maintenance after his $1,750.00 payment to her in April 2018. He started receiving his monthly pension benefit of $6,539.00 in May 2018. The wife filed her Emergency Motion for Petition for Rule to Show 2018. The court found that the matter was not an emergency and the matter was continued to the trial.

The court entered an Agreed QILDRO Calculation Order on February 6, 2019, which

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provided that the wife was to receive $4,209.50 from the husband's monthly pension benefit from the Illinois Municipal Retirement Fund (IMRF). The wife testified that she received a lump-sum payment from IMRF in May 2019 for the retroactive pension payments she was owed.

The husband was seeking to Terminate Maintenance or in the alternative Modify Maintenance down to zero dollars based upon a substantial change in circumstances since the entry of the Judgment for Dissolution of Marriage, He was alleging that his gross income had substantially decreased because he retired and the wife's income substantially increased since the entry of the Judgment for Dissolution of Marriage.

The husband solely owned a 2014 Ford Explorer valued at $10,000.00. He had an interest in a Merrill Lynch IRA valued at $300,087.00. This account originated from his Deferred Compensation Plan he was awarded pursuant to the MSA. He also had another IRA at Merrill Lynch valued at $25,549.00. The court found he had assets that were solely in his name valued at $335,636.00.

The husband had net assets that were solely in his name that totaled $335,636.00. He and his wife have jointly held net assets of $786,350.00. The former wife currently had net assets of $393,108,00. The marital estate was divided equally between the parties upon the entry of the Judgment for Dissolution of Marriage. There was no evidence that either party received any non-marital property.

The husband retired as Executive Director of the Hoffman States Park District in April 2018 when he was earning in excess of $200,000.00 a year. He was 63 years old and at the present time had not resumed working and had no intention of working. There was no evidence he would return as Executive Director of the Hoffman States Park District. There was no evidence as to his present earning or future earning capacity.

The wife was earning approximately $100,000.00 a year working as a librarian for School District 54 and had reached her maximum earning potential.

The husband was healthy and could work. There was no evidence presented as to his present or future earning capacity. Other than that, he was 63 years old and had not worked for almost two years. The court found that there was no impairment to his working in the future.

The wife had already earned her Master's Degree in Education at the time of the entry of the Judgment for Dissolution of Marriage, and had increased her earnings as a teacher since the divorce. Her wages had gone from $64,000.00 in 2011, the year she was divorced, to $100,000.00 in 2019. She was currently able to support herself through her employment and the income she received from the husband's pension from IMRF, without the need for maintenance.

The best evidence of the parties' standard of living during the marriage was the history of the parties' social security earning statements admitted into evidence. At the time of the entry of the Judgment for Dissolution of Marriage in the year 2011, the husband had gross earnings of $143,876.00 and the wife had gross earnings of $64,369.00 for a total joint income of $208,245.00. At the time of the divorce, the parties were supporting one minor child and had two college age children. Presently, the wife's gross income was approximately $159,000.00 and she was supporting only herself with no obligations to the husband or her four children. It appeared that her financial circumstances and

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standard of living were equal or better now because she had 100% of her income of $159,000.00 per year supporting only herself versus a joint income of approximately $208,000.00 supporting herself, the husband, one minor child, and two college age children.

In the year 2005, the husband's gross earnings were $123,720.00 and the wife's gross earnings were $42,076.00 for a total joint income of $165,796.00. In 2005 the parties' children were ages 17, 15, 12, and 10. Even when adjusted for inflation, the wife's current income of $159,000 clearly could support a lifestyle equal or greater for one person than a joint income of $165,796 supporting a family of six.

From 1989 to 1996, there were eight years where the parties were supporting the entire family solely on the husband's income, which was never higher than $75,000.00. In 1996, the parties' children were ages 8, 6, 4 and 2 and the parties supported the entire family solely on the husband's gross income of $72,805.00.

The wife's mortgage payment on her current residence was $1,892.00, while at the time of the divorce her mortgage payment was only $1,300.00 on the parties' marital residence. The court found that her current gross income of approximately $159,000.00 clearly can support a lifestyle equal to or greater than the parties had during the marriage.

The parties married July 20, 1985 and were divorced December 28, 2011. They were married 26 years. Based upon the length of the marriage the wife would have been a candidate for indefinite maintenance under the current law, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities, and the needs of each of the parties The husband was 63 years old and although he had substantial out of pocket medical expenses in 2019, he had no significant health problems. The husband is retired and is remarried to his new wife and they were supporting themselves on their retirement incomes, the new wife's part-time employment, and assets the new wife inherited from her father. They had joint assets of $786,350.00 and the husband had individual assets of $335,636.00. He was able to delay withdrawing funds from his retirement accounts and delay receiving social security retirement income at the present time because he was accessing funds from the joint Merrill Lynch Account.

The wife was 59 years old and had no significant health problems. She was still working for School District 54 and had a gross income to support her current needs without the need for maintenance at this time. She had $393,108.00 in net assets solely in her name.

The husband was only receiving $88,288.00 in pension and interest income per year, he could access social security retirement income at the present time and withdraw funds from his Individual Retirement Accounts without incurring the 10% federal tax penalty.

The wife was receiving her current wages at School District 54 and income from the husband's pension at IMRF. The wife could also access funds from her Individual Retirement Accounts without incurring a federal tax penalty since she was over 59 1/2 years old. She could also access funds from her savings account. She was unable to receive social security income at this time.

The husband had approximately $177,000.00 in net assets at the time of the divorce. He was remarried. His new wife brought approximately $750,000.00 in assets to their marriage and had transferred said assets into jointly held accounts

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with the husband. They had joint net assets totaling approximately $786,000.00. In addition, the husband had approximately $336,000.00 in net assets that were solely in his name.

Prior to the husband having retired, the wife's gross income was approximately $100,000.00 from employment and $21,000.00 from maintenance paid by the husband for a total of $121,000.00. Since the husband had retired, he had stopped paying maintenance to the wife, but now the wife was receiving $50,514.00 a year from the husband's pension from IMRF. The wife increased her earnings from $121,000.00 to $150,000.00 solely because the husband had retired, and that was without the wife receiving maintenance. The husband earned approximately $218,000.00 in his last full year as Executive Director of the Hoffman Estates Park District. The wife would have been better financially if he continued working and paying the wife maintenance until the normal retirement age of 66 years and 4 months according to the Social Security Administration. Ironically, the wife would have been worse financially if the husband continued to work as the Executive Director of the Hoffman Estates Park District as she would have not received his pension benefits until November 2022. The wife would have lost at least $132,813,00 even with the husband's payment of maintenance.

The wife argued that the husband's retirement was contemplated at the time the parties entered into the MSA and therefore, his retirement cannot be considered as a substantial change in circumstances. The wife cited *In re Marriage of Salvatore, 2019 IL App (2d) 180425 and Bernay v. Bernay, 2017 IL App (2d) 160583* which provided that a party cannot ordinarily avail themselves to Section 510 for a change in circumstance that was contemplated at the time a maintenance obligation was entered. The wife argued that since the MSA provided that the husband would maintain life insurance for the benefit of the wife until his retirement, that the husband contemplated retirement at the time the Judgment for Dissolution of Marriage was entered. The husband argued that he was seeking a termination and/or modification of maintenance not solely based upon his retirement, but because the wife's gross income had increased substantially since the divorce and that she was financially independent and did not need maintenance. The *Salvatore* decision cited by the wife was distinguishable from the present case in that the *Salvatore* case dealt with modification of child support and not maintenance. In addition, in the *Salvatore* case, the payee of child support was still earning substantially less than the payor spouse. In the present case, the wife had a gross income more than the husband. In the *Bernay* case cited by the wife, the Appellate Court found the payee of maintenance did not have a gross income or assets to maintain the lifestyle achieved during the marriage. In the present case, the wife had a gross income to maintain a lifestyle commensurate during the parties' marriage, the court found that just because the husband included his retirement as a terminating event in a provision relative to life insurance, did not mean the husband contemplated and expected that he would continue to pay maintenance regardless of the wife's income.

Though the court found that a modification of maintenance was appropriate, the court believed it would be unfair to terminate maintenance at this time, as the wife's circumstances might change and she may need maintenance to meet her needs at some point. She was currently working and her future retirement income from the School District was speculative as it depended on how many more years she continued to work. Despite the fact there was no evidence that the wife had health problems at the present time, she may develop

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health problems that required significant out-of-pocket medical expenses. Pension laws and federal and state income tax laws may change and affect the wife's circumstances. Therefore, she would have the right to seek maintenance if her financial circumstances changed. Accordingly, the husband's obligation to pay the wife's maintenance was modified from $1,750.00 per month to zero dollars per month.

Dismissal of Hague Petition Denied

The mother sought the return of the parties two children whom the father took purportedly on vacation to Hong Kong. However, he refused to return them. The mother filed a complaint and petition for their return pursuant to the Hague Convention. The father filed a Motion to Dismiss asserting that the court did not have jurisdiction to decide the sovereignty of Hong Kong as it was a non-justiciable political question. Judge Sue E. Myerscough of the U.S. District Court for the Central District of Illinois – Springfield Division denied the Motion to Dismiss.

The mother was represented by Joy M. Feinberg of Boyle, Feinberg, Sharma, P.C. and Reuben A. Bernick of the Law Offices of Reuben Bernick. The father was represented by Enrico J. Mirabelli and Shana L. Vitek of Berrman LLP.

On September 8, 2020, the mother filed her Complaint and Petition for the return of the parties two minor children pursuant to the Convention on the Civil Aspects of International Child Abduction ("Hague Convention") and the International Child Abduction Remedies Act ("ICARA"). The mother was a citizen of Hong Kong and the United Kingdom. She filed the action to secure the return of the two minor children, T.D. and A.D., from Illinois to Hong Kong. The children were born in Hong Kong and were citizens of Hong Kong and the United States. The mother alleged that on July 18, 2020, the father traveled with the minor children from Hong Kong to Shelbyville, Illinois to visit relatives. The mother agreed to the trip. She contended that the father originally said the minor children would return on August 17, 2020. However, he thereafter told the mother that he and the children will not return to Hong Kong.

On October 7, 2020, the father filed a motion to dismiss and memorandum of law in support arguing that the Hague Convention was now void with Hong Kong. He argued that recent events indicate that Hong Kong was indistinguishable from the People's Republic of China (PRC), and the United States government declared Hong Kong was no longer autonomous from the PRC. He contended that because PRC was not a signatory to the Hague Convention, Hong Kong was no longer a party to the Convention, and, therefore, the mother failed to state a claim and her Petition should be dismissed with prejudice. However, the mother argued that Hong Kong was still a party to the Convention, and the court did not have jurisdiction to decide the sovereignty of Hong Kong as it was a nonjusticiable political question.

A motion under Rule 12(b)(6) challenged the sufficiency of the complaint. *Christensen v. Cty. Of Boone, Ill., 483 F.3d 454, 458 (7th Cir. 2007).* A complaint must "state a claim to relief that was plausible on its face." *Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007).* A plausible claim was one that alleged factual content from which the court could reasonably infer that the defendant was liable for the misconduct alleged. *Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).* "Factual allegations are accepted as true at the pleading stage, but allegations in the form of legal conclusions are insufficient to survive a Rule 12(b)(6) motion." *Adams v. City of Indianapolis, 742 F.3d 720, 728 (7th Cir. 2014)*

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(internal quotation omitted). The court must draw all inferences in favor of the non-moving party. In re *MarchFIRST Inc., 589 F.3d 901, 904 (7th Cir. 2009).*

Hong Kong had been a separate yet unified country as a "one country, two systems" policy with China since July 1, 1997, which was to continue until the year 2047.

In 1988, the United States ratified the Hague Convention and became a contracting state on July 1, 1988. Also, in 1988 the United States enacted the ICARA to implement the Hague Convention in the United States. On September 1, 1997, Hong Kong became a signatory to the Hague Convention.

In 1992, Congress enacted the United States-Hong Kong Policy Act (USHKPA), which governed U.S. policy with Hong Kong providing "If in carrying out this subchapter, the President determined that Hong Kong was not legally competent to carry out its obligations under any such treaty or other international agreement, or that the continuation of Hong Kong's obligations or rights under any such treaty or other international agreement was not appropriate under the circumstances, such determination was to be reported to the Congress in accordance with Section 5731 of this title.

On June 30, 2020, China's National People's Congress Standing Committee (NPCSC) passed a national security law (NSL) for the Hong Kong Special Administrative Region (HKSAR). Hong Kong's Chief Executive promulgated it in Hong Kong later the same day. The law was widely seen as undermining the HKSAR's once-high degree of autonomy and eroding the rights promised to Hong Kong in the 1984 Joint Declaration on the Question of Hong Kong, an international treaty between the People's Republic of China (China, or PRC) and the United Kingdom covering the 50 years from 1997 to 2047.

Thereafter, President Trump and Secretary of State Pompeo have taken steps to combat China's actions.

On July 14, 2020, the United States passed the Hong Kong Autonomy Act (HKAA) codifying that the PRC was to ensure Hong Kong had the "high degree of autonomy." On the same day, President Trump issued an Executive Order, No. 13936, declaring a national emergency based on his determination that "the situation with respect to Hong Kong, including recent actions taken by the PRC to fundamentally undermined Hong Kong's autonomy, constitutes an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States." The Executive Order stated, "It was to be the policy of the United States to suspend or eliminate different and preferential treatment for Hong Kong to the extent permitted by law and in the national security, foreign policy, and economic interest of the United States." The President found that the recent actions of PRC "constituted an unusual and extraordinary threat" and declared "a national emergency with respect to that threat."

The father argued that the Executive Order suspended differential treatment and eliminated the distinction between Hong Kong and China for purposes of the Hague Convention. As such, according to the father, the United States no longer treated Hong Kong as a party to the Convention. However, as the mother indicated, the Executive Order referred to specific federal statutes and treaties. Neither the Convention nor the ICARA was cited in the Executive Order.

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Petitioner argued there was no basis to conclude that the United States intended to abrogate or suspend the application of the Convention to Hong Kong. The father argued that the list was not exhaustive. Of note, the Court received a letter on October 15, 2020, from the United States Department of State stating that the Department was the U.S. Central Authority for the Hague Convention and that a case was before the court "as the result of a request to the Central Authority from the Central Authority of Hong Kong for the return of the minor children under the Convention." The Department detailed information about the Convention and resources provided to the court, if it so desired. The court found that the U.S. Department of State was still following the Hague Convention with respect to Hong Kong as the Department sent this letter based on a request from the Central Authority of Hong Kong.

The court gave the language of the Executive Order its plain and ordinary meaning as the language was clear and unambiguous. *Food Mktg. Inst. v. Argus Leader Media, 139 S. Ct. 2356, 2364 (2019)* ("In statutory interpretation disputes, a court's proper starting point lies in a careful examination of the ordinary meaning and structure of the law itself. Where, as here, that examination yielded a clear answer, judges must stop." The Executive Order specifically stated that Hong Kong was no longer sufficiently autonomous to justify differential treatment in relation to the People's Republic of China under the particular United States laws and provisions thereof set out in this order." Moreover, throughout the Executive Order, the President listed specific statutes and treaties that the Executive Order affects. The Hague Convention and the ICARA were not mentioned. Therefore, the court found that neither the United States Congress nor the President of the United States had removed Hong Kong from the Hague Convention.

Additionally, the mother argued that the court did not have jurisdiction to decide the sovereignty of Hong Kong as it was a nonjusticiable political question. *See Jones v. United States, 137 U.S. 202, 212 (1890)* ("Who is the sovereign, de jure or de facto, of a territory, is not a judicial, but a political, question, the determination of which by the legislative and executive departments of any government conclusively binds the judges, as well as all other officers, citizens, and subjects of that government."). The mother contended that deciding the issue of whether Hong Kong was without authority to be a party to the Convention would be a political question, over which the court lacked subject matter jurisdiction. Without a clear pronouncement from the President of the United States or the United States Congress that the United States did not view Hong Kong as a signatory to the Hague Convention, the court was not in a position to issue a ruling on the sovereignty of Hong Kong. The father's motion to dismiss was denied.

Comments of Attorney Joy M. Feinberg:

"The father sent the mother copies of flight tickets departing the USA on August 17, 2020 and returning to Hong Kong on August 19th. Instead of her husband arriving home on August 19, 2020, the mother was served with Illinois divorce papers in Hong Kong. This Hague case is now going to be tried."

Appellate Review: "Corporate Assets Deemed Marital"

In December 2019, Volume 10, Issue 10, the Digest reported a decision of Judge Matthew Link titled "Corporate Assets Deemed Marital". In a Rule 23 Opinion issued on September 30, 2020, the First District Appellate Court affirmed a decision of Judge Matthew Link who found that

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the husband failed to overcome the presumption that a business account of $171,088 was marital property, despite the husband's claims to the contrary. The Appellate Court cited In Re Moorthy and Arjuna 2015 IL App (1st) 132077.

The husband (Appellant) was represented in the appeal and at the trial court level by Cheryl M. Berdelle. The wife (Appellee) was represented in the appeal by Linda S. Kagan and at the trial court level by Russell M. Reid.

To read the entire opinion go to 2020 IL App (1st) 192238.

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