

2010 SUMMARY OF SIGNIFICANT ILLINOIS DIVORCE AND FAMILY LAW CASES / 2010 LEGISLATION

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Property Cases Law:

Retirement Benefits Case:

Child Support

Initial and Post-Divorce: Establishing Amount of Child Support

***Abrell* - Illinois Supreme Court Affirms Appellate Court Re Whether Accrued Sick and Vacation Days are Marital Property**

[IRMO *Abrell*](#), 386 Ill.App.3d 718, 898 N.E.2d 1163, 325 Ill.Dec. 884 (Fourth Dist., November 19, 2008); [Illinois Supreme Court \(February 4, 2010\)](#).

I had included the 2008 *Abrell* decision because of the Illinois Supreme Court's review of this decision. The trial court determined the net value of certain of the vacation and sick days (through a state employer) in the property division. The appellate court stated:

The categorization of John's accumulated sick and vacation days appears to be one of first impression in Illinois. No statute or previously reported decision in Illinois appears to have addressed the issue.... We have carefully considered the cases cited by appellant and appellee and conclude accumulated sick-leave and vacation days are not marital property. They are not property--they are a substitute for wages when, and if, the employee is unable to perform his duties.

This case also has a good discussion regarding motions for reconsideration.

The Supreme Court stated, "The issue of whether accumulated vacation and sick days are marital or nonmarital property is an issue of first impression in this court."

As the appellate court noted, other jurisdictions are split on the issue of whether vacation and sick days are marital property. Those courts have held that: (1) accrued vacation and sick days are marital property subject to division at the time of dissolution; (2) accrued vacation and sick days are marital property but are subject to distribution when received, not at the time of dissolution; and (3) accrued vacation and sick days are not marital property.

The Supreme Court addressed out of state case law at great length and then quoted with approval the appellate court's reasoning. The Supreme Court concluded:

Although the trial court was able to put a value on those days in its judgment for dissolution, we find that the value assigned to those days was speculative at best. We also find that the reserved jurisdiction approach used by the Grund court could be unnecessarily complicated and difficult to administer, particularly if the parties are many years from retirement. Applying the facts to the holding the High Court stated:

As the appellate court noted, John had no present right to be paid for his sick and vacation days absent retirement or termination of his employment. Further, while John had accrued 115 sick days and 42 vacation days at the time of trial, those days may or may not remain at the time John retires or terminates his employment. If John uses any of the sick or vacation days awarded to him prior to retirement or termination of his employment, John will never collect payment for those days. In that case, the award of the value of those days to John in the property distribution would be illusory. As John has argued, if this court reinstates the trial court's finding that the accumulated vacation and sick days are marital property, John's share of the

marital estate will be diminished every time he uses a sick day or vacation day before his retirement or termination, while Jacquie’s cash payout will remain the same. Consequently, we find that although John accumulated his vacation and sick days during his marriage to Jacquie, the accumulation of those days had only a future value that was indeterminate and speculative. For that reason, we find that the accrued vacation and sick days differ from pension plans, stock options and deferred compensation.

Support Enforcement

Paternity

Maintenance Cases:

Removal: Parentage / Divorce:

Domestic Violence:

***Holthoff* – Neglect Does Not, in itself, Constitute Abuse under the IDVA**

[*IRMO Holthoff*](#), (2nd Dist., January 19, 2010)

Holthoff addresses an issue which arguably also is a matter of first impression in Illinois – whether under the Domestic Violence Act (IDVA), neglect equals abuse. The appellate court ultimately ruled that neglect, itself, does not equal abuse. But the case points out the problems in not providing an adequate record of the proceedings, that is, the transcript of the proceedings. *Holthoff* involved a case where the mother repeatedly was arrested for shoplifting. She did so on several occasions when the children were left in the car. While the order itself appeared mostly premised on apparent findings of neglect, the appellate court ruled that, “These allegations, if proved, certainly rise to the level of physical abuse, defined in section 103(14)(iii) of the Act as "knowing or reckless conduct which creates an immediate risk of physical harm." 750 ILCS 60/103(14)(iii).”

Attorney’s Fees:

***Pal v. Gudgel*– Intervenor Cannot Seek Fees Under Section 508(a)**

[*IRMO Pal v. Gudgel*](#), (Fourth Dist., January 27, 2010)

The first issue was a case of first impression – whether an intervenor could seek attorney's fees under Section 508(a) of the IMDMA. For interesting reading, review the facts of the case involving Gudgel. But for the purpose of the body of Illinois case law, I will only address the greater legal issues. The appellate court stated:

In addition to the stated purpose found in section 102(5), the language of section

508(a) is telling of the legislature's intent. While the General Assembly used the term "party" in section 508(a), the section only refers to two parties. According to section 508(a):

"The court *** may order any party to pay a reasonable amount for his own or *the other party's* *** attorney's fees. Interim attorney's fees *** may be awarded from *the opposing party* ***. At the conclusion of the case, contribution to attorney's fees *** may be awarded from *the opposing party* in accordance with subsection (j) of [s]ection 503." (Emphases added.) 750 ILCS 5/508(a).

The appellate court then stated:

An intervenor is not an "opposing" party in a dissolution action. The spouses are the "opposing" parties. An intervenor is someone who is merely allowed to join an action in order to assert or protect an interest that may be affected by a court's order.

The appellate court then looked to the language for contribution awards per Section 503(j)(2) and pointed out that it specifically referenced awards of contribution to one party from the other party. The appellate court ruled, "As a result, we find the trial court correctly concluded an intervenor is not eligible for attorney fees pursuant to section 508(a) of the Dissolution Act (750 ILCS 5/508(a)).

Next, the appellate court stated, "We need not address whether the trial court erred in finding a court can award an intervenor attorney fees pursuant to section 508(b) of the Dissolution Act (750 ILCS 5/508(b) to affirm the trial court."

Read the specifically concurring opinion. The concurring opinion agreed that an intervenor cannot obtain a fee award under Section 508(a). The concurring opinion disagreed that the majority opinion should have avoided a decision regarding whether under Section 508(b) an intervenor might collect attorney's fees:

They may be, however, recoverable under section 508(b) of the Dissolution Act (750 ILCS 5/508(b) if they are incurred to defend a pleading filed for an improper purpose. See *In re Marriage of Pillot*, 145 Ill. App. 3d 293, 495 N.E.2d 1247 (1986). No such improper purpose was found here.

Evidence Cases:

2010 Legislation:

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