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REVIEW OF LAW IN THE 50 STATES IN 2022: U.S. SUPREME COURT SHAKES UP FAMILY LAW POLICY

LINDA D. ELROD*

I. Introduction

Life returned to a more normal rhythm in 2022. State and federal courts returned to in person hearings and trials as vaccines became widely available and states lifted mask mandates. More people returned to work in offices, factories, and schools. Historic changes, however, did occur in June 2022 as the U.S. Supreme Court dismantled the federal protection of abortion rights that had existed since 1973. In *Dobbs v. Jackson Women's Health Organization*, the majority rejected substantive due process and a woman's right to privacy arguments in holding that there is no constitutional right to an abortion.[1] The legality of abortion was tossed back to the states. In several states like Florida and Texas, restrictive abortion laws immediately went into effect. Kansas was the first state to have a statewide referendum on a constitutional amendment to restrict access. In August 2022, independents and young voters turned out in record numbers in a primary election. The vote was 59% against adding restrictions. The impact of *Dobbs* is likely to be felt for years to come, and there are unanswered questions about the future of other decisions that were based, in whole or in part, on substantive due process.[2]

1. 142 S. Ct. 2228 (2022) (overruling Roe v. Wade, 410 U.S. 113 (1973)).

2. *See* Carol Sanger, *The Rise and Fall of a Reproductive Right:* Dobbs v. Jackson Women's Health Organization, 56 FAM. L.Q. 117 (2022–23).

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The U.S. Supreme Court answered a question about the presence of domestic violence and the "grave risk" defense to return under the Hague Convention on the Civil Aspects of International Child Abduction. An Italian father had successfully petitioned for return of his child to Italy, the child's habitual residence. The mother presented undisputed evidence of the father's abusive conduct that could expose the child to a grave risk of harm. Over the years, courts have struggled with whether and to what extent courts are required to consider whether ameliorative measures exist to protect the child if returned after a grave risk of harm is established. Some courts went to great lengths to explore all ameliorative measures. The Supreme Court found that the lower court has broad discretion to deny a child's return to a foreign country if the return could pose a grave risk of harm without exploring ameliorative measures.[3]

In November, the Supreme Court heard a case by non–Native American adoptive parents and several states challenging the constitutionality of the Indian Child Welfare Act (ICWA).[4] ICWA was enacted to stop the unwarranted removal of Indian children from their families. ICWA requires notice to tribes if an Indian child is involved in a child neglect or adoption proceeding, contains a heightened burden of proof (beyond a reasonable doubt the child will be harmed if parental rights are not terminated) for termination of parental rights, and requires qualified expert witnesses. ICWA also provides that when a Native American child is removed from their home, the state must attempt to place the child with relatives or members of the child's tribe before considering non-Native families.[5] Although almost half of the states joined an amicus brief supporting ICWA,[6] there was fear that the Court would find that the placement options discriminate on the basis of race and that ICWA exceeds Congress's power over Indian affairs and impermissibly commandeers state governments and courts.[7] In

3. Golan v. Saada, 142 S. Ct. 1880 (2022). For more on this decision, see Molshree "Molly" A. Sharma, Golan v. Saada*: Protecting Domestic Abuse Survivors in International Child Custody Disputes*, 56 Fam. L.Q. 251 (2022–23).

4. Transcript of Oral Argument, Haaland v. Brackeen, Nos. 21-376, 21-377, 21-378, 21-380 (U.S. Nov. 9, 2022); *see* Julia Gaffney, *"The Gold Standard of Child Welfare" Under Attack: The Indian Child Welfare Act and* Haaland v. Brackeen, 56 Fam. L.Q. 231 (2022–23).

5. Indian Child Welfare Act of 1978, Pub. L. No. 95-608, 92 Stat. 3069 (1978) (codified as 25 U.S.C. §§ 1901–63).

6. Brief for the States of California et al. as Amici Curiae in Support of the Federal & Tribal Parties, Haaland v. Brackeen, Nos. 21-376, 21-377, 21-378, 21-380 (U.S. Aug. 19, 2022).

7. Kathryn E. Fort, *After* Brackeen: *Funding Tribal Systems*, 56 Fam. L.Q. 191, 199–206 (2022–23); Marcia Zug, Brackeen *and the "Domestic Supply of Infants"*, 56 Fam. L.Q. 175 (2022–23).

2023, however, the Supreme Court rejected the challenge to the ICWA, deciding some claims on the merits and dismissing others for lack of standing. The Court did not reach the merits of the equal protection claims.[8]

The Supreme Court also agreed to hear a case concerning LGBT rights that deals with an issue evaded in other post-*Obergefell* cases: To what extent can a person who owns a business refuse to provide services for a same-sex marriage based on religious objections. This case deals with free speech claims by a website designer who does not want to design and execute websites for same-sex couples planning to marry.[9] The Tenth Circuit affirmed summary judgment to the defendants, finding that the state could reasonably prohibit discrimination in business transactions. The state had a compelling justification to burden the website owner's free speech.[10] In 2023, the Supreme Court, however, reversed and ruled in favor of the website designer.[11]

II. National

A. Lower Federal Courts

There were a variety of eclectic "family law" issues heard in lower federal courts. The Hague Abduction Convention cases are plentiful enough to warrant their own article.[12] Other interesting cases involved abstentions and fraud. A purported owner of artwork brought a diversity action against the possessor, his brother-in-law, alleging replevin, conversion, and statutory theft. The defendant alleged the art was marital property and the *Colorado River* abstention applied. The Second Circuit found the abstention did not apply because the pending divorce was not parallel to the instant action and any determination by the state court in the divorce action would not comprehensively dispose of the claims. The court also did not apply the domestic relations exception.[13] In another case, a federal court remanded a case to consider if the deceased husband's fraudulent conduct in his divorce 13 years before

8. Haaland v. Brackeen, 143 S. Ct. 1609 (2023).

9. 303 Creative LLC v. Elenis, 6 F.4th 1160 (10th Cir. 2022), *cert. granted in part*, 142 S. Ct. 1106 (2022), *rev'd*, 143 S. Ct. 2298 (2023).

10. *Id.*; *see* Arthur S. Leonard, *Same-Sex Family Recognition and Anti-Discrimination Law: A Free Speech Battleground*, 56 Fam. L.Q. 161 (2023).

11. 303 Creative LLC v. Elenis, 143 S. Ct. 2298 (2023).

12. Robert G. Spector, *2022 in Hague Return Proceedings*, 56 Fam. L.Q. 291 (2022–23).

13. Mochary v. Bergstein, 42 F.4th 80 (2d Cir. 2022).

warranted equitable tolling of the statute of limitations on the sale of one investment. The ex-wife's deepening suspicion of fraud was not sufficient to show she had knowledge.[14]

B. Uniform Family Laws

The Uniform Law Commission, established in 1892 with the goal of promoting uniformity in family law, has been active in the family law area since the 1968 Uniform Child Custody Jurisdiction Act, which had 50 state enactments. It has promulgated numerous family-law-related uniform laws.[15] While the Uniform Marriage and Divorce Act of 1973 only has six adoptions, the UMDA provided the basis for much of the law reform in divorce grounds, equitable distribution, factors for child custody, and other aspects. The Uniform Child Custody Jurisdiction and Enforcement Act (49 states and D.C.) replaced the UCCJA. The Uniform Interstate Family Support Act has been adopted by all 50 states, D.C., and Puerto Rico. Therefore, cases dealing with UCCJEA and UIFSA have been recognized as primary authority in sister states.

Other popular acts include the Uniform Premarital Agreement Act, which has been adopted in various forms in 26 states and D.C.; the Uniform Collaborative Law Act (22 states and D.C.); the Interstate Enforcement of Domestic Violence Protection Orders (20 states and D.C.); and the Deployed Parents Custody and Visitation Act (16 states). The Child Abduction Prevention Act is in 15 states and D.C. with plans to propose it in nine states next year. The Uniform Parentage Act (1973) was at one time in 16 states, but later versions, UPA (2002) and now UPA (2017) (seven states), have replaced the older acts in many states.

III. State Family Cases

A. Adoption

Most reported adoption decisions dealt with the consent issue. As a general rule, a consent to adoption cannot be withdrawn unless it was obtained by fraud or duress. A birth mother's decision to change the adoption entity just prior to birth and her mistaken belief that the adoption would be by a relative resulted in some violations of procedural safeguards but did not deny her fundamental fairness. She could not withdraw her consent because there was no fraud or duress.[16]

14. Koral v. Saunders, 36 F.4th 400 (2d Cir. 2022).

15. *See* Unif. L. Comm'n, https://www.uniformlaws.org.

16. M.J.G. v. Graves, 332 So. 3d 1008 (Fla. Dist. Ct. App. 2022).

Whether the consent of unwed fathers to adoption of an infant is required may depend on whether he assumes responsibility and provides reasonable support to the mother during the pregnancy, and after the child's birth according to his means.[17] An Ohio statute requires the consent of the legal father, but the legal rights have to be established prior to the date the adoption petition is filed. So a father's consent was not required where he had not filed in the putative father registry or filed a paternity action before the petition.[18]

Many cases deal with whether a stepparent can adopt without the biological or legal parent's consent. A consent to adoption is not necessary if the parent has abandoned the child or unjustifiably failed to assume the duties of a parent for a certain period of time. Time periods vary.[19] Some states require a two-year period preceding the filing of the petition. Other states use a one-year period.[20] In Alaska abandoning the child for six months can be sufficient.[21] Kentucky uses a 90-day period.[22] In most cases, even if the biological parent's conduct has been less than perfect, the courts require the parent's consent to adoption by a stepparent.[23]

17. Matter of Adoption of B.M.T., 882 S.E.2d 145 (N.C. Ct. App. 2022). *See also* Adoption of Arlene, 190 N.E.3d 1141 (Mass. App. Ct. 2022) (putative father had a right to receive notice and an opportunity to be heard before stepfather adopted child); *In re* Adoption of William, 170 N.Y.S.3d 447 (App. Div. 2022) (biological military father's consent required where he did what he could).

18. *In re* Adoption of H.P., 2022 Ohio 4369 (2022).

19. *In re* J.W.R., 340 So. 3d 1242 (La. Ct. App. 2022) (mother's consent unnecessary where mother had failed to visit or communicate without just cause, had not paid most of child support, had not sent presents or cards for birthdays or Christmas or participated in any activities); Interest of K.M.T., 974 N.W.2d 641 (N.D. 2022) (unwed biological father's consent to child's adoption potentially not required where he had not seen the child since 2017). *See also In re* Adoption of C.H.M., 871 S.E.2d 136 (N.C. Ct. App. 2022) (biological father's consent not needed where for 9 months he did not attempt to act as a parent for the child).

20. *In re* Adoption of Minor Child, 653 S.W.3d 544, 549 (Ark. Ct. App. 2022) (birth father's consent required where his inability to contact his child for a year was "not voluntary or intentional" because the mother "concealed her home address and phone number"); *see also* Interest of K.M.T., 974 N.W.2d 641 (N.D. 2022) (biological father's consent not required if he failed to communicate with child or provide support unless excusable).

21. *In re* Adoption of J.R.S., 505 P.3d 234 (Alaska 2022) (father's consent to adoption was required where he did not abandon the child for six months or willfully fail to provide support, and his failure to communicate was not without justification).

22. M.S.S. v. J.E.B., 638 S.W.3d 354, 366 (Ky. 2022) (biological mother had "abandoned [the] child for a period of not less than 90 days," so her consent was not needed).

23. D.G. v. D.H., 182 N.E.3d 247 (Ind. Ct. App. 2022) (father's consent needed where he did not pay support for 13 months due to loss of job and had been an active part of the child's life since birth); *In re* Adoption of A.M.H., 525 P.3d 444 (Okla. Civ. App. 2022) (biological father's consent required where he regularly worked offshore for his job as an underwater

B. Agreements

1. Premarital

Courts generally uphold premarital agreements that are in writing and voluntarily entered into with full disclosure of assets.[24] If a state encourages the use of an attorney for each party, the counsel should be independent and advise the party not seeking the agreement about the consequences of waiving certain rights and benefits.[25]

An interesting New York case interpreted the term "consummation of the marriage" as a condition precedent to the enforceability of the premarital agreement. The court found the term meant the date of marriage ceremony, not sexual relations between the couple.[26] A waiver of alimony in a premarital agreement may be upheld if the spouse does not become eligible for public assistance,[27] unless there is a violation of strong public policy.[28] A premarital waiver of alimony will not prevent imposition of a support order if the person signed an I-864 affidavit of support for a spouse.[29]

2. Postnuptial

States vary widely on the requirements for a postmarital agreement. Only Colorado and North Dakota use the Uniform Premarital and Marital Agreements Act. Some states require the agreement to be fair and equitable when made and not unconscionable at divorce. A New York court found that a postnuptial agreement was not unconscionable, invalid, or unenforceable where the husband had signed three postnuptial agreements, including the one at issue, and the parties had conducted

welder, contacted the child or mother multiple times a month, met his financial obligations, and a canceled visit was due to COVID-19); *In re* Adoption of A.K., 198 N.E.3d 47 (Ohio 2022) (incarcerated father's failure to contact children prior to the maternal grandparents' adoption petition was justifiable because there was a no contact order against him, so his consent to adoption was required).

24. Seder v. Errato, 272 A.3d 252 (Conn. App. Ct. 2022) (trial court properly refused to admit husband's unsigned, undated, and unfinished boilerplate premarital agreement).

25. Spiegel v. Spiegel, 170 N.Y.S.3d 295, 299 (App. Div. 2022) (facts based on husband's statements created concerns whether wife was meaningfully represented).

26. Fort v. Haar, 176 N.Y.S.3d 611 (App. Div. 2022).

27. Fercho v. Fercho, 982 N.W.2d 540 (N.D. 2022).

28. *In re* Marriage of Zucker, 291 Cal. Rptr. 3d 183 (Ct. App. 2022) (waiver in 1994 premarital agreement of all community property for one-time payment of $10,000 was unconscionable as against public policy at the time of enforcement).

29. Backman v. Backman, 875 S.E.2d 510 (Ga. Ct. App. 2022).

their finances in accordance with the terms.[30] Hawaii found that a provision penalizing a spouse for adultery was contrary to its no-fault divorce policy and unenforceable.[31] On the other hand, the Maryland Court of Special Appeals upheld a provision of a postnuptial agreement that required the husband to pay the wife a lump-sum penalty of $7 million if he committed adultery. That case is on appeal.[32]

C. Alimony/Spousal Support

1. Initial Order

The Iowa Supreme Court recognized "transitional alimony" as a tool for courts "to do equity."[33] Florida's alimony statute requires the trial judge in awarding even a nominal one dollar a year of alimony to include findings as to one spouse's need for alimony and the other spouse's ability to pay.[34] The Florida Court of Appeal found that an award of spousal support for two years as "bridge-the-gap alimony" needed to be supported by specific findings of the wife's "'legitimate, *identifiable* short-term needs.'"[35]

A New York court upheld the trial court's award of maintenance for a wife who had multiple sclerosis and was unable to work.[36] A South Carolina court found that the trial court erred in not analyzing all mandatory statutory factors in determining the wife's eligibility for alimony where she had supported the husband for most of the 10-year marriage, allowing him to gain seniority status and earn more money. The lower court also should have considered the husband's present and future earning capacity and the wife's student loans and should have awarded her permanent periodic alimony.[37]

An Oregon court found that the husband's wages from voluntary overtime should be excluded where "his income would decrease due to changes at work over which [he] had no control" and he "would not

30. Campbell v. Campbell, 173 N.Y.S.3d 372 (App. Div. 2022).

31. Crofford v. Adachi, 506 P.3d 182 (Haw. 2022).

32. Lloyd v. Niceta, 284 A.3d 808 (Md. Spec. Ct. App. 2022), *cert. granted*, 482 Md. 733 (2023).

33. *In re* Marriage of Pazhoor, 971 N.W.2d 530, 541–42 (Iowa 2022).

34. Fabrizio v. Fabrizio, 334 So. 3d 711 (Fla. Dist. Ct. App. 2022) (per curiam); *see also* Kirby v. Kirby, 345 So. 3d 356, 358 (Fla. Dist. Ct. App. 2022) (reversing award of $8,000 a month to wife without considering husband's ability to pay).

35. Ogle v. Ogle, 334 So. 3d 699, 703 (Fla. Dist. Ct. App. 2022) (citation omitted).

36. Anastasi v. Anastasi, 170 N.Y.S.3d 794 (App. Div. 2022).

37. Cohen v. Cohen, 881 S.E.2d 650, 653–55 (S.C. Ct. App. 2022).

continue to work voluntary overtime on a regular basis. . . .”[38] Evidence also supported finding that the wife, who was not currently employed, could go back to working as a dental assistant, despite her testimony that “her back problems prevented her from bending over a dentist’s chair. . . .”[39]

If the trial court is going to impute income, it should be on the amount the person can earn now based on current qualifications and the job market, not what the person earned 19 years before.[40] A Florida trial court imputed an annual income of over $51,000 to a wife who was underemployed where the husband’s evidence showed a full-time real estate agent could make in excess of $50,000. Although the wife had a real estate license, she “failed to exert a good faith effort to become gainfully employed as a fulltime real estate agent.”[41]

A Utah trial court properly considered the marital standard of living when it awarded the wife over $15,000 a month for two years and almost $13,000 a month for 22 years thereafter following a long-term marriage.[42] The South Carolina Supreme Court interpreted its alimony statute and determined that the standard of living and ability to pay factors favored awarding the husband alimony even though the wife had been both the children’s primary caretaker and the higher income spouse. The husband, who was in law enforcement, did not have to show that he had reduced his earning capacity to support the marriage in order to be a “supported spouse” where the wife earned four times what he did.[43]

In Florida, when the parties had a long-term marriage, an award of durational alimony needed to be supported by sufficient findings concerning why permanent alimony was not appropriate.[44] In another Florida case, the court found the trial court erred in awarding 12 years’ durational support when the marriage was “three (3) days shy of twelve years.”[45] New York found that the husband would get no post-dissolution maintenance due in part to his failure to disclose marital property, his

38. *In re* Marriage of Wirth, 509 P.3d 685, 688 (Or. Ct. App. 2022).

39. *Id.* at 688–89.

40. Poveromo v. Poveromo, 333 So. 3d 309 (Fla. Dist. Ct. App. 2022) (per curiam).

41. Saario v. Tiller, 333 So. 3d 315, 320–21 (Fla. Dist. Ct. App. 2022).

42. Fox v. Fox, 515 P.3d 481, 487–89 (Utah Ct. App.), *cert denied*, 525 P.3d 1263 (Utah 2022).

43. Rudick v. Rudick, 878 S.E.2d 686, 687–90 (S.C. 2022).

44. Rea-Manna v. Manna, 336 So. 3d 804 (Fla. Dist. Ct. App. 2022) (per curiam).

45. Whyte v. Whyte, 337 So. 3d 18, 20 (Fla. Dist. Ct. App. 2022).

domestic violence and harassment, and his receipt of maintenance pendente lite for 24 months.[46]

2. Modification/Termination

The trial court erred in not terminating the husband’s maintenance payments because the wife was in a de facto marriage with another man. The court looked at several factors, including rings.[47] On the other hand, one case was a reminder to be careful when parties agree to specific terms because the contract will control. The parties had a marriage settlement agreement and based on its terms, the ex-husband could not terminate an alimony obligation that would arise if he obtained a downward modification of child support even though the ex-wife had remarried.[48]

U.S. citizens married in Pennsylvania, moved to the United Kingdom, and dissolved their marriage. The English court incorporated the parties’ consent order, distributed the parties’ property, and provided for the payment of spousal and child support. Both parties relocated to the United States. The wife registered the order in Connecticut, where she lived, pursuant to the Uniform Interstate Family Support Act (UIFSA) and asked the court to approve two Qualified Domestic Relations Orders, which the court did. The ex-wife sought to increase support based on the ex-husband’s increased income; the ex-husband moved to modify based on the ex-wife’s cohabitation. The wife argued the court lacked subject matter jurisdiction to modify the foreign order, and the trial court agreed. The appellate court reversed so the trial court could hear the husband’s motion to modify.[49] There was a strong dissent.[50]

D. Alternative Dispute Resolution

There is a growing interest in the Uniform Family Law Arbitration Act (UFLAA), which was introduced into seven states in 2022. A Utah case illustrates why the UFLAA would be helpful. The parties agreed to arbitrate using the general arbitration law, which is not specifically tailored to family law cases. The husband had asked the wife to arbitrate after a year of litigation. When the arbitrator made the award,

46. J.N. v. T.N., 182 N.Y.S.3d 497, 530–31 (Sup. Ct. 2022).

47. *In re* Marriage of Churchill, 209 N.E.3d 296, 304 (Ill. App. Ct. 2022); *see also* Taormina v. Taormina, 639 S.W.3d 482 (Mo. Ct. App. 2021).

48. Long v. Long, 282 A.3d 694 (Pa. Super Ct. 2022).

49. Olson v. Olson, 279 A.3d 230 (Conn. Ct. App.), *cert. denied*, 284 A.3d 299 (Conn. 2022).

50. *Id*. at 240 (Elgo, J., dissenting).

the husband claimed it was against public policy to arbitrate divorce actions or alternatively the court should vacate the award because the arbitrator manifestly disregarded the law. The Utah Supreme Court held that the Utah Arbitration Act did not allow someone who participates in arbitration without objection to then contest the award based on an invalid agreement to arbitrate.[51] The court noted that intersection of the Utah Arbitration Act and the Utah Family Code permits parties to arbitrate the parts of the divorce the parties agreed to arbitrate—property and alimony—and affirmed. Arbitration awards dealing with child custody and support must be seen as nonbinding recommendations to the district court.[52]

An Indiana court noted that an arbitrator was somewhat akin to a judge under Rule 60(A) seeking relief from judgment for clerical mistakes that arise from oversight or omission that may be corrected at any time before completion of the clerk's record. Where a husband moved for relief from judgment on the ground that the arbitrator committed a clerical error, the court agreed and directed the Amended Order be substituted.[53]

E. Assisted Reproduction

Courts in Ohio and Colorado went in different directions on the disposal of frozen embyros when the parties divorce. Ohio found that the embryos were marital property and awarded them to the wife on condition that she not use them to impregnate herself or a surrogate.[54] A Colorado court used a balancing test but found that the ex-wife's inability to have a biological child through means other than use of the embryos was irrelevant where the wife was seeking to donate the embryos to someone else. The appellate court directed that the embryos be awarded to the husband, who wanted to discard them.[55]

The Uniform Parentage Act (2017) Article 8 includes both gestational and genetic surrogacy. Of the seven states that have enacted UPA (2017), only California excluded Article 8; it has had a well-developed

51. Taylor v. Taylor, 517 P.3d 380 (Utah 2022).

52. *Id.* at 395–96.

53. Ashley v. Ashley, 190 N.E.3d 353 (Ind. Ct. App. 2022).

54. Kotkowski-Paul v. Paul, 204 N.E.3d 66 (Ohio Ct. App. 2022), *appeal not accepted for review*, 206 N.E.3d 741 (Ohio 2023).

55. *In re* Marriage of Fabos & Olsen, 518 P.3d 297 (Colo. App. 2022). *But see In re* Marriage of Katsap, 214 N.E.3d 945 (Ill. App. Ct. 2022) (using a several-factor balancing test to award the frozen embryos to the wife, who was unable to produce more eggs or otherwise have a biological child).

surrogacy law for years and opted to keep the existing law. Colorado, Connecticut, Maine, Rhode Island, Vermont, and Washington allow gestational surrogacy. Colorado, Connecticut, and Washington also allow genetic surrogacy. Maine, Rhode Island, and Vermont allow genetic surrogacy only if the genetic surrogate is a family member of an intended parent, but do not otherwise provide specific rules for genetic surrogacy agreements.[56]

F. Attorneys

In North Carolina, an attorney's conduct of engaging in sexual relations with a current client breached his fiduciary duty and the rules of professional conduct, indicating his intent to harm the client and the legal profession. He was suspended for one year.[57] An Iowa attorney had his license suspended for 60 days for misconduct arising out of assault and child endangerment criminal charges involving his wife and children and failure to use diligence in representing a client by not responding to discovery in modification of a custody case.[58]

The trial court has the discretion to award attorney fees. In a New York case, the court awarded $75,000 in interim attorney fees to the wife in a divorce action.[59] A California husband who over-litigated the marriage dissolution proceeding was not entitled to statutory attorney fees.[60] A South Dakota court upheld an award of $50,000 in attorney fees where it found the husband unreasonably prolonged the divorce litigation.[61] A Texas court determined the trial court could award attorney fees in a divorce even if there was no community estate to divide.[62] A couple of courts did not award attorney fees when the party was acting pro se.[63]

56. Libby Snyder, *Legislative Counsel Report to Joint Editorial Board on Uniform Family Laws*, Mar. 22, 2023.

57. N.C. State Bar v. Merritt, 877 S.E.2d 892 (N.C. Ct. App. 2022). *See also* Disciplinary Counsel v. Cox, 195 N.E.3d 1018 (Ohio 2022) (engaging in a physical sexual relationship with a client and lying about it warranted two-year suspension from practice).

58. Iowa Sup. Ct. Att'y Disciplinary Bd. v. Bixenman, 973 N.W.2d 522 (Iowa 2022).

59. Fugazy v. Fugazy, 176 N.Y.S.3d 728 (App. Div. 2022). *See also* Martin v. Martin, 520 P.3d 813 (Nev. 2022) (awarding wife attorney fees and costs for appeal pendente lite in her action to enforce divorce decree).

60. *In re* Marriage of Nakamoto v. Hsu, 294 Cal. Rptr. 3d 424 (Ct. App. 2022).

61. Dunham v. Sabers, 981 N.W.2d 620 (S.D. 2022).

62. Interest of A.P.N., 655 S.W.3d 55 (Tex. App. 2022).

63. Gorman v. Gorman, 166 N.Y.S.3d 121 (App. Div. 2022) (equity did not support award of fees to wife acting pro se); Jeffrey P. v. Alyssa P., 164 N.Y.S.3d 265 (App. Div. 2022) (father not

G. Child in Need of Care

1. Child Abuse and Neglect

In a New Hampshire case, the evidence supported that the mother had physically abused the child. The appellate court found that the mother was not prejudiced by the court's failure to hold the adjudicatory hearing on the petition within the 60-day time period, so the court did not lose subject matter jurisdiction.[64]

How long a child can be left alone can be an issue. In one case, the child should not have been adjudicated neglected where the father left his infant alone in the home for five minutes.[65] A child was deemed neglected, however, when the mother twice left him at a day care center after closing time.[66] An incident when an unsupervised child was dropped from a window by an older sibling did not support a finding that the mother neglected the children. Her decision to let the children eat and watch television while she was in the bathroom with the door open was not intrinsically dangerous. Although the older child was aggressive, she could not foresee that he would open a locked window and remove the screen.[67]

Before making a finding of derivative neglect, the court must hold a fact-finding hearing.[68] The Illinois Appellate Court reversed a trial judge's finding of neglect. The evidence did not show the child's environment was injurious to his welfare even though the child had tested positive for tetrahydrocannabinol (THC) at birth and the motel where the mother lived was facing multiple code violations. The evidence also did not support finding of anticipatory neglect based on previous neglect of a sibling.[69] A New York court, however, found that a prior finding of neglect as to the mother's older children did support a finding of derivative neglect as to the child.[70]

entitled to attorney fees for his pro se work).

64. *In re* N.T., 286 A.3d 1124 (N.H. 2022).

65. *In re* D.S., 879 S.E.2d 335 (N.C. Ct. App. 2022).

66. *In re* Z.M., 272 A.3d 1183 (D.C. Ct. App. 2022).

67. Matter of Silas W., 171 N.Y.S.3d 290 (App. Div. 2022).

68. Matter of Serena G., 171 N.Y.S.3d 564 (App. Div. 2022).

69. *In re* D.A., 2022 IL App (2d) 210676 (2d Dist. 2022).

70. Matter of Jolani P., 176 N.Y.S.3d 312 (App. Div. 2022). *See also* Matter of Mahkayla W., 170 N.Y.S.3d 551 (App. Div. 2022) (agency established prima facie case of derivative neglect as to youngest child based on prior findings of neglect).

2. Termination of Parental Rights

Where the child is not abused or neglected, the court lacks subject matter jurisdiction to terminate a parent's rights. The child had been safely placed in a court-ordered guardianship with third parties for five years prior to the filing of the petition.[71] The Rhode Island Supreme Court upheld the family court's finding it in the child's best interests to terminate the parental rights of a mother with a substance abuse disorder. Although she loved the child and made attempts to engage in treatment, she was unable to make progress on her plan.[72] A father's rights were terminated where unchallenged findings included that he had murdered the mother.[73]

An Oregon court affirmed termination of a mother's parental rights to her two children, ages three and two, who have severe hemophilia A, which requires significant medical intervention, close monitoring, and a particularly safe physical environment. The children had been in a stable foster placement for most of their lives. Reintegration into the mother's home was improbable within a reasonable time. The foster parents were amenable to negotiating an open adoption agreement for ongoing contact with the parents.[74]

H. Child Custody

1. Jurisdiction

The mother took her infant born in Utah to Idaho. The father filed for divorce and sought temporary custody in Utah. The mother filed in Idaho. The Idaho court denied the mother's motion and granted the father's motion to dismiss. Utah had proper jurisdiction under the UCCJEA because the infant had been born there and lived there with parents before the mother unilaterally took the child to Idaho.[75] The mother of an eight-year-old filed a petition for child custody, child support, and other relief in Mississippi, where she lived, alleging child had lived with her since birth. The parties had never married and there were no custody or support orders. The father countered that Louisiana was the child's home state and the child had lived with him. Mississippi found that Louisiana

71. *In re* C.S., 875 S.E.2d 350 (W. Va. 2022).

72 *In re* Donnell R-H, 275 A.3d 1139 (R.I. 2022).

73. Matter of A.N.S. Jr., 876 S.E.2d 629 (N.C. Ct. App. 2022).

74. Matter of K.H.P., 504 P.3d 1221 (Or. Ct. App. 2022). *See also* Matter of K.H.P., 505 P.3d 473 (Or. Ct. App. 2022) (terminating the father's parental rights for same reasons as mother).

75. Swanson v. Swanson, 503 P.3d 982 (Idaho 2022).

was the home state based on records of daily care, sources of government assistance, and the child's enrollment in school.[76]

Emergency jurisdiction allows a court to enter temporary orders to protect a child when a serious occurrence happens unexpectedly and demands immediate action. The Tennessee juvenile court properly exercised temporary, emergency jurisdiction to protect the child when the mother attempted suicide but it could not make any further custody determinations because of the exclusive, continuing jurisdiction of the Alabama court, which issued the decree and where the father lived.[77] Temporary emergency jurisdiction can ripen into home state jurisdiction if no orders are filed in the home state or it declines jurisdiction.[78] Generally, the jurisdiction ends when the emergency ends. An Indiana court properly took emergency jurisdiction to place children into foster care due to the mother's medical emergency and hospitalization while driving through the state. The state welfare office later filed a child in need of care action. The court relinquished jurisdiction because the emergency had been alleviated and the West Virginia court assumed jurisdiction.[79]

An interesting case of vacuum or "no other state" jurisdiction arose this year. The mother moved several times to keep the father from knowing where she and the child were. She ended up in North Carolina, married, had a baby, and died soon after. The maternal grandmother who had helped care for the child earlier took the child to her home in Michigan with the stepfather's permission and filed for guardianship. The stepfather with the new baby did not want custody of the other child. The older child's father, a South Carolina resident, learned of the mother's death and immediately came to North Carolina. Michigan determined it did not have jurisdiction and that North Carolina was the more convenient forum. No one seeking custody, however, lived in North Carolina. The North Carolina appellate court found that North Carolina had jurisdiction by necessity. No other court would have jurisdiction.[80]

2. Factors

When two parents are competing for custody, the trial court must determine the best interest of the child solely from the passionate and

76. Smith v. Banks, 350 So. 3d 1191 (Miss. Ct. App. 2022).

77. *Ex parte* Dukes, No. CL-2022-1012, 2022 WL 17076214 (Ala. Civ. App. Nov. 18, 2022).

78. Farfan v. Ark. Dep't Hum. Servs., 654 S.W.3d 849 (Ark. App. 2022).

79. Matter of A.R., 196 N.E.3d 723 (Ind. Ct. App. 2022).

80. Sulier v. Veneskey, 878 S.E.2d 633 (N.C. Ct. App. 2022).

self-interested testimony of the parents and their respective relatives or friends. Most decisions are upheld on appeal because the trial judge is in the best position to assess the credibility, demeanor, and tone of the witnesses. The judge has discretion as to the weight to give the testimony in light of the statutory factors.[81] The consensus is building that safety of the child should be the most important factor. So where one parent is abusive, the other parent may get sole custody.[82] In one case, a trial court erred in awarding visitation that amounted to joint physical custody with the youngest child where, because of the father's violence against the mother, there was a domestic violence restraining order protecting the mother and her two older children. The appellate court awarded sole legal and physical custody to the mother.[83]

The stability factor usually weighs in favor of the primary caregiver.[84] Oregon requires the court to determine and give a statutory preference to the primary caregiver. A trial judge erred in awarding sole legal and physical custody to the father where both parties stipulated the child had lived with the mother since 2019 and she had been the primary caregiver.[85] The trial court acted within its discretion in awarding the mother primary physical custody where she was the primary caregiver even though career training took her away for a relatively short time.[86] A Georgia court awarded the father primary physical custody of the children where both parents were capable but the children would incur stability and the least amount of conflict with their father. The court also upheld a restriction limiting overnight guests to family members when the children were present.[87]

The trial court did not abuse its discretion by allowing two children ages 8 and 12, as well as the 16-year-old, to testify about their

81. Hinds v. Hinds-Holm, 505 P.3d 1136 (Utah Ct. App. 2022) (while some factors favored the mother, her pattern of violating court orders, among other things, led the judge to award father sole legal and physical custody).

82. Garner v. Garner, 343 So. 3d 1097 (Miss. Ct. App. 2022) (father's violent temper, repeated use of combative and aggressive behavior, and verbal and emotional abuse were described as shocking in the GAL's report).

83. City & Cty. of San Francisco v. H.H., 291 Cal. Rptr. 3d 417 (Ct. App. 2022).

84. Lvovsky v. Lvovsky, 201 A.D.3d 571 (N.Y. App. Div. 2022) (mother awarded sole legal custody and primary physical custody of parties' two children with permission to move to Ottawa, Canada, where she had been primary caretaker since 2014); Harrington v. Harrington, 334 So. 3d 9 (La. Ct. App. 2022) (mother was primary caretaker and allowed to relocate to another city).

85. Henretty v. Lewis, 509 P.3d 701 (Or. Ct. App. 2022).

86. Flint v. Flint, 974 N.W.2d 698 (S.D. 2022).

87. Byrne v. Byrne, 878 S.E.2d 95 (Ga. Ct. App. 2022).

preferences on residential custody. The court found the children could distinguish right from wrong, understood the questions presented, and found their testimony was not influenced. Maturity is a factually driven issue. The court may allow a mature child to testify, but it is the court's responsibility to determine the best interests of the children and award residential responsibility based on the evidence presented.[88]

In a paternity proceeding, the court awarded the father domiciliary status and granted him primary physical custody during the school year, and the mother primary physical custody during the summer. Alternating weeks was not feasible for a four-year-old starting school where the mother had relocated. The father was a more credible witness than the mother, who alleged abuse by the father. "[T]he trial court 'sits as a sort of fiduciary on behalf of the child, and must pursue actively that course of conduct which will be of the greatest benefit to the child.'"[89]

The trial court properly awarded joint physical custody but sole legal custody to the father where the court found the parents would be unable to co-parent. The mother had attempted to have the father arrested, falsely claiming that he did not have a driver's license, and tried to have the father fired by calling his employer. The parents had substantially different opinions about parenting, where the mother's plan was to have the children homeschooled and unvaccinated; the father's plan was the opposite. Joint custody was not appropriate and not in the best interests of the children when the parents could not make shared decisions concerning their welfare.[90] Modification of joint custody was granted and the mother was awarded sole legal and physical custody where she was the primary caretaker and had suitable housing; the father's medical condition potentially endangered the children and he made baseless accusations that the mother abused the children.[91]

Two courts imposed sanctions for a parent's failure to comply with court orders for discovery.[92] An Arizona court found that the father

88. Cnty. of Sargent v. Faber, 978 N.W.2d 652, 657–68 (N.D. 2022).

89. Moore v. Prater, 342 So. 3d 994, 1000 (La. Ct. App. 2022).

90. Moore v. Moore, 645 S.W.3d 705 (Mo. Ct. App. 2022). *See also* Mary AA. v. Lonnie BB., 167 N.Y.S.3d 230 (App. Div. 2022) (joint custody was inappropriate where the parties were unable to communicate in an effective manner, mother was primary caregiver, and father had inconsistent parenting schedule).

91. Misty PP. v. Charles PP., 170 N.Y.S.3d 383 (App. Div. 2022).

92. Kadish v. Kadish, 274 A.3d 482 (Md. Ct. Spec. App. 2022) (imposing rebuttable presumption that it was in child's best interest to modify primary physical custody to father where mother violated discovery rules); *In re* Marriage of Durocher, 509 P.3d 682 (Or. App. 2022) (precluding parenting time evaluator from submitting an evaluation or testifying because of father's failure to comply with court order about evaluation process).

seeking unsupervised parenting time partially waived the psychologist-patient privilege on the discrete topic of his alcohol abuse treatment for the past year (not for five years as the mother requested) where the father had been diagnosed with moderate to severe alcohol use disorder.[93] A divorce judgment was vacated where the trial court awarded shared parental rights to minor children based on hearsay evidence that the father had been substantiated for child sexual abuse.[94]

3. Restrictions on Parenting Time

Florida reversed a multiphase timesharing schedule that increased the father's timesharing only after the completion of certain events without judicial intervention.[95] A New York trial judge ordered a visitation restriction on the father's paramour (who was the mother's brother's wife) from having any contact with the child. The father married the paramour. The appellate court reversed the trial judge who granted the mother's request for increased restrictions because there was no evidence that the father and wife engaged in any inappropriate conduct in the presence of the child.[96]

A couple of courts have upheld narrowly drafted reasonable nondisparagement clauses. A clause that provided "[t]he parties shall refrain from making disparaging comments about the other in writing or conversation to or in the presence of [Child]" was acceptable because it was to protect the child from the conflict. The part that provided that the parties could not make "disparaging comments about the other" in the presence of "anyone" even when the child was not present was an unconstitutional prior restraint.[97]

4. Modification

A father proved a material change of circumstances justifying modification of child custody where the mother had numerous relationships marked by conflict since the divorce, the child was fearful in the mother's home, and the guardian ad litem reported the child did not want to live with the mother.[98] Where a father could not show that there had been a substantial and material change of circumstances

93. J.F. v. Como in & for Cnty. of Maricopa, 514 P.3d 299 (Ariz. Ct. App. 2022).

94. Needham v. Needham, 267 A.3d 1112 (Me. 2022).

95. T.A. v. A.S., 335 So. 3d 208 (Fla. Dist. Ct. App. 2022).

96. Beckman v. Beckman, 870 S.E.2d 66 (Ga. Ct. App. 2022).

97. Israel v. Israel, 189 N.E.3d 170, 175, 180 (Ind. Ct. App. 2022).

98. Chrissonberry v. Chrissonberry, 654 S.W.3d 870 (Ark. Ct. App. 2022).

affecting the best interest of the child since the last order, the court did not have to hold a hearing on change of custody and he was required to pay the mother's attorney fees and costs.[99] Conduct that interferes with a parent's right under a custody order may establish a substantial change in circumstances.[100] Parents' inability to co-parent was substantial, constituting a material change in circumstances that could support modification of physical custody.[101] Even if a parent proves a change in circumstances, however, modification of custody may not be in the best interest of the children.[102]

Where the current custody arrangement is harmful to the child, the court will consider modification. In a Nebraska case, the two-year rotating schedule negatively affected the child, causing sufficient anxiety to require professional treatment. The negative effect was a material change in circumstances. The counselor diagnosed the child with adjustment disorder and depression relating to the child's difficulty adjusting to the custody arrangement and the parental conflict. The child expressed anxiety and fear of visits with the father. The appellate court found that the trial court's award of sole custody to the father was not in the child's best interest.[103]

There were a few cases dealing with COVID-19. Parents stipulated to joint custody with 50/50 physical custody and the mother named as domiciliary parent. After the mother and child evacuated to Texas due to Hurricane Delta, the court found a change of circumstances. The father had stayed in Lake Charles and the child spent one night with the father and his girlfriend but did not want to stay and had been exclusively with

99. Romano v. Romano, 501 P.3d 980 (Nev. 2022). *See also* Winkler v. Winkler, 978 N.W.2d 346 (Neb. Ct. App. 2022) (no change of circumstances where children were happy in mother's physical custody, parents communicated, and mother was not unfit; court did award higher child support, increased father's summer time, and ordered him to pay $5,000 of mother's attorney fees); A.L. v. V.T.L., 162 N.Y.S.3d 667 (Fam. Ct. 2022) (no change of circumstances to hear modification where father went from pro vaccine to hesitancy).

100. Rainer v. Poole, 510 P.3d 476 (Alaska 2022) (continuing conduct to ignore a new custody order may justify modification); Smith v. Francis, 170 N.Y.S.3d 195 (App. Div. 2022) (a change of circumstances and transfer of residential custody to the mother where the father disparaged her, behaved inappropriately, and consistently denied phone contact and access).

101. Schmidt v. Schmidt, 339 So. 3d 163 (Miss. Ct. App. 2022).

102. Piker v. Piker, 655 S.W.3d 754, 757 (Ark. Ct. App. 2022) (attorney at litem recommended leaving custody with the mother where the children wanted to spend less time with the father, did not want joint custody, and father's wife was "angry, aggressive, controlling" and sent "highly inappropriate" text messages to the mother; court found modification would not have been in the children's best interests even if a material change in circumstances had been established).

103. Rodas v. Franco, 974 N.W.2d 856 (Neb. Ct. App. 2022).

the mother since. When the mother told the father the child had COVID-19, the father denied it and his girlfriend had threatened to beat her up.[104]

A New York court allowed a mother to relocate to Pennsylvania with her new husband for his job even though the father had shared custody until the child started kindergarten.[105] A mother's unilateral decision to move the child to a school in a distant town was a willful violation of the parenting plan's requirement of joint legal custody.[106] A Michigan trial court did not abuse its discretion in denying a mother's motion to change the domicile of her and the child to Pakistan even though Pakistan had acceded to the Hague Abduction Convention.[107] Due to the father and new wife's relocation to a city an hour away, a New York court modified the judgment to fix a new custodial exchange location. The move had quadrupled the mother's time to pick up the children after four years of exchanges.[108]

5. Third Party Visitation

A grandmother had standing to seek visitation where she established a sufficient, existing relationship with the grandchild because the mother and child lived with her for approximately the first five months after the child was born. The mother suffered from postpartum depression and moved out after a fight about the child's father, cutting off all contact for over a year. The court found visitation was in the child's best interest, despite the mother's opposition.[109]

Maine used the preponderance of evidence standard used for de facto parents in determining that a grandparent had standing by showing a "sufficient existing relationship."[110] On the other hand, a Wyoming appellate court reversed an award of visitation because even though the grandparents had standing, they did not prove by "clear and convincing evidence that 'the parents [were] unfit or their visitation decision [was] harmful to the child[ren].'"[111] When the mother limited the paternal grandmother's contact with the grandsons after the father's death in the middle of the divorce action, ending those proceedings, the grandmother

104. Davis v. Davis, 333 So. 3d 1252 (La. Ct. App. 2022).

105. *In re* Thomas SS. v. Alicia TT., 170 N.Y.S.3d 389 (Fam. Ct. 2022).

106. Vyhlidal v. Vyhlidal, 973 N.W.2d 171 (Neb. 2022).

107. Safdar v. Aziz, 342 Mich. App. 165 (Ct. App. 2022).

108. Jeffrey P. v. Alyssa P., 164 N.Y.S.3d 265 (App. Div. 2022).

109. Melissa X. v. Javon Y., 161 N.Y.S.3d 362 (App. Div. 2021).

110. Fiske v. Fiske, 276 A.3d 31 (Me. 2022).

111. Bowman v. Study, 519 P.3d 985, 989–91 (Wyo. 2022).

sought visitation. The trial court gave proper constitutional deference to the fit mother's right to make decisions but found her proposed visitation plan of no visitation was unreasonable and not in her children's best interests.[112]

The trial court erred in finding a stepfather lacked standing to petition for allocation of parental responsibilities in a divorce action. The stepfather had physical care of the child for 182 days and he filed the petition within 182 days after the father removed the child.[113] Of the mother's seven children, the father of the two youngest children had primary physical custody of them and joint custody with the mother's consent of another child. The mother neglected that child by failing to keep the child bathed and to protect the child from aggression of older siblings, and the child preferred to live with him. The nonparent made the necessary showing of extraordinary circumstances to have the child placed with him.[114]

A former partner in a same-sex relationship with the birth mother lacked a right to visitation of children born to the relationship despite existence of a mediation agreement for one child. Florida does not enforce written agreements granting visitation to nonparents.[115] The Texas Court of Appeals found that the former wife of the birth mother of the child born during the lawful same-sex marriage was not required to seek adjudication of parentage under the Uniform Parentage Act to assert her standing as a parent to seek custody.[116] If the parties are not married, however, the Texas Court of Appeals found the trial court could not overrule the wishes of a parent and award visitation to a former same-sex partner who has no biological or legal relationship to the child. A nonparent "must establish at a minimum that the denial of visitation would significantly impair the child's physical health or emotional well-being."[117]

I. Child Support

Every state has child support guidelines that judges and administrative agencies are to follow. A Connecticut appellate court remanded a case for

112. Schwarz v. Schwarz, 506 P.3d 950 (Kan. Ct. App. 2022).

113. *In re* E.K., 511 P.3d 605 (Colo. 2022).

114. Kennell v. Trusty, 170 N.Y.S.3d 429 (App. Div. 2022).

115. Stabler v. Spicer, No. 1D21-1826, 2022 WL 16628940, at *1 (Fla. Dist. Ct. App. Nov. 2, 2022).

116. Interest of D.A.A.-B., 657 S.W.3d 549 (Tex. App. 2022).

117. *In re* N.H., 652 S.W.3d 488, 491 (Tex. App. 2022).

a trial court which made a substantial deviation from the guidelines to make specific findings as to why the application of the guidelines would have been inequitable or inappropriate.[118] A New York court pointed out some of the realities when parents split the children's physical custody so that neither parent could be said to have physical custody for the majority of time. The court reversed for a determination of who had the "greater pro rata share of the child support obligation." The court noted that "a strict approach to determining which parent is the custodial parent . . . will make it difficult or impossible for a parent with a lower income to share what is essentially close to equal parenting time, as opposed to precisely equal or greater custodial overnight time. In such cases, the children may experience a significant disparity in standard of living in their two households."[119]

1. Income

Income includes income that comes from any source, which includes perquisites from a job. Therefore, a Massachusetts court found that a judgment that precluded considering the father's income from a second job at a medical center from being considered for child support and alimony was void. Additionally, employer contributions to the father's retirement accounts were income for child support.[120]

A difficult issue in calculating child support can be determining income for a self-employed person. In a North Dakota case, the court examined income in a farming and ranching operation and the sale of cattle and the practice of trading machinery. The court erred in only calculating the gains from the farming and ranching operation without considering the expenses and activity that led to the gains. The court should have considered the expenses from the rental property.[121]

2. Imputing Income

The court can impute income based upon the offer of a full-time job from a parent's employer.[122] A father's submission of tax returns and Domestic Relations Financial Affidavits did not preclude the trial court from imputing income where the father was unable to explain

118. Moore v. Moore, 283 A.3d 994 (Conn. App. Ct. 2022).

119. Smisek v. DeSantis, 174 N.Y.S.3d 139, 151, 152 (App. Div. 2022).

120. Cavanaugh v. Cavanaugh, 191 N.E.3d 975 (Mass. 2022).

121. Gerving v. Gerving, 969 N.W.2d 184 (N.D. 2022).

122. Malkani v. Malkani, 173 N.Y.S.3d 675 (App. Div. 2022).

discrepancies in various financial documents and why his deposits exceeded his income.[123]

The trial court has discretion to impute income to a party based on the party's failure to seek more lucrative employment consistent with his or her education, skills, and experience if there is support in the record. Although the father had a law degree and a master's degree in public health, the record did not show he had ever practiced law or held a job directly related to his master's, so the court should not have imputed an additional $50,000 in income. The court, however, could impute $120,014 in annual income based on the father's unreported income sources.[124]

The trial court can impute income based on historical income in appropriate cases, such as where the parent failed to provide adequate supporting documentation.[125] A father had been employed throughout the marriage, earning around $200,000 the last three years. He was active in two unions and paid dues but became voluntarily unemployed for over a year and a half after the wife filed for divorce. The court imputed around $3,800 a week in income. While the court properly imputed income, the case was remanded to consider the "prevailing job opportunities and earning levels in the community."[126]

3. Modification/Termination

A court must have jurisdiction to modify a child support order. Arizona issued the original support order; then the father and child moved to Alabama and the mother moved to North Dakota. The father filed a motion to modify in Alabama. The mother had no contacts sufficient to give Alabama personal jurisdiction over her.[127] After a D.C. divorce, the mother had residential custody and the father was ordered to pay child support. The mother and child moved to Maryland and modified the order in 2016. The mother moved to modify child support in D.C. in 2018. The father claimed D.C. lacked jurisdiction because he had lived in Maryland since 2012. The trial court agreed, concluding that

123. Berg v. Beaver, 874 S.E.2d 868 (Ga. Ct. App. 2022).

124. Yezzi v. Small, 170 N.Y.S.3d 712 (App. Div. 2022).

125. Pankhurst v. Pankhurst, 508 P.3d 612 (Utah Ct. App. 2022) (decrease in income from oil industry was temporary); *see also* Updike v. Updike, 974 N.W.2d 360 (N.D. 2022) (court imputed income based on earning capacity as oil industry worker rather than minimum wage).

126. Walters v. Walters, 186 N.E.3d 1186, 1194 (Ind. Ct. App. 2022).

127. *Ex parte* Sperry, No. CL-2022-1036, 2022 WL 17546472 (Ala. Civ. App. Dec. 9, 2022).

the father's consent to D.C. jurisdiction in the 2016 modification did not constitute consent to D.C. for the 2018 motion to modify.[128]

The mother established a material and unforeseen change in circumstances since the original order that warranted modification of child support because the child's autism spectrum disorder diagnosis had affected her needs and expenses as she aged. The mother provided a financial statement reflecting the child's expenses that were unforeseeable at the time of the parties' divorce.[129]

Whether a parent's drop in income is a change of circumstances may depend on if it was anticipated at the time of the order.[130] A father's loss of employment as a railroad foreman due to his failure to properly complete employee risk assessments did not result from willful violations of his employment and could be a change in circumstances justifying modification of support.[131] In another case, the father did not prove that his termination from employment was not caused by bad faith where it was a "direct result of [his] violation of [his employer's] family and medical leave policy."[132]

Courts do not allow parents to contract out of their obligation to pay child support because it is the child's right, not the parent's. Where the parties orally agreed to reduce the father's child support conditioned on his regular visits, but the father did not visit, the mother sought past-due child support. The father sought modification based on his retiring from the Marines with reduced pay and the agreement. The court found no change in circumstances as the father had the ability to work and his standard of living was not impacted.[133]

J. Cohabitation/Domestic Partnership

The Statute of Frauds provision imposing an attorney-review requirement for palimony agreements violated substantive due process under the New Jersey Constitution but did not impair the obligation of contract.[134] The consideration a former girlfriend gave under a

128. Sewell v. Walker, 278 A.3d 1175 (D.C. Ct. App. 2022).

129. Nowell v. Stewart, 356 So. 3d 1217 (Miss. Ct. App. 2022), *cert. denied*, 346 So. 3d 460 (Miss. 2022) (sealing records to protect child's privacy).

130. Thayne v. Thayne, 521 P.3d 190 (Utah Ct. App. 2022) (no modification where alleged change of circumstances was anticipated and addressed in parties' stipulation).

131. Hodgen v. Hodgen, 970 N.W.2d 782 (Neb. Ct. App. 2022).

132. Tolliver v. Tolliver, 334 So. 3d 1228, 1232 (Miss. Ct. App. 2022).

133. Kelley v. Zitzelberger, 342 So. 3d 499 (Miss. Ct. App. 2022).

134. Moynihan v. Lynch, 269 A.3d 435 (N.J. 2022).

cohabitation separation agreement was not so insufficient as to render the agreement unconscionable because she had surrendered the joint residence.[135]

An Alaska trial court erred in determining the parties were in a domestic partnership without making the predicate factual findings on factors. If the domestic partnership existed, the court must classify each disputed item as partnership or separate property. The error was harmless as to a claim for proceeds from sale of Alaskan property, but not as to Oklahoma property. The court, however, properly determined the woman owed the man for his contributions to out-of-state (Oklahoma) property in his name sold at a loss and vet bills charged to his credit card.[136]

K. Divorce

1. Jurisdiction

Because the husband was domiciled in North Carolina, not South Carolina, the South Carolina family court properly dismissed his divorce action based on the wife's adultery for lack of jurisdiction and awarded the wife attorney fees.[137] After a husband petitioned for separation in California, the wife petitioned for dissolution of marriage in Massachusetts and sought to quash the California proceedings. Where the California court lacked in personam jurisdiction over the wife when the husband filed his original petition for separation and his amended petition seeking marital dissolution, the first in time rule did not apply. "[T]he first in time rule applies only when the court has acquired both in rem and in personam jurisdiction."[138]

Mississippi granted two divorces based on cruelty. In one, the allegations included that the wife threw things, threatened to kill the husband, and told him to leave. The parties had not cohabited for five years.[139] In another, the court granted the husband a divorce in a case in which the husband had Alzheimer's.[140]

In an unusual appeal, the husband argued that a divorce decree granting the wife a divorce did not also grant the husband a divorce, so

135. Silzell v. Silzell, 640 S.W.3d 667 (Ark. Ct. App. 2022).

136. Wright v. Dropik, 512 P.3d 655 (Alaska 2022).

137. Hayduk v. Hayduk, 872 S.E.2d 847 (S.C. Ct. App. 2022).

138. *In re* Marriage of Thompson, 289 Cal. Rptr. 3d 545, 546 (Ct. App. 2022).

139. Montgomery v. Montgomery, 339 So. 3d 819 (Miss. Ct. App. 2022).

140. Shannon v. Shannon, 357 So. 3d 1043 (Miss. Ct. App.), *cert. granted*, 346 So. 3d 460 (Miss. 2022).

the court lacked jurisdiction to rule on the wife's motions to modify child support and sharing of expenses and to relocate. The North Dakota court found that "nonsensical" and granted sanctions.[141]

2. Effects of Divorce

Parties divorced in 2012 and the property settlement agreement provided that the husband waived all rights to the wife's 401(k) retirement plan. When the former wife died without a will in 2018 and without changing the beneficiary, the plan paid the former husband. The administrator of the former wife's estate successfully sued the former husband to return the money to the estate.[142] In another case, the personal representative of the husband's estate petitioned for declaratory judgment against the wife claiming she waived her beneficiary rights by the language in the separation agreement. The court agreed that ERISA did not preempt and the agreement's language waived her rights.[143]

Some cases this year dealt with a spouse dying at some stage during the proceeding. The marital estate vested when the wife initiated marital litigation. The family court must apportion marital property between the husband and the wife's estate so that "the probate court could then exercise its exclusive original jurisdiction over the distribution of [the] Wife's estate."[144] In another case, the ex-husband died after the decree and the parties' property agreement that the husband execute a quitclaim deed transferring his interest in the marital residence to the wife upon her payment of a sum of money. The ex-wife paid, but he failed to execute the deed and died in 2021. The dissolution court found it lost jurisdiction when the husband died. The appellate court found that rule did not apply here because the wife was merely trying "to complete the implementation of the division of property as ordered in the final decree."[145]

L. Domestic Violence

A father-in-law's interruption of the petitioner's video meeting with loud humiliating remarks did not rise to the level of a "credible threat to physical safety" for a protection order.[146] A Washington trial court abused its discretion in failing to consider the former wife's request for

141. Lessard v. Johnson, 970 N.W.2d 160, 165 (N.D. 2022).

142. Morgan v. Bicknell, 268 A.3d 1180 (R.I. 2022).

143. *In re* Estate of Petelle, 515 P.3d 548 (Wash. Ct. App. 2022).

144. Seels v. Smalls, 877 S.E.2d 351, 359 (S.C. 2022).

145. Dennis v. Dennis, 189 N.E.3d 1115, 1119 (Ind. Ct. App. 2022).

146. A.A.R. v. Rustad, 511 P.3d 88 (Or. Ct. App. 2022).

a restraining order where her former husband had a history of domestic violence and his partner indicated he fantasized about killing the former wife.[147]

M. Marriage

If a guardian has been appointed for a person, the guardian may have to consent to a marriage. The Illinois Supreme Court found the processes of the Probate Act, rather than the Marriage Act, governed, so the marriage of the ward without knowledge or consent of the guardian was void.[148] A husband married a woman (wife #1) in California. He then went to Lebanon and married another woman (wife #2). When he tried to terminate marriage #2, wife #2 sought spousal support. The trial court properly found the bigamous marriage was void and wife #2 got nothing.[149]

When a marriage is annulled for fraud, the fraud must be proven by clear and convincing evidence. A wife successfully showed her husband, who had been a childhood neighbor in Nigeria, married her within 90 days of arriving in the United States just to get U.S. citizenship. As soon as the husband got his green card, he "became distant" and "secretly prepared" for his exit from the marriage months after becoming a citizen.[150]

N. Names

An unwed mother and father had separated by the time of their second child's birth. The mother named the child "Legend Messiah Ornelas." The father petitioned to establish paternity and to add his first and last names. The mother objected to adding his first name but not the last. The appellate court upheld the trial court's decision to add the name "Angel" (the father's name). The court noted the child was only a few months old and had a strong bond with the mother that would not change, but the name change could help the child develop his relationship with the father, whose motive was to follow family tradition.[151]

147. *In re* Marriage of Mishko & Kehr, 519 P.3d 240 (Wash. Ct. App. 2022).

148. *In re* Estate of McDonald, 201 N.E.3d 1125 (Ill. 2022).

149. *In re* Marriage of Elali & Marchoud, 294 Cal. Rptr. 3d 804 (Ct. App. 2022).

150. Nwankwo v. Uzodinma, 185 N.E.3d 513, 517, 521 (Ohio Ct. App. 2022).

151. Munguia v. Ornelas, 515 P.3d 1287, 1289 (Ariz. Ct. App. 2022).

O. Paternity

A biological unwed father who brought a parentage action before the child reached the age of majority was entitled to be named the father and granted joint physical custody. The court felt the mother and another individual who was listed on the birth certificate "intentionally deprived" the father of the child's "infancy, toddlerhood, and young childhood."[152]

When a man filed an action to determine parentage, the mother alleged the child was the result of sexual assault and he should have no rights. The court agreed. The fundamental right to parent is not inherent in biological connection. "Rapists will not be rewarded for their crimes simply because they were successful in reproductive mechanics. Consequently, the perpetrator is not afforded the same due process rights of a person who is a parent to a child as a result of consensual sexual intercourse. . . ."[153] Most states today have statutes or cases that preclude a rapist from seeking custody of the child conceived of the rape.

P. Property Division

1. Classification

A wife did not overcome a presumption that nonmarital inheritance monies she put towards a down payment on a jointly owned marital home were intended as a marital gift.[154] Life insurance proceeds and IRA benefits the wife received as a beneficiary following the death of her son from a premarital relationship who had resided with, but was never adopted by, the husband constituted gifts, and not marital property.[155] Substantial evidence supported a trial court's determination that $1.7 million of the husband's nonmarital property that was deposited into the wife's transfer on death trust during the marriage constituted a gift and therefore was the wife's nonmarital property.[156]

In Maine, one of the exceptions to marital property is property acquired after a decree of legal separation; a "de facto" separation, however, does not count.[157] In North Dakota, a court errs if it includes in the marital estate property acquired post-separation.[158]

152. Rosie M. v. Ignacio A., 512 P.3d 758, 764 (Nev. 2022).

153. *In re* R.V., 511 P.3d 148, 158 (Wash. Ct. App. 2022).

154. Chatten v. Chatten, 334 So. 3d 633 (Fla. Dist. Ct. App. 2022).

155. Goodwin v. Goodwin, 280 A.3d 937 (Pa. 2022).

156. Lewis v. Fulkerson, 650 S.W.3d 288 (Ky. Ct. App. 2022).

157. Moran v. Moran, 279 A.3d 385, 390–91 (Me. 2022).

158. Berdahl v. Berdahl, 977 N.W.2d 294, 301 (N.D. 2022).

A husband established that appreciation in the value of the wife's premarital art gallery business was marital property. The evidence supported the trial court's finding that the increase was due to the wife's active efforts during the marriage, and there was some connection to the husband's "limited indirect contributions as a supportive spouse and active parent. . . ."[159] An Oklahoma court found that the substantial appreciation ($188,000) of an investment account during the divorce was marital property.[160] An Alaska trial court should have considered significant contributions of marital funds made to pay taxes on the wife's inheritance investment earnings in assessing whether any of the appreciation in value was marital property.[161]

A Washington court upheld a determination that a wife who conveyed separate property to herself and her husband through a quitclaim deed in order to secure a loan did not intend to convert the property to community property.[162] The joint title gift presumption does not apply in dissolution matters and the trial court could consider extrinsic evidence showing the spouse's intent when signing the quitclaim deed.[163]

The trustee of the husband and wife's irrevocable trust brought several claims based on fraudulent transfers against the husband's girlfriend, to whom the husband allegedly gave approximately $5 million of marital property without the wife's consent, violating their marital agreement and irrevocable trust. The court found the girlfriend was aware that the wife had interests and imposed a constructive trust for all the transfers.[164]

2. Retirement Issues

The family court lacked jurisdiction over the husband to divide his military retirement benefits where he contested jurisdiction. Under the Uniformed Services Former Spouses' Protection Act, the court has jurisdiction if the service member resides or is domiciled in the state or has consented to the jurisdiction of the court. The husband had done none of these.[165]

159. Culman v. Boesky, 170 N.Y.S.3d 5, 28 (App. Div. 2022), *leave to appeal denied*, 202 N.E.3d 1288 (N.Y. 2023).

160. Dancer v. Dancer, 513 P.3d 569, 575–76 (Okla. Ct. App. 2022).

161. Layton v. O'Dea, 515 P.3d 92, 105–07 (Alaska 2022).

162. *In re* Marriage of Watanabe, 506 P.3d 630 (Wash. 2022).

163. *Id.* at 636.

164. Wallace v. Torres-Rodriguez, 341 So. 3d 374 (Fla. Dist. Ct. App. 2022), *review denied*, No. SC22-853, 2022 WL 4283256 (Fla. Sept. 16, 2022).

165. Williams v. Williams, 873 S.E.2d 785, 793, 809–10 (S.C. Ct. App. 2022).

The Ohio Court of Appeals noted that the former spouse, not the employee, has the burden to follow through with the preparing and implementing of the Court Order Acceptable for Processing (COAP). The lack of proper service and notice to the husband denied him the "opportunity to cooperate . . . [in] the preparation and implementation of the COAP" and provided "extraordinary and unusual circumstances as grounds for relief" from the judgment.[166]

3. Valuation

Generally, the same valuation date should be used for all assets. Circumstances, however, may dictate different dates. In one case, the appellate court remanded because the trial court used a 2018 date to value the husband's 401(k) but a June 2020 (pandemic) date to value the husband's employee stock ownership plan and the wife's Roth IRA retirement account.[167] In another case, where the parties' valuations of the marital home differed by $75,000, the court upheld the trial court's decision to take judicial notice of and use the tax assessor's valuation figure.[168]

4. Division

The D.C. Court of Appeals held that "substantial homemaker services can . . . entitle a spouse to an equitable interest in real property purchased by the other spouse before the marriage and used as the family home."[169] A trial court did not abuse its discretion in assigning a wife one-half of the husband's interest in a real estate company where it appeared he had hidden substantial assets and had the capacity for further acquisition, and his sister lived on property that was a marital asset without paying rent.[170]

North Dakota allows consideration of "the parties' conduct during [the] marriage, including fault."[171] A North Carolina Court of Appeals upheld unequal distribution of marital assets based on the fact that the husband set the house on fire.[172] A husband's purchase of a yacht did not require the court to find a dissipation of marital assets even though the yacht had depreciated in value. The husband historically bought planes

166. Ostanek v. Ostanek, 191 N.E.3d 1220, 1227 (Ohio App. 2022).

167. McGowan v. McGowan, 344 So. 3d 607, 613 (Fla. Dist. Ct. App. 2022).

168. Herron v. Herron, 338 So. 3d 662, 671 (Miss. Ct. App. 2022).

169. Macklin v. Johnson, 268 A.3d 1273, 1283 (D.C. Ct. App. 2022).

170. Mezini v. Mezini, 268 A.3d 1171, 1178 (R.I. 2022).

171. Berdahl v. Berdahl, 977 N.W.2d 294, 299 (N.D. 2022).

172. Mosiello v. Mosiello, 878 S.E.2d 171, 176, 180 (N.C. Ct. App. 2022).

and boats and there was no evidence that he caused the large diminution in value. The court assigned him responsibility for the remaining payments on the yacht.[173]

A Florida appellate court upheld an order for a wife to pay a husband $1.92 million as an equalization payment where she "transferred over four million dollars in marital assets into [a] revocable trust in her maiden name about a year before initiating" the divorce proceedings, and while the proceedings were pending, she moved those assets and others to an irrevocable trust in her maiden name.[174] The wife was the "sole beneficiary of both trusts," and the court found it "hard to see how one reasonably could conclude" that the transfer "was done for any marital purpose."[175]

The trial court properly awarded the wife about 57 percent of the marital property. The distribution was "well within the general rule" that "a spouse should be awarded one-third to one-half of the marital estate. . . ."[176]

A Virginia trial court lacked authority to require the husband to maintain his life insurance policy with the wife as beneficiary. The court also was not required to reduce the wife's share of the husband's ownership interest in PriceWaterhouseCoopers to account for his future tax liability.[177]

5. Enforcement

An ex-wife brought an action to modify a property division five years after entry of the decree. The court found that the ex-husband's failure to disclose his pension during negotiations was intrinsic, not extrinsic, fraud. Therefore, the wife should have sought modification within one year under Iowa law. Furthermore, the wife could have discovered the pension within a year because one of the statements on a document provided to her attorney should have alerted her to the existence of the pension.[178] In another case, however, the former wife moved to vacate the decree and a 2017 stipulation in 2018 after discovering three additional accounts worth over $300,000 that the former husband did not disclose during the settlement negotiations. The court not only

173. Wadsworth v. Wadsworth, 507 P.3d 385, 406 (Utah Ct. App. 2022).

174. Collier v. Collier, 343 So. 3d 183, 188 (Fla. Dist. Ct. App. 2022).

175. *Id.* at 188, 189.

176. Hamann v. Hamann, 977 N.W.2d 687, 695 (Neb. Ct. App. 2022).

177. Sobol v. Sobol, 867 S.E.2d 774, 785 (Va. Ct. App.), *appeal granted* (Va. Sept. 13, 2022).

178. *In re* Marriage of Hutchinson, 974 N.W.2d 466 (Iowa 2022).

found the husband misrepresented his assets and vacated the decree to divide them but also awarded the wife $62,000 in attorney fees for his intransigence.[179]

IV. Conclusion

As the pandemic became more manageable, most courts heard cases with the usual problems of partners and spouses fighting over money, property, and children. Change, however, continues to make the practice of family law challenging. The Supreme Court's *Dobbs* decision has forced states to deal with reproductive issues long dormant. The relatively new recognition of de facto parents, assisted reproduction, same-sex marriages, and rights for stepparents has added a new term, "polyparenting." Parental rights to regulate education as well as issues with binary and transgender children have resulted in legislation in some states. Family lawyers are rising to the challenges and adapting their practices to address the changes created by these increasingly complex families.

179. Bresnahan v. Bresnahan, 505 P.3d 1218 (Wash. Ct. App. 2022).