

Res Ipsa Loquitur

**Newsletter of the Wicomico County Bar Association
Vol. I, Issue 2 - April 2011**

President's Message by Heather Konyar

I think we can call the newsletter a success! Whether you sent kudos, expressed encouragement, or offered to write articles, we have been pleasantly overwhelmed by your response.

In this next installment, be sure to read about our new District Court Drug Treatment Program, a much-needed program that can now act as a counterpart to the pre-existing program in the Circuit Court. We also have helpful case law updates and DSS practice tips, which will interest those in the domestic practice. In the future, we hope to have more of practice tips, legislative updates and case law updates. We will be targeting any and all practice areas; please do not hesitate to share if you know of a change in the law in your field of practice.



While I am happy to report on the Bar Association's positive start to the year, I must also pause a moment to recognize the loss of Henry Vinyard. Henry was consummate professional, brilliant and impassioned, and personable at the same time. As fellow attorneys, let us honor his memory by passing on to each other the collegiality he embodied.

In that spirit, please join us at our upcoming Bar Association events, as it is through these events that we build rapport and civility, and establish resources among our very own. I hope to see you all soon.

Happy spring,

Heather Konyar ❖

WCBA Calendar

Mark Your Calendars!

- ❖ **May 20, 2011 @ Noon, Brown Bag Lunch; Location: TBA; Topic: How Bankruptcy Affects Your Legal Practice**
- ❖ **August 12, 2011 @ Noon, Brown Bag Lunch; Location: TBA; Topic: TBA**
- ❖ **November 4, 2011 @ 4:30 pm, Wine or Beer Tasting; Location: TBA**
- ❖ **December 3, 2011 - Holiday Party! Details Coming Soon.**

Practice Tips: Child Support & the Wicomico County Bureau of Support Enforcement

by Mark A. Tyler, Esq., Attorney, Wicomico County Bureau of Support Enforcement

Attorneys practicing family law will undoubtedly run into cases where clients have questions about enforcing their child support obligations through the local Department of Social Services - Bureau of Support Enforcement (“Bureau”). Here are some practice pointers in preparing both a support order and the clients for the case being referred to the Bureau:

1. Health Insurance – Federal law requires all child support orders that are enforced by the Bureau to have a provision in them addressing the health insurance needs of the child/ren. Therefore, if you anticipate that your client will be taking the divorce decree, separation agreement, or support order to the Bureau, you should clearly address who is legally obligated to provide health insurance for the child/ren in the order. Otherwise, the Bureau may have to bring the parties back to Court to litigate which party will be ordered to provide health insurance for the child/ren.

2. Automatic Earnings Withholding – All orders established and enforced by the Bureau should authorize automatic earnings withholding, through the following clause: “ORDERED, that this Order constitutes an immediate and continuing withholding order on all earnings of the Defendant on or after the date of this Order and forward same to Maryland Child Support Account, P.O. Box 17396, Baltimore, MD 21297-1396”. This allows for the process of computer automated earnings withholding to occur.

3. Costs/Benefits of Agency Enforcement – Discuss with the client the potential benefits of agency enforcement such as new hires registry, automated earnings withholding, tax intercepts/lottery intercepts, license suspension program, as

well as civil and criminal contempt prosecutions. The primary cost will be an annual fee of \$25.00 if the agency collects at least \$3,500.00 during that federal fiscal year and the parties have never received temporary cash assistance (TCA).

4. Pass Through Cases – In cases where the support payments are court ordered to be sent to the Maryland Child Support Account, clients should be advised not to expect enforcement activity by the Bureau. Often, in cases where the support payments are simply being “passed through” the Bureau, clients are confused about the Bureau’s role. There is no enforcement case at the Bureau just because the support payments are passing through the agency. Consequently, all of the Bureau’s services mentioned above will not be provided to the client until he/she completes an application for services, pays the application fee of \$25.00, and completes a Data Collection sheet, which is available from the Bureau or the Clerk’s Office. Further, the Bureau will not be able to collect on arrears that pre-date the Bureau’s direct involvement in the case unless there is a finding by the Court that the arrearage exists. Therefore, clients run the risk of having to litigate the arrears on their own if they delay in applying to the Bureau for full services.

As the attorney for the Wicomico County Bureau of Support Enforcement, I am happy to discuss any specific questions you or your clients may have about the process of enforcing their child support obligations through the Bureau. Call me directly at 410-713-3967, or email your questions to me at mtyler@dhr.state.md.us. ❖

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To contact Res Ipsa Loquitur, please e-mail the Editor or Co-Editor. Res Ipsa Loquitur is a bi-monthly publication of the Wicomico County Bar Association informing its members about current events related to law and the community. Articles do not necessarily reflect the official position of the Association, and publication does not demonstrate an endorsement of views expressed herein.

The contents of advertisements and articles are the responsibility of the advertisers and writers, and do not represent any recommendation or endorsement by Res Ipsa Loquitur or the Wicomico County Bar Association.

Focus on the District Court Drug Treatment Court

The Drug Treatment Court (DTC) for the District Court of Wicomico County was initially developed in the spring of 2008. This problem solving court was developed to address substance abuse and related criminal activity, while rehabilitating an offender to be a productive member of the community. The target population is comprised of non-violent adult offenders with habitual substance abuse problems who live in Wicomico County.

The DTC is a coalition of agencies providing intensive treatment and supervision along with comprehensive judicial monitoring to offenders who have committed crimes as a result of their addiction. The DTC incorporates support services, such as vocational, educational, and life skills development, to bring about meaningful behavioral and lifestyle changes for the participant, while facilitating the integration of participants into the community. Status Review Hearings are held on a bi-weekly basis to review participant progress.

The program is comprised of four phases, each with a set of requirements that participants must meet to move on to the next phase. Protocol includes attending treatment, completing community service, maintaining a curfew, obtaining employment, and compliance with the conditions of probation. To date, the program has served over forty individuals and graduated eight successful participants.

The DTC has recently experienced some changes with staff and location. The DTC office is now located on the second floor of the District Court building, across the hall from the Office of the Public Defender. DTC welcomed Jonna Hitch as the new Coordinator for the program in February of 2011. ❖

Family Case Law Notes

by Barbara R. Trader

Andrulonis v. Andrulonis, 193 Md. App. 601; cert. denied, *Andrulonis v. Riley*, ___ Md. ___ (2010). This case has a long procedural history. Parties' Marital Settlement Agreement provided for wife to receive \$4,000 per month alimony, non-modifiable. When wife remarried in 1998, husband filed a complaint to modify or terminate. In that appeal COSA held that "the Circuit Court correctly concluded that the alimony provision contained in the parties' divorce decree is not modifiable". Subsequently in 2003, the COA held, in *Moore v. Jacobson*, that "unless an agreement states explicitly that alimony survives the party's remarriage, alimony terminates on the marriage of the recipient spouse". Relying on *Jacobson*, five years later husband filed a complaint to strike or withdraw and an earnings withholding order awarding wife alimony and seeking reimbursement of the preceding years' payments. Wife filed a motion to dismiss relying upon the earlier COSA opinion as "law of the case." Trial court agreed and dismissed the case. Appellate court held that trial court erred in dismissing husband's complaint. "Because the Court of Appeals decided *Jacobson* between the time husband filed his first and second complaints, the principles announced by the *Jacobson* court are now controlling upon this court." Wife is not required to repay alimony, but alimony is terminated as of the date of the appellate opinion. COMMENT: This opinion includes discussion of law of the case, collateral estoppel, and res judicata.

Behr v. Behr, 192 Md. App. 307, 994 A.2d 487 (2010). Parties had triplets. They separated and settled all issues except uninsured medical expenses for the children. At trial, wife obtained an order for husband to pay half of all uninsured medical expenses, not just extraordinary medical expenses. On appeal, the court held that if a party

was ordered to pay ordinary medical expenses, rather than extraordinary as defined by statute, the court must find special circumstances and explain on the record why this is appropriate. In addition, extraordinary medical expenses should be prorated by percentage of income as provided by statute. PRACTICE TIP: This case offers a good review in footnote 1 for the legislative history of the new child support statute.

Boemio v. Boemio, 414 Md. 118, 994 A.2d 911 (2010). Parties divorced after 21 years of marriage. Trial court reviewed the factors in FL 11-106(d) and AAML alimony guidelines before awarding alimony. Trial court stated it did not consider AAML guidelines controlling, and consulted them for informational purposes only. Husband appealed the alimony award. COSA affirmed. COA took cert. On cert, COA held that consultation of the guidelines promulgated by AAML was within court's discretion. In a footnote the court noted that the AAML guidelines are no more preferable than the ones commonly known as the Kauffman Guidelines, which were released after this case was litigated.

The alimony award was in excess of the petitioner's stated monthly deficit. The COA held it was within the exercise of the trial court's discretion when stated monthly needs did not reflect the parties' past life style and wife's post-divorce housing costs. Judicial review of the alimony award will be disturbed only when it is shown that the trial court arbitrarily used its discretion or its judgment was clearly wrong.

Brandenburg v. Lebar, 193 Md. App. 178. This is a grandparent visitation case. Following a three day trial, the court issued a written opinion in which it found that in light of "common sense and decent regard for the importance of human

(Continued on pg. 5)

Family Case Law Notes
(Continued from pg. 4)

relationships,” the termination of a close relationship with their grandparents caused the children a significant deleterious effect, and it was his belief that the children were continuing to suffer harm. He concluded that the threshold of exceptional circumstances had been met, and it was in the best interest of the children to have a regular visitation schedule. The parents appealed. On appeal, the court reviewed the Maryland case law, most recently in some depth the Koshco case and held the trial court was not permitted to draw an inference based on common sense and decent regard. Absent proof of a significant deleterious effect caused by the cessation of visitation, exceptional circumstances are not met. PRACTICE TIP: It may be that expert testimony is the only way to establish the deleterious effect once contact for the grandparents is cut off.

Brown v. Brown, 115 Sept. Term 2008 (COSA September 30, 2010). The parties listed a jointly-titled home on the 9-207 statement as “non-marital”. At trial wife requested transfer of the title to her “as an adjustment of the equities and rights of the parties concerning marital property (statutory language)”. Trial court granted the request. Husband appealed. Appellate court reversed because the trial court did not have authority to transfer title to property which was not marital by valid agreement. Husband’s interrogatory answer as to the value of an asset was an admission of a party opponent and could be used against him. PRACTICE TIP: If you find you put something on the 9-207 incorrectly, ask for leave to amend.

Bussell v. Bussell, 194 Md. App. 137 (2010). This case involves the timeliness of a Notice of Appeal from a Pendente Lite ruling. (The Court addressed the issue of the timeliness of appeal sua sponte.) Trial judge issued a Pendente Lite ruling from the bench on September 30, 2009. Appellant filed a Notice of Appeal on October 5, 2009. An

Order was prepared by Appellee’s counsel and submitted on October 28, 2009 and signed and docketed on November 3, 2009. On appeal, the court addressed whether the Notice of Appeal was premature and held it was not because trial judge had announced the entire ruling and merely requested counsel to prepare the order. Maryland Rule 2-601 now requires a separate order. Under Maryland Rule 8-602(d) the Notice of Appeal was treated as filed on September 3, 2009.

Doe v. Roe, 193 Md. App. 558, 998 A.2d 383, cert. granted, Doe v. Roe, ___ Md. ___ (___). The issues in this case involve allegations of sexual abuse while plaintiff was a minor. Plaintiff reached majority on September 29, 2001. At that time, CJ Section 5-201(a), plaintiff had a three year statute of limitations. On October 1, 2003 the SOL for sex abuse was enlarged to seven years. On September 29, 2004, plaintiff’s three year statute of limitations under old 5-201(a) would have run. Plaintiff filed suit for sexual abuse on September 3, 2008. (The seven year statute of limitation would have run on September 30, 2008). Trial court dismissed the case relying on the old three year statute of limitations. Appellate court reversed, holding language in new statute stated that it could not be applied retroactively to a claim that was barred by October 1, 2003. However, that did not bar this claim since Plaintiff’s claim would not have run under the old statute until September 29, 2004.

Defendant also raised a constitutional issue and COSA held that the extension of the SOL to include claims that were not barred when the statute was enacted did not infringe on any vested or substantial rights of the defendant.

Dziamko v. Chuhaj, 193 Md. App. 98; cert. denied, Chuhaj v. Dziamko, ___ Md. ___ (2010). The parties’ M.S.A. provided for the division of Husband’s pension. Husband’s employment had been in the public sector and military. Husband’s draft of proposed DRO (private pension) and CPO

(Continued on pg. 9)

News From The Circuit Court

- ❖ The Circuit Court welcomed Natalie Whittingham, as a new law clerk in mid-year. She is a graduate of Benjamin N. Cardozo Law School and previously interned with the Salisbury office of the Public Defender. Wittingham, replacing Beth Britt who left mid-year to join the Public Defender's Office, is primarily working for the visiting judges sitting as a result of the current vacancy.
- ❖ The Circuit Court also welcomed new staff from the Sheriff's Office to serve as Court security. Deputy Robert Brown and Deputy Jeff Webb recently joined the security staff on a part-time basis. Deputy 1st Class Sam Workman is now assigned to the Court security staff on a full-time basis.
- ❖ The Wicomico County Circuit Court Adult Drug Court Program is scheduled to convene the ninth graduation ceremony on May 6, 2011 at 3:00 p.m. at Wor Wic Community College in Guerrieri Hall. Four participants are currently expected to graduate.
- ❖ The Wicomico County Truancy Court, part of a First Circuit Pilot Program, now has thirty-one participants. In February 2005, Wicomico County became the first jurisdiction to convene a Truancy Court, which is designed as an early intervention to reduce truancy and prevent delinquency. Delegate Norman Conway, the Honorable Daniel Long and the Wicomico County Board of Education were instrumental in introducing and enacting legislation to authorize the Truancy Court. Both the Department of Social Services and the Department of Juvenile Services cooperate with the program. Peninsula Addictions, Wraparound Maryland and the Wicomico County Health Department have also cooperated in serving program participants. The Wicomico County Board of Education initiates the cases by filing Truancy Petitions in Juvenile Court. The program will be expanding to a full-day docket beginning on April 27, 2011 because of an increasing caseload. Responsible for the entire First Circuit program, Truancy Court Coordinator Sharonda Ebanks can be reached at 410-621-7593.

District Court Staff on the Move

There have been a number of comings and goings in the Wicomico County District Court office staff. Currently, there are four staff vacancies. Fortunately for us, the other locations in this District have graciously been assisting us by assigning clerks to come in daily and help out.

Chris Byrnes, our Drug Court Coordinator, accepted a position at the District Court Commissioner's office in Wicomico County in December of 2010. We were sorry to see him leave, as he was instrumental in the implementation of our Drug Treatment Court. However, we are glad he remains in the District Court family. We have welcomed Jonna Hitch as our new Drug Court Coordinator, and will soon be recruiting for

a Drug Court Case Manager.

Courtroom Clerk Terri Taylor transferred to the District Court in Somerset County in December of 2010, and her position is still vacant. Courtroom Clerk Christine Morris accepted a Supervisor position at the District Court for Ocean City in February of 2011. Once again, our losses were certainly Somerset County and Worcester County's gains. Finally, cashier Juanita Purnell will soon be transferring to the Snow Hill District Court to be their primary cashier. ❖

Not a member?

Not a member of the Wicomico County Bar Association? Dues slipped your mind? Contact Nicole at attygrl@aol.com for information.

The Tax Man Cometh

by James W. Respass, JD, RFC

Congress extended the Bush Tax Cut for another two (2) years in December of 2010. What does that mean to you and me: it means we have a window of opportunity to make some adjustments. Why do we need to make adjustments? Because the Tax Rate will increase in 2013. If one looks at the National Debt, one could deduce that it is inevitable that taxes have to increase to reduce the Deficit.

Let's look at what a trillion looks like. One million seconds is 11 years, 6 months. One billion seconds is 32 years. One trillion seconds is 31,688 years. The Federal Government owes \$14 trillion in debt, so you get an idea for where we are headed in 2013.

You can move taxable assets into non-taxable assets while the taxes are lower and take the money out tax-free when taxes are higher (after 2012). Your IRA's, if left as they are, will be taxed when you use the money, whenever. Transfer that money into a Roth IRA and pay the taxes in 2011 and 2012, 50% each year. You have to pay the taxes, but at a lower rate now than after 2012, 2013 and beyond. The same rules apply for 401(k)'s and 403(b)'s.

Let's look at the Capital Gains situation: the tax rate for 2011 is 15%, after 2011 the rate is the same as your tax rate on other income, which could be as high as 39.5 %. If you plan to sell any property that has a gain and is subject to

Capital Gains, do it in 2011 and invest in non-taxable property. I am recommending to my clients that they consider Cash Value Life Insurance; they would pay in after tax dollars and take out tax-free dollars.

Do you have a home office? Most of us do, even though we have one outside as well. If you check your email and other things in your home office before leaving in the morning, you may get two tax

breaks. First, you can take the home, administrative and office expenses off your taxable income. Second, you can take your auto expenses for the trip to and from your other office.

Other tax information will be coming in future issues. If you have ideas for future coverage, or comments, please send them to James W. Respass, Esq. at jrespass@comcast.net. ❖



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Seacrets Shuttle

Please contact Angie Dipietro if you are interested in taking a shuttle bus from Salisbury to Seacrets for the MSBA Annual Conference Happy Hour. The shuttle is scheduled for Thursday, June 9, 2011; leaving at approximately 12:30 and returning at approximately 5:00. Reserve your spot by emailing angie@angiedipietrolaw.com.

Life Crisis Center – Legal Services Program

The Life Crisis Center has provided legal advocacy for victims of domestic violence, sexual or physical assault and abuse since 1998. As the need for services has grown, so has the Legal Services Program. The Legal Services Program currently provides free legal services and advocacy to victims who qualify on the basis of low to moderate income in Wicomico, Worcester, and Somerset counties.

Eartha Harris, Director of Court and Advocacy Programs, Janell Hale, Victim Advocate, Elizabeth L. Ireland, Esq., Staff Attorney, and a number of volunteer courtroom advocates comprise the Legal Services team. Prior to the hiring of Ms. Ireland as staff attorney, local attorneys were contracted to represent victims at final protective and peace order hearings. Ireland, a former Wicomico County Assistant State's Attorney, who has expertise in prosecuting violent crime, sexual assault and child abuse, now provides comprehensive legal advocacy to victims of domestic violence, dating violence, stalking, rape, sexual assault and abuse.

Legal services offered now include assisting victims in obtaining interim, temporary and final protective orders, peace orders, and appeals from adverse rulings in temporary protective orders, filing for modifications, and filing of contempt petitions for violations of orders. The Legal Services Program also assists victims in matters of emergency custody, visitation, and separation/divorce cases where domestic violence, sexual assault or abuse is occurring. In addition to legal representation in court, victims are offered safety planning, lethality assessment and concomitant appropriate referrals to local resources, and free child care while in court. In addition, victims are offered transportation to and from court. A victim may also choose to have a trained volunteer courtroom advocate with her at all court hearings.

The Life Crisis Center's mission is "to improve the quality of life in our community through crisis interventions and violence prevention." The Legal Services Program fully supports this mission, in conjunction with the many other services offered by the agency, such as including parenting classes, supervised visitation, counseling, anger management and domestic abuser intervention programs, and a nineteen-bed safe home. Life Crisis and the Courts and Advocacy Programs can be reached at 410-749-0632 and 410-749-8111. ❖

Minutes in a Minute

On February 11, 2011 the first Membership Meeting of the new year was held at La Tolteca Restaurant. We started the committee sign-up process, and ask that all members sign up for at least one committee. The committees are Library, Newsletter, Social, Memorial and Community/Pro Bono.

The calendar of events for the year was reviewed – take a look at the cover of this newsletter to see what's coming up.

New business included:

- ❖ An announcement regarding Legal Aid's new program of Pro Se clinics, to help insure access to justice. Contact Melissa Kilmer at the LAB for information.
- ❖ Mark Tyler moved, and the motion was passed, for the Association to request funding for additional judges on the Circuit Court for Wicomico County.
- ❖ James Respass was welcomed as our newest member, and announced that he is the MSBA CLE liaison for the Eastern Shore.
- ❖ Thanks and kudos were offered to the Honorable Bruce Wade, for the *Waiver of Rights* form he created for use in the District Court.

***Family Case Law Notes
(continued from pg. 5)***

(military pension) were entered post judgment and wife appealed. Appellate court held that husband's proposed DRO was in error because he used "contributions made" rather than "benefits received". Also, Husband's draft provided Wife with a lower denominator by terminating the months of service with divorce when it should have been terminated with retirement. This actually benefited Wife but was in error. Survivor benefits are separate and distinct. Here Marital Settlement Agreement failed to include them so wife was not entitled to them. Direct payment of the CPO requires among other things a 10 year marriage. If the marriage is less than 10 years, the court can provide for payment by requesting husband to set up an allotment. PRACTICE TIP: If you don't ordinarily prepare pension orders, hire someone who does!

Henriquez v. Henriquez, 413 Md. 287.

Wife was represented by House of Ruth at trial and submitted a bill for \$11,668. Trial court awarded House of Ruth \$5,000 attorneys fees, which was the same amount that Mr. Henriquez had paid his attorney. Husband appealed to the COSA which held there is no per se bar to awarding attorneys fees to a party who is represented by a non-profit organization that provides the party with free legal representation. COA first reviewed the Rules of Professional Conduct as they pertain to pro bono service. The court then reviewed the relevant statute, 12-103, and held there was no limitation on the award of counsel fees other than "that which are just and proper under all the circumstances". The court reviewed the language of all fee award statutes in the Family Law Article, none of which prohibit an award of attorneys fees to the attorney rather than the party, and the court concluded that an award of counsel fees can be made directly to the non-profit organization.

Meyer v. Meyer, 193 Md. App. 640, 998 A.2d 921 (2010). Under parties' M.S.A. wife agreed to transfer home to husband, and wife would receive at sale of home half of the net proceeds up to a maximum of \$10,000. M.S.A. provided that husband was solely responsible for all house expenses. Instead of wife conveying home to husband, parties conveyed Wife's interest in home to their son and daughter as joint tenants with right of survivorship. (Children were 6 and 3 at the time of the conveyance and resided with father on the property). In 1998 children moved in with mother. In 2007 husband filed a complaint against son and daughter for sale in lieu, and requested adjustment of the sales of the proceeds to reimburse him for a portion of the house expenses. The parties agreed to auction the property and proceeds were placed with the Clerk of the court. At trial, husband prevailed on his claim for contribution and trial court denied wife's claim to \$10,000 pursuant to the Marital Settlement Agreement.

Appellate court held that under the Maas case, there was a presumption of a gift to the children, and husband presented no evidence to the contrary. As for his claim for contribution, there wasn't sufficient evidence to show the conveyance was subject to a right of contribution. COMMENT: Good discussion of clear and convincing standard.

As for mother's share of the proceeds, the appellate court held that because husband had asked wife to sign the deed to his son and daughter, instead of just to him, wife performed as requested by husband and there was no evidence to show whether the parties intended that this transfer would relieve father of his obligation to pay mother. In remand, evidence would be admissible to determine the parties' intention, but a waiver by mother "must be clearly established and would be not inferred by equivocal language."

(Continued on pg. 10)

Family Case Law Notes
(continued from pg. 9)

Meyr v. Meyr, #2936 Sept. Term 2009; #362 Sept. Term 2010 (COSA October 27, 2010). This is a parenting coordinator and alienation case. Trial court delegated BIA to oversee family reunification therapy. One parent appealed. COSA affirmed because the BIA's authority to oversee the therapy was subject to supervision and modification by the court. COMMENT: Case contains discussion of parenting coordinator role. Although clear visitation schedule is preferable, the trial courts' utilization of the parties' agreed-upon language from their interim visitation schedule was affirmed. The court noted that the parties had not offered any other schedule. When the court's opinion thoroughly reviews the parties' financial needs and resources, a subsequent order for award of fees did not need to repeat the analysis. Award of fees to one party was affirmed. However, court erred in ordering one party to pay BIA's fees before BIA presented a bill.

Murray v. Murray, 190 Md. App. 553, 989 A.2d 771 (2010). Wife was terminated from employment and filed an employment discrimination suit during the marriage. After separation but before divorce she settled for \$550,000. The settlement agreement did not allocate the settlement between lost wages, pain and suffering, etc. Trial court found that because the Settlement Agreement did not allocate, husband failed to meet his burden of proof to identify and value marital property. Appellate court reversed and remanded, holding that any portion of the settlement that was compensation to wife for lost marital wages would constitute marital property, and the trial court unduly restricted husband's efforts to prove any portion of the settlement as marital.

Omayaka vs. Omayaka, #111 COA Sept. Term 2008. Prior to and during separation, wife removed \$80,000 from two bank accounts in her name only. Husband claimed dissipation. Wife testified that the funds were used for clothing,

food, health insurance, credit card debt, car loan, and for two children who lived in another country, but she offered no documentation to corroborate her testimony. Trial court found that Husband failed to meet his burden of production and if he had met the burden, wife's testimony as to the use of funds was credible, so there was no dissipation. Husband appealed. The appellate court reviewed the law on dissipation and affirmed the trial court. The appellate court observed that the ultimate burden of persuasion remains on the party who claims the other party has dissipated marital assets, and the appellate court would not set aside the trial courts' determination regarding dissipation unless the determination is clearly erroneous. In this case, because the Circuit Court could find that wife had explained adequately where the funds went, the appellate court affirmed the trial court. PRACTICE TIP: If you are claiming dissipation, do appropriate discovery. Footnote in opinion indicates Husband did not request documentation.

Roosevelt v. Corapcioglu, 415 Md. 434, 2 A.3d 1095 (2010). Appellant sought to enforce a custody order and was awarded attorneys fees as part of her judgment. She tried to enforce the judgment by QDRO, arguing that fees were in the nature of child support pursuant to FL 12-103(a)(2)(iii). Trial court denied the request. On appeal, COA issued a writ of cert and held that the fees were not in the nature of child support and no QDRO should issue. A QDRO can be entered for child support, alimony or marital property, but not fees awarded for enforcement of a custody action, because fees are not child support under Maryland Law.

Smith v. Smith, 193 Md. App. 29, 996 A.2d 416 (2010). Husband's mother gifted real property to husband and wife, then died. At divorce, the court ordered the property sold and proceeds divided equally. Husband appealed, contending the court failed to consider Factor 9 (contribution by either party to acquisition of T by E property),

(continued on pg. 11)

***Family Case Law Notes
(continued from pg. 10)***

which should have given him claim to a marital property award. Appellate court held that Factor 9 was neutralized because the gift was to both parties and neither actually “contributed” to the acquisition.

Husband received sizeable severance package from employer after trial but before the final divorce. When a party receives payment for vacation, annual or sick leave prior to divorce, the funds are marital property. This case was different from Thomasian in which the funds had not been received at the time of divorce. ❖

Call for Articles

Come one, come all! Submit your articles, or ideas for article, for inclusion in future newsletters. If you would like to do a regular column or be a regular contributor, we welcome you! Articles should be relevant to law or our community.

We are also looking for information regarding our members, such as moves, new hires, new jobs, etc. This newsletter will be only as great as the contributions you make to it.

Speakers Bureau

To celebrate the 100th Anniversary of the Legal Aid Bureau, Inc., the Wicomico County Bar Association is joining with the Bureau to create a Speakers Bureau for the Lower Eastern Shore.

If you are interested in joining the Speakers Bureau, please send you name, contact information and areas of law that you are qualified to speak on to Susan Land at sjland@akmanpc.com.

This is a wonderful opportunity for members of the Association to help the community and get in those Pro Bono hours as well.

***Advertising Information
and Rates***

Res Ipsa Loquitur is published bimonthly and contains substantive legal articles, announcements and Association News.

Advertisements are subject to approval by the Res Ipsa Loquitur staff and the Executive Board of the Wicomico County Bar Association. Advertisements can be accepted in PDF, Word, or WordPerfect format.

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Limited advertising space is available in the next four issues at these rates:

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❖ 1/4 page \$40.00 each or Four (4) issues for \$120.00

❖ 1/8 page \$20.00 each or Four (4) issues for \$ 60.00

Deadlines:

❖ June issue: *May 25*

❖ August issue: *July 25*

❖ October issue: *September 23*

❖ December issue: *November 23*

***Other Events to Look
for This Year:***

Spring: Memorial Service

Summer: June 8-11, 2011: MSBA Convention
in Ocean City

Fall: WCBA Blood Drive

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