



**ERICSA 62ND ANNUAL
TRAINING CONFERENCE & EXPOSITION**

MAY 18-22, 2025

NORFOLK

VIRGINIA

Off the Charts: Navigating Unconventional Cases and Reaching Creative Solutions

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The Father, The Son, and the Chimera

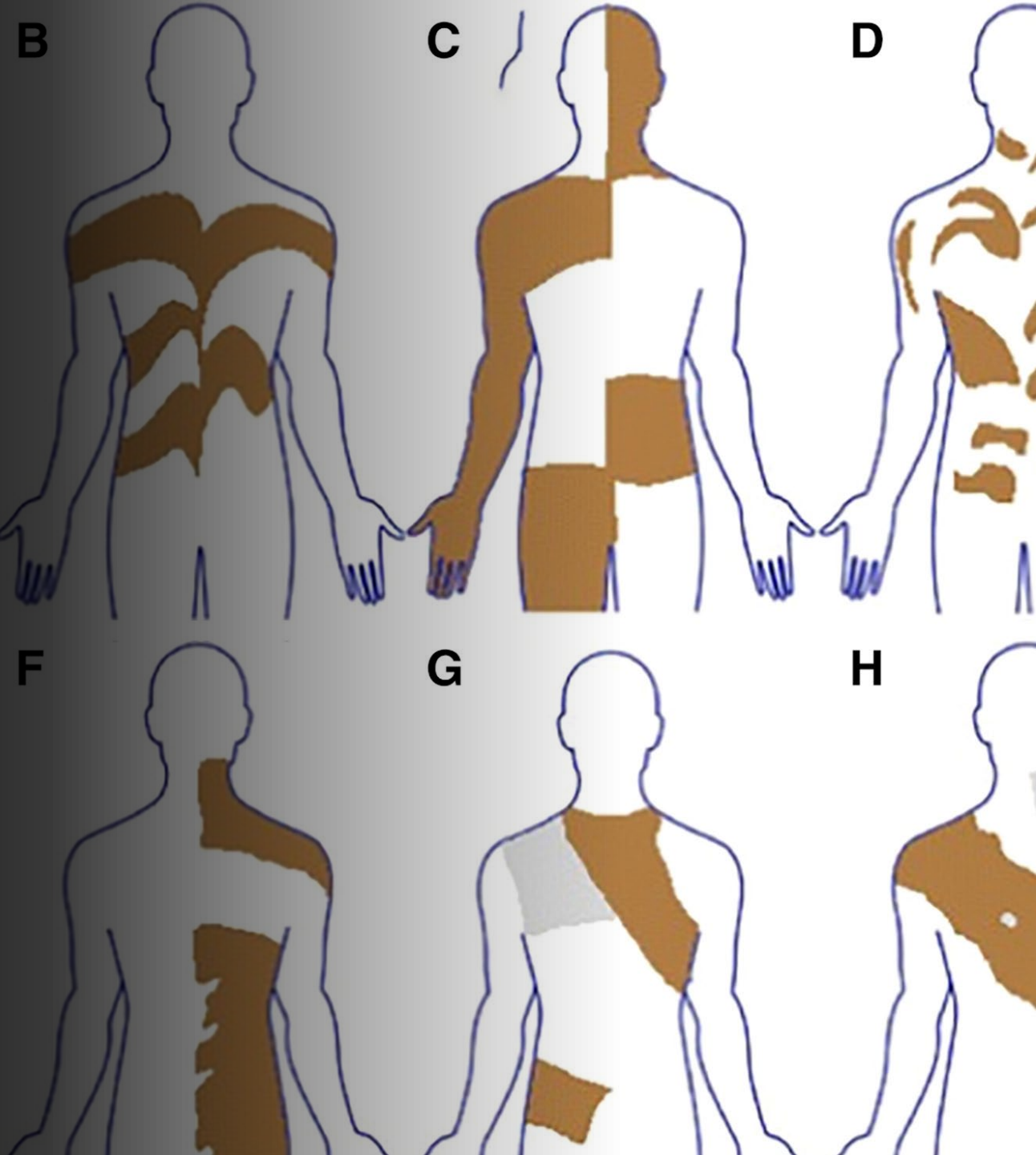
- Who is Max's biological father?

Background: Max's mother had sexual encounters with Jacob (who is ready to sign an acknowledgment), Jordan (Jacob's identical twin), and Elijah (Jacob's adult son, who may be a chimera).

- Jacob's DNA is indistinguishable from his twin, Jordan's.
 - Elijah, Jacob's son, shows two DNA profiles; lab suspects chimerism.
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- Advanced testing is available but costly (\$40,000).
 - Initial testing was inconclusive due to genetic similarities among the men.
 - The lab used extended marker analysis to distinguish between Jacob and Elijah when standard testing failed.
 - Elijah refused blood testing due to a severe needle phobia, leading to a contempt finding and incarceration until he took the test.

Questions:

- Can the court accept Jacob's acknowledgment despite uncertainty?
- How does the close familial relationship between alleged fathers affect the strength of DNA evidence?
- Does Elijah's needle phobia limit the court's authority to compel testing?
- Should the state pay for next-gen testing to resolve the issue?
- How much weight should non-DNA evidence carry when advanced testing is unavailable or inconclusive?



Gregoire v Gisewhite, No. 1308, 2021 MDA LEXIS 1057

(PA Super. Ct. May 6, 2022)

Case Overview:

<https://casetext.com/case/gregoire-v-gisewhite>

- CP files complaint for support and there is a determination that the [NCP](#) as no ability to pay.
- She later files a petition to modify indicating there is evidence that the NCP has the ability to pay, and the NCP agrees to pay \$600.00 per month prior to a hearing.
- **The NCP then files his own petition to modify, resulting in a full hearing in which a private investigator testifies and provides documentation that the NCP has income.**
- The court dismisses the NCP's petition, but *also denies the CP's request for attorney and investigator fees.*
- On appeal, the superior court vacates the portion of the order denying fees.

Questions:

- If and how does false testimony/information from a party affect the retroactivity of an order?
- When is awarding attorney or investigator fees justified?
- How seriously does your jurisdiction take the truthfulness of testimony? Are perjury cases being pursued?



Life Insurance vs. Arrearages

Case Overview

- **Parents:** Nina & Henry
- **Child:** Jason, born 1998 – emancipated 2021
- **Arrearage owed by Henry:** \$150,000+
- **2022:** Jason tragically killed in hit-and-run
- **Life Insurance Payout:** \$188,000 (no beneficiary listed)
 - BCBS split between parents: \$94,000 each



Legal & Policy Dilemma

- Nina had pending court enforcement actions
- HFS standard policy: allocate lump sums proportionately between all child support cases
- Life insurance funds $\neq$ wages or tax refund – triggered by Jason’s death
- Equity concern: Should another family benefit from Jasons’ estate?



Life Insurance vs. Arrearages (cont.)

Actions Taken

- Nina filed for Emergency TRO to freeze funds
- HFS placed lien on Henry's bank account
- Henry ultimately surrendered full \$94K to Nina – in exchange, Nina waived remaining arrears
- No funds allocated to Henry's second child support case

Questions

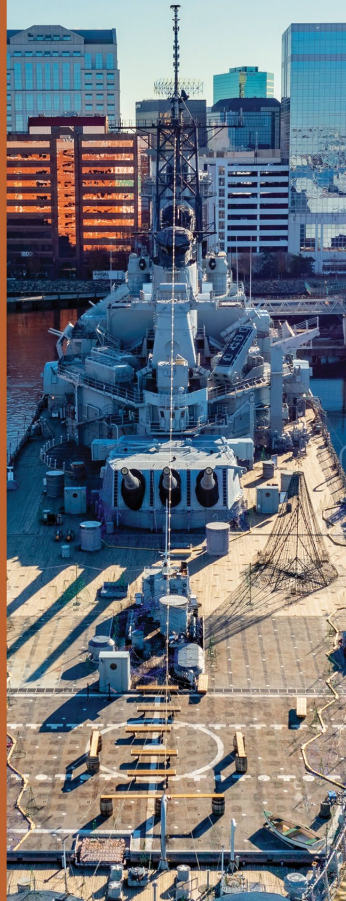
1. Should HFS have departed from its standard allocation policy?
2. How should third-party funds (e.g., life insurance) be treated in enforcement?
3. Was Nina's decision to waive the balance of the arrears fair in exchange for Henry's \$94K?



Threat or Just Blowing Hot Air...

FACTS

- Judgment of divorce entered in 2019
- Parties have one minor child, D.F.
- A Stipulated Mutual Restraining Order was entered by the Judge in Wayne County on June 8, 2021.
- Consent order was entered in January 2022. Father has parenting time every other weekend from Saturday at 4:00 pm (pick up at the police station) until Monday morning drop off at school. Father was ordered to pay child support in the amount of \$322.00 per month.
- Mother moved to Oakland County. She obtained a personal protection order in Oakland County in 2022. In the personal protection order, Father's parenting time was changed to supervised parenting time. At this time, there are pending criminal charges against Father.
- Both mother and father file motions in Wayne County regarding child support and parenting time. His behavior escalated when his parenting time was suspended. Father was ordered to continue paying support. Multiple Referees heard the various motions at various times. The Referee kept adjourning the parenting time enforcement hearings indicating they lacked the legal authority to enforce or modify another county's order regarding parenting time, to allow the pending hearings in the personal protection order and/or criminal charges to be resolved.



Facts (continued)

- Father filed objections and the issues of child support and parenting time. Father asserted that he was not responsible for paying for support when he couldn't see the child. In Father's objections, he threatened court staff, all the Referees, as well as the Judge.
- These threats were included in papers that are public record. The threats and phrases, coupled with him expressly wishing for the "heinous and venomous death" of the Judge and her children.
- Additional Background: Father has an on-line presence. Father posted similar messages on Facebook to and about his ex-wife. The Michigan Court of Appeals found that the speech was not protected by the 1st Amendment. The Court of Appeals further convicted him of criminal contempt for violating a domestic-relations personal protection order. In addition, an Attorney that previously represented Mother obtained a personal protection order.

Questions

- Did Oakland County have the jurisdiction to change Father's parenting time without conferring with the case that had jurisdiction and the current parenting time order?
- Is Father required to pay child support even though his parenting time was changed to supervised?



Legal Basis

- Per **MCL 552.605. (2)**, the court shall order child support in an amount determined by application of the child support formula developed by the state friend of the court bureau as required in section 19 of the friend of the court act, MCL 552.519. Child support and visitation are separate legal obligations.
- According to MCR 3.706(3)(C), the Personal Protection Order takes precedence over the Court's custody and parenting time orders. The other county has the authority to address parenting time and custody until the PPO expires or is terminated.

Action Taken

- The Judge referred the matter to the Prosecutor for criminal prosecution.
- The Judge obtained a Personal Protection Order against Father.
- The Judge recused herself from the case.
- The case was transferred to Oakland County.



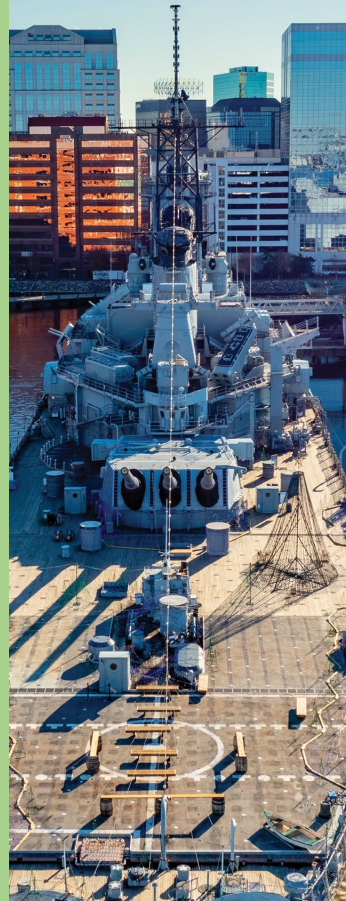
Medical Marijuana as Unreimbursed Medical Expense

Case Overview:

- CP provides \$10,000+ receipts for six months of medical marijuana they purchased for their own use.
- NCP annual income - \$85,000, CP annual income - \$16,000
- Medical split: – NCP 67% – CP 33%
- Order includes: – APL – Child support – Private school tuition – Monthly medicine for one child – Mortgage on marital home

Questions:

- Do you order any portion of these expenses to be paid by the NCP, and if so at what percentage?
- In what way(s) is medical marijuana handled differently than other medical expenses?
 - Is treating it differently weighing medical utility?



Paternity in an Invalid Marriage

Case Overview:

- **2015:** Mary & Alex “marry” have three children
- **2021:** Divorce filed
- **2023:** Court declares marriage “invalid instanter”
 - Alex was already married . . . *to two other women.*



Question:

Does invalidation of the marriage erase the marital presumption of paternity?



Paternity in an Invalid Marriage (cont.)

- **750 ILCS 5/303 & 5/212(c):**
Children of invalid marriages = lawful children
 - Applies to bigamous, prohibited, or common-law unions
- **Bartolini v. Bartolini (1996):**
Paternity and legitimacy stand, even without removal of prior impediments
- **Robinson v. Ruprecht (1901):**
Earlier standard required removal of impediment – *later overridden*
- **750 ILCS 5/304:**
Invalidation is retroactive *unless* the court rules otherwise

Conclusion:

- Illinois law prioritizes the children’s legitimacy and right to support, regardless of the marriage’s legal validity
- Marital presumption of paternity remains intact when the parties entered the marriage in good faith



To object or not to object...

Facts

- An order was entered in Zurich on 7/16/2013 that established paternity, custody, parenting time, and child support of the minor child A.S.
- As of 3/23/23, support is charging monthly in the amount of \$2,071.00 USD. Arrears totaled \$288,271.04.
- Switzerland contacted Wayne County Friend of the Court and requested registration of the foreign order. Notice of registration was mailed to all parties on 3/23/23.
- Father's attorney filed an objection to registration of the foreign order. He alleged: 1) the issuing tribunal in Switzerland lacks both general and specific personal jurisdiction over Father; 2) the Zurich order was obtained by fraud, and 3) Michigan does not have personal jurisdiction over Father.
- Father further claimed that he only traveled to Switzerland once over a decade ago. He was never served with any documents from any tribunal in Switzerland. He has lived in Morocco since 2011.

Question

- Did Father present a valid defense to registration of the order under UIFSA §315?



Defenses to Registration – UIFSA § 607



Issuing or registering tribunal lacks personal jurisdiction	Order was obtained by Fraud	Order has been vacated, suspended, or modified	Issuing tribunal stayed order pending appeal
Defense under law of this state to remedy sought	Amount of alleged arrears is incorrect	Statute of Limitations	Alleged controlling order is not controlling order

A party may not plead nonparentage as a defense to registration –
UIFSA § 315

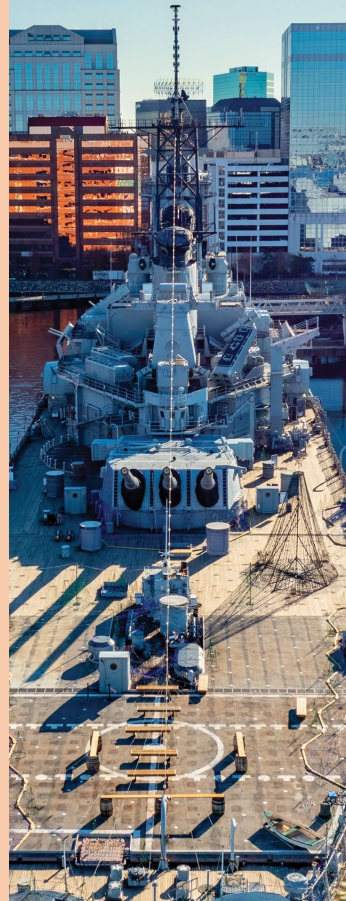


Resolution

- Switzerland provided me with a copy of the order, as well as a copy of the transcripts from the initial hearing (German and English translations). In the transcript, it stated that Father appeared, and stated, “I saw the baby two days ago and I trust the [child’s] mother. Yes, I am the father. I have not insisted on a DNA report and will not do so.” The transcripts also stated that he signed the acknowledgment of paternity. Father withdrew his first two objections, but still insisted that Michigan did not have personal jurisdiction.
- Michigan ran a CLEAR search, found out that he had recently opened a credit card using an address in Michigan. He claimed it was his family’s house, not his. Michigan further requested copies of both his passports to see when he last traveled to the USA and Michigan. Both passports did not show that he had traveled to the USA. It was adjourned to have him provide the electronic copy as some airports do not use paper passports. In the final hearing, I requested that Father step outside so we could see if he was in Michigan or Morocco. He was in Morocco.
- The Court granted his objection and found that Michigan did not have personal jurisdiction over Father.



Deceased Petitioner



- **Case Overview:**
- NCP is current in paying support until he develops terminal disease and is unable to work and has exhausted short term disability. He is pending a social security disability claim.
- NCP files petition to suspend support based on the above. CP refuses to agree in conference and a hearing is scheduled.
- Pending said hearing the NCP passes away. Support is terminated effective his date of death, but some arrears remain. CP indicates intention to pursue those arrears should an estate be filed. NCP fails to appear in support of his modification petition.
- **Questions:**
- Should NCP petition be dismissed for non-prosecution? What if the estate had been notified?
- Does it matter what documentation the NCP had previously submitted in support of his petition?
- If NCP's petition is granted with a retroactive effective date, what date should that be?

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