Annotated Bibliography of Selected Issues in Family Law: Addiction, Advance Healthcare Directives, the Uniform Parentage Act, and Self-Represented Litigants

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This bibliography covers law review articles published since 2009.

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Family Law, Addiction, and Substance Abuse

Approaches for Courts and Public Services Providers

Barbara Babb, Gloria Danziger & Judith Moran, Guest Editors’ Introduction to Special Issue on Substance Abuse and Addiction in Family Courts, 47 Fam. Ct. Rev. 204 (2009) (describing how juvenile and family court cases frequently involve addiction issues and discussing the need for a broad, multidisciplinary approach to address the problem).

Deborah Chase & Peggy Fulton Hora, The Best Seat in the House: The Court Assignment and Judicial Satisfaction, 47 Fam. Ct. Rev. 209 (2009) (discussing results of a survey of judges that found higher levels of judicial satisfaction in problem-solving courts, such as drug treatment courts and unified family courts, than in traditional family law or criminal courts).

Caroline S. Cooper, Adolescent Drug Users: The Justice System Is Missing an Important Opportunity, 47 Fam. Ct. Rev. 239 (2009) (explaining how many young people who use drugs are not receiving meaningful services through juvenile or adult justice systems, and proposing that courts should develop mechanisms for systematically screening for drug use among young people coming into the system).
Carrie E. Garrow, *Changing Family Courts to Help Heal and Build Resilient Families*, 2018 B.Y.U. L. REV. 1277 (calling for family courts to adopt the collaborative approach used by family drug courts).


Hilary Kushins, Julie Butner & Terrence Wilson, *Seven Common Ingredients for Family Treatment Courts*, 36 No. 3 CHILD L. PRAC. 73 (2017) (listing seven elements for healing families impacted by substance use disorders and discussing family treatment courts as one solution to help parents receive quality treatment and reunify with their children).

Matthew B. Lawrence, *Deputizing Family: Loved Ones as a Regulatory Tool in the “Drug War” and Beyond*, 11 NE. U. L. REV. 195 (2019) (assessing risks and benefits of laws that use family members to influence decisions or behavior of their loved ones, such as laws making family members liable for their involvement in their loved ones’ drug use or laws empowering family members to use information shared by their loved ones to petition for involuntary treatment).

Robert M. Spataro, Student Note, *Nipping It in the Bud: Adopting a Family Drug Court Approach to Fighting the Cycle of Alcohol Addiction for Children when Parents Are Convicted of DUI*, 49 FAM. CT. REV. 190 (2011) (arguing that drug court programs, which combine drug and alcohol treatment with ongoing judicial supervision, have been very effective in helping offenders break the cycle of addiction and crime, but these programs should be modified to include an alcohol education and counseling program for the benefit of children of alcohol-related offenders).

Child Custody and Parental Rights


M. Katherine Kerbs, Comment, Robbing the Cradle: The Use of Mediation in Parental Rights Termination with Evidence of Drug Abuse by the Mother, 2016 J. DISP. RESOL. 217 (2016) (arguing that mediation provides the right balance of court authority and solves problems creatively to create conditions in which mothers can overcome drug addictions).

Opioid Epidemic


Dana Shilling, Senior Citizens and the Opioid Crisis, 328 ELDER LAW ADVISORY NL 1 (July 2018) (reporting on recent efforts at the federal and state levels to deal with public health problems arising from opioid use).

Stephanie Tabashneck, Family Drug Courts: Combatting the Opioid Epidemic, 52 FAM. L.Q. 183 (2018) (discussing opioid use and its effects on parenting, neonatal abstinence syndrome, medication-assisted treatment, and several models for family drug courts).

Prenatal Effects

Jennifer Anderson, Protecting Newborns from Parents Who Abuse Drugs or Alcohol, 28 NO. 7 CHILD L. PRAC. 106 (2009)
(discussing trends and controversies in legal and policy approaches to protection of newborns prenatally exposed to alcohol and illegal drugs).

Wendy A. Bach, *Prosecuting Poverty, Criminalizing Care*, 60 Wm. & Mary L. Rev. 809 (2019) (reporting results of an empirical study of prosecutions under new laws creating crime of fetal assault for situations where a pregnant woman took narcotics without a prescription and caused harm to her child).


Alex Gaspari, Student Note, *Inheriting Your Mother's Eyes, Hair, and Drug Addiction: Protecting the Drug-Exposed Newborn by Criminalizing Pregnant Drug Use*, 54 Fam. Ct. Rev. 96 (2016) (examining the impact of drug use during pregnancy and arguing that states should follow Tennessee’s lead in adopting a statute that makes it a crime where a child is harmed by a pregnant mother’s drug use but provides a defense for a mother who takes reasonable steps to seek help and stop using drugs).


Andrew J. Weisberg & Frank E. Vandervort, *A Liberal Dilemma: Respecting Autonomy While Also Protecting Inchoate Children from Prenatal Substance Abuse*, 24 Wm. & Mary Bill RTS. J. 659 (2016) (proposing a combination of treatment options to ensure pregnant women receive needed treatment while also maintaining sufficient enforcement mechanisms to ensure protection of children).
Science of Addiction


Substance Abuse in Aging and Elderly Adults


Substance Abuse in Teens

Advance Directives and Health Care Proxies

General Discussions

Donna A. Casey & David M. Walker, *The Clinical Realities of Advance Directives*, 17 Widener L. Rev. 429 (2011) (asserting that based on one of the author’s clinical experience, advance directives are not as effective in practice as one would expect them to be).


Charles P. Sabatino, *Advance Care Planning in a Nutshell*, 35 Bi-Focal 151 (2014) (providing a basic explanation of advance care planning and obstacles to its effectiveness).


Advice for Practicing Attorneys

(examining how lawyers, estate planners, and personal financial planners can help clients prepare for potential health crises or accidents that lead to disability or incapacity).

Hugh M. Lee, *Failure or Refusal to Execute Advance Medical Directives: Exploring the “Practical” and “Practice” Implications of State Default Surrogacy Statutes*, Elder L. Advisory, Apr. 2016, at 1 (explaining legal principles behind advance medical planning, discussing practical realities for clients resulting from a failure to plan, and addressing practice reality for lawyers when a client refuses to participate in advance medical planning).

Kate McEvoy, *Furthering Use of Advance Health Care Directives by Individuals Who Lack Resources for Private Counsel*, 23 Quinnipiac Prob. L.J. 386 (2010) (explaining what attorneys should know about tools and resources available for people seeking to create advance directives but unable to afford legal help in doing so).


**Assisted Reproduction**

Dementia


International Perspectives


Issues in Particular States


**LGBTQ Issues**


**Pregnancy**

Wendy Adele Humphrey, “*But I’m Brain-Dead and Pregnant*”: *Advance Directive Pregnancy Exclusions and End-of-Life Wishes*, 21 WM. & MARY J. WOMEN & L. 669 (2015) (proposing that states clarify their laws for situations in which a woman who is brain-dead and pregnant has an advance directive instructing doctors to withdraw or withhold life-sustaining medical treatment).

**Orders for Life-Sustaining Treatment**


Treatment) paradigm that is focused on patient protection while ensuring that medical choices are honored).


**Psychological Considerations**


Barbara A. Noah, *In Denial: The Role of Law in Preparing for Death*, 21 ELDER L.J. 1 (2013) (arguing that while advance directives have rarely been used to resolve end-of-life disputes, the practice of encouraging such directives should be continued and expanded because it benefits individuals by providing a structured context in which they consider their values and preferences throughout life as well as at the end of life).

**Proposals for Reform**


Allison Hughes, *State Advance Directive Registries: A Survey and Assessment*, 31 BIFOCAL 23 (2009) (explaining how some states have created registries where people can store advance directives so that health care providers can access them when needed).

states should adopt uniform standards for advance health care decisions and include the disabled and elderly populations in the legislative process).

Dorothy D. Nachman, *Living Wills: Is It Time to Pull the Plug?*, 18 ELDER L.J. 289 (2011) (proposing that reliance on advance directives should be replaced with dialogue that guides the patient’s health care agent in making health care choices on behalf of the principal).


Charles P. Sabatino & Louraine Arkfeld, *Bridging the Lawyer-Clinician Gap in Advance Care Planning*, 40 BIFOCAL 62 (2019) (examining how lawyers and clinicians approach health care advance planning with clients and patients, and describing the ABA Commission on Law and Aging’s project to develop a unified set of practice principles for lawyers and clinicians and an advance care planning practice checklist).


**Race**

Catheryn S. Koss & Tamara A. Baker, *Where There’s a Will: The Link Between Estate Planning and Disparities in Advance Care Planning by White and Black Older Adults*, 40 RESEARCH ON AGING 281 (2017) (reporting on a study looking at why older
adults who are white are more likely to have advance directives and other advance health care planning).


**Religious Beliefs**


**Studies**


Suicide

Casey Frank, *How to Reconcile Advance Care Directives with Attempted Suicide*, COLO. LAW., July 2013, at 97 (considering the ethical and legal dilemmas in situations where a person attempted suicide and has an advance directive declining medical treatment).

Unconventional Forms of Advance Directives


Veterans


Wrongful Living Claims

Samuel D. Hodge, Jr., *Wrongful Prolongation of Life – A Cause of Action That May Have Finally Moved into the Mainstream*, 37 QUINNIPIAC L. REV. 167 (2019) (claiming that changing attitudes have increased the likelihood of health care providers being held liable for not following advance directives).

Alberto B. Lopez & Frederick E. Vars, *Wrongful Living*, 104 IOWA L. REV. 1921 (2019) (proposing the creation of a nation-
wide registry of advance directives and recognizing liability for failure to comply with directives).

Nicole Marie Saitta & Samuel D. Hodge, Jr., Wrongful Prolongation of Life – A Cause of Action That Has Not Gained Traction Even Though a Physician Has Disregarded a “Do Not Resuscitate” Order, 30 TEMP. J. SCI. TECH. & ENVTL. L. 221 (2011) (discussing why courts have been reluctant to impose liability on doctors failing to honor advance directives).

Nadia N. Sawicki, A New Life for Wrongful Living, 58 N.Y.L. SCH. L. REV. 279 (2013/2014) (arguing that while courts have generally not recognized a liability claim for disregarding advance directives, the trend may be toward doing so).

**The Uniform Parentage Act of 2017**

*General Discussions*


Steven H. Snyder & Richard B. Vaughn, The Modern Family: Why the 2002 UPA Needs Updating, FAM. ADVOC., Spring 2017, at 32 (discussing social, legal, and medical advances that have created a need to modernize the Uniform Parentage Act).

*Establishing Parentage*


Jeffrey A. Parness, Unnatural Voluntary Parentage Acknowledgments Under the 2017 Uniform Parentage Act, 50 U. TOL. L. REV. 25 (2018) (arguing that the Uniform Parentage Act of 2017 should be amended so that voluntary parentage acknowledge-
ments would be available only to persons who are naturally related to the children they acknowledge, and there should be different opportunities provided for parentage declarations by those with no natural ties).

**LGBT-Parent Families**


**Surrogacy Contracts**


Advocacy with Self-Represented Litigants

General Discussions

Karen S. Adam & Stacey N. Brady, *Fifty Years of Judging in Family Law: The Cleavers Have Left the Building*, 51 Fam. Ct. Rev. 28 (2013) (recognizing that the shift to self-represented litigants is one of the major changes observed over the past fifty years of judging).

John M. Greacen, *Self-Represented Litigants, the Courts, and the Legal Profession: Myths and Realities*, 52 Fam. Ct. Rev. 662 (2014) (arguing that most self-represented litigants have no alternatives, judges following best practices encounter no unusual ethical issues in dealing with self-represented litigants, self-represented litigants are able to obtain fair outcomes when given appropriate accommodations, cases with self-represented litigants actually consume less judicial resources than cases where both sides are represented, and self-represented litigants are a potentially lucrative market for the delivery of limited-scope representation by the private bar).


Advice for Attorneys Dealing with Self-Represented Litigants


Joseph W. Booth, *Successfully Negotiating with the Self-Represented Party*, Fam. Advoc., Winter 2015, at 36 (advising attorneys on leading negotiations between family law litigants while representing only one of the parties).

Amy Calvo MacNamara, *Pro Se Roadblocks: How to Get Around Them*, Fam. Advoc., Winter 2018, at 12 (providing ad-
vice for attorneys preparing for trials against self-represented parties).

Yolanda F. Sonnier, *Approaching Your Case Against the Pro Se Litigant*, FAM. ADVOC., Fall 2013, at 11 (providing tips for attorneys handling family law matters involving self-represented litigants).

**Ethical Issues**

Jessica Dixon Weaver, *Overstepping Ethical Boundaries? Limitations on State Efforts to Provide Access to Justice in Family Courts*, 82 FORDHAM L. REV. 2705 (2014) (considering whether state judges and agencies have overstepped ethical boundaries and caused harm by promulgating standard forms, such as divorce pleadings and paternity acknowledgements, to be used by people without lawyers for family law matters).

Victoria White & Thomas G. Wilkinson Jr., *Ethics Digest*, PENN. LAW., Aug. 2016, at 54 (reporting on an ethics opinion about a situation where a family law attorney had a client who insisted on appearing pro se at a custody conference without permitting the attorney to withdraw as counsel of record).

**Reforms and Proposals**

ABA Standing Committee on the Delivery of Legal Services, *An Analysis of Rules that Enable Lawyers to Serve Pro Se Litigants*, 45 FAM. L.Q. 64 (2011) (discussing ways in which various states are formulating or amending rules of professional conduct, rules of procedure, and other rules and laws to enable lawyers to provide limited scope representation to clients who would otherwise proceed on a pro se basis).


Jim Hilbert, *Educational Workshops on Settlement and Dispute Resolution: Another Tool for Self-Represented Litigants in Family Court*, 43 FAM. L.Q. 545 (2009) (proposing that courts provide
settlement and negotiation educational workshops for self-represented litigants).


**Studies and Surveys**

Connie J.A. Beck, *Divorce Mediation with and Without Legal Representation: A Focus on Intimate Partner Violence and Abuse*, 48 Fam. Ct. Rev. 631 (2010) (reporting results of a study of litigants in mediation in Arizona and Indiana, including levels and types of violence or abuse reported by pro se versus represented litigants).


STUD. 57 (2010) (reporting on a study of divorcing couples in Waukesha County, Wisconsin, looking at why people represent themselves and whether they are worse off than those represented by legal counsel).


Summits and Conferences


Natalie A. Knowlton, From Talk to Action: How the IAALS Summit Recommendations Can Reshape Family Justice, 55 FAM. CT. REV. 97 (2017) (discussing recommendations produced by the Family Bar Summit at the University of Denver, with a focus on issues relating to the prevalence of self-represented litigants in family courts).