



**Family Law and Practice Section MCLE Program
Webinar
December 16, 2021**

Welcome/Announcements and Introduction

Emily Rapp, Family Law and Practice Section Vice Chair

11:45 PM – 12:00 PM

Case Law Updates

Leah Setzen, Grunyk Family Law

Domestic Relations Division Update

Hon. Timothy J. McJoynt, Domestic Relations Division of the 18th Judicial Circuit Court

12:00 PM – 1:00 PM

Program

Developing and Common Tax Issues in Divorce Litigation

Daniel J. Moriarty, Law Offices of Daniel J. Moriarty

Mr. Moriarty is a 1991 graduate of DePaul University College of Law and his practice is limited to family law and litigation with offices in Naperville and Chicago, IL. Mr. Moriarty is a Certified Public Accountant.

Link to Evaluation

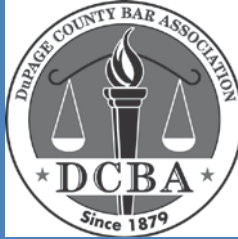
The evaluation must be completed to receive CLE credit.

<https://www.surveymonkey.com/r/FamilyLaw12162021>

Next CLE Program:

No regular CLE Program due to GAL Training on January 13th, 14th and 21st.

[GAL Training Registration - Zoom](#)



Renew Your Court Pass

All 2021 Court ID's expire January 31, 2022. As soon as you receive confirmation of your ARDC registration for 2022, you can renew your court ID through the DCBA website at this link - <https://www.dcba.org/page/courtid>. The renewal fee is \$25 payment, and your 2022 extension stickers will be mailed January 15th. For a new ID or to renew in person, bring your ARDC card and \$35 payment to the DuPage County Bar Center from 8:30 AM - Noon, Monday - Friday. There will be no in-person renewal in the courthouse. Save time and money by renewing online and renew before January 31st to avoid reactivation delays.

DCBA OnDemand CLE is Available on IICLE:

Members can find the link to The Illinois Institute for Continuing Legal Education (IICLE) catalog on the DCBA website under the menu item **CLE & Events**→**IICLE Online Library**. You must be logged into your DCBA Membership Profile to view courses for free or at a reduced price.

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The DuPage County Bar Association and the
18th Judicial Circuit Domestic Relations Division



Guardian Ad Litem Training Program

Our remote ten - hour GAL Training will take place via three Zoom sessions on the following days:

- Thursday, January 13th, 2022, from 1:00 p.m. - 4:45 p.m. (3.5 hours CLE)
- Friday, January 14th, 2022, from 1:00 p.m. - 4:15 p.m. (3.0 hours CLE)
- Friday, January 21st, 2022, from 1:00 p.m. - 4:45 p.m. (3.5 hours CLE)

By attending ALL sessions, you will earn 10 hours of CLE credit (PRMCLE awarded based on final agenda). Attendance at ALL sessions is required to be placed or remain on the approved GAL list for the 18th Circuit Domestic Relations Division.

\$200 for DCBA Members \$400 Non-Members
Register online at: www.dcba.org

DCBA Members must sign into their account before registering to receive member pricing.



A DIGNIFIED APPROACH TO FAMILY LAW
DEDICATED TO ACHIEVING POSITIVE OUTCOMES

**DUPAGE COUNTY BAR ASSOCIATION
FAMILY LAW SECTION
DECEMBER 16, 2021**

**Prepared by:
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Victoria C. Kelly, Esq.
Brandy N. Arvanitis, Esq.**

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APPELLATE JURISDICTION

In re Marriage of Villcampa and Mungaho, 2021 WL 5112008 (Ill.App. 1 Dist.), November 2, 2021*

Wife filed motions to voluntarily dismiss her petitions for dissolution of marriage and for allocation of parental responsibilities. The trial court struck the future trial date and took the motions to dismiss under advisement, ordered supervised parenting time for Wife, and set the matter over for status. Wife appealed.

The appellate court declined jurisdiction as no final order had been entered and Wife failed to obtain permission to appeal the interlocutory order.

ATTORNEY'S FEES

In re Marriage of Fitz (Weiler & Lengle, P.C., Third-Party), 2021 WL 4963642 (Ill.App. 2 Dist.), October 25, 2021*

After being granted leave to withdraw, Petitioner's former counsel filed a fee petition pursuant to section 508 of the Illinois Marriage and Dissolution of Marriage Act. An attorney (referred to as "Mr. Weiler") from the firm represented the firm during the hearing and testified as to the billing invoices and fees incurred. Seven days prior to the hearing, Petitioner issued a 237 Notice to Appear and requested, for the first time, production of documents by his former counsel at the hearing. Mr. Weiler objected to the 237 requests for documents as the documents had never been previously requested as required by the rule. The trial court struck the requests. Petitioner did not appear at the fee petition hearing and was represented by counsel who submitted no evidence other than his cross examination of Mr. Weiler. Mr. Weiler testified that Petitioner had received his invoices on numerous occasions prior to the hearing, which summarized all costs incurred and services rendered in addition to the monthly invoices he received during his representation. Judgment was entered in favor of former counsel. Petitioner appealed.

The appellate court affirmed, finding that Petitioner did not properly use Rule 237 and that the exception under 237(c) for expedited domestic relations proceedings did not apply in the context of a fee petition hearing where former counsel is seeking fees. Furthermore, the appellate court found that the trial court was in the best position to determine the reasonableness of the fees as it presided over the underlying litigation and held that the trial court did not abuse its discretion.

In re Marriage of Jordan and Spratt, 2021 WL 4944750 (Ill.App. 1 Dist.), October 22, 2021*

Pursuant to the parties' judgment for dissolution of marriage, the parties shared joint custody. Mother was granted leave to relocate to California approximately three years following entry of the judgment. Father filed a motion to reconsider the relocation and attached Mother's income tax returns to the motion. Mother filed an emergency motion to redact and/or file under seal. Father immediately (within days) filed an amended motion with personal identifying information redacted. Mother sought fees pursuant to section 508(b) of the Illinois Marriage and Dissolution of Marriage Act, claiming that Father had willfully and knowingly attached her personal information to his motion and also that he brought his motion to reconsider merely to harass Mother. The trial

* Unpublished/Rule 23(e)(1) decision.

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court ordered Father to contribute towards Mother's fees, finding that 508(b) does not require the act being complained to be intentional and that Father's act by including the unredacted tax return needlessly increased the costs of litigation. Father appealed.

The appellate court reversed, finding that no hearing in the case was either precipitated or conducted for an improper purpose as required by section 508(b) and holding that an improper use of a document is "simply not the same as an improper purpose," which has been defined by the statute as being limited to "harassment, unnecessary delay, or other acts needlessly increasing the cost of litigation." In this case, Father legitimately sought to have the trial court reverse its decision in granting the relocation.

CIVIL CONTEMPT

In re Marriage of Kottaras, 2021 WL 5125233 (Ill.App. 1 Dist.), November 4, 2021**

The parties divorced in 2014. Father was to pay \$5000 in unallocated maintenance/support for 48 months. Mother could request an extension if she filed a petition for review within four years. The parties thereafter had disagreements over parenting. In 2016 the court granted Father's motion for court-ordered mediation, but when that failed the court appointed a parenting coordinator, over Mother's objection. In June 2017 the court entered the parenting coordinator's drafted order, but a month later Father filed an emergency petition, arguing Mother willfully violated the June 2017 order and requested leave to schedule a medical assessment for the children. The court set a hearing on the matter and granted Mother's attorney leave to file a motion to withdraw. Father was granted leave to schedule a medical assessment, and Mother was given 28 days to respond to the emergency petition. Mother was given an additional 28 days upon securing new counsel.

In November 2017 Father's petition was denied, finding Mother's noncompliance was not willful or contumacious. In July 2018 Mother filed for an extension and increase of the unallocated maintenance/support to \$7000 per month. In November 2018 Father filed a petition for a rule to show cause, a finding of indirect civil contempt, and for sanctions based on Mother's failure to communicate about issues with the children and failing to pay her portion of the court-ordered mediation. Father argued her failure to pay prevented him from accessing the mediator to help resolve parenting disputes.

The court ordered a rule to show cause would issue against Mother as to why she had not paid her portion of the coordinator's fees. Mother's second set of attorneys filed a motion to withdraw, which was granted. Mother filed for chapter 7 bankruptcy. Mother's third attorney filed an appearance. Father filed a notice of Mother's discovery deposition. Father served Mother with interrogatories and a request to produce. Father sent Mother a 201(k) letter asking compliance with the discovery requests. Thereafter a number of motions were filed, resulting numerous court proceedings, rules to show cause, findings of indirect civil contempt, and a motion from Mother's attorney to withdraw. On November 1, 2019 the court held a hearing on the status of discovery, wherein Mother was still represented by her attorney and claimed her attorney was at fault for delays in discovery responses, though said attorney "strongly contested that accusation." After hearing, the court entered a written order granting discovery sanctions, striking Mother's petition

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to review and extend maintenance and terminating said maintenance of any kind finally and forever, and granted Mother's attorney's motion to withdraw.

Mother appealed, arguing the trial court erred in striking her petition to review, extend and increase her maintenance because the court abused its discretion by imposing the discovery sanction, did so on the day her counsel withdrew, and her failure to comply with the discovery order was mitigated by her erroneous belief an automatic bankruptcy stay remained in effect. Mother continued to argue her failure to produce discovery was her attorney's fault, but the appellate court found the record supported the trial court's sanction because Mother failed to appear at her deposition, did not give any reason for her failure, and did not object to the discovery requests. The appellate court found the record demonstrated Mother herself was responsible for her failure as, for instance, she admitted she had bank statements but "did not have time to make the copies," and that her attorneys could not be reasonably responsible for documents she withheld from them.

Further, the appellate court found Mother lost credibility with the trial court because of her numerous violations of prior court orders and her failure to support her eventual submissions with financial records. Her repeated defiance supported the trial court's finding of "deliberate and contumacious disregard of the court's authority." The appellate court further found Mother did not have a right to at least 21 days to defend on the discovery sanctions merely because her attorney withdrew on the day of the hearing. Mother was represented by an attorney, despite her claim her attorney was her adversary the moment she presented the motion to withdraw. However, the trial court did not rule on the motion to withdraw until after it had ruled on the discovery sanctions issue. Consequently, Mother was represented while the motion to strike was argued and granted. Finally, as to Mother's mistaken assumption that there was an automatic bankruptcy stay in effect, the appellate court found Mother's ignorance of the law did not excuse her from compliance. The trial court was thereby affirmed.

In re Marriage of Menckowski, 2021 WL 5094828 (Ill.App. 5 Dist.), November 1, 2021*

Pursuant to the parties' judgment for dissolution of marriage, Husband was awarded the marital home and was ordered to refinance the mortgage to remove Wife's name. During the underlying dissolution case, the parties filed for bankruptcy, which was finalized the year following entry of the judgment. Wife filed a petition for contempt approximately four years after the divorce, claiming that Husband failed to refinance the mortgage as required by the judgment. Husband presented evidence and testified that he had applied for a refinance, both individually and with a co-signer, but because of his bad credit and the parties' bankruptcy, he was unable to refinance. The trial court found him in contempt of court and ordered that his purge was to refinance the home or sell the home within 120 days at an amount that would be enough to pay off the mortgage, even though the evidence showed that the home was underwater. Husband appealed.

The appellate court reversed, holding that Husband's purge provisions were not within his own control because they required a financial institution to approve financing or a willing and able buyer to purchase the home above market value.

* Unpublished/Rule 23(e)(1) decision.

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DISSIPATION

In re Marriage of Porikos-Gorgees, 2021 WL 5194796 (Ill.App. 2 Dist.), November 8, 2021**

The parties' marriage, and began undergoing an irretrievable breakdown on November 27, 2012. The parties had first run a successful parking lot/valet business and transitioned to an eyebrow threading venture ("Brow Art"), which eventually spread nationwide. Husband became voluntarily unemployed in February 2013, while Mother continued as the 100% shareholder in Brow Art. At the time of dissolution the business was in chapter 11 bankruptcy and was valued at around \$12,000,000. Husband filed a total of eight notices to claim dissipation between February 2016 and June 2018. At issue were the failures to timely pay income taxes resulting in hefty fines and interests due to the IRS, extravagant travel, the purchase of a Cadillac for Wife's mother, property purchased in Greece, investment of money from Brow Art to a failed business venture called Ooh La La, distributions taken from Brow Art over and above base salary, cash taken from Brow Art locations, funds spent on architectural services, and a home purchased in Wife's Mother's name with the aim of avoiding tax liability. A 17-day trial ended with a ruling in which the court found both parties had been substantially involved in the Brow Art business and its success, that Husband owed child support and was to receive maintenance based on his imputed income of \$50,000, and Wife's income of \$455,000. The court further found Husband had made a case for dissipation and Wife was vague, evasive or not credible. Specifically, the trial court found Wife dissipated \$2,901,462.37. The remaining marital estate was worth \$2,380,833.25. The court divided the marital estate 50-50 after deducting the amount of IRS penalties and interests, and thereby awarded 100% of the marital estate to Husband and entered a judgment against Wife for the \$134,484.50 shortfall. Husband later filed a petition for rule to show cause for Wife's failure to pay liens and taxes on the real estate owed to him. Wife was given 30 days to comply, and when she failed, the court sentenced her to 90 days' incarceration with a purge amount of \$55,000.

Wife appealed, claiming some of the court's findings of dissipation were erroneous, that Husband's award of maintenance was in error, and the court failed to take into account the income-generating properties and maintenance in calculating child support. The appellate court analyzed each finding of dissipation, affirming in most cases but reversing in the instance where \$633,958.31 from cash withdrawals from stores in Tennessee that were not sufficiently tied to Wife sufficiently to pass the manifest weight of the evidence test. The appellate court also found the trial court failed to account for \$125,000 in pre-distributions to Husband in setting the award, and held the award should be reduced by that amount. The appellate court vacated the property distribution because of the reversal of one dissipation finding and the failure to include pre-distributions. The appellate court also found the trial court abused its discretion in ordering Wife to secure the deficiency judgment with a life insurance policy because the statute does not authorize the court to impose such a requirement.

As to child support, the appellate court found the trial court failed to apply the guidelines from 750 ILCS 5/505(a)(3.3b) or 5/505(a)(3.4) and did not enter a written finding for the deviation, thereby vacating and remanding for further proceedings. As to the award of maintenance, the appellate court found the trial court abused its discretion in imputing an income of \$50,000 to Husband and failing to require him to take measures to secure employment commensurate with his earning

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potential. The appellate court found Husband, by his own testimony, was an entrepreneur by profession who claimed to be the “sole force behind” Brow Art’s success. The trial court failed to take into account Husband’s earning potential in imputing income, and should have minimally considered he was as capable as Wife to make a living. Consequently, the appellate court barred maintenance to both parties. As to the finding of contempt, the appellate court affirmed.

EXCLUSIVE POSSESSION

In re Marriage of Paris, 2021 WL 5125087 (Ill.App. 1 Dist.), November 4, 2021*

Wife had been granted exclusive possession of the marital residence during the pendency of the dissolution proceedings where she continued to reside with the parties’ minor children. The basis of the exclusive possession included physical issues with the home that needed be rectified and Husband’s financial and verbal abuse, including not fixing things in the home as a way to exert control. Husband had allowed the home to remain in a state of disrepair with exposed rusty nails, black mold, exposed outlets, animals nesting in the ceiling, and ripped up floors and would tell the children that he would fix everything once he knew he was retaining the home. This put the children and Wife in physical jeopardy as well as caused an extreme amount of stress on both the children and Wife. One child’s hair was falling out, another child’s nose was bleeding, the kids were socially withdrawn, and Wife’s hair was also falling out. Once the repairs were made to the home, Husband sought to be allowed back in the home. The trial court denied his request, and he filed an interlocutory appeal.

The appellate court affirmed. holding that the trial court appropriately reviewed the evidence and weighed the credibility of the testimony presented and did not abuse its discretion as the repairs to the home were not the sole basis of granting exclusive possession but rather the refusal to properly maintain the home was a tool Husband used to financially and verbally abuse the family.

MAINTENANCE

See also CIVIL CONTEMPT, *In re Marriage of Kottaras*, 2021 WL 5125233 (Ill.App. 1 Dist.), November 4, 2021**

See also DISSIPATION, *In re Marriage of Porikos-Gorgees*, 2021 WL 5194796 (Ill.App. 2 Dist.), November 8, 2021**

ORDER OF PROTECTION

In re Steven W. v. Meeli W., 2021 WL 4988197 (Ill.App. 2 Dist.), October 27, 2021**

On November 24, 2012 the parties were married in Tartu, Estonia. Two children were born to the marriage: the first in Estonia in November, 2012; the second in Downers Grove in April, 2016. In January 2020 the family went on a trip to Estonia, purchasing round-trip tickets as they had on other occasions in the past. Father testified the family planned to return on January 24, 2020; however upon a disagreement on whether the children would remain in Estonia permanently, Father returned to Illinois alone. Father filed an emergency order of protection on March 31,

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2020, seeking a court order to prohibit Mother from continuing to withhold the children from Father. Father also filed a petition to allocate parental responsibility, or, for other injunctive relief. The trial court granted an emergency order of protection. Mother was ordered to return with the children for an April 15, 2020 date, where the court would determine whether to extend the order of protection on a plenary basis. Mother did not appear. Following a 14-day extension, counsel for Mother presented a motion to stay the proceedings and to reconsider the order of protection, both of which were denied. The court heard testimony in which Father admitted to signing documents concerning the residence of the children in Estonia, that Mother had not concealed the children in that Father could visit them as he pleased and knew their whereabouts, and that a court in Estonia had found no unlawful removal or retention of the children had taken place. The trial court commenced its hearing on the issuance of a plenary order of protection, ruling Mother had improperly removed the children from Illinois and that Father was an abused person as defined by section 103(7)(v) of the Illinois Domestic Violence Act of 1986 (ILCS 60/103(7)(v)) because Mother has “harassed” Father by improperly removing them from the state and causing him emotional distress thereby.

Mother appealed, arguing Father failed to show harassment or abuse under the act. Father moved to strike Mother’s brief, pointing out basic failures to follow the Illinois Supreme Court Rule 341(h)(7) in citing to the record. The appellate court agreed there were serious errors, but notwithstanding, it found the brief did not hinder review and therefore did not merit the “harsh penalty” of being stricken. As to the substantive issue, the appellate court found the trial court improperly determined Mother’s conduct met the definition of abuse or harassment under the Act. First, the trial court explicitly determined there had not been any concealment of the children. Second, as to the element of harassment, the trial court erred in finding removal of the children from the state was *per se* evidence of harassment, particularly because a primary element in harassment is that the abused is threatened; Father did not allege Mother threatened him, only that she removed the children. The appellate court ruled Father failed to show he was an abused person. Rather, the appellate court opined Father was using the Act to pursue custody because he was not getting much accomplished with an action proceeding under the Illinois Marriage and Dissolution of Marriage Act. The effort to utilize the Domestic Violence Act under this set of facts was inappropriate. The judgment of the trial court was reversed.

PARENTING TIME

In re Marriage of Garnhart, 2021 WL 5056005 (Ill.App. 2 Dist.), October 29, 2021*

In February of 2017 Husband filed the first of what would be a number of petitions revolving around Wife’s consistent failure to observe court orders regarding communication between the parents and between Wife and the minor children. Wife variously was awarded parenting time, supervised parenting time, and then revocation of any parenting time as a result of her behavior towards the children, which included discussing the litigation, disparaging the Husband, and sending a barrage of texts (as many as hundreds in a day) to Husband, a GAL assigned to the case, the minor children’s paternal grandfather, among others. Husband testified Wife had been able to coparent effectively during the marriage and the unusual behavior on display was unusual. Between the second and third day of trial, the court entered a plenary order of protection against Wife in favor of Husband. On July 24, 2019 the court entered a memorandum of decision

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indicating it would enter a judgment assigning all parental decision-making to Husband, and on August 22, 2019 the court entered a parenting plan and the related memorandum of decision. Ultimately the court found Wife's conduct seriously endangered the mental, moral and emotional health of the children. The trial court further said it would consider a motion to modify the award of supervised parenting time and monitored phone calls once Wife was able to establish she had been evaluated for substance abuse, anger issues and mental health concerns. Wife filed a motion to reconsider, which was denied.

Wife appealed, arguing the trial court abused its discretion in ordering Wife other to undergo evaluation and, if necessary, treatment for alcohol and drug abuse before it would consider modifying the parenting order. Wife also argued the court erred in admitting social media posts from Wife disparaging Husband's girlfriend. The appellate court noted there is not caselaw on section 603.10(a)(8) of the Illinois Marriage and Dissolution of Marriage Act (IMDMA), which specifically authorizes the courts to order a parent undergo treatment for drug and alcohol abuse because it has been in place only since January 1, 2016. However, the appellate court found the trial court did not abuse its discretion in making the order because Wife's actions were unusual given she was able to co-parent effectively before the divorce and the pattern of her behavior were those of someone abusing drugs or alcohol. The appellate court also pointed to evidence Wife smelled of alcohol and school counselors and the GAL also expressed concerns Wife was abusing alcohol. As to the evidence from social media posts disparaging the Husband's girlfriend, the appellate court found Wife had an opportunity to object and to cross-examine the evidence at trial and did not do so. Further, the appellate court reasoned the social media posts were not essential for the court to come to the conclusion it had drawn, and that admitting the posts into evidence was not prejudicial to the Wife. The trial court's order was affirmed.

In re Marriage of Jeffrey F., 2021 WL 5276627, (Ill.App. 4 Dist.) November 9, 2021**

The parties were married in May 2002, had two children and resided periodically in Japan and the United States while married. In November 2011, Husband filed a petition for dissolution of marriage when he was living with the two minor children in Illinois and Wife lived in Japan. In July 2013 the court entered a judgment with an approved parenting plan granting the parties joint custody, with Father being the residential custodian and Mother having liberal visitation limited to the United States. Mother was prevented from taking the minor children to Japan until Japan signed the Hague Convention on the Civil Aspects of International Child Abduction, the United States Department of State issued an annual compliance report certifying Japan was in substantial compliance, and Mother posted a \$25,000 bond for the purpose of securing the children's return. In September 2015, Father filed a petition to modify, asking the court to modify the parenting agreement to grant him significant decision-making authority to Father and limiting Mother's parenting time to four weeks over the summer. April 2017 the trial court largely granted Father's petition, limiting visitation to four weeks in the summer, and additional times over spring and winter breaks. Mother was not allowed to take the children far from their residence for the next three years. However, the court reiterated its earlier finding, that Mother could take the children to Japan upon the satisfaction of the three criteria above.

In March 2021, Mother filed a motion to modify summer parenting, arguing the COVID pandemic had dramatically impacted her ability to visit with the children, that the conditions for travel to

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Japan had been met, and seeking her summer visitation time expanded to eight weeks to allow her to spend substantial time with the children in Japan. Father stipulated the first two conditions for travel had been met but requested the court require Mother to post a \$25,000 bond to secure the children's return. Father also objected to the modification, claiming Mother had not shown a substantial change in circumstances. After hearing evidence, the trial court granted Mother's motion to modify, allowing Mother to take the children to Japan. To alleviate Father's worry that Mother would delay their return, the court ordered Mother to pay the entire cost for round trip tickets and provided Father would reimburse for half of the cost only upon the children's return. Mother was to have the children from July 16 to August 14, 2021.

Father appealed, arguing the trial court erred in granting the motion to modify because there had not been a substantial change in circumstances, the court erred in denying his motion for a directed finding, and that the court's order would subject the children to medical requirements in Japan (due to COVID travel restrictions) absent his consent, thereby altering the allocation of parental responsibilities. The appellate court affirmed the trial court's decision. First, the appellate court found the COVID pandemic was, contrary to Father's argument, an unforeseen circumstance that dramatically altered Mother's ability to exercise parenting time with her children. The appellate court found the best interests of the children were met by travel to Japan. The appellate court noted Father's own testimony affirmed the value of the children spending time in Japan. As to the issue of the \$25,000 bond, the appellate court noted Father was not concerned about whether Mother would keep the children in Japan, only that she would delay their return past the agreed upon duration.

As to whether travel to Japan during the pandemic was in the children's best interest, the court noted Father testified he would be comfortable with a trip in the winter. Given the timing of the appeal, the appellate court noted the question as to summer travel was moot and Father could not now argue he was uncomfortable with winter travel when he had previously testified to the contrary. As to the denial of Father's directed finding at the close of Mother's case-in-chief, the appellate court found the issue moot because, upon denial, Father presented evidence in support of his defense. A defendant who presents evidence on its behalf after its section 2-1110 motion is denied waives any complaint that the denial of the motion was error. Finally, as to Father's argument the modification effectively altered the allocation of significant decision-making because COVID protocols in Japan would subject the minor children to medical procedures without his consent, the court noted the trial court had supported its decision on evidence that both supported a change to parenting time and to the allocation of parenting responsibilities. Mother met the requirements for both in showing there was a substantial change in circumstances and modification was in the children's best interests. The judgment of the trial court was therefore affirmed.

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DEVELOPING AND COMMON TAX ISSUES IN DIVORCE LITIGATION

PRESENTED BY DANIEL J. MORIARTY

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Applicable Illinois Law

- Gross income as defined by Section 505 of the IMDMA: “total of all income from all sources”
- “Net income” as defined by Section 505 defined as gross income less “standardized tax amount” or “individualized tax amount”
- “standardized tax amount” defined as the total of federal and state income taxes for a single person claiming the standard tax deduction, one personal exemption, and the applicable number of dependency exemptions for the minor child or children of the parties, and Social Security and Medicare tax calculated at the Federal Insurance Contributions Act rate.
- 505(3)(C)(I): “Unless a court has determined otherwise or the parties otherwise agree, the party with the majority of parenting time shall be deemed entitled to claim the dependency exemption for the parties' minor child.”

SECTION 504 OF THE IMDMA

- (b-3) Gross income. For purposes of this Section, the term "gross income" means all income from all sources, within the scope of that phrase in Section 505 of this Act, except maintenance payments in the pending proceedings shall not be included.
- (b-3.5) Net income. As used in this Section, "net income" has the meaning provided in Section 505 of this Act, except maintenance payments in the pending proceedings shall not be included.

COMPARISON OF CURRENT VS. PRIOR CHILD TAX CREDIT

	2020 CTC (OLD LAW)	2021 CTC (new)
Age of child	Children age 16 and under can qualify for the credit	Children age 17 and under can qualify for the credit
Credit Amount	\$2,000 per child	\$3,000 per child and \$3,600 for children under the age of 6
Refund Amount	Up to \$1,400 per child is refundable	Fully refundable
Income	You must have earned income more than \$2,500 to qualify for the refundable part of the credit	No income requirement, you can have zero income and still qualify for the full credit amount per child
Advance Payments	No advance payments	Periodic advance payments between July to December 2021
Phase Out Rate	The CTC amount will start to decrease at \$200,000 for single filers and heads of households (\$400,000 for married couples)	The CTC amount will start to decrease at \$75,000 for single filers (\$150,000 for married couples and \$112,500 for heads of households)

Criteria For Qualifying For Advanced Child Tax Credit Payments

- Under 18 Years Of Age as Of January 1st, 2022
- Must be U.S. citizen, U.S. national, or U.S. resident alien
- Related to taxpayer
- Child relies on taxpayer for support
- Child lives with taxpayer more than half of year
- Claimed as dependent
- Child does not file joint return with spouse

Phase Out

- **Child Tax Credit begins to be reduced to \$2,000 per child if 2021 AGI exceeds:**
 - \$150,000 if married and filing a joint return or if filing as a qualifying widow or widower;
 - \$112,500 if filing as head of household; or \$75,000 if you are a single filer or are married and filing a separate return.
 - The previous, \$200,000 single/\$400,000 married filing joint phaseout thresholds apply if taxpayer does not qualify for the increased credit and, instead, claims the regular credit with pre-ARP rules.

Child And Dependent Care Credit

- ARP temporarily expanded scope and amount of this tax credit.
- Employer-sponsored child care benefits via flexible spending account increased from \$5,000 to \$10,500 for 2021.
- Pre-ARP, CDCTC credit up to \$600 for one child; \$1,200 for two or more qualifying children.
- ARP expands CDCTC by making the credit fully refundable and increasing the maximum benefit to \$4,000 for one child and \$8,000 for two or more children.
- The income limit for receiving full credit increases to \$125,000 for households.

Earned Income Credit

- EITC significantly expanded by ARP through 2021.
- Workers receive a credit equal to a percentage of their earnings up to a maximum credit. Both the credit rate and the maximum credit vary by family size, with larger credits available to families with more children. In 2021, the maximum credit for families with one child is \$3,618, while the maximum credit for families with three or more children is \$6,728. The maximum credit for childless workers is \$1,502, roughly triple what it was prior to the ARP.
- Expansion of who qualifies:
 - Removes the upper age limit and lower age limit to 19
 - Maximum benefit for adults not claiming a qualifying child increased to \$1,502
 - Individuals may qualify even if they have less than 10K of investment income

Earned Income Credit

Maximum Credit Amounts

The maximum amount of credit you can claim

- No qualifying children: \$1,502
- 1 qualifying child: \$3,618
- 2 qualifying children: \$5,980
- 3 or more qualifying children: \$6,728

Generally, you don't have to be entitled to claim the child as a dependent to claim the earned income credit based on the child being your qualifying child, because the support test for qualifying child as a dependent does not apply for the earned income credit.

Children or Relatives Claimed	Maximum AGI (filing as Single, Head of Household, Widowed or Married Filing Separately*)	Maximum AGI (filing as Married Filing Jointly)
Zero	\$21,430	\$27,380
One	\$42,158	\$48,108
Two	\$47,915	\$53,865
Three	\$51,464	\$57,414

Investment income limit: \$10,000 or less

Section 503 Of The IMDMA

(d) In a proceeding for dissolution of marriage ... [The Court] shall divide the marital property without regard to marital misconduct in just proportions considering all relevant factors, including: ... (12) the tax consequences of the property division upon the respective economic circumstances of the parties.

Capital Gains And Losses

- Long Term v. Short Term - short-term tax treatment applies to sale of capital asset held less than 1 year.
- Short-term capital gains are subject to taxpayer marginal income tax bracket; the highest of which is presently 37%.
- Basis equal to amount paid plus costs of purchase and costs of improvements.
- Long-term capital gains result subject to a tax of 0%, 15%, or 20% depending upon taxpayer's income.
- There is a flat 28% capital gains tax on gains related to art, antiques, jewelry, precious metals, stamp collections, coins, and other collectibles regardless of income.

Long-term capital gains tax rates for the 2021 tax year

FILING STATUS	0% RATE	15% RATE	20% RATE
Single	Up to \$40,400	\$40,401 – \$445,850	Over \$445,850
Married filing jointly	Up to \$80,800	\$80,801 – \$501,600	Over \$501,600
Married filing separately	Up to \$40,400	\$40,401 – \$250,800	Over \$250,800
Head of household	Up to \$54,100	\$54,101 – \$473,750	Over \$473,750

Long-term capital gains tax rates for the 2022 tax year

FILING STATUS	0% RATE	15% RATE	20% RATE
Single	Up to \$41,675	\$41,676 – \$459,750	Over \$459,750
Married filing jointly	Up to \$83,350	\$83,351 – \$517,200	Over \$517,200
Married filing separately	Up to \$41,675	\$41,676 – \$258,600	Over \$258,600
Head of household	Up to \$55,800	\$55,801 – \$488,500	Over \$488,500

Tools To Ascertain Basis

John Doe's Investment Account

Symbol <small>▲ Name Full Short</small>	Quantity	Price	Price Change \$ %	Market Value	Day Change ² \$ %	Cost Basis	Gain/Loss ³ ⓘ \$ %	Rating ⁵	Reinvest?	% of Account ⁶	
Equities											
BSX BOSTON SCIENTIFIC CO	47	\$41.17 ⁷	-\$0.11	\$1,934.99 ⁷	-\$5.17	Incomplete	N/A	B	No	3%	⋮
MYRX MYREXIS INC	150	\$0.0201 ⁷	+\$0.00	\$3.02 ⁷	+\$0.00	\$299.37	-\$296.35	--	No	0%	⋮
MYGN MYRIAD GENETICS INC	600	\$24.77 ⁷	-\$0.36	\$14,862.00 ⁷	-\$216.00	\$9,127.58	+\$5,734.42	A	No	23.07%	⋮
LUV SOUTHWEST AIRLINES	1,000	\$41.97 ⁷	-\$1.64	\$41,970.00 ⁷	-\$1,640.00	\$15,472.95	+\$26,497.05	F	No	65.15%	⋮
TEVA TEVA PHARMACEUTICAL IN F...	100	\$8.34 ⁷	+\$0.05	\$834.00 ⁷	+\$5.00	\$3,172.95	-\$2,338.95	--	No	1.29%	⋮
Equities Total				\$59,604.01	-\$1,856.17	\$28,072.85	+\$29,596.17⁴			92.52%	

Taxation of Incentive Stock Options and Restricted Stock Units

Taxation Of ISOs

- Incentive Stock Options are eligible to receive more favorable tax treatment than any other type of employee stock purchase plan.
- Sale at least two years after the grant date and one year after the exercise treated as long term capital gain
- Otherwise sale treated as short term capital gain and taxed as ordinary income
- No tax consequences at grant, vesting, or exercise.

Taxation of Restricted Stock Units

- Employee taxed at vesting.
- Taxable as ordinary income equal to the market value of the shares at vesting.
- Income subject to FICA and Illinois income state.
- If stock appreciates after vesting, gain on sale subject to capital gains tax. Holding period determines short term v. long term capital gain.

Potential Impact of Pending Build Back Better Act

- Changes To Individual Income Taxes Under The Build Back Better Act (not passed by Senate):
 - Creates a new surcharge on adjusted gross income 5% of AGI in excess of \$10 million plus 3 percent on AGI above \$25 million.
 - Extend the American Rescue Plan (ARP) Child Tax Credit (CTC) expansion through 2022, and make the entire CTC fully refundable on a permanent basis.
 - Extend the ARP's temporary expansion of the Earned Income Tax Credit (EITC) eligibility, phase-in rates, and amount through 2022.
 - Limit Individual Retirement Accounts (IRAs) contributions when balances reach \$10 million and accelerate required minimum distributions for those accounts.
 - Raises the cap on the state and local tax (SALT) deduction from \$10,000 to \$80,000 and extends cap through 2030.

Temporary Abatement Of Premature Distribution Penalty For 2020

- CARES Act, enacted March 27, 2020, provides for special treatment for retirement plan and IRA distributions.
- 10% penalty does not apply to any coronavirus-related distribution.
- Option to include Distributions in income over a three-year period.

Summary Of Prior Covid Relief Payments

ROUND OF PAYMENT	AMOUNT	PHASE OUT
First Round (CARES Act)	\$1,200 per adult \$500 per child	Single: \$99,000 HOH: \$136,500 Married: \$198,000
Second Round (Consolidated Appropriations Act)	\$600 per adult \$600 per child	Single: \$87,000 HOH: \$124,500 Married: \$174,000
Third Round (American Rescue Plan)	\$1,400 per adult \$1,400 per child	Single: \$80,000 HOH: \$120,000 Married: \$160,000