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ARTICLES

The American Law Institute Principles of Family Dissolution, the Approximation Rule and Shared-Parenting

Marygold S. Melli.....347

This article discusses the ALI Principles of Family Dissolution which proposes a default rule to determine child custody when parents cannot agree. That rule, known as the Approximation Rule, requires the court to allocate child custody so that the amount of time that the child spends with each parent approximates the proportion of time each parent spent in child care during the marriage. This article explains the background for the choice of the rule and faults the ALI for not explicitly recognizing that the rule may in effect be a proposal for shared parenting.

Relocation Custody Disputes—A Binuclear Family-Centered Three-Stage Solution

Robert E. Oliphant.....363

This article argues that the best method for courts to adopt during relocation custody disputes is a binuclear, family-centered process. A binuclear family is defined as a large, interconnected family, with one household headed by the ex-wife and the other by the ex-husband, with the child being a member of both. The author contends that the current methods, which include the endangerment standard and the "new family" theory, are both inadequate to deal with a relocation custody dispute. Specifically, the author discusses a proposed three-step process for dealing with a relocation custody dispute. Step one involves the creation of a parenting plan, step two requires mediation and, as a last resort, step three would involve a de novo hearing by the court. This three-step process, following a binuclear family-centered approach, would make relocation disputes seem fair to all parties, and would avoid many of the current problems associated with the other methods of resolution.

Domestic Violence and the Danger of Joint Custody Presumptions
Judith G. Greenberg.....403

This article points out that the current trend towards joint custody as the preference or presumption in divorces can create some unwanted side-effects. Specifically, joint custody is dangerous for victims of spousal abuse because it allows, and sometimes even facilitates, the continuation of patterns of abuse. Although many jurisdictions that apply a joint custody presumption attempt to protect victims of domestic violence, neither of the two usual approaches is successful in protecting the victims and their children. As a result, the author makes two recommendations. First, statutes should never create a presumption in favor of joint custody. Second, courts should not accept agreements to joint custody on the eve of litigation.

Applying Intent-Based Parentage Principles to Nonlegal Lesbian Coparents
Melanie B. Jacobs.....433

With increasing frequency, courts are being asked to determine the parental rights of lesbian partners; some of these partners have no biological connection to their child(ren) while others have donated genetic material. Current parentage laws are often inadequate to resolve these disputes and even when they are available, courts are often reluctant to apply them and depart from the traditional family law paradigm of one mother/one father. In this article, the author argues that courts should embrace the doctrine of intentional parenthood to legalize the rights of nonlegal lesbian partners, with two caveats: first, courts should not apply intent-based principles to the exclusion of other doctrines and second, courts should apply intent equally to homosexual and heterosexual couples.

Determining the Undeterminable: The Best Interest of the Child Standard as an Imperfect but Necessary Guidepost to Determine Child Custody
Steven N. Peskind.....449

Since the 1960s, our nation's courts have almost universally relied on a legal standard known as the "best interest of the child" in order to resolve contested issues involving child custody. Critics of the standard conclude that, due to the complexities of defining what will serve a child's best interests, the standard is at best not helpful, and is perhaps even useless. Critics also charge that the standard is indeterminate, and depends too heavily on the subjective values and life experience of the individual fact finder—the trial judge. In this article, Steven Peskind will review the history of standards used by courts in deciding contested child custody matters. His analysis will focus on the development of custody law from a standard that automatically awarded custody to fathers evolving into the ubiquitous best interest standard used today. It will also address the concerns of the critics of the best interest standard and will conclude that, despite the many profound weaknesses of the standard, there is effectively no better option for courts. The solution, he will opine, is not a different legal standard, but practical changes in the administration of custody cases. These include expedited litigation, less reliance on mental health professionals, and better training.

COMMENTS

Protecting the Parent-Child Relationship: The Need for Illinois Courts to Extend Standing to Non-biological Parents in Regard to Visitation Proceedings

Desiree Sierens.....483

Each year, children in Illinois are denied the opportunity to visit a “parent” because the children’s families do not fit into traditionally defined family units. Under Illinois law, one “parent” in these non-traditional families lacks standing to petition for custody and visitation. While Illinois courts have a tradition of extending rights to common law parents, current courts have declined to follow previous rulings when asked to extend standing to the same-sex partner of the biological parent, even in cases where the couple, together, agreed to have the child. This comment will argue that maintaining relationships between a non-biological parent and his or her child is in the child’s best interests. Additionally, this comment will look at the different theories other states have employed in extending standing to non-biological parents and determine the best option for Illinois.

Child Support Obligations That Result from Male Sexual Victimization: An Examination of the Requirement of Support

Dana Johnson.....515

This comment examines the consideration of male sexual victimization in child support judgments. Specifically, this comment addresses situations in which fatherhood resulted from male sexual victimization. State courts have rejected the arguments that young boys have made in an attempt to avoid the financial consequences of their victimization. While these arguments have all failed, this comment argues that state courts have not adequately considered male sexual victimization in this context. These courts have clung tightly to child support policies, but have failed to protect victimized boys by adhering to gender stereotypes about boys and sex. With more education and a stricter interpretation of sexual assault statutes, courts would be able to protect boys from the financial responsibility of fatherhood that results from male sexual victimization.