

PREFACE

The past year of Zoom hearings and restricted schedules has probably taken its toll on most of us. Nevertheless, Kentucky courts and attorneys appear to have continued to provide service to the citizens of the Commonwealth in an admirable way. It may be that many of the precautions in place last year will have to continue as new varieties of the Covid-19 virus erupt.

In many cases, those with the least resources are also the most disadvantaged and at risk from this pandemic. In one area, the Kentucky Supreme Court has offered some protection to incarcerated child support obligors, but it will be important to adopt ways of implementing this protection to assist those persons entitled to them to claim the protection at the first opportunity. Previously, courts had treated incarcerated persons as voluntarily underemployed or unemployed. That rule no longer holds. However, even if a court cannot set an imputed income for a jailed person, the minimum support obligation in Kentucky is \$60 per month. Moreover, child support obligations are vested when due, so incarcerated persons cannot avoid arrearages that accrue before a court order setting that minimum obligation is sought. We might hope that judicial districts can develop procedures that will allow inmates to move quickly and perhaps automatically to adjust child support obligations to avoid the accrual of arrearages.

Child custody cases continue to play a significant role in Kentucky litigation. Many of those cases involve claims of *de facto* custody in which third parties who have cared for children face off against biological parents. While many difficult decisions face trial courts, perhaps one of the most difficult arises when the parent has had a shared role with the third party in caring for the child. It remains unclear just exactly how much parental participation will deny the third party *de facto* custodian status. Perhaps courts would do well to consider that achieving *de facto* custodian status only grants such parties equal status and does not automatically entitle them to prevail over biological parents.

Other custody cases have involved questions on the appropriate standard for determining parenting time of minor children. In one recent case, the issue was remanded to the trial court on the ground that the issue was not risk of harm but the best interest of the children in a case that involved requests by a father for increased parenting time. Because the case involved allegations of child sexual abuse many might agree that a rethink by the trial court was a good idea. It seems important to recognize that in such a case parental rights must be balanced against the Commonwealth's duty to protect minor children. Under any standard for determining parenting time can hardly be true that concerns for child welfare are irrelevant.

On the property front, courts have confronted issues related to new forms of compensation, such as restricted purchase stock. Like attorney's contingent fees, RPUs will apparently be divided on a time rule, but the latest court developments leave room for plans that provide the units for reasons that may make it nonmarital property. Attorneys will need to study plans carefully and possibly provide expert witness testimony to establish the reason for the compensation and also to show the time frame for which it is to be awarded.

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