

MEMO

To: Committee on Access to Family Courts Members

From: Ad Hoc Committee (Judge Brent Powell, Karen J Brown, Tricia Scaglia)

Date: March 31, 2014

Re: Impact of recent Western District decision (DSK, MO App Western District 76789, Dec. 31, 2013) on pro se litigants involved in IV-D paternity cases.

Background

CAFC met on March 7, 2014 at its regularly scheduled meeting and discussed the possible impact (on pro se litigants) of the recent appellate court decision (DSK, MO App Western District 76789, Dec. 31, 2013) that states a court cannot proceed in adjudicating custody in a paternity case unless the issue is specifically pled. The chair requested Karen, Brent and Tricia serve as an ad hoc group to prepare a background memo on the issue including copies of the court decision and related statutes and case law.

CAFC discussed how the prosecuting attorney (PA) initiates paternity actions pursuant to Title IV-D of the Social Security Act for the purpose of recouping expenses from state assistance but they are not authorized to address custody issues.

Prior to the decision referenced above, courts in Missouri have dealt with the custody issue in the following ways:

- 1) PA has indicated on the pleadings that "custody is an issue" in order to get the matter addressed in some way (7th Circuit);
- 2) Parties have asked the court to address the issue;
- 3) Assistant Circuit Attorney (ACA) files an action as to paternity, child support and health insurance; if a parent inquired about custody, the court provides the ACA with information on the *Self Represent* website to give to parties for information; if parent files an action for custody/visitation the parties are referred to mediation to develop a parenting plan – the ACA either incorporates those arrangements into the Form 14 calculation or the court makes the adjustment for custody credit; If an agreed upon plan is not reached the ACA would move to sever the two matters;
- 4) Assistant Prosecuting Attorney (APA) or the parties inform the court that custody needs to be addressed with the understanding that the APA's

involvement is limited to paternity establishment, child support and health insurance; court refers parties to mediation to develop a parenting plan then the court incorporates same into final judgment. The difference between this method and the one above is that custody/visitation is incorporated into the final judgment without parties having to file a separate custody pleading;

5) Custody/Visitation is not addressed unless pled.

Statement of Issue: CAFC is concerned that the effect of this appellate decision will result in a barrier to access (incur fees, filing separate action, delaying permanent custody provisions) for pro se litigants because parties will not know how or won't file a pleading for custody/visitation because the APA and/or courts will no longer assist them with this aspect of the case;

Recommendation: As it is important to educate pro se litigants on their rights with respect to requesting custody in IV-D cases, it is recommended that the Litigant Awareness Program Sub Committee/Website Sub Committee develop an informational brochure designed to address custody specifically in IV-D cases. This brochure should be made available for distribution in each circuit court describing the resources available to allow pro se litigants in IV-D cases to seek an order/judgment concerning the custody of the children involved in the pending IV-D case;

It is also recommended that the Committee's website be updated to accomplish this goal and that the Judicial Education and Communication Sub Committees assist with circulating the brochure after it is developed and approved by the Committee on Access to Family Courts.

Links

Western District Decision

<https://www.courts.mo.gov/file.jsp?id=68736>

Southern District Decision (2010) – states the Family Support Division has no authority to establish custody through the administrative process

<http://www.courts.mo.gov/file.jsp?id=41360>

RSMO 454.435 – sets forth scope of PA responsibility in child support enforcement

<http://www.moga.mo.gov/statutes/C400-499/4540000435.HTM>

RSMO 452.513 – sets forth PA representation of Family Support Division not parties

<http://www.moga.mo.gov/statutes/C400-499/4540000513.HTM>

Sincerely,

Ad Hoc Committee