FAMILY LAW NEWSLETTER

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Leveraging Big Data and Technology to Keep Your Practice Viable

By Julie Gentili Armbrust

"Big Data" is all the buzz these days. But, how can all this information be gathered and applied to the practice of law? More importantly, how can it help you? It's simple: we need to be open to using data in new ways.

As attorneys, we pride ourselves in analyzing all aspects of the law and providing our clients with an educated analysis regarding their matter. We are committed to providing informed counsel to our clients; informed by the personal facts of each situation, relevant statutes and rules, and precedents gleaned from case law. Emerging trends dictate that the law contains data to be mined and analyzed, too.

Big data is regarded as applying mathematical principals to huge quantities of data in order to infer probabilities.[1] Big data is changing the way attorneys approach cases. For example, LexisNexis® "Lex Machina" looks at millions of court decisions to find trends that can be used for an advantage at trial or settlement. IBM has created "Ross," a robotic attorney powered with artificial intelligence. Fourteen major law firms are using the "Ross" technology. "Premonition" is a program that conducts statistical analysis and can predict which attorney will win before which judge. Each of these technologies uses data to help attorneys.

Spousal support is ripe for the emerging trend of analyzing data to help our clients.

Todd Van Rysselberghe's December 2016 Family Law Newsletter article, "The Numbers on Spousal Support," was well-written and informative. It casts a light on the ugly underbelly of how spousal support awards are unreliable due to the differences between appellate decisions and circuit court decisions on the same fact patterns. He correctly suggests the numbers tell the story.

As you are aware, Oregon's spousal support statute ORS 107.105(1)(d) provides little guidance on how much and how long a fair spousal support award should be. It's up to the gladiators to fight it out. Guess which gladiator wins? The one with better weapons!

I was frustrated by this gladiator approach to negotiating spousal support. As a family law attorney-mediator, I knew attorneys and clients deserved better. My mind harassed me in the middle of the night with the basic

1 Viktor Maryer-Schonberger and Kenneth Cukier, Big Data: A Revolution That Will Transform How We Live, Work, and Think. 12 (2013).

concept that if spousal support is a number, based upon various other numbers[2], then a formula could be created to generate a fair award from those original numbers.

In 2013, as the chair of the Lane County Bar Association's family law section, I decided to track spousal support award data in Lane County in a similar manner to the Clackamas County family law group's project in 2005. In 2015, with the adoption of e-filing, I expanded my goal from Lane County to all Oregon and began gathering every reliable[3] spousal support award in Oregon.

We confide to each other over lunch that we want to know the back-of-the-envelope formula each judge uses to determine spousal support. We secretly believe each judge has a formula, but s/he simply refuses to share it with us. If asked, judges have been known to say, "I don't have a formula because every case is unique." Every case is unique, but what does the data suggest?

There is no secret formula, ***on a per judge basis***, that I have found. How do I know? As of the writing of this article, I have compiled 1,743 reliable spousal support cases in Oregon into a service called *www.SupportHound.com.*

SupportHound applies universally accepted mathematical principals to spousal support cases and parties' information (i.e. party incomes and duration of marriage) to achieve a suggested spousal support award.

Although the data shows that each individual judge makes decisions on a case by case basis, a closer analysis of all reliable spousal support awards (not limited to an individual judge) reveals that trends exist that can be extrapolated and used in individual spousal support cases to predict a fair spousal support award.

Additionally, the data shows that the difference between the payor's income and the payee's income (some practitioners call this the income differential or the delta) is less impactful on the support award than practitioners believe. Although, I personally believe the payor's and payee's income delta should impact an award, the data shows otherwise.

To date, only five states in the United States use formulas to calculate temporary or permanent spousal support. The American Academy of Matrimonial Lawyers suggests a formula, too.

When comparing Oregon's data with other states' formulas, the data shows:

- In long-term marriages, other states tend to award more indefinite spousal support awards compared to Oregon.
- In short-term marriages, Oregon tends to order more spousal support award amounts and durations than other states.
- When the payor earns less than $14,000/mo (gross), the AAML formula awards more than Oregon spousal support awards. However, if the payor earns at least $14,000/mo (gross), the AAML formula and Oregon awards are similar in amount and duration.

This data provides an unprecedented visibility into our spousal support negotiations. Just as instant-access to Westlaw, LexisNexis®, and FastCase® changed our practices for the better and armed us with better weapons, spousal support data will change our negotiations for the better, too. With this data, we can now advise our clients based upon actual spousal support awards and cases… just as we would for a property award. We are no longer handcuffed to gut feelings.

Spousal support data frees us to negotiate from a place of knowledge and banish speculation forever. Pandora's box of big data has been opened and the data is available, not just to you, but to your future judge, mediator, arbitrator, and to your opposing counsel. You wouldn't go to trial without conducting basic case law research for your trial memo. Why wouldn't you conduct a basic spousal support award analysis for your matter, too?

Utilizing data also reduces our personal liability exposure by providing support for the negotiated award. Wouldn't you feel much better defending yourself against an alleged malpractice claim for too much/too little spousal support if you had cases in hand to back-up the award? Your former client's new attorney will have the data to attempt to prove the malpractice case. Why? Because it is available.

Technology disrupts the traditional approach of practicing law and I am sensitive to the ethical considerations of incorporating technology into one's legal practice. Data cannot replace you, but it can enhance you. When you are armed with information, you are a better gladiator and you have the better weapon. We need to begin embracing technology that can better inform us, which makes us more helpful to our clients and infinitely more valuable than an on-line document preparation service.

"Unfortunately, profession after profession, metrics have not been (initially) received with open arms," says Tony Rousemaniere (parenthesis added). However, eventually professions embrace data and improve experiences and

2 Author's Note: The author concedes some spousal support awards are based upon non-numerical criteria.

3 A reliable spousal support award is defined as an award that has (1) either gone to trial, or if settled pre-trial, at least one party is represented by counsel, and (2) the judgment contains parties' incomes and the duration of marriage.

outcomes for practitioners and clients.[4] Just as the introduction of the internet changed our world forever, big data will also force a change to the practice of law.[5]

As attorneys, we bristle at change; we are skeptical of the new; and we like consistency. Many of us panicked at the adoption of e-filing, but we lived through it and realize it makes our lives easier. I am not suggesting our profession should be open to adopting just any technology. You do not need a Twitter handle, a Facebook page, or a listing on Yelp. I am suggesting, however, that we need to be open to technology that can help us help our clients and help ourselves, too.

Technology is advancing at a rapid pace. We need to learn how to harness data and discriminately adopt technology to protect ourselves and our clients. Otherwise, we'll get left in the dust when technology tries to replace us.

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About the Author: Julie Gentili Armbrust is an attorney-mediator, president of Mediation Northwest, author of *Divorce Mediation In Oregon*, and an adjunct professor at the University of Oregon School of Law. She is also founder and CEO of SupportHound, a technology service that applies a proprietary algorithm to current Oregon spousal support award data to calculate fair spousal support awards. Julie has been practicing law for 17 years.

4 Tony Rousmaniere, What Your Therapist Doesn't Know: Big Data Has Revolutionized Everything... The Atlantic, April 2017, at 56-57.

5 Viktor Maryer-Schonberger and Kenneth Cukier, Big Data: A Revolution That Will Transform How We Live, Work, and Think. 12 (2013).

Fixing the Frozen Benefit Award, Part 2

By Mark E. Sullivan

[Part 1 of this article covered the new rule for division of military retired pay (as of 12/23/16), the "time rule" used for pension division in most states, and how to establish the required data for pension division.]

Strategy for the Former Spouse

When operating under the new rules, the former spouse needs to realize that, in the words of the Rolling Stones' 1964 hit, "Time Is on My Side." The longer it takes to obtain the divorce, the higher the servicemember's rank, years of service and "High Three" will be. Should the SM move to bifurcate the hearing into "divorce now, property division later," the FS should oppose the request by arguing that judicial economy and efficiency will be impaired, state law frowns upon severance of the issues and a multiplicity of hearings (if that is accurate) and that Congress has joined inextricably the divorce and the division of a military pension by requiring the setting of the retired pay base (the "High Three") at the time of divorce.[1]

Once the divorce case has started, the FS ought to propound discovery immediately, asking – among other things – for verification of when the highest three years of continuous compensation were for the SM, and for information on what the "High Three" is so that the court can calculate this essential element of military pension division. The latter inquiry can be posed in interrogatories and also in document requests. If the SM is less than forthcoming in the responses, the FS can argue for putting off the divorce until the SM begins to cooperate in responding to discovery. Counsel for John Doe, the spouse, may be able to use principles of equity and "the clean hands doctrine" to argue that the SM must be in compliance with the rules and orders of the court – including full, prompt and honest answers to discovery – to be able to move for affirmative relief herself, in the form of a hearing on the application for a divorce judgment.

To attempt to find the flaws and wiggle through the loopholes in the new rule, the lawyer for John Doe (the ex-husband of CDR Mary Doe) faces a daunting task, and it doesn't simply involve the assembly of numbers for the court to use in ruling on a hypothetical award. The strategy for John is more of a global approach to the entire process, and it might involve half a dozen possibilities, depending

1 For an excellent summary of arguments against bifurcation of the divorce and the property division, along with case citations for state appellate decisions, *see* Brett R. Turner, Equitable Distribution of Property (3rd Ed. & 2016-2017 Supp.), Sec. 3.2.

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Editor: Daniel R. Murphy
P.O. Box 3151
Albany, OR 97321
(541) 974-0567
murphyk9@comcast.net

Publication Deadlines

The following deadlines apply if a member wants an announcement or letter included in the newsletter.

Deadline	Issue
June	May 15

on the state court rules for pension division, opposing counsel (or *pro se* litigant), the particular judge involved, the phase of the moon and other factors!

John Doe's goal is to "restore the equilibrium" in pension division. He needs what he would have received before the new rule was passed: a division of the amount of retired pay which Mary gets *at retirement*. At best, he wants to employ an approach which will yield a result that is numerically the same as that produced by the *time rule* if that were still available. His "Plan B" would be to obtain other payments or benefits which would help him obtain what he sees as a fairer division of Mary's retired pay and benefits, or of the marital or community property in general.

As to John's possible strategies, note that these are not labelled "One Size Fits All." While some states may prohibit or restrict a particular approach, the summary below is written to set out the entire spectrum of possible strategies, not to advocate one specific method for a particular case or state.

Another *caveat* is that the final rules have yet to be published. Until there are revisions to Volume 7B, Chapter 29 of the Department of Defense Financial Management Regulation, no one will be completely sure how the division of uniformed services retired pay shakes out. At present, the rules are being circulated to all branches of the uniformed services for editing, comments and revisions. The only information presently available from DFAS is a "Notice of Statutory Change" and a sample order.[2]

This interim guidance makes it clear that DFAS has settled on the "date of divorce" as the target for when the *High Three* must be fixed. Under 10 U.S.C. § 1408 (a)(2),

> …"court order" means a final decree of divorce, dissolution, annulment, or legal separation issued by a court, or a court ordered, ratified, or approved property settlement incident to such a decree (including a final decree modifying the terms of a previously issued decree of divorce, dissolution, annulment, or legal separation, or a court ordered, ratified, or approved property settlement incident to such previously issued decree)….

DFAS removed everything from this sentence except "final decree of divorce, dissolution, annulment, or legal separation issued by a court" and used that to specify the *High Three* date. Regardless of what potential pension benefit is earned later in the servicemember's career, it is the *High Three* as of the *date of divorce* which DFAS interprets as being "the time of the order" as specified in Section 641 of NDAA 17. For those military members

2 Type into any search engine, "Notice of Statutory Change" and "DFAS" to locate this. DFAS has placed the Notice at its website, www.dfas.mil > Garnishment Information > Former Spouses' Protection Act > NDAA-'17 Court Order requirements.

who entered service *on or after* September 8, 1980, the following information must be provided to the retired pay center in the order:

1. A fixed amount, a percentage, a formula or a hypothetical which is awarded to the FS;
2. The SM's *High-Three* amount at the time of divorce (i.e., the actual dollar figure); and
3. The SM's years of creditable service at divorce or, with a member of the Guard or Reserves, the member's creditable retirement points at divorce.

Spousal Support Settlement. When the parties are in agreement, a consent order for alimony, maintenance or spousal support is one way to obtain *time-rule* payments from the military pension without the limitations of the frozen benefit rule. An alimony garnishment is based on "remuneration from employment." It is not tied to DRP, or *disposable retired pay*; thus the new rule and its definition of DRP do not apply to permanent alimony payments which start at retirement and function as a division of retired pay.[3]

Here are a few other pointers about the use of permanent spousal support to mimic *pension division as property*:

- Note that there is no "10/10 rule" for alimony payments from the retired pay center, as is the requirement when the pension is divided as property (i.e., property division payments from the retired pay center may only be made if there are at least 10 years of creditable service concurrent with at least 10 years of marriage).[4]
- Make sure that the FS payments do not end at remarriage or cohabitation (since pension-share payments would not end at either of these two events) and are not subject to modification.
- Admittedly, spousal support is usually effective immediately (not at a future date). In addition it usually consists of a fixed dollar amount, not a formula such as:

$$50\% \text{ X } \frac{\textit{120 months of marital pension service}}{\textit{total months of creditable service}} \text{ X final retired pay.}$$

There is no reason, however, why the retired pay center should refuse to accept a formula for the spousal support, rather than a specific set dollar figure.[5]

- A consent order for permanent spousal support should suffice to obtain the payments to the FS upon retirement of the SM, and the tax consequences will be the same, namely, the FS is taxed on the payments and they are excluded from the income of the payor/retiree.

A Spoonful of Alimony. John's attorney could argue for division of the pension under the new rule, with the remaining amount made up by alimony to be decided upon Mary Doe's retirement, in order to get the equivalent of a "time rule" order. If John is awarded alimony while Mary is still serving, the alimony should not end automatically upon Mary's retirement; John's attorney needs to review carefully the results of dividing Mary's retired pay to decide whether *some alimony* should be continued to equalize the parties' positions. The terms of the alimony order might make the amount adjustable depending on economic and financial factors at the time of Mary's retirement, including any reduction of the retired pay to which John would be entitled under the *time rule* due to the "frozen benefit rule," or any reduction because Mary elects VA disability compensation and that reduces John's amount due to a "VA waiver" under 10 U.S.C. § 1408 (a)(4) and 38 U.S.C. § 5304-5305. Note that the order regarding spousal support as a "stand-in" for pension division must clearly state that the support does not end at the remarriage or cohabitation of the recipient spouse, since true pension division orders do not change upon either event.

Using the Time Rule Formula Anyway. The revised law doesn't say that a court may not enter a *time-rule* order. It merely states that the retired pay center (DFAS or the Coast Guard Pay and Personnel Center) will only honor "date-of-divorce division" for those still serving. Recognizing this limitation on payments from the pay center, the court may still enter a time rule order, noting that at Mary's retirement only a portion of the pension-share payment for John Doe will come from DFAS. The court's order would provide that Mary will still be responsible for the rest and will indemnify John for any difference between the two amounts.

There is a parallel to the remedy often used in "VA waiver" cases in which the FS gets less than intended. When the retiree elects VA disability compensation, the result is often a dollar-for-dollar reduction in retired pay. The duty to indemnify is a common solution for this "VA waiver" and the former spouse's receipt of a lower amount due to operation of the law. Why shouldn't it work for

3 The rules for collecting alimony, child support or both from an individual's military retired pay are found at 42 U.S.C. § 659 and 5 C.F.R. Part 581. The money from which family support may be withheld is termed "remuneration for employment." This includes military retired pay, and even military disability retired pay. DoD 7000.14-R, Department of Defense Financial Management Regulation (DoDFMR), Military Pay Policy and Procedures –Retired Pay (DoDFMR), Vol. 7B, ch. 27, para. 270102. It is advisable to mention the above citation to the DoDFMR in the permanent alimony order so as to avoid confusion by those who are processing the order.

4 10 U.S.C. § 1408 (d)(2).

5 The application form for payments from military retired pay is DD Form 2293.

cases in which the "operation of law" involves an amendment to USFSPA, the "frozen benefit rule"? As will be explained below, 10 U.S.C. § 1408 (e)(6), the "savings clause" in USFSPA, allows the courts to employ state enforcement remedies for any amounts which may not be payable through the retired pay center.[6]

Be sure not to use "disposable retired pay" in the order to describe what is divided. Disposable retired pay, or DRP, means the restrictive definition in the frozen benefit rule (i.e., the retired pay base at the date of divorce) less all of the other specified deductions, such as the VA waiver and moneys owed to the federal government. The best way to word a pension clause is to provide for division of total retired pay less only the SBP premium attributable to coverage of the former spouse. Regardless of the language used, DFAS will construe orders dividing retired pay as dividing "disposable retired pay."[7]

Put Off the Divorce. Delay of the divorce will gain time for the FS, and time is money. The longer the divorce is postponed, the higher the retired pay base (i.e., the "High Three") of the SM. Intervening months and years will yield "step increases" (i.e., pay increases which occur every two years), Congressional pay raises and possibly promotions. The only naysayers for this strategy are two types of attorneys whom we'll call "Naïve Ned" and "Ethical Ethyl."

Naïve Ned says, "It can't be done! How can you postpone the divorce for more than a couple of weeks on the outside, once the case has been filed?" Sadly, Ned hasn't had much experience in the big, wide world outside his office walls.

Many legitimate tactics exist for slowing down the wheels of litigation. Rather than accepting service of process, Ned could politely tell his opponent that the client will not allow him to do an acceptance, and that regular service of process must be employed. When the client is finally served, Ned can ask for an extension of time for filing an answer. If there is a flaw in the pleadings, Ned may file a motion to dismiss. If there are questions regarding grounds for the divorce or the validity of the plaintiff's claim of domicile, then Ned can initiate discovery. With these and other tactics, an attorney in Syracuse, New York (for whom the author was a consultant) was able to drag out and delay a divorce decree from 2010 (when the case was filed) until 2014. And all the while the client, a retired Army colonel, was begging him to speed it up and get the divorce granted!

Ethical Ethyl takes a different approach. "While it may be possible to postpone the divorce, there are serious concerns under the Rules of Professional Conduct. It's never right to delay the litigation. Counsel has an ethical duty to move forward toward completion, not drag his feet. Slowing down the process with the goal of delay is simply unethical!" Unfortunately, Ethyl hasn't read the Rules very closely.

While delay for its own sake is improper, delay which results from the legitimate use of objections, discovery, motions and other tactics is not inappropriate or a violation of the Rules of Professional Conduct. The Rules prohibit "unreasonable delay" or "improper delay." They do not bar the use of legitimate devices, such as discovery, to obtain needed information, even though the employment of discovery and the unresponsiveness of the other side may lead to lengthy delays in the legal process. In a 1998 divorce and property division case, the author embarked on a campaign of discovery to ascertain whether the plaintiff, a soldier, was a legitimate resident of North Carolina. Domicile is an essential element of divorce, and the defendant was a maid at a motel in coastal Georgia, so it could not be *her domicile* which was at stake. Using sequential discovery (i.e., interrogatories followed some weeks later by document requests, and then followed by requests for admissions, rather than simultaneous service of all of these on the plaintiff), the author beamed in amusement when the plaintiff – instead of answering the discovery immediately – decided to obtain an extension of time for response by 30 days, following that with his objections and motion for protective order. In due course the author filed a motion to compel. A hearing was eventually calendared on the objections, motion for protective order and motion to compel. The latter motion was granted, and the clock just kept on ticking. The plaintiff eventually fired his first lawyer and hired a new one to get the case moving faster. Legitimately using these discovery tactics, the author was able to get the granting of a divorce postponed for 18 months, thus allowing the client to obtain a share of the SM-husband's retired pay (which otherwise would have been lost due to a change in state law).

If you get the file when the divorce has already been granted (after 12/23/16), don't give up. Check to see if the divorce is valid. A faulty dissolution might be set aside by the court, giving the FS a larger potential pension to divide.[8] Imitating Sherlock Holmes may pay dividends in terms of flushing out a flawed divorce, so get out that magnifying glass!

[Part 3 of this article will cover other strategies for the former spouse to "even out" the division of retired pay and other benefits.]

6 *See also* Brett R. Turner, *Equitable Distribution of Property* (3rd Ed. & 2016-2017 Supp.), Sec. 6.4.

7 DoDFMR, Vol. 7B, ch. 29, Sec. 290601.

8 A guide to scrutinizing the validity of divorces is found at the Silent Partner, "'Lost' Military Pensions: The Ten Commandments."

* * *

Mr. Sullivan is a retired Army JAG colonel and author of The Military Divorce Handbook. He practices family law with Sullivan & Tanner, P.A. in Raleigh, N.C. and works with attorneys nationwide as a consultant on military divorce issues and in drafting military pension division orders. He can be reached at 919-832-8507 and mark.sullivan@ncfamilylaw.com (alternate 919-306-3015, law.mark.sullivan@gmail.com).

CASENOTES

OREGON APPELLATE DECISIONS

June 2017 Edition, OSB Family Law Newsletter

Family Law Opinions: April 1, 2017 – May 31, 2017

Editor's Note: these are brief summaries only. Readers should read the full opinion. A hyperlink is provided to the on-line opinion for each case.

UNITED STATES SUPREME COURT

Syllabus | Opinion (Stephen G. Breyer) | Concurrence (Clarence Thomas)

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U. S. 321.

SUPREME COURT OF THE UNITED STATES

Syllabus

HOWELL v. HOWELL

Certiorari to the Supreme Court of Arizona

No. 15–1031. Argued March 20, 2017—Decided May 15, 2017

The Uniformed Services Former Spouses' Protection Act authorizes States to treat veterans' "disposable retired pay" as community property divisible upon divorce, 10 U. S. C. §1408, but expressly excludes from its definition of "disposable retired pay" amounts deducted from that pay "as a result of a waiver . . . required by law in order to receive" disability benefits, §1408(a)(4)(B). The divorce decree of petitioner John Howell and respondent Sandra Howell awarded Sandra 50% of John's future Air Force retirement pay, which she began to receive when John retired the following year. About 13 years later, the Department of Veterans Affairs found that John was partially disabled due to an earlier service-related injury. To receive disability pay, federal law required John to give up an equivalent amount of retirement pay. 38 U. S. C. §5305. By his election, John waived about $250 of his retirement pay, which also reduced the value of Sandra's 50% share. Sandra petitioned the Arizona family court to enforce the original divorce decree and restore the value of her share of John's total retirement pay. The court held that the original divorce decree had given Sandra a vested interest in the prewaiver amount of John's retirement pay and ordered John to ensure that she receive her full 50% without regard for the disability waiver. The Arizona Supreme Court affirmed, holding that federal law did not pre-empt the family court's order.

Held: A state court may not order a veteran to indemnify a divorced spouse for the loss in the divorced spouse's portion of the veteran's retirement pay caused by the veteran's waiver of retirement pay to receive service-related disability benefits.

This Court's decision in Mansell v. Mansell, 490 U. S. 581, determines the outcome here. There, the Court held that federal law completely pre-empts the States from treating waived military retirement pay as divisible community property. Id., at 594–595. The Arizona Supreme Court attempted to distinguish Mansell by emphasizing the fact that the veteran's waiver in that case took place before the divorce proceeding while the waiver here took place several years after the divorce. This temporal difference highlights only that John's military pay at the time it came to Sandra was subject to a future contingency, meaning that the value of Sandra's share of military retirement pay was possibly worth less at the time of the divorce. Nothing in this circumstance makes the Arizona courts' reimbursement award to Sandra any the less an award of the portion of military pay that John waived in order to obtain disability benefits. That the Arizona courts referred to her interest in the waivable portion as having "vested" does not help: State courts cannot "vest" that which they lack the authority to give. Neither can the State avoid Mansell by describing the family court order as an order requiring John to "reimburse" or to "indemnify" Sandra, rather than an order dividing property, a semantic difference and nothing more. Regardless of their form, such orders displace the federal rule and stand as an obstacle to the accomplishment and execution of the purposes and objectives of Congress. Family courts remain free to take account of the contingency that some military retirement pay might be waived or take account of reductions

in value when calculating or recalculating the need for spousal support. Here, however, the state courts made clear that the original divorce decree divided the whole of John's military pay, and their decisions rested entirely upon the need to restore Sandra's lost portion. Pp. 6–8.

238 Ariz. 407, 361 P. 3d 936, reversed and remanded.

Breyer, J., delivered the opinion of the Court, in which Roberts, C. J., and Kennedy, Ginsburg, Alito, Sotomayor, and Kagan, JJ., joined. Thomas, J., filed an opinion concurring in part and concurring in the judgment. Gorsuch, J., took no part in the consideration or decision of the case.

OREGON SUPREME COURT

No Supreme Court family law decisions during this period.

OREGON COURT OF APPEALS

Attorney Fees

In the Matter of the Marriage of John N. HOFFMAN, Petitioner-Respondent, and Marlee Ravenscroft HOFFMAN, Respondent-Appellant, 285 Or App 675 (2017)
http://www.publications.ojd.state.or.us/docs/A161234.pdf

Marion County Circuit Court 14DR09031; A161234 Jamese Lou Rhoades, Judge

Ortega, P. J.

Wife appeals from a dissolution of marriage judgment, assigning error, in part, to the trial court's award of attorney fees to husband.

Held: The trial court erred in awarding attorney fees to husband because it did not comport with the procedural requirements of ORCP 68. Attorney fee award vacated and remanded; otherwise affirmed. COA 05.24.17

Child Support

STATE OF OREGON ex rel DEPARTMENT OF JUSTICE and Jennifer D. Buck, Petitioners-Respondents, v. Robert W. AKINS, Jr., Respondent-Appellant. 285 Or App 217 (2017)

http://www.publications.ojd.state.or.us/docs/A157536.pdf

Lane County Circuit Court 170223291; A157536 Clara L Rigmaiden, Judge

Armstrong, P. J.

Father appeals a judgment establishing a child support arrearage against him. He asserts that the trial court should have given him a credit against the arrearage based on mother's acknowledgement that father had 50 percent parenting time with the child for the entire period that the arrearage covered.

Held: Under ORS 107.135(7)(a), a trial court cannot give a credit against a child support arrearage for reasonable parenting time. Because father sought a credit only for his reasonable parenting time with the child, the trial court did not err. Affirmed. COA 05.03.17

Family Abuse Prevention Act

M. D. D., Petitioner-Respondent, v. Kassten F. ALONSO, aka Kassten F. Alsonso, Respondent-Appellant, 285 Or App 620 (2017)

http://www.publications.ojd.state.or.us/docs/A160408.pdf

Multnomah County Circuit Court 15PO04551; A160408 G. Philip Arnold, Senior Judge

DeHoog, J.

Respondent in a proceeding under the Family Abuse Prevention Act (FAPA) appeals an order prohibiting contact with petitioner. Respondent contends that the issuance of the FAPA restraining order was inappropriate for three reasons. First, respondent contends that the record does not support the trial court's finding that abuse occurred. Second, respondent asserts that the court erred by failing to make two findings that were essential to the issuance of a FAPA restraining order, specifically, that petitioner was in imminent danger of further abuse, and that respondent represented a credible threat to petitioner's safety. Third, respondent argues that the court could not have made those findings, because the record does not support them. In response, petitioner argues that respondent failed to preserve each of those contentions, but that, to the extent that the Court of Appeals considers them, the record supports the trial court's findings and the restraining order as a whole.

Held: As to respondent's first argument, evidence in the record supports the trial court's finding of abuse. The Court of Appeals did not consider the merits of respondent's second and third arguments, because it concluded that they were unpreserved. Affirmed. COA 05.17.17

Stalking Protective Order

D. M. G., Petitioner-Respondent, v. Genisis TEPPER, Respondent-Appellant, 285 Or App 646 (2017)

http://www.publications.ojd.state.or.us/docs/A161624.pdf

Jackson County Circuit Court 16SK00020; A161624 Ronald D. Grensky, Judge.

Flynn, J. pro tempore

Respondent appeals from the trial court's entry of a stalking protective order (SPO) pursuant to ORS 30.866(1). The trial court issued the SPO based on two incidents. In the first, respondent stood in front of petitioner at a high school football game and said, "[w]ouldn't it be funny if I maced her?" In the second, respondent directed a third party to smear fish on petitioner's car. On appeal, respondent argues that the trial court erred when it granted the SPO because neither contact qualifies as a basis for issuing an SPO under ORS 30.866(1).

Held: The trial court erred when it issued the SPO. The first incident, which involved expressive conduct, failed to satisfy the heightened standard necessary to be a qualifying contact under State v. Rangel, 328 Or 294, 303, 977 P2d 379 (1999). With respect to the second incident, petitioner's alarm as a result of having fish smeared on her car was not objectively reasonable Reversed. COA 05.17.17

Note on Opinions Reviewed:

The Editor tries to include all the Family Law related decisions of the Oregon Appellate Courts in these Notes. Some cases do not have holdings that have precedent significance however they are included to insure none are missed.