



Bar Bulletin

Home > Publications > Bar Bulletin

Hot Tips in Family Law

By Vince Wills | January 13, 2016

Hot off the press, here are some 'hot tips' in light of recent Rule changes and caselaw:

1. Effective January 1, 2016, section (b)(b)(A)(iv) is added to Maryland Rule 5-803 pertaining to hearsay exceptions where the unavailability of the declarant is not required. The change adds a new exception under paragraph (b) (8) - Public Records and Reports. The change permits the court, at a final protective order hearing, to accept the factual findings reported to a court pursuant to Family Law 4-505 (report of local department pertaining to abuse of a child or vulnerable adult), provided that the parties have had a fair opportunity to review the report. The committee note states that the court may be required to continue the final protective order hearing to provide the parties a fair opportunity to review the report and to prepare for the hearing.

2. Effective January 1, 2016, Maryland Rule 9-205.3 goes into effect. This Rule pertains to the appointment or approval of a person to perform an assessment in a case that involves child custody or visitation. Assessment includes a custody evaluation, home study, mental health evaluation, and a specific issue evaluation. The Rule sets requirements for custody evaluators, establishes mandatory elements that a custody evaluation must have, and contains requirements for the court order appointing or approving a person to perform a custody evaluation. The Rule further requires the custody evaluator to prepare a report, which may be oral, made on the record at a pretrial or settlement conference, or written. The Rule further sets parameters for copying and/or dissemination of the report. The Rule provides that the court may receive access to a report only if the report has been admitted into evidence. (There are exceptions for

access to the report upon stipulation of the parties or to a settlement judge or magistrate.) Finally, there are provisions pertaining to discovery, subpoena, and admission of the report without the presence of the assessor. The Rule also dictates that the Court is required to establish a maximum fee schedule for custody evaluations.

3. *The recent case of Friedetzky v. Hsia*, 223 Md. App 723, 117 A.3d 660 (2015) deals with interplay between the UCCJEA and UIFSA. In this case, the Court of Special Appeals held that a party waives immunity (from personal jurisdiction) contained in Section 9.5-108 of the UCCJEA by requesting that the court order paternity testing in his answer, and by initiating discovery pertaining to paternity and child support. Since the father in *Friedetzky* sought affirmative relief from the Maryland court, he not only waived the immunity under the UCCJEA, he also subjected himself to personal jurisdiction under Maryland UIFSA.

Facts: The parties had an affair in 2005 in New York where they were living at the time. *Friedetzky* was married to another man. Following a single act of relations, *Friedetzky* gave birth to a child. In 2011, *Friedetzky* and the child moved to Maryland. In 2013, *Friedetzky* filed a custody petition (seeking sole physical and legal custody) against *Hsia* in Maryland.

Hsia filed an answer wherein he requested that the court order genetic testing of the child to determine paternity. (He also sought attorney's fees, which he later withdrew.) Along with his answer, *Hsia* served interrogatories and 40 requests for documents pertaining to paternity and child support. He later sent a request for admission of facts. He also deposed *Friedetzky* and asked her questions pertaining to attorney's fees and child support.

Before the deposition, *Friedetzky* filed an amended complaint for the establishment of paternity, custody, child support and attorney's fees. In response, *Hsia* filed a motion to dismiss the paternity, child support, and attorney's fees claims based on lack of personal jurisdiction. The trial court initially denied the motion, but then changed its decision on a motion for reconsideration.

On appeal, the Court of Special Appeals reversed the trial court's dismissal, holding that *Hsia* waived the immunity provided by Section 9-108, by requesting that the court order genetic testing in his answer, and by conducting discovery on paternity and child support. By doing so, he subjected himself to personal jurisdiction under UIFSA.

The UCCJEA applies to proceedings involving custody and visitation. The UCCJEA does

not require the court to have personal jurisdiction over a party. Alternatively, UIFSA applies to child support and paternity proceedings and requires the court to have personal jurisdiction over a party before it can establish paternity or award child support.

Section 9.5-108 of the UCCJEA states: "A party to a *child custody proceeding*, including a modification proceeding, or a petitioner or respondent in a proceeding to enforce or register a child custody determination, is not subject to personal jurisdiction in this State for another proceeding or purpose solely by reason of having participated, or of having been physically present for the purpose of participating, in the proceeding." "Child custody proceeding" is defined as a proceeding in which legal custody, physical custody, or visitation of a child is at issue. "Child custody proceeding includes a proceeding for divorce, separation, neglect, abuse . . . *paternity* . . . in which the issue may appear.

In rejecting Hsia's argument that his request for paternity testing was part of a "child custody proceeding," the Court stated that the types of proceedings listed in the UCCJEA were merely intended to remove any confusion regarding the kinds of proceedings in which the determination of custody may be made. The CSA stated that had Hsia merely denied paternity, instead of requesting that the court order genetic testing, he would have been protected by the immunity provided by Section 9.5-108 and could have moved to dismiss the paternity and child support claims. However, since Hsia sought affirmative relief from the Maryland court, he purposely availed himself of the privilege of conducting activities in Maryland and subjected himself to the long arm provision contained in Section 10-304 (a)(2) of UIFSA.

Practice Pointer: To avoid being subject to personal jurisdiction under UIFSA, Hsia could have denied paternity as his defense or averred a lack of sufficient information to admit or deny. The effect would have been to force Friedetzky to file suit for paternity and child support in a state that had personal jurisdiction over Hsia (presumably New York).

Vince Wills, Esquire is the immediate past Chair of the Family and Juvenile Law Section Council and is a partner at Dragga, Hannon, Hessler & Wills, LLP in Rockville, Maryland.

Special Focus

Columns

[For Members](#)
[CLE](#)
[Become A Member](#)
[For the Public](#)

[Member Groups](#)
[Publications](#)
[Legal Resources](#)
[About Us](#)

FOLLOW MSBA:

Maryland State Bar Association | 520 W. Fayette Street, Baltimore, Maryland 21201 | (410) 685-7878 | (800) 492-1964

[Copyright](#) | [Privacy Policy](#) | [Site Map](#) | [FAQs](#)