



The Star-Ledger

Citizenship means nothing for a little girl torn from her mother

Thursday, October 13, 2005

Well, it's all set.

Arianna Adan, only 5 and born an American citizen, will be taken from her home in Elizabeth, removed from school, escorted to the airport by armed federal marshals – your tax dollars at work – and flown to Argentina.

Its government will place her in a foster home or other temporary shelter while she awaits the outcome of a custody hearing, scheduled for Nov. 24 in Buenos Aires.

"We helped set it up," says Walter Lesnevich, a Hackensack lawyer who works for Arianna's father, Ariel Adan.

Elena Mazza, her mother and also an American, with whom Arianna has lived since birth, can come if she wants. But Adan has filed criminal kidnapping charges against her in Argentina – although he signed a separation agreement giving her custody of Arianna – so there's a good chance Mazza will be locked up when she touches down.

Mazza also says she fears what Adan will do to her – that's why she fled Argentina with Arianna two years ago. Adan denies abusing his ex-lover (they never married), but admits he did, in fact, recently plead guilty to violating a restraining order in an unusual, maybe spectacular, fashion.

When he was in a state court in Elizabeth to answer a prior charge, he broke away and tried to get into the room where sheriff's officers wisely keep plaintiffs in domestic violence cases away from those who might inflict violence on them.

"I did nothing but try to tell her I love Arianna," says Adan. Mazza says he tried to grab her. A sheriff's officer felt Adan belonged in handcuffs. Just in case.

All this does not seem a good outcome for Arianna, a bright, wide-eyed youngster articulate in two languages. Who lives in a home with her mother, grandmother, two aunts and a cousin, a little girl her age.

"All women," says Mazza. "I think we like it that way."

But uprooting Arianna – stripping her of protections she would have in New Jersey courts – is the certain outcome unless a three-judge federal appeals panel in Philadelphia overturns a district court decision ordering Arianna's deportation.

It was a decision that had to do with this country's treaty obligations to return "abducted" children (even if they were the kids of battered women) and absolutely nothing to do with Arianna's best interests.

"Why would anyone want to do that to a little girl?" asks her mother. "She is happy here. Why would her mother want it?"

Before I wrote about Arianna last week, I tried to reach Adan. His lawyer declined an interview

NEW YORK POST

25 CENTS

LATE CITY FINAL

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DEPORT GIRL, 5, SPARED Can stay in U.S.

New York Post, Wednesday, February 15, 2006 nypost.com



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By JEANIE MACINTOSH

A 5-year-old New Jersey girl facing deportation got a sweet Valentine's Day surprise: a federal-court ruling that lets her stay in the United States with her mom.

Arianna Adan, an American citizen who faced deportation to Argentina — the home of the father who allegedly molested her — was spared, at least for now, by two appellate judges, who struck down an earlier ruling to send the kindergarten packing.

"I'm so happy, so thankful to them and to God," Arianna's jubilant mom, Elena Mazza, said after the decision came down.

The appeals court blasted as "extremely troubling" a June decision by Newark Judge William Walls to send Arianna back to her father, Ariel Adan.

Adan had invoked the Hague Treaty, a pact designed to prevent parental kidnappings in custody disputes, after Mazza, alleging years of abuse, spirited the girl from the family home in Argentina in 2004.

The appeals court said Walls "abused [his] discretion" and "erred" when he decided that Mazza's claims of abuse by Adan — although "credible" — weren't enough to override the treaty.

with certain exceptions, custody cases must be heard in the country where the child mostly lived — in this case Argentina.

But the higher court, citing several factors that could be viewed as exceptions, has ordered Arianna's case be reheard.

"I can't believe it. This has got to be a sign," said Mazza, who was standing in front of the church of her daughter's Catholic school in Elizabeth when she got the good news.

The appeals court noted that Adan offered no proof Mazza's removal of Arianna from Argentina was illegal.

The higher court was also concerned Walls "overly compartmentalized" Mazza's child-abuse claims, noting that while there might be "an innocent explanation for each allegation in isolation, taken together they are far less easily explained."

"The higher court agreed that the judge did not look at the totality of the circumstances. He did not appreciate the depth or the extent of abuse in this case," noted Mazza lawyer Elliot Gourvitz.

"The higher court was concerned that, while each of the single allegations might be explained away, the totality of them was so horrific that it needs to be re-examined."

The treaty certifies that

jeanie.macintosh@nypost.com



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THE COMPLEAT LAWYER

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LAW NOTES

The Stepparent's Obligation to Support a Spouse's Child



BY ELLIOT H. GOURVITZ

In these days of multitudinous divorces, remarriages, and extended families, the stepparent increasingly is being called on to contribute to the support, either directly or indirectly, of his or her spouse's children.

According to the Bureau of the Census estimates, 35 million American adults currently live in stepfamilies, and 1,300 new stepfamilies that include children under age 18 are created daily. If the current trend continues, 45 percent of all newborns will be part of a stepfamily or single-parent family before they turn 18.

The pervasiveness of stepparents, coupled with a high incidence of natural parents defaulting on their child support obligations, has compelled the courts to look beyond the biological parents to maintain support for minors. Courts are seeking alternative sources of income, either as a substitute for those who are responsible for the initial support obligation, or as an additional income fund.

A general practitioner must know how his or her particular state's statutes regarding the stepparent-stepchild relationship. A lawyer also should be aware of the techniques used to assert liability for child support on the stepparent.

Most states begin with the axiom that it is both biological parents' responsibility to support their infant child, although some phrase it differently or achieve

that result by different means. In California, for instance, the primary responsibility for child support rests with the father. But if he is unable to provide adequate support, then the mother is called on to help. In the proper circumstances, both parents owe a duty to support their child. *West's Ann. Civ. Code*, 196; *Chapin v. Superior Court*, 239 Cal. App. 2d 851, 49 Cal. Rptr. 199, 202 (Dist. Ct. App. 1966).

In New Hampshire, the support obligation is succinctly stated: "Every person . . . owes a duty to support . . . his or her . . . child . . ." (*Logan v. Logan*, 424 A.2d 404 (1980)). Louisiana concurs: "Fathers and mothers, by the very act of marrying, contract together the obligation of supporting, maintaining and educating their children." Pennsylvania's statute requires: "Both mothers and fathers are obligated to contribute to the support of the children in accordance with their respective abilities to pay." *Costello v. LeNoir*, 462 Pa. 36 (1975).

Courts in most states require indirect contributions by a stepparent, but New Hampshire, under its Uniform Civil Liability for Support Act, RSA 546-A:2, imposes on stepparents the duty to support their stepchildren in a manner equal to and coextensive with their obligation to support their natural children. Although common law denies any legal obligation of the stepparent to support his or her stepchild,



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| 7:30 a.m. - 8:30 a.m. | Continental Breakfast & Registration - Exhibit Hall |
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| 9:00 a.m. - 10:30 a.m. | Hot Tips from the American College of Family Trial Lawyers
<i>Elliot H. Gourvitz, Esq.</i> |
| | Trial Techniques
Evidence - New High Tech Developments, including video simulations, computer graphics, animations and the question of admissibility.
<i>Honorable Joseph P. Testa, J.S.C., Robert J. Durst, II, Esq., and Charles C. Abut, Esq.</i> |
| 10:30 a.m. - 10:45 a.m. | Coffee Break - Exhibit Hall |
| 10:45 a.m. - 12:15 p.m. | Successfully Developing a Case Theme
<i>Charles A. Matison, Esq. and Ronald B. Rosen, Esq.</i> |
| | Domestic Violence Update
<i>Mark Biel, Esq.</i> |
| 12:15 p.m. - 1:15 p.m. | Luncheon - Exhibit Hall |
| 1:15 p.m. - 2:45 p.m. | Valuation - How to Value a Medical Practice in these Changing Times
<i>David Shuffler, The Paragon Group and Richard A. Russell, Esq.</i> |
| 2:45 p.m. - 3:00 p.m. | Coffee Break - Exhibit Hall |
| 3:00 p.m. - 4:00 p.m. | Matrimonial Taxation
<i>Alan Winters, CPA and Kalman Barson, CPA</i> |
| 4:00 p.m. - 5:00 p.m. | ATLA-NJ Membership Meeting & Elections |
| 5:00 p.m. - 6:30 p.m. | Wine and Cheese Reception & Award Presentation |
| 6:30 p.m. - 11:00 p.m. | Membership Party |

REGISTRATION INFORMATION ON REVERSE SIDE

LOVE PUT HIS FAT IN THE FIRE, BUT SAUSAGE KING JIMMY DEAN SAYS HIS NEW SWEETIE IS WORTH THE HEAT



His divorce "is not pleasant, but it's right," says Dean (with new love Donna Meade). "I'm the happiest I've ever been."

Even in Nashville, the town where fortunes are built on cheatin' songs, folks still expect affairs behind closed doors to stay there. Which may explain why fans were just a bit shocked when country singer-turned-sausage king Jimmy Dean showed up on cable TV's *Nashville Now* smiling and holding hands with a former country lounge singer named Donna Meade. The two even cooed a duet—"Have You Ever Been Lonely?"

Not lately. Dean, 62, and Meade, 37, have been inseparable for the past 10 months, a fact of considerable interest to Mary Sue Dean, 62, the singer's wife of 40 years. Mary Sue isn't talking right now, but in court depositions filed last year, she said Dean acted like "an angry tyrant" at times and accused him of mental cruelty, habitual drunkenness and

adultery, naming Meade as the other woman. In a countersuit that read like a first draft for *The War of the Roses*, Dean charged his wife with being "completely unsupportive" and refusing to visit his hospital bedside during "life-threatening" oral surgery in 1987 and a bout with skin cancer last year.

Dean, who calls his relationship with Meade "the prettiest thing I've ever known in my life," says he's angered by the home-wrecker charges being hurled at her. "Nobody, man or woman, has ever wrecked a good marriage," he says. "My marriage was shot a long, long, long time before." The couple say they'll wed as soon as the *i*'s are dotted on Dean's divorce, and to hush gossip they have already signed a prenuptial agreement—at Meade's insistence. "I don't want any-

body to think that I want to marry him for any other reason except that I'm in love with him," she says of the pact, which states that she has no right to a share of any wealth Dean accumulated before their marriage.

That business tended to, the couple set out on a Bahamian cruise aboard Dean's 110-foot yacht, the *Big Bad John*. Decked out in teak, with white carpeting (no shoes allowed on board), the boat has six bedrooms, five baths (some with gold-plated fixtures), a main salon with sectional sofas, a gourmet chef and a crew of two.

Mary Sue Dean, who has lived alone in New Jersey since Dean moved out last April, hasn't said how she feels about her husband's new love. But apparently not all of the couple's children are thrilled. Dean's eldest son, Garry, 39, a restaura-



New Jersey Family Lawyer

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FEBRUARY 1986

Change of Name: The Procedure Step by Step

by Elliot H. Gourvitz

The procedure for change of name of an individual is governed by both R.4:72-1, *et seq.* and by N.J.S.2A:52-1 *et seq.* neither of which are all inclusive of the requirements and must be read together in order to fully comply with each county's special individualized requirements.

Step 1, The Complaint. The complaint is captioned in the county in which the petitioner lives, and may be made by a guardian or parent on behalf of the infant children, i.e., "IN THE MATTER OF THE APPLICATION OF JANE DOE for leave to assume the name of JANE SMITH." The jurisdiction is in the county's Law Division.

The introductory clause sets forth name of the petitioner and if the petitioner is a minor, the name of the petitioner's parent or guardian as follows:

JANE DOE, by her mother and natural guardian ALICE SMITH, residing at 2424 Morris Avenue, Township of Union, and State of New Jersey, by way of complaint says:

The complaint should include the following information:

(a) Date, citizenship and place of birth of the plaintiff;

(b) If a natural parent is involved, the circumstances surrounding the reason for change of name, i.e., non-support, abandonment; institutionalization; death; and parents' date of divorce, separation, and remarriage, and statement that the natural parent has been served by registered mail, return receipt requested;

(c) A statement "that the application is not made with the intent to avoid creditors or criminal prosecution or for other fraudulent purposes";

(d) A statement as to whether or not plaintiff has ever been convicted of any crime. (N.J.S.A. 2A:52-1)

(e) If the plaintiff has been convicted of a crime at any time, or if there are pending charges against him/her, a statement as the circumstances of the crime or the charges in such a manner as to enable a prosecutor to identify the matter, which would mean the caption of the criminal case, the county from which it arose, and the accusation or indictment number, as well as the date of conviction and sentencing.

(f) A statement that "there are no judgments unsatisfied on record against the plaintiff and no suits are pending against him/her. If there are such judgments unsatisfied of record or suits pending, they must be identified by caption, county and docket number

(i) The name to which plaintiff wishes to assume, and the reason why he wishes to assume that name. Such reasons include easier name to pronounce, religious reasons, adoption of a stepparent's surname for an infant child after the mother has remarried, or any other valid reason.

In the event that the plaintiff has been using the assumed name and wishes to make it "legal", the reasons for using such an assumed name should be set forth, as well as the fact that he/she has been using it and now wishes to legally establish that surname by which he/she has been known, giving the periods of time he/she has been known by that name.

(j) The conclusion should be as follows:

"WHEREFORE the plaintiff desires to have legally established, his/her right to use the surname Smith (by which he/she has been known during the period of time aforesaid.)

WHEREFORE, plaintiff demands judgment pursuant to N.J.S.A. 2A:52-1 *et seq.* authorizing JANE DOE to assume the name of JANE SMITH."

DATED: _____

A.B.C., Attorney

(k) The complaint should be verified and state on behalf of the plaintiff or by his/her guardian under oath that the matters stated in the complaint are true and that the action is brought for the purpose as set forth in the complaint.

Elliot H. Gourvitz



Elliot H. Gourvitz practices in Union. He is a Certified Trial Attorney and a Fellow of the American Academy of Matrimonial Lawyers.

the Matrimonial STRATEGIST

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Volume VI, Number 2

March 1988

Equitable Distribution

PENSIONS

Non-Vested Pensions: N.J. Follows a Trend

By Elliot H. Gourvitz

New Jersey recently joined 27 other states and the District of Columbia in moving away from invoking vesting as a requirement to the distribution of pension benefits. In *Whitfield v. Whitfield*, 222 N.J. Super. 36 (App. Div. 1987), a case that puts New Jersey in sync with a nationwide trend, the court ruled that a pension which was earned during the marriage but which was neither vested nor matured at the time of the divorce was property acquired during the marriage and subject to equitable distribution.

With its decision, the state's Appellate Division broke with its long history of excluding all pensions which had not fully vested from any consideration in distribution of property upon dissolution.

Cliff Vesting

The parties in *Whitfield* were married in 1968. Sixteen years later, they began divorce proceedings. The defen-

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Enforcement

SUPPORT

Interstate Withholding Of Pay Hits Snags

By Robert D. Arenstein

Robert D. Arenstein, a Council Member of the ABA's Family Law Section, recently testified on the government's child support enforcement program before the House Subcommittee on Public Assistance and Unemployment Compensation and the Ways and Means Committee. In this article he discusses some of the problems in interstate enforcement that he discovered in preparing his testimony.

The Child Support Amendments enacted in 1984 required states to: (a) withhold income in intra- and interstate child support cases beginning when one month's amount of support became due, and (b) set up procedures for implementing liens against real and personal property.

Four years later, attorneys are still experiencing very basic difficulties in obtaining interstate wage withholding. Some of the most prevalent of these problems:

- Interstate cases receive the lowest priority for withholding. States appear to be so overwhelmed in trying to get rec-

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Woman Avoids
Ex's Lien
On Homestead

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Court taking aim at notario game

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that were denied or were fraudulent to begin with can result in deportation. The applicant, often with limited English, has no idea how to respond — and the notary public who prepared the forms all too often is nowhere to be found.

The continuation of such practices; despite a 1997 New Jersey law making the unauthorized practice of immigration law a felony, has moved the New Jersey Supreme Court's Committee on the Unauthorized Practice of Law into action. That panel last week issued an opinion laying out just what notaries public can and cannot do.

Specifically, the committee said it is an unauthorized practice of law for any notary public "to render assistance by giving advice or by preparing, reviewing, analyzing, or completing any forms, writings, pleadings, or other documents in person, in writing, electronically or otherwise."

Further, the opinion urges authorities to ensure commissioned notaries and notary applicants are informed of the new sweeping regulation.

This panel underscored that confusion results when notaries advertise in the language of the potential consumer, using words such as notario or notario publico.

"There have been many victims of 'notario fraud' because persons come to notaries thinking they will receive legal advice as they may have received in their

applications," said Clifton attorney William E. McAlvanah, chairman of the New Jersey State Bar Association's Immigration, Naturalization and Americanism Section.

Such petitions were doomed to failure because applicants were from countries where there clearly was no risk of persecution. The process provided a temporary advantage because the applicants were able to get work authorization in the interim.

But eventually an interview with immigration officials would be scheduled, the applicants often didn't show and a deportation order would be issued *in absentia*, said McAlvanah.

"We see the same pattern over and over," said Newark attorney Harlan G. York, whose law partner, Robert Frank, was among those who helped draft the 1997 law.

"Someone sets up shop in a community, any community — Chinese, Spanish, or whatever — speaks the language, and has some kind of certificate on the wall saying they're a notary. They call themselves 'immigration consultants' or 'immigration specialists,'" York said.

Promises

They make unrealistic promises and get clients, he said, because "people are so willing to believe there's someone out there who can help them."

Often, by the time those clients realize there's a problem and call a lawyer for

For example, one of Housman's clients, a U.S. citizen, used a notario to file permanent resident petitions on behalf of her two daughters in El Salvador. The petitions were approved, but there was a misstep at the next level of processing, when it appeared the mother did not have enough income to support the daughters.

She returned to the notario, who, instead of advising her to continue the process when she could show more income, filed the initial petitions again, wasting years of time. The girls entered the country illegally, and Housman, who only got the case after the mother went to other notarios, now is working on picking up the pieces.

"A notary would probably say, 'I'm not practicing law; I'm just filling out forms,'" said Housman. "But I, as an attorney, would say there are all kinds of ramifications for filling out those forms."

Attorney facing arrest

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really am. You are not ready, willing or able to come to work and only offered to do so because your disability was running out and you needed some excuse to get your unemployment."

And he further wrote, "Your appearance is not such that would be conducive to my clientele meeting and greeting you each day."

And the margin for error is shrinking she said, because authorities are more than ever stepping up strict enforcement of immigration laws.

Melvin R. Solomon of Hackensack too, stressed that "immigration law not just the filing of applications because "there are ramifications in every case."

For example, notarios will help people with criminal records file for naturalization, perhaps not realizing those applicants are putting themselves at greater risk of being detected and deported, he said.

And other problems can arise when notaries vanish.

Applications sent to the Department of Labor can take up to five years process, and by the time the agent responds, "the notario is gone, the papers sit in the mailbox and the case lapses."

Reporter Michael Ann Knotts can be reached at maknotts@njnews.com.

Attorney facing arrest

In a letter accompanying the arrest warrant, Rothschild said, "While the court did not need any further proof that Gourvitz is not impecunious," the court that he "was apparently able to make down payment and first month's rent new office space in Short Hills demonstrates that he has had the ability to. Ms. Rokos but has chosen not to."

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The Cannons argued (1) that the Mizrahis had no right to seek visitation after the adoption was completed and (2) that the Mizrahis had not met their burden of proving that Raquel would suffer harm if they were not permitted to visit with her. The Appellate Division reversed because it concluded that the Mizrahis had not met their burden of proof.

The Appellate Division began its analysis by addressing the Cannons' first argument, which focused on *In re Adoption of Child by W.P.*, 163 N.J. 158 (2000). In *W.P.*, the New Jersey Supreme Court held that a child's biological grandparents were not entitled to visitation under the grandparent visitation statute, N.J.S.A. 9:2-7.1, over the nonrelative adoptive parents' objection. The *W.P.* court recognized the "inherent conflict" between the adoption statute and the grandparent visitation statute, but it concluded that public policy and the adoption statute rendered the grandparent visitation statute inapplicable when a child has been adopted by nonrelatives.

W.P. court emphasized the importance of preserving the autonomy of the parents after the rights of the biological parents have been terminated. Cannons analogized their position in this case to that of the adoptive parents in *W.P.* The Cannons pointed out that the adoptive parents in *W.P.* had contact between the biological parent and the child and that the grand-

Turning to the Cannons' burden of proof argument, the Appellate Division identified *Moriarty v. Bradt*, 177 N.J. 84 (2003), as the relevant authority. Between *W.P.* and *Moriarty*, the U.S. Supreme Court decided *Troxel v. Granville*, 530 U.S. 57 (2000), which struck down Washington's grandparent visitation statute because it violated the fundamental due process rights of parents.

Moriarty concerned two teenagers whose father sought to prevent visits by the parents of their deceased mother. Reconciling *Troxel* with §9:2-7.1, the *Moriarty* court held that grandparents who seek visitation under the statute must prove by a preponderance of the evidence that the child will be harmed if visitation is denied. The *Moriarty* court found that the avoidance of harm to a child is the only state interest that can justify the infringement on parents' fundamental right to raise their children as they see fit, and it emphasized that the best interests standard does not apply to a parent's dispute with a third party. In *Moriarty*, the court found that the children had a "very extensive relationship" with their grandparents, and it concluded that visitation was necessary to prevent harm to the children.

In this case, the Appellate Division was "satisfied" that the Family Part had applied the best interests standard rather than the *Moriarty* standard. The appeals court set forth 18 possible harms to Raquel that the Family Part had obtained from the Mizrahis and

ATTORNEY'S FEES

Order To Return a Retainer Was Not Abuse of Discretion

FISCHER v. FISCHER, Appellate Division, A-5093-03T3, February 22, 2005, approved for publication February 22, 2005. By C.S. Bishop, J. Concurrence by Fall, J. Also on panel: Weiting, J. Argued from the Chancery Division, Family Part, Essex County (33 pages).

Facts-on-Call
Order Number 92317

In an old and difficult matrimonial matter, the Family Part did not abuse its discretion by granting the motion by the defendant's attorney to be relieved as counsel not long before the scheduled trial date or by requiring the attorney to return the defendant's \$10,000 retainer.

after Fischer claimed that Gourvitz was "dishonest" and that he had deceived her about the terms of the retainer agreement. Fischer opposed the motion. Although she no longer wanted to be represented by Gourvitz, Fischer felt that she had no alternative.

Fischer told the Family Part that she had paid the retainer to Gourvitz before seeing the retainer agreement, that Gourvitz promised that he would hold the check, and that she could read the agreement in a week. According to Fischer, Gourvitz cashed the check within 24 hours, and she had no funds "to go anywhere else." The Family Part relieved Gourvitz as counsel, and it directed that Gourvitz return the entire \$10,000 retainer to Fischer, of which \$2,500 would be paid to an expert retained on Fischer's behalf.

On Gourvitz's motion for reconsideration, the Family Part found that a review of the retainer agreement raised "very serious questions" as to its fairness to the client. The court forwarded a copy of the agreement to the Ethics Committee. The court found that Fischer opposed the motion only because she had to borrow the \$10,000 to retain Gourvitz and that she had no money to hire new counsel. The court noted that the case was almost four years old and that there had been a "parade" of attorneys in and out of the case and a "pattern of behavior" on the part of the litigant to demand recusal of

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In "a very old and highly contentious matrimonial action," the defendant Annette C. Fischer had retained Eljot H. Gourvitz, P.A. to represent her. Gourvitz moved to be relieved as counsel