

Oyez!

Winter Newsletter for the Young Lawyers Division 2008

Possession Agreements: Changing the Home State of a Child?

By Ashlie Weeks

I recently had the pleasure of representing a Mother who had signed what I will call a “possession agreement” regarding her minor daughter. She and the Father had signed a document that stated he would have possession of the child while she finished her studies in Florida (a period of time lasting between six months and one year). This document was signed shortly after the child turned three years old. The child had been conceived and had spent all of her life in Miami, Florida, and had only been to Tennessee for brief visits with the Father and his family. Beyond these intermittent visits, the Father had little contact with the girl prior to the agreement being drafted. The Mother and Father were able to interact amicably, but the Father made little attempt to foster a relationship with his child from his state of domicile, had sent little to no money for child support and rarely phoned the child as well. Upon completion of her studies, the Mother attempted to regain possession of her child; however, the Father had filed, and received an emergency custody order and would not relinquish the child back to her Mother. The Father claimed that the Mother had given him custody of the child and that was the clear intent behind their signed agreement, despite the fact that the word “custody” was not mentioned anywhere in the five-line document. I was retained immediately after the Mother was served and we began the process of retrieving the child from the Father.



I am happy to announce that we won in Court

and were able to establish there was no emergency for the emergency custody order. What is most interesting about this case, however, is that we truly won by default as well. There is a recent Tennessee Court of Appeals case regarding a similar “agreement” between two parents living in separate states, stating that this kind of parental visit does not constitute an intent to transfer the home state of the child, and the Mother had “no intention of forfeiting her status as custodial parent...”¹ The Court went on to state that

the agreement was for an “extended visitation period with the Father” only², and for our purposes, Tennessee therefore had no jurisdiction for any custody dispute and the Mother remained to be the custodial parent and the little girl was allowed to return to Miami with her Mother.

It is important to take note that the Mother immediately took action and retained an attorney once she received the emergency custody order from the court. While the written agreement was clear in its wording, and it did not grant custody to the father, the Father was nonetheless expounding this argument. He was also under the impression that he and the Mother had *verbally* agreed he was to have custody of the child, which simply was not the case. During the time the child was here in Tennessee, the Mother, the maternal grandmother, and the maternal great-grandmother had sent money and gifts, called weekly and made numerous visits to the Father’s home to

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NBA YLD
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From the President . . .



Emily Shouse

By the time you read this, the 2008 Davidson County High School Mock Trial competition will be in the history books. I have no doubt that it was a resounding success as a result of the hard work and commitment of the Mock Trial committee co-chairs Patrick Witherington and Kimberly Silvus and the Mock Trial committee members as well as the team coaches and the 250+ volunteers who volunteered as judges, bailiffs and scorers during five rounds of competition over two days.

This is one of the most visible YLD projects every year and it never fails to impress all who hear about it.

Thank you to Patrick and Kimberly and the Mock Trial committee and thanks to all of you who volunteered for making the competition a great success!

The YLD reception before the NBA Annual Banquet was another success. We had a great turnout and I hope that if you didn't make it there, you will be there this year. Thanks to Claudia Richardson and Ryan Levy for planning the event.

At the reception, four new NBA YLD Fellows were inducted. Fellows are past YLD members who made significant contributions to the YLD and its programs. Here is a little about the new YLD Fellows.

Jonathan Cole was on the YLD Board from 1996 until 2000. During that time, Jonathan served as chair of Teen Court, as the "Bar Czar" and on the founding committee for the YLD Fellows. From the NBA YLD, Jonathan went on to serve as president of the ABA YLD.

Tonya Mitchem Grindon served on the YLD Board for six years. Tonya was chair of the Law Week committee for two years before moving on to the Executive committee, where she served as Secretary for two years, before moving on to President-Elect and then President for the 2005-2006 year.

David Johnson's first year on the YLD Board was 1999, when he served as vice chair for Teen Court. The following year, he moved up to chair of Teen Court, where he worked for the next few years. His last year on the Board was 2005-2006, when David served as liaison to the ABA-YLD and TBA-YLD (a position formerly known as "Bar Czar").

David Thompson began his YLD career in 2001 as a member of the Mock Trial committee. In 2003, he did double-duty as co-chair of the Mock Trial committee and co-chair of the Race Judicata committee during its inaugural year. David was instrumental in the success of that new venture and continued to work as chair or co-chair of the Race Judicata committee for the next two years and last year he was a volunteer.

Finally, I would like to say thanks to all those who signed up to be on a YLD committee when they completed their NBA dues form. Everyone who signed up should have already received an e-mail from me putting them in touch with their committee's chair, but if you signed up and have not heard from me, please let me know.

It is not too late to sign up for a committee. If you would like to get involved, please contact me at eas@iplawgroup.com.

Emily Shouse is a shareholder in Waddey & Patterson, P.C. She is a registered patent attorney and concentrates her practice on patents, trademarks and related matters.

The Fifth Annual YLD Land Rover Race Judicata a Phenomenal Success

The Fifth Annual YLD Race Judicata was a phenomenal success. A record number of runners and walkers braved the hills of Percy Warner Park on either the demanding 5K or 10K course, and helped raise thousands of dollars for St. Luke's Community House. The final tally of funds raised has not been calculated, but details will follow in the near future.



Check out the race results and race photos at www.nashvillestriders.com and www.nashvillebar.org. This year's race brought out some of the area's top runners and several prominent civic leaders.

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Pictured from left to right: Allison LaRue (Race Judicata chair), Brian Diller (Executive Director of St. Luke's Community House), and Cyndi Parson (Race Judicata co-chair)

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spend time with the child. The Mother also repeatedly attempted to get her child back upon termination of the agreement. Although it appeared clear to everyone but the Father that this was a temporary arrangement, had the Mother waited an unacceptable period of time, the Father's argument about transferring custody might have been substantiated by the trial court.

Once the Mother, the child and the Mother's family returned to Miami, I received an email that thanked me for all I had done and letting me know that the child was happier than ever. I would like to claim this triumph as a personal and professional victory, but it was almost entirely a matter of precedent.

Endnotes

¹ Stanford v. Sylvain, No. M2006-01782-COA-R3-JV Tenn. App. 6 (2007).

² Stanford, No. M2006-01782-COA-R3-JV Tenn. App. , at

Ashlie Weeks is an attorney who maintains an office on Music Row where she focuses on construction law. She also practices in the areas of real estate, criminal defense, family law and contracts.



THE DAVIDSON COUNTY MOCK TRIAL COMPETITION WINNERS!



Congratulations Montgomery Bell Academy's Red Team - First Place (pictured), Hume-Fogg's White Team - Second Place, and University School of Nashville's Blue Team - Third Place!

The Mock Trial Competition was fierce and the display of legal skill and courtroom virtue by the young high school barristers made this lawyer look twice and listen intently as the competitors comparatively attributed fault and liability to the parties at bar during the competition. Montgomery Bell Academy's Red Team took top honors and Hume-Fogg's White Team was runner-up. These two teams will move on to the state competition.

The YLD would like to thank Patrick Witherington and Kimberly Silvus and all of the students, teachers, judges, scorers, bailiffs, jurors, attorneys, volunteers, parents and everyone else who helped make this year's Mock Trial Competition a success.

HAPPY HOUR!

THURSDAY, APRIL 10TH 6:00 – 8:00PM @ THE ADELICIA

**COCKTAILS AND LIGHT HORS D'OEUVRES PROVIDED BY THE ADELICIA
TOUR WILL BE AVAILABLE OF FURNISHED UNITS AND AMENITIES**

**RSVP TO RYAN LEVY - RDL@IPLAWGROUP.COM
OR CLAUDIA RICHARDSON - CLAUDIA.RICHARDSON@COUNSELONCALL.COM**

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Pictured from left to right: Justin McNaughton, Ted Graffam, Heather Graffam, and Lance Bridgesmith

VOLUNTEERS

The races would not have been possible without the assistance of the numerous volunteers who gave up their Saturday morning to direct traffic, register runners, hand out water along the course, and do all the other non-glamorous work that makes an event successful. Thanks to all. A special thanks goes to the Race Judicata committee who, in addition to all their race day duties, managed to keep director Allison LaRue from going temporarily insane.

AWARDS

After fierce and ardent combat among determined foes on the field of sport and the hills of Percy Warner Park on March 1st, winners were determined in the much anticipated team competition of the Land Rover Race Judicata V.

This year, the fastest law firm award and bragging rights go to: Riley Warnock & Jacobson, PLC. RWJ's team was anchored by Russell Tabor who ran an impressive 19:38. Also running for RWJ were Will Parsons and Jim Bowen, whose efforts led the team to a convincing win.



Pictured from left to right: Kendra Rodgers, Dawn Edmondson, Candice Reed, Claudia Richardson, and Katherine Howie

The gavels for this year's fastest lawyers for the 5K race go to Patrick Cooper and Claudia Richardson. The fastest 10k lawyers are Trey Harwell and Carolyn Schott.

A special thanks to the Race Judicata Committee and Volunteers:

Rob Baker, Emily Shouse, Russell Taber, Josh Phillips, Becca Brinkley, Audrey Taylor, Laura Roberts, Justin McNaughton, Libby Sanders, Candice Reed, Claudia Richardson, Chris Coleman, Patrick Witherington, Brian Neal, Robb Bigelow, Emily Walsh, Emily Plotkin, Mark Plotkin, Will Parsons, Ally Harper, Matt Potempa, John Mueller, Cyndi Parson, and Erin Polly.



by
Rob Baker

Word on the Street



Partners:

Wadley & Patterson has made an honest man out of long-time YLD board member, **Phil Walker** - its newest partner. Phil has requested that associates bow and/or curtsy before entering his office.

Mark Plotkin has also been named a partner (different than "a named partner") at Waller. Congratulations, Mark - now you can pay for your own insurance.

Births:

On January 5, 2008, Peter Robert Bigelow was born to **Robb** and Emily **Bigelow**. PRB came in at a half-inch under 21 inches and tipped Vanderbilt's scales at 7.7lbs. Rumors that Peter Robert's great aunt was Beatrix Potter have not yet been confirmed.

Mints: (This is a new section of the column where I am allowed to publish things that make very little sense, but keep taking up space in my brain) I was talking to my wife, Jenny, last night and told her that I was looking for a signature mint. "What are you talking about?" she said. "You know, mints - Altoids or something like that."

"Then go buy some mints. I don't get it. You're weird." I can't blame her - and it does sound weird when you say it out loud, but for months, maybe (definitely) longer, I've been looking for a mint that I can identify with. Its got to be the right flavor - cinnamon or wintergreen. There are no other serious contenders. I can't stand spearmint - it's so fake-buttery and arrogant. Part of me wishes spearmint would die, except that it distracts people from my favorites, which makes me feel better - like I'm special because I didn't fall for Mr. Wrigley's spear-O-mint hoax like all the other sheep blinded by the marketing machine telling them what flavors to like in direct defiance of what their own taste buds must have been screaming - 'this is fake and it tastes bad.' Wintergreen and Cinnamon are the Emmylou Harris and Patti Griffin to Spear-O-mint's Brittney Spears. Case closed.

I know some of you are saying "what about peppermint?" I don't have the same hatred for peppermint that I harbor for spearmint even though it, too, is ubiquitous. I like the flavor, but I just don't love peppermint enough for it to be MY mint. Point of fact, Jenny is the one that turned me on to peppermint - York's version - early in our marriage and I eat a lot of them, but I guess that's always going to be her mint, not mine. Besides, cinnamon and wintergreen taste better or at least I want them in my mouth way more than peppermint.

So, flavor is settled, but brand is not. I need to be able to pull out a box of mints that makes people say, "Hmmm, those are interesting mints. Rob must be wealthy, intelligent and powerful." Vermints are a cool-looking brand of mints. They have the right flavors and are sold in coffee shops and gourmet grocery stores - a bit pretentious, but unique enough to fit the bill. The other day, I was about to pull the trigger and adopt Vermints as my own when a co-worker pulled out his own box of the wintergreen variety. I couldn't copy Ted; that defeats the whole purpose - the mint has to be mine. I couldn't copy Ted's mints any more than I could drive the same kind of car as he drives - it's just creepy. Besides, Vermints are \$3.50 a box, which pretty much makes them more expensive than diamonds.

My identity crisis is not limited to mints. Every so often I try to come up with a signature guy-dish. Everybody knows that guy who makes great barbeque or has some secret recipe for bloody maries. I want my secret recipe.

Once, when Jenny and I were expecting a few of our couple friends over for dinner, I had a revelation - potato chips! I would make homemade potato chips that would blow everyone away. Jenny indulged me. I sliced up the potatoes and seasoned them from the top of my head - there is no recipe for genius, I reasoned. It would take time to perfect the chips, but that night would be their debut.

The lucky (blessed) few in attendance would point to that night and say "remember the first time we had Rob's chips?" It was going to be awesome. People would talk about the chips for years. They would love to come to our house hoping against hope that there would be chips. They would invite us to every party secretly wishing that I would whip up a batch and bring them along. People would say things like, "I hope Rob brings his chips," and "What do you mean you've never had one of Rob's chips - you've got to try them," and my favorite, "Rob, will you please make some of your famous chips?"

The chips sucked. Half of them were soggy and way too salty and the other half burnt and way too salty. Too much work for me to figure it out. They didn't have to be great from the start, but edible would have been nice. That's not the kind of signature I want. I'll come up with something else.

I'll eventually figure out the mints and the chips, but they're really symptomatic of a bigger problem - namely, that I am freaking insane. They say that crazy people don't think that they're crazy. If that's true, then what do you call someone that recognizes their own absurdity, but needs it like air and food? I'm not sure, but Jenny calls it weird and that seems about right.

AARON DOUGLAS AT THE FRIST

If you missed his exhibit at the Aaron Douglas Gallery at Fisk University last month and you are interested in African American Art, specifically Harlem Renaissance period paintings that depict many aspects of the journey of persons with African roots and their struggles in America, then you can still check out his exhibit at the Frist Museum until April 13, 2008.



Aaron Douglas was born in rural Topeka, Kansas in 1899. He won fame as a painter during the Harlem Renaissance period in New York during the 1920's and eventually settled down in Nashville, Tennessee at Fisk University where he founded the art department and taught students fine art for close to thirty years. To learn more about Aaron Douglas, The Aaron Douglas Gallery, or to make a donation to the school, please visit www.fisk.edu.



Extra, Extra Read All About It...

X-Men Team Up Again to Win Nashville Bar Basketball Tournament against Tough Team from Waller!

When asked to comment on the victory, team captain Xavier could only marvel at the way Shane Foster shot 3-pointers for Vandy, and Chris Lofton shot 3-pointers for Tennessee. Mr. X-Men further stated that he wished Stan Lee had created X-Men characters for these guys. Wolverine and other franchise players were not available for comment at press time.

TLAP

Do you know a Lawyer who is feeling sad? Call the Tennessee Lawyers Assistance Program and they will help your Lawyer Friend feel glad (or better). Call the Tennessee Lawyers Assistance Program at the number below for help dealing with a range of health and personal issues.

(615) 741-3238

Save the Date – Field Day

On May 3, 2008, from 11:00 a.m. to 1:30 p.m. (location TBD), the NBA YLD, in conjunction with the TBA YLD and the Napier-Looby Bar Association, will host a "YLD Field Day" for Big Brothers/Big Sisters of Middle Tennessee. It's a small time commitment for the day - only a couple of hours. Come show off your three-legged race and/or water balloon toss skills, get some free food and hang out with the kids. Contact Chris Coleman at ccoleman@lchb.com or 313-9000 for more information.

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Young Lawyers Division of the Nashville Bar Association

CALENDAR OF UPCOMING EVENTS:



<u>Date</u>	<u>Event</u>
March 26	Quality of Life Seminar
April 10	Happy Hour at Adelia
April 29	Law Week Luncheon
May 3	Big Brothers/Big Sisters Field Day
May 31	Ode to Otha
July 11	Carbolic Smoke Ball