NFLR
NEVADA FAMILY LAW REPORT

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Sexual Abuse Allegations: Separating Fact from Fiction

by Lewis M. Etcoff, Ph.D., ABPN, ABMP

A couple is in the midst of an acrimonious divorce. Anger and frustration builds week after week as custody and financial matters are not agreed upon. Suddenly, mother alleges that father has sexually molested a young daughter.[1] Physical evidence to support the allegation either does not exist or is equivocal. Father staunchly denies the allegation. The daughter is interviewed by Police, Child Protection Services and a local Counselor over a period of several months following the allegation. The Judge reluctantly must order supervised visitation for the father, to assure the child's protection. The father becomes livid at "the system."

Several weeks later father sees his daughter in a sterile, supervised environment, after not having seen her for weeks or perhaps months, due to the difficulty in arranging a visitation site. The daughter behaves tensely in her first few sessions with her father in this strange environment. No one is sure whether her reticence to "be herself" is due to a legitimate fear of her father; a fear derived out of her mother's communicating to her that father is dangerous; a discomfort derived out of an awkward situation; or a tension due to feeling torn between loyalties to her mother upon whom she most depends at the present time versus her father who she still loves very deeply.

This scenario is becoming increasingly common in our country as well as in Southern Nevada. Family lawyers, judges, and psychologists are being placed in the very difficult and sometimes impossible situation of having to determine whether a young child's behaviors or words suggest that she or he has been sexually abused. On the one hand, we can't afford to assume the child is misinterpreting her father's possibly innocent behavior; nor can we assume that her mother's sincerely presented suspicions are unfounded in fact. On the other hand, we cannot accept on the face of it that sexually abusive behavior has occurred; because, if we are wrong, enormous damage is done to the father's reputation in the community, his psychological functioning and his relationship with his daughter.

And so, when a sexual abuse allegation is made, we must protect the child. We must also make antithetical hypotheses; 1) That the mother may either be concocting the allegations in retribution; or else, on a subconscious level, may want to believe that the father has behaved inappropriately; and 2) That the mother is correct in her belief that abuse has oc-

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From the Editor

by Marshal S. Willick

The Section has a new Chair; at the Tonopah annual meeting, the Council elected Peter Jaquette of Carson City for a one-year term, succeeding Ishi Kunin, who just completed her second year as Chair. Incoming Vice-Chair of the Section is Mary Rose Zingale of Elko, and Sharon Claassen of Carson City has agreed to stay on as Treasurer. Bill Phillips has taken over the job of coordinating the annual Showcase, so if you have any opinions as to where it should be, or when it should be, or what topics should be the subject, please make them known to Bill. The Section owes a debt of gratitude to the outgoing officers who represented the interests of the Section's members, and worked hard to improve the conditions of practice in this field for all of us.

In other Bar-related matters, at least two members of the Section are running for the Board of Governors: Family Court Presiding Judge Steven E. Jones and Bruce I. Shapiro. Many members of the Section have complained, at the Tonopah open sessions and elsewhere, that the Board of Governors seems unresponsive and even hostile to the Section, its projects and goals, and even its membership. The election of these two Section members would go a long way toward ensuring due consideration of Section policies and viewpoints in the future. Mail ballots will be out soon, and ballots must be returned by June 14, 1993, prior to the annual meeting at the Hyatt Lake Tahoe.

As a benefit to the members of the Section, the Executive Council has made available to each Section member a free binder in which to keep all issues of the NFLR. If you were not present to get yours in Tonopah, please contact Ishi Kunin in Las Vegas, or Peter Jaquette, in Carson City, to obtain one.

The articles that have appeared in the NFLR during the past few years are a valuable research tool for Nevada family law, and should be retained. The Council has decided to sell back issues of the NFLR at $2.50 per back issue. Included in this issue is an index of the articles that have appeared in all prior issues of the NFLR. You can order from the editor.

To date, no responses have been received regarding comments, criticisms, or suggestions for improving the Affidavits of Financial Condition in Washoe and Clark counties. A northern Nevada committee is already working on amendments to Washoe County's form. Please send your observations to the editor; I'll compile them in advance of the discussion to take place at the next annual Tonopah Showcase in 1994. Again, one objective is the possible adoption of a single form to be used state wide. As practitioners, you will have to live with whatever the form requires, so if you have an opinion, please provide it.

Those interested in attending family law seminars elsewhere should note the upcoming four-day conference in New Orleans of the Association of Family and Conciliation Courts on May 12-15 (co-sponsored by the ABA Family Law Section). The emphasis this year is on economic impacts of divorce. The AFCC can be reached at (608) 251-4001. The truly adventurous could consider the "First World Congress on Family Law and Children's Rights" to be held in Sydney, Australia, on July 4-9 (co-sponsored by the ABA Family Law Section). The sponsors can be reached at (612) 256-4467 (Australia).

We should be reasonably pleased that Section membership is at 137. We now have separate judges, and will soon have separate rules of procedure, and perhaps a distinctive ethical code (the Bounds of

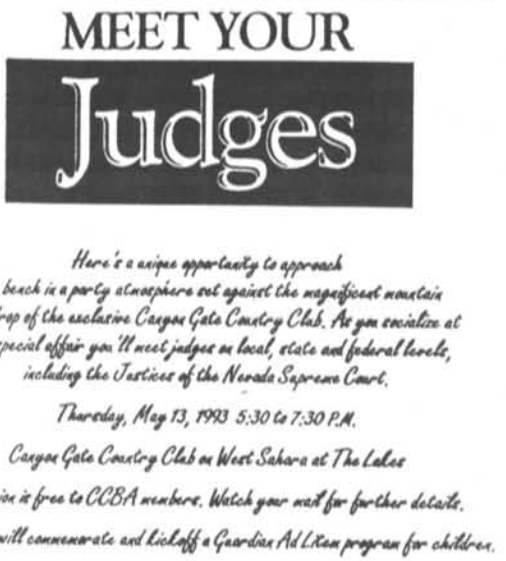
Advocacy). It is no longer a question of *whether* we will have specialization in the Bar; the question is how best to manage it, and whether we should insist on having some form of certification available to give some guidance to the public.

On the ABA front, you should know that the ABA House of Delegates has *approved* a resolution endorsing the recommendations of the U.S. Commission on Interstate Child Support. Those recommendations are far-reaching, and would affect several aspects of interstate (and, necessarily, intrastate) practice. The House also approved the Uniform Interstate Family Support Act, which is expected to largely replace URESA within the next two years.

Upcoming in the ABA is a policy struggle concerning the report of the Center for Children and the Law on "Obstacles to the Recovery of Parentally-Abducted Children." This report, to which William Hilton contributed (he was a star speaker at the 1993 Tonopah Showcase, for those who missed him), would make significant changes to the UCCJA and PKPA. For example, the report advocates eliminating indefinite continuance of exclusive continuing modification jurisdiction by the state where the "left-behind" parent resides. Essentially, it would increase uniformity and enforceability, at the price of increased federalization. Those interested can contact the editor, who is one of the five persons from the ABA Family Law Section studying the report for the purpose of devising a policy resolution endorsing or opposing some or all of the report.

Those who missed Tonopah can still get some of the benefits from that seminar. The Executive Council is making available, at a cost of $10.00 per disk, two diskettes. The first contains all of William Hilton's materials from Tonopah (including sample interstate custody pleadings, the Hague Convention, PKPA, and case cites). The second disk contains the sample pension division forms that went with Marshal Willick's pensions lecture (a military divorce clause set, the new model Civil Service clauses, and two forms of QDROs, one each for defined benefit and defined contribution plans). Contact Ishi Kunin in Clark County, or Mary Anne Decaria, in Washoe County, to order disks. The State Bar is also selling extra copies of the Showcase written materials. The comments from those attending the Showcase indicate that may have been the best seminar the Section has ever sponsored.

This issue of the NFLR contains a copy of the Judgment, Order, and Settlement Report Form. Please make a few copies, and take a few minutes to fill one out with a case you would like to share with the Section membership. We can all learn a lot about the substance and procedure that matters from day to day by keeping up with what happens at the trial level in cases other than our own.



Allegations con't

curred and that the father is lying to protect himself from prosecution. Together, these assumptions lead us to psychologically evaluate each of the parties in the hope that psychological tests in conjunction with the clinician's interviewing skills, together can determine fact from fantasy.

To this end, attorneys and judges hope that there exists psychological instruments that can reliably determine whether a person is lying, and whether a person is "the type of individual" who would, more likely than not, sexually abuse another child. While there exist objective personality tests, (e.g., the MMPI-II, MCMI-II) which contain validity indices that reliably measure a respondent's test taking attitude, a person of average intelligence who wishes to hide the truth can answer questions on the test in a way on that will cause the test to show an absence of pathology (a normal profile). More likely than not, the test's validity indices will illustrate that the person was unwilling to admit to any significant personal faults.

Nevertheless, in the criminal realm, where evidence must reach a stringent criteria of virtual certainty (beyond a reasonable doubt), a psychologist with two essentially invalid objective personality inventories cannot say "beyond a reasonable doubt" that the person who produced these invalid test results did so because he is likely guilty of the abuse. At best, the psychologist can determine that the tests were invalid because the person wanted to hide something about himself from the psychologist. Whether what the person wishes to hide has to do with sexually abusing his daughter cannot be known from these psychological tests.

Optimally, along with his perceptions of the couples' clinical presentation (behavior) during the interviews with them, both separately and conjointly, we can hope to establish whether either person is more or less believable. The person's believability is not only a function of an honestly and openly taken battery of psy-

chological tests, but is also associated with the person's openness during questioning and the depth and consistency of the person's answers to questions posed by the psychologist.

When an older child (nine years and older) of at least average intelligence is sexually abused, especially when the abuse takes place several times with the same perpetrator, the child's ability to recollect details concerning the times, places and specifics of the abuse should be substantial. If, however, the abuse takes place just once, or if it is relatively mild in severity, or if the child is less than average in intelligence, or if the child is much younger, e.g., three to five years old, or if the child is seriously threatened by the perpetrator, then it is much more difficult for the child to accurately recall or to accurately communicate substantial (and incriminating) evidence that meets the stringent criteria of "beyond a reasonable doubt."

To make matters worse, there is substantial research[2] suggesting that a younger child, in particular, when interviewed by multiple authorities (Police, CPS, parents, social workers), may have her recollections of the event(s) influenced or even distorted by several factors: 1) The child's desire to please the parent or authority figures, 2) The method of the authorities' questioning the child, 3) The number of interrogations itself, 4) The time between the alleged abusive events and the interviews with the child.

For an excellent review of the various intrapersonal, cognitive and environmental factors which together can influence and distort a child's recollections of events, see John Doris (Editor), *The Suggestibility of Children's Recollections: Implications For Eyewitness Testimony*, American Psychological Association, Washington, D.C., 1991. While not an easy book to read, it is an outstanding text on a child's ability to accurately recall traumatic events. It is very relevant to the work of family attorneys, Family Court Judges, and psychologists and counsellors who work with or assess children who may have been, or have been, sexually abused. The articles in the book are written by the foremost national and international authorities on children's memory functioning.

For a less academic and more pragmatic discussion of how to differentiate true from false sexual abuse allegations, Dr. Richard Gardner's new book, *True and False Accusations of Child Sex Abuse*, should be on our bookshelves. A very lengthy book of 742 pages, it contains chapters on the male and female pedophile, the child, the accuser, the medical evaluation, and interview techniques best used in questioning the accused, the accuser, and the child.

Dr. Gardner cautions the reader that there are no fool proof medical or other tests, or interview techniques that can validly and reliably determine whether a child was, or was not, sexually abused. He asserts that the decision is purely clinical in nearly all instances. This means, of course, that none of us can ever be entirely certain that our opinions in these cases are accurate without either the admission of guilt by the perpetrator or a witness to the abuse who confirms the abuse took place.

Dr. Gardner says, "I recognize that I am extremely critical of many (and probably most) of the people who are doing evaluations in sex-abuse cases. . . My experience, however, has been that the majority of those evaluators whose examinations I have had the opportunity to evaluate in depth exhibit significant deficiencies in their techniques (P. 263)."[3] Dr. Gardner states that "there is no generally recognized training program for sex-abuse evaluators. The field is basically "open territory" (P. 264).[4]

Therefore, attorneys and Family Court Judges must remain skeptical of the evaluations conducted in the area of child sexual abuse regardless of whether the evaluator has an M.D., Ph.D., M.S.W., or M.F.T. after his or her name. While a Masters Degree and above, as well as State licensure is a minimum sign of competence at best in the respective field, I would suggest that those among us who perform child custody, and particularly child sexual abuse evaluations, receive more formalized training.

This training should include familiarity with the best literature available, and should include continuing education workshops which are sanctioned by nationally recognized organizations such as the American Psychological Association, American Psychiatric Association, or National Association of Social Workers, Police, CPS professionals, Child Custody Specialists, Psychologists, Social Workers, Psychiatrists, and Marriage and Family Counsellors who wish to develop the requisite clinical skills to evaluate for sexual abuse should attend these workshops.

The actual evaluation itself must, according to Dr. Gardner, include evaluations of all relevant parties individually and sometimes conjointly. Dr. Gardner emphasizes the utility of the conjoint interview including the child and the alleged perpetrator interviewed together.

Sexual abuse evaluation may demand the use of more than one clinician. For example, neither a Marriage and Family Therapist nor a Social Worker, are trained in graduate school to diagnose the more severe psychiatric and psychological disorders of children or of adults. A Clinical Psychologist is probably best trained to evaluate the children and adults because of the many tests which they use to uncover personality or cognitive disturbances that may be pertinent to the case. Nevertheless, a Child Psychiatrist, Marriage and Family Therapist, and Social Worker with a Masters Degree, can interview the child and adult and may have the background and experience in this area to perform an excellent evaluation. In the end, the Family Court Judge and attorneys must leave the evaluation in the hands of the mental health professional. This professional must not hesitate to refer any of the people he or she is evaluating for additional interviews with related professionals.

Last, but not least, most authorities in

NFLR JUDGMENT, ORDER, AND SETTLEMENT REPORT FORM

Knowing what is happening at the trial level in Family Law will help all of us to be better practitioners. Please share with the Section what is happening in any case you think is significant, either because it typifies rulings in an area, or appears to be contrary to normal rulings in that area.

CASE NAME: _____ DATE: _____

PROCEDURAL STATUS: ☐-Pre-Trial Motion ☐-Trial/Settlement ☐-Post-Trial Motion

COUNTY: _____ DEPT./JUDGE: _____ CASE NO.: _____

POINT OF PRIMARY INTEREST: ☐-Procedure ☐-Custody ☐-Visitation
☐-Child Support ☐-Spousal Support/Alimony
☐-Property Division ☐-Other

EXPLANATION/SUMMARY: _____

_____

_____

_____

_____

_____

_____

_____

_____

ATTORNEY(S): PLAINTIFF: _____ DEFENDANT: _____

OTHER RELEVANT PERSONS--EXPERTS/WITNESSES/ETC: _____

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the field of child sexual abuse evaluation, have come to recommend that the first professional (and subsequent professionals, if possible) who examine the child should videotape the interview, or audiotape it if videotape is not available. The videotape is preferable as it allows subsequent experts and State officials to determine whether the questioning of the child was adequate and fair or whether undue pressure was applied that may have influenced the child to alter his or her recollection of the alleged events. Subsequent videotaped interview of the child, sometimes occurring months later, can be compared to the first videotape to help investigators detect changes in the child's presentation which may be due to the passage of time, faulty long term recollection of events, or influences placed on the child by other adults. In any event, the sexual abuse evaluation is one of the most complicated and difficult of all evaluations that mental health professionals perform.

Notes:

[1] Allegations can be made by fathers against mothers also. For purposes of illustration, I used the scenario of mother making allegations of sexual abuse against father because it is the more common scenario.

[2] Doris, John (Editor), *The Suggestibility of Children's Recollections: Implications For Eyewitness Testimony*, American Psychological Association, Washington, D.C., 1991.

[3] Gardner, Richard A., M.D., *True and False Accusations of Child Sexual Abuse*, 155 County Road, Cresco, New Jersey, 1992.

[4] Ibid.

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Order from Editor Marshal Willick, 330 South Third Street, Suite 960, Las Vegas, NV 89101

CASE SUMMARIES

◆ **Deviance disfavored; spousal income irrelevant; "relative income" means gross income, not net surplus**

Lewis v. Hicks, 108 Nev. ___, ___ P.2d ___ (Adv. Opn. No. 173, Dec. 22, 1992) Action by former wife to increase child support; Referee recommended and trial court affirmed setting support at half of formula amount. NRS 125B.020, .010, .080(5), (6), (9) interpreted. Quoting *Barbagallo*, 105 Nev. 546, 552, 779 P.2d 532, 536: "[A]pplication of the formula must be the rule, and deviation from the formula for the benefit of the secondary custodian must be the exception." To justify such deviation, a basis in injustice and unfairness to the secondary custodian must be set forth. Here, only finding was that surplus of total net income over expenses was $92.00, which was insufficient to support deviation from the formula. "Although the trial judge's discretion will continue to play an important role within the confines of the statutes, it cannot go beyond them." Referee's "formula" of adding surplus over expenses to prior support order rejected as "significant departure from the statutory scheme."

Referee had considered income of noncustodian's spouse. "The statutory scheme does not authorize consideration of spousal income. In fact, the Nevada Legislature rejected a proposal to include spousal income. . . . A trial judge might properly consider spousal contributions where they have a significant impact on recognized statutory factors, such as the parents' standards of living or their relative financial means. However, Nevada law does not authorize using spousal income directly."

Referee's balancing of equities out of sympathy for non-custodian's financial problems and breakdown of his second marriage disapproved. Ability of custodial parent to make up some of shortfall, so needs of child are met, does not give district court unfettered discretion in determining how to supplement the income of the custodial parent. "Child support is not calculated as a supplement to the presumably inadequate means of the custodial parent. NRS 125B.070 specifies a parent's duty of child support according to the parent's means rather than according to the child's needs. Although the ultimate policy objective may be the welfare of the child, the legislative scheme implements this policy by focusing the court's attention upon a parent's statutory duty to provide a fixed percentage of his income as support. . . . Where no special circumstances exist, courts must focus exclusively upon the noncustodial parent's duty to pay a fixed percentage of income." Here, consideration of custodian's surplus inappropriate since no explicit finding of special circumstances.

Further, record could not support a finding of special circumstances to rebut statutory presumption in favor of the formula, repeating *Barbagallo*'s emphasis on "the standard of living of the parties, their earning capacity and their relative financial means." Here, non-custodian had more assets, but non-custodian had three times higher income, which facts "favor raising . . . child support obligation, rather than reducing it." NRS 125B.080(9)(1) "relative income of both parents" does not refer to net surplus, but gross income. There was no large disparity in standards of living. Modification of support due to "responsibility of the parents for the support of others" may be based upon noncustodian's prior or subsequent family obligations, citing *Hoover*, 106 Nev. 388, 793 P.2d 1329 (1990) and *Scott*, 107 Nev. 837, 822 P.2d 654 (1991), but Court notes Bar's Child Support Committee's conclusion that legislature has not yet resolved the question of how courts should apply that statute. Application is within trial court's sound discretion, but courts should "apply it cautiously." Here, non-custodian had re-

married, had new child, and a spouse who worked. Not every decision to reduce support on such facts would "invariably rise to the level of abuse of discretion," but such a decision should be the exception rather than the rule.

◆ **Employer allowed to replace pregnant worker**

950 Ryland, Inc. v. Daane, 108 Nev. ___, ___ P.2d ___ (Adv. Opn. No. 148, Nov. 10, 1992) Appeal from judgment for violation of maternity leave statute reversed. Employer had unwritten policy allowing six to eight weeks of maternity leave, but agreed to give employee with risky (twins) pregnancy four to six months. When she called in three and a half months later, she was told her position was no longer available. NRS 613.335 states that employers who allow leave for a medical condition must allow same leave for pregnancy. Here, employee had not proven that same leave had been granted to others. (Court did not address at all employer's having lied to employee.)

◆ **Bankruptcy by husband to avoid property payments permits spousal modification of alimony to permanent for "changed circumstances"; modification motion filed while there is an arrearage is timely**

Siragusa v. Siragusa, 108 Nev. ___, ___P.2d___(Adv. Opn. No. 152, Dec. 3, 1992) Appeal from order granting motion to modify alimony terms of decree. Doctor husband fell into arrears in property settlement and alimony payments. Wife reduced arrears to judgment, and husband filed bankruptcy, wiping out $1,300,000.00 in property arrears. Alimony award survived, and District Court ordered increased alimony on new schedule to pay off original judgment. Wife moved to modify before the last day of the new schedule of payments, although husband prepaid the last months and had already actually satisfied the judgment, alleging changed circumstances from the bankruptcy. Referee recommended alimony at existing rate made permanent. Husband failed to object, but appealed.

NRS 125.005 was not intended to delegate judicial power, but rather certain fact finding and recommending power. Failure to Object precludes further review by District Court, but not the ability to appeal.

Under NRS 125.150(7), the District Court's jurisdiction is "co-existent with the alimony order itself," so alimony award can be modified until the time for making final payment passes, whether or not husband prepays (citing *Schryver*, 108 Nev. 190, 826 P.2d 569 (1992). Fact that original alimony award had expired was "unpersuasive," since period of extension was caused by husband's failure to make payments and wife's obtaining arrearage order: "Where the supporting spouse is in arrears at the expiration of the original alimony term, modification of the alimony award is proper after the expiration of the original alimony term."

Acknowledging that whether an obligation is dischargeable in bankruptcy is a matter of federal law, court noted that state and federal courts have concurrent jurisdiction to determine whether a debt is one for property settlement or one for alimony and support. Court joins majority elsewhere in holding that discharge of a property settlement obligation in bankruptcy may be taken into account in determining whether the parties' circumstances have changed sufficiently to justify a modification of alimony, although question is "a close one, and two strong competing interests must be weighed." Court looked to supremacy clause, but found no preemption of state law permitting alimony modification "to compensate the wife for the discharged obligation." Consideration of post-bankruptcy circumstances not antagonistic to the federal "fresh start" policy of bankruptcy relief.

◆ **Almost married is close enough to attain "community property by analogy"**

Michoff v. Michoff, 108 Nev. ___, ___ P.2d ___ (Adv. Opn. No. 144, Nov. 5, 1992) Nine year cohabitant (Lois) brought declaratory action for equal division of property accumulated during cohabitation. Court noted in passing Max's concealment of $50,000.00 from his former wife and divorce court, terming it fraud. Lois changed her last name to that of Max, and actively participated in business, with both as co-signors and corporate owners, and Lois as license holder. Max held Lois out as his wife, and had her sign a spousal consent form to a contract he entered. They filed joint tax returns as husband and wife, designating corporate profits as community property. Trial court found express and implied agreement between parties to acquire and hold property as if they were married, that community property laws applied by analogy, and granted judgment against Max and the corporation for half of net assets.

Citing *Hay v. Hay*, 100 Nev. 196, 678 P.2d 672 (1984), Supreme Court found that complaint was adequate under notice pleading to set forth contract claim. Defense that recognition of claim would violate public policy encouraging marriage rejected, since policy not furthered by allowing "one participant in a meretricious relationship to abscond with the bulk of the couple's acquisitions." Court saw its role as protecting parties' reasonable property expectations. Again, *Marvin v. Marvin*, 557 P.2d 106 (Cal. 1976) approved; conduct demonstrating an implied contract for partnership or joint venture, if proven, to be given effect. Parties "may agree to hold all property acquired during the relationship in accord with the law governing community property.... unmarried couples are not precluded from holding their property as though they were married.... In such a case, the community property law can apply by analogy."

Trial court's finding of express contract reversed for lack of evidence, and judgment against corporation reversed since it was not a party to the contract and so could not breach it. "No view intimated" as to whether trial court should appoint a receiver.

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Ed. Note: There were some errors in the numbering sequence printed on some issues. The dates listed are those printed on the actual newsletter.

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Extensive dissent by Justice Springer, decrying "*Michoff* doctrine" of permitting "community property by analogy" (CPBA), stating that it is an unprecedented extension of *Hay*, disregards contract focus for status focus, reimposes common law marriage, goes beyond a legal recognition of "putative spouses" who believe in good faith but incorrectly that their marriages are valid (which our law also does not appear to recognize), that the majority holding has no bound as to gender or number of persons who might claim CPBA property rights, that CPBA is a disincentive to marriage, and that divorce courts should not be open to unmarried persons.

◆ **Wife entitled to trial opportunity to prove intentional misrepresentation**

Blanchard v. Blanchard, 108 Nev. ___, ___ P.2d ___ (Adv. Opn. No. 140, Oct. 23, 1992) Nearly two years after filing for divorce in 1989, a decree was entered in 1991, incorporating a property settlement agreement from a month earlier. The agreement contained a "financial analysis" listing assets and assigning values. Despite clause in agreement that the valuations were "not relied on by the parties" wife filed an original complaint two months after divorce, seeking rescission based upon intentional misrepresentation. District court's dismissal under NRCP 12(b)(5) reversed.

Certain assets did not exist at all, certain others were worthless, and others were undervalued. Agreement listed some of Husband's assets as worth $150,000.00; he orally claimed they were worthless, but sold them later at a profit. For 12(b)(5) motion, all allegations to be accepted as true and construed in favor of plaintiff. A complaint should not be dismissed for failure to state a claim for relief unless it appears beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him to relief.

Intentional misrepresentation requires plaintiff to prove that defendant made false representation, with knowledge or belief of falseness, and intended to induce plaintiff to act or refrain, and that plaintiff justifiably relied, and was damaged. Justifiable reliance requires that the false representation must have played a material and substantial part in leading the plaintiff to adopt his particular course. Question of whether elements satisfied is generally one of fact. Misrepresentation may consist of representation misleading because it partially suppresses or conceals information. Integration and waiver clauses do not bar actions for misrepresentation. There was no evidence in record that wife made an independent investigation (which would charge her with what reasonable diligence would have disclosed), but would not have prevented reliance where falsity not apparent from inspection, plaintiff is not competent to judge facts without expert assistance, or defendant has superior knowledge. Whether plaintiff made such an investigation is a question of fact. Citing *Williams v. Waldman*, a contract will be construed against the party drafting it. There is no duty to make a reasonable investigation unless the recipient has in-

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