
Amy Edwards

FAMILY LAW

Family Matters

e-Newsletter

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Welcome to another issue of *Family Matters* e-Newsletter. This monthly divorce e-Newsletter is brought to you by Amy Edwards Family Law and Divorce Magazine. We hope you will find the information and articles useful. If you wish to be removed from our mailing list, please reply with the subject "Remove" or use the unsubscribe feature at the end of this e-mail. Visit us online at www.greenvillelaw.us. For past issues visit [our archives](#).

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Child Abuse by the "Good" Parent

By Amy A. Edwards

Law Firm History

Take a moment to read our law [firm history](#).

Web Site of the Month

www.MilitaryOneSource.mil

This site includes tons of information about almost everything military, from benefits to dealing with support or other family issues, to news topics of interest to vets and service members.

Tip of the Month

Guardianship

If you are a guardian for another adult or a child, you have legal obligations imposed by law. Be sure to read the court's handbook:

Responsibilities of Guardians in NC
www.nccourts.org/Forms/Documents/1184.pdf

Legal Term of the Month

Statute of Limitations

The law creates limits on the length of time lawsuits are eligible to be brought. For example, the statute of limitations for criminal

conversation is 3 years.

Legal Trivia

Did You Know?

In NC, the age of consent for intimate relations with someone is age 16 in most cases, and the adult who initiates consensual relations with someone 16 or older does not "contribute to the delinquency of a minor." NC Gen. Stat. §14-27.7A and §202.1

Suggestions For Future Newsletter Topics

Is there a topic you would like to see featured in a future newsletter?

Click Reply and send us an e-mail with your suggestion.

Quick Links

[City of Greenville](#)

[Pitt County](#)

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[State of NC](#)

[Collaborative Divorce Assn of Eastern Carolina](#)

[Social Security Admin.](#)

[Research Family Law](#)

[Our Firm Web Site](#)

[Pitt County Courthouse](#)

Family Matters Archive

Past issues of Family Matters are now available from [our archive](#).

But / Didn't Do Anything!

There is a common but sometimes overlooked problem when children are abused. Adults who are not directly responsible for injuries to their baby or child, but allow someone else to injure them, are permitting the abuse which has the same effect on the child. The law demands someone protect the child if the other parent won't. But if no one notifies Child Protective Services, the child might not get the protection he or she deserves. A scenario I've seen more than a few times in my practice is the parent who is faced with an abusive co-parent who suffers from substance abuse. The sober parent sees himself or herself as the "good parent" who guards or protects the child from the "bad" parent. Sadly, that is not the case at all.



But I'm the "Good" Parent Who is Always There

First, you cannot always be there to "supervise" the other parent or adult. There are inevitably times you must leave the home or leave the other adult with your child. Constant protection and surveillance is unrealistic, especially when there is turbulence between the co-parents or other adults who are in the home or spend time around your child. In fact, when a romantic relationship between parents ends and they separate, the other parent might threaten to take the child as a way to get back at you, even when the child does not have a close relationship with him or her. The other parent might do so while driving drunk or under the influence of controlled substances. What if he or she is angry and starts throwing things at your child or at you while the child is watching? Or passed out and doesn't hear the baby crying or the fire alarm? Or crying while waving a weapon and making threats to hurt you and/or commit suicide?

Second, a parent who is intoxicated or impaired can be moody and easily agitated, which can lead to physical assaults. Time after time I see domestic violence cases filed after a baby is violently snatched from the arms of the "good" parent and used as a pawn to control her or him or to prevent the other parent from fleeing the home. As the child hears all sorts of chaos, screaming and cursing, the parent (and child) may be shoved, pushed, kicked or held against his or her will. Think about it: to your baby or child, it is meaningless whether or not you were the "good" parent or the bad parent that day.



Stop the Cycle

Parents forget the child sees the behavior modeled by both of them. Aside from teaching children to either become abusive, or tolerate an

abusive partner when they grow up, allowing this type of environment is dangerous. It is not uncommon for children and teens to jump into the line of fire when they try to help the parent or sibling who is being abused in front of them. Children and teens are not equipped to handle this sort of trauma. Although there are some technical legal distinctions, child abuse is a form of domestic violence. Your kids are dependent on you for protection. It can be hard to break up with the other parent because you feel you are giving up security or the marriage but it is not a secure situation if you do nothing. In fact, the longer a victim stays with the abuser, the more chance the danger will grow. Victims of violence think they will miss the marriage or relationship with the other parent.

However, it is sometimes the case that they miss the relationship they wish they had, not the relationship they are somehow managing to endure every day.

The Bottom Line

Parents are sometimes reluctant to call 911 when there is violence in the home. They should always call 911 when any violence occurs. Allowing the other parent or another adult to abuse or neglect your child just because they live with you is not okay. Additionally, it creates potential legal liability to you. Failing to remove your child from an abusive environment means Child Protective Services might do it for you because you knew about it and allowed it to happen. Or, it might mean you try to help your child after it is too late and the damage cannot be undone.

The NC Department of Social Services has a great free resource, the [Personalized Domestic Violence Safety Plan](#). Another good web site is the [Center for Family Violence Prevention in Pitt County](#). There are many complex issues surrounding violent family relationships. If you are facing family violence, you should consult with a family law attorney immediately about how to safely remove yourself and your child from an abusive environment.

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Announcement: Now VA Accredited



Amy A. Edwards is proud to announce she has recently been accredited by the U.S. Department of [Veterans Affairs](#), to represent veterans who are filing disability claims based on injuries or illnesses that either appeared while on active duty, or were aggravated by their military duties.

Through referrals from an American Bar Association program known as VCAN, [The Veterans Claim Assistance Network](#), a program created in response to the huge backlog of disability claims by veterans, she will

be representing veterans on a *pro bono* basis. For many years, she has been a volunteer attorney with Operation Standby, another [ABA Military Pro Bono Project](#) in which civilian attorneys assist military attorneys with state specific law in their area of expertise.

A Certified Family Law Specialist by the North Carolina Board of Legal Specialization, Ms. Edwards handles both military and non-military family law cases.

Affairs of the Heart: Torts in Family Law

By Amy A. Edwards

What is a Tort?

A tort is not a yummy bakery treat. You are thinking of a tart, which ironically may also be discussed below. But in legal terms, a tort is negligent or bad behavior. Bad behavior that is deemed criminal is punished by the government. Although crimes may be punishable by fines, they might also be punished by incarceration. Bad behavior that allows individuals to sue each other for money damages are categorized as torts. In other words, instead of facing possible incarceration, a person who is sued for committing a tort is being sued for money. This type of lawsuit is discussed in the Old Testament when surviving family members essentially received financial compensation for the wrongful death of the slain loved one. The modern claim is called wrongful death, which is an example of a tort that is also a crime.

A Few Family Law Torts:

Infliction of Sexually Transmitted Diseases

If a person is having sexual relations with a person he or she knows is married, the law imposes a duty to warn the spouse who is the victim of the cheating. Failure to do so constitutes negligent infliction of sexually transmitted disease. This is so because the infected person can assume a married person will have relations with their spouse.

Breach of Promise to Marry

When two people make a contract (*i.e.*, an agreement) to marry, but one party breaches the agreement by failing to go through with the wedding, the one "left at the alter" may be able to sue for breach of the promise to marry. This claim requires that both people are unmarried at the time of the promise. Being separated



from a legal husband or wife at the time of the promise to marry makes the promise unenforceable. If one of the engaged parties has venereal disease that has not been cured, there is no legally enforceable agreement to marry. These claims are a way to recoup the money paid for wedding expenses. There is currently no North Carolina case that clearly determines who gets the engagement ring when the anticipated marriage falls apart, but most states say a engagement ring is a conditional gift, becoming a gift only if the condition of marriage is fulfilled.

Defamation, Slander and Libel

Someone who makes false defamatory statements about someone to a third party and "causes injury" to the person's reputation has defamed him or her. This type of tort includes slander, when defamation is made by spoken communication, and libel, when defamation is made by printed communication. Truth of the allegation made about someone is a defense to this tort, as is marital privilege between spouses.

Legitimate allegations about someone in the course of a lawsuit are also privileged, meaning the person who said them can't be sued for defamation. A good example of this type of allegation is marital fault asserted in an alimony complaint, the document that generates the lawsuit. Mere communication about someone having a sexually transmitted disease is defamation if the person does not have the disease.



Alienation of Affection

This claim is based on a person's wrongful interference in a marriage that previously had affection between the spouses, regardless of whether there was any sexual intercourse. The person who interfered in the marriage destroyed the affection between the spouses by his or her wrongful and unjustifiable conduct. The person trying to defend this claim may argue there was no affection existing between the spouses, so he or she was not the cause of the alienation of one spouse from the other.

Criminal Conversation

This quaint language is a polite way to say, for lack of a better term, wrongful sexual intercourse. When a person is married, any third party who has intercourse with a spouse can be sued for money damages. This claim is controversial, and it is usually filed together with alienation of affection. Proponents of this tort argue the third party has essentially

interfered with the other spouse's exclusive legal right to sexual intercourse. Those who think this tort is outdated argue it is not in keeping with modern social mores.

This article is current as of August 2014.

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Just the Three of Us: You, Me and Uncle Sam



By Amy A. Edwards

In law school, my family law professor was fond of saying there are three individuals in a marriage, the husband, the wife and the government. In addition to a host of other consequences of marriage, the Internal Revenue Service plays a critical role, both while you are married, and while you are separated or divorced. While there are many reasons a separation agreement should be prepared by an attorney, I will limit this article to one of the most important reasons, the IRS. While I am an attorney, and not a financial adviser, there are several red flag issues to be addressed when you and your attorney begin to make decisions about a property settlement.

Why Can't I just write my own Separation Agreement?

There are tax consequences for the status under which you file your taxes, whether you file jointly as husband and wife, married but separated, or some other status. Additionally, a share of certain daycare expenses might be deductible to a parent, and only one of you may claim your child as a dependent. If you and your spouse have not filed taxes as required, and not made arrangements to get an extension, you are playing with fire, not to mention steep penalties and fines. The IRS may deduct tax payments from your salary in certain cases, or create a lien against your residence or other real property. You will not only have serious problems with the IRS, you will also have problems in family court if there is a future motion to change support. In most cases, tax returns and the attachments (W-2 statements, for example) must be provided to the court when necessary to determine income. A new layer of concern applies if one or both spouses are self-employed but there are no tax returns filed because there is no clear answer, or even a starting point, as to what that person earns for purposes of calculating child support and/or alimony.

Retirement

There are tax consequences associated with retirement division, and

failure to correctly roll over or divide a retirement account. Depending on your age, you might be saddled with tax penalties for early withdrawal or failure to take required minimum distributions from an account. If a retirement account or benefit is divided by a court order, there are certain additional requirements to satisfy the IRS that the part of the account that was rolled over remains tax deferred instead of being taxed as income and additionally penalized.

The Buy-out of the Marital Property

If one of the spouses keeps more assets than the other, there is often a "buy out" called a distributive award. In order to avoid unnecessary tax on this type of award, there are certain time periods by which the award must be paid. Back in the days of the real estate boom, clients often took out a home equity loan to make the buy-out and deducted the interest. Now, in the wake of the real estate bust, it is less common for people to qualify for this type of loan.

Alimony

Unlike child support, alimony has serious tax consequences. When done properly (depending on who is pushing that particular settlement), the alimony may be a tax deduction for the person paying it, and income taxed to the person receiving it. As with most IRS requirements, there are certain tests that must be met, including certain time periods that apply. A person receiving alimony may be required to file estimated taxes, paid on a quarterly basis, instead of an annual basis.

The House

The family home presents another opportunity for the IRS to strike. If you have a mortgage, there are mortgage interest deductions that should be addressed, and if there is alimony, there is another set of rules with which you must comply. With the down economy, more and more home owners are negotiating their mortgage terms with their lender to avoid foreclosure. If you manage to get some share of the mortgage to be reduced, there may be a requirement to claim the dollar amount of any loan forgiveness as a benefit to you. People who "save" money by skipping the advice and services of an attorney by preparing a homemade agreement may end up spending a great deal more to the IRS than what they save.

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WHO GETS THE DOG?

Child Custody & Support • Marital Property Division
Divorce • Alimony Adoptions • Military Families

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13 YEARS EXPERIENCE

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Sincerely,

Amy A. Edwards

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