Family Matters e-Newsletter

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News For July 2016

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New Appellate Case:

Was the Marriage Worth the Paper it was Printed On?

By Amy A. Edwards

The late Richard Peacock and his wife Bernadine were married in 1993, had three children together, and divorced in 2007. The remarkable part of the story of their lives is that they reconciled after the divorce. Five years later, in 2012, Bernadine moved back into the home. The couple regularly attended church together and told their reverend about their divorce, their renewed relationship and their intent to remarry although there was no "solid date." Richard faced serious medical problems, and Bernadine became his caretaker. Their reverend was a frequent visitor and they told her to marry them right there at the hospital. The ceremony took place on December 18, 2013, but there was no marriage license issued. Richard passed away the very next day, on December 19, 2013.

The Problem: No Marriage License

When Bernadine began addressing the matter of his estate at the courthouse, the Clerk of Court told her she was not his wife because no marriage license was ever issued. Therefore, she was not a widow and his only legal heirs were his children because he failed to leave a will. The matter was then heard in court by a judge. The reverend testified that the couple knew there was no license, and that "we all knew that there was not a wedding, a marriage license. So, this was a pastoral and a sacramental…act." Bernadine testified Richard was not well enough to go

to the courthouse, and that "we didn't really think about a marriage license, we just were happy to finally get married." The trial court ruled against her.

The Ruling

On appeal, it turns out the marriage actually was worth the paper it was printed on despite the fact that there was no paper. On June 21, 2016, the NC Court of Appeals ruled the marriage was valid. Bernadine is now deemed to be the surviving spouse and entitled to a share of Richard's estate along with his children. Although an official is legally required to have the license signed by the Register of Deeds before performing a ceremony, the consequence of failing to do so falls only on the official, who is fined $200.00 for committing a misdemeanor. Citing a case decided before the Civil War, the Court ruled the failure to issue a marriage license will not invalidate an otherwise valid marriage. *State v. Robbins*, 28 NC 23 (1845).

NC Gen. Stat. §51-1 *et seq*.
In re: Estate of Richard Dixon Peacock (2016)

Amy A. Edwards is a family law attorney in Greenville, NC, certified by the NC State Bar Board of Legal Specialization as a Family Law Specialist, and is licensed only in NC. Laws change. This article is current as of July 2016.

Infliction of Emotional Distress: Does My Divorce Qualify?

By Amy A. Edwards

My family law professor once said something along the lines of "when it comes right down to it, all divorces involve emotional distress." Your former lover, confidant and best friend disappears, both physically and emotionally. It is against this backdrop North Carolina law defines marital fault, such as abandonment and illicit sexual behavior, which are based on the legal relationship between the two spouses. In contrast to marital fault alleged between spouses, a tort is a general civil claim filed by anyone, based on behavior that is wrong or negligent. The infliction of emotional stress is a tort.

The Tort of Emotional Distress

Negligent infliction of emotional distress occurs when someone negligently causes severe emotional distress by his or her extreme and outrageous conduct. To meet the standard of inflicting emotional distress, the person's conduct must exceed "all bounds usually tolerated by decent society." Although divorces almost always involve emotional distress, the key is the extent of the conduct, which must be far greater than that encountered in a typical divorce. The conduct is negligent if the person did something that caused the victim to be severely distressed, when the person should have reasonably expected that result from the conduct. *Wilkerson v. Duke*, 748 S.E.2d 154 (2013).

Extreme and Outrageous Conduct

For divorce-related cases, the standard of proving "extreme and outrageous" behavior is a high one. One example of how bad the behavior must be is *Miller v. Brooks, et al.*, 123 NC App. 20 (1996). In that case, the ex-husband sued his former wife for numerous claims, including infliction of emotional distress. After they separated and were living in separate residences, they signed a separation agreement awarding their home to the ex-husband. Although they then tried to reconcile for a few days, they were unable to do so.

A year after the effort to reconcile failed, the ex-wife met a locksmith at the ex-husband's house to have a key made. About two weeks later, she used the key to allow third parties to invade his home without permission to install a hidden video camera in the ceiling of his bedroom. The video surveillance captured the ex-husband in the shower, getting undressed and doing various other things. Worse, she knew her ex was a fearful person when she did these things. In fact, the ex-wife specifically told the third parties who helped her install the video camera that her ex was so fearful that he "slept with a loaded shotgun next to him." The ex-wife also intercepted his mail at the post office, opened it and disposed of some of it, and put the remainder back into his mailbox.

Kroh v. Kroh, 152 NC App. 347 (2002)
NC Gen. Stat. § 50-16.1A

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What Happens to My Child Support Payment if I Quit My Job?

By Amy A. Edwards

Courts use the actual incomes of both parents to calculate child support. Some people think that by working less or changing jobs to earn less before court that they can make the child support lower. Doing so in an effort to reduce the child support is a bad idea to do so. The Child Support Guidelines require the court to use your actual income in determining child support. However, if a parent is underemployed in bad faith or if the parent is deliberately suppressing his or her income to reduce the child support obligation, the court can assign an income based on what the parent is capable of earning. For example, if you are a medical doctor and earn $100,000.00 per year, and you quit your job to work at the mall earning $20,000.00 per year to avoid paying as much child support (or to get more support), the court can impute an income of $100,000.00 to you. Motive is crucial for the court to determine.

Imputed Income

Basing the income on what a parent is capable of earning instead of the actual income is known as imputing income. The court can also impute income if the parent has "deliberate disregard" for the child's support. *Askew v. Askew*, 119 N.C. App. 244 (1995). Imputing income is a two-way street. If the parent who is deliberately trying to reduce income is the one who has physical custody, the court may still impute income. Although that parent is not the one paying child support, the amount he or she receives will be reduced if the court imputes income.

Assuming the judge rules you are acting in bad faith to avoid or minimize child support, what income should be imputed? The judge must consider the individual attributes you have, such as your recent work history, education, training and qualifications. If you don't have a recent work history or training, the court will assign an imputed income of minimum wage. Perhaps more importantly, the Guidelines require the court to look at the local job market and incomes in the community.

No Imputed Income

The court can't use your potential income if you are under-employed because the child is three years old or younger, so long as the child is the one at issue in the child support case. If the child is not the one at issue, meaning he or she is a sibling by another person, income may still be imputed to you if the judge believes you are doing so in bad faith, deliberately minimizing your child support obligation (or seeking to increase the child support paid to you). The court cannot impute income to you if you are "physically or mentally incapacitated." In one example of good faith related to income is *Ellis v. Ellis*, 126 NC App. 362 (1997). In it, the NC Court of Appeals ruled a school psychologist should not have income imputed to him for being "voluntarily unemployed" during the summer recess.

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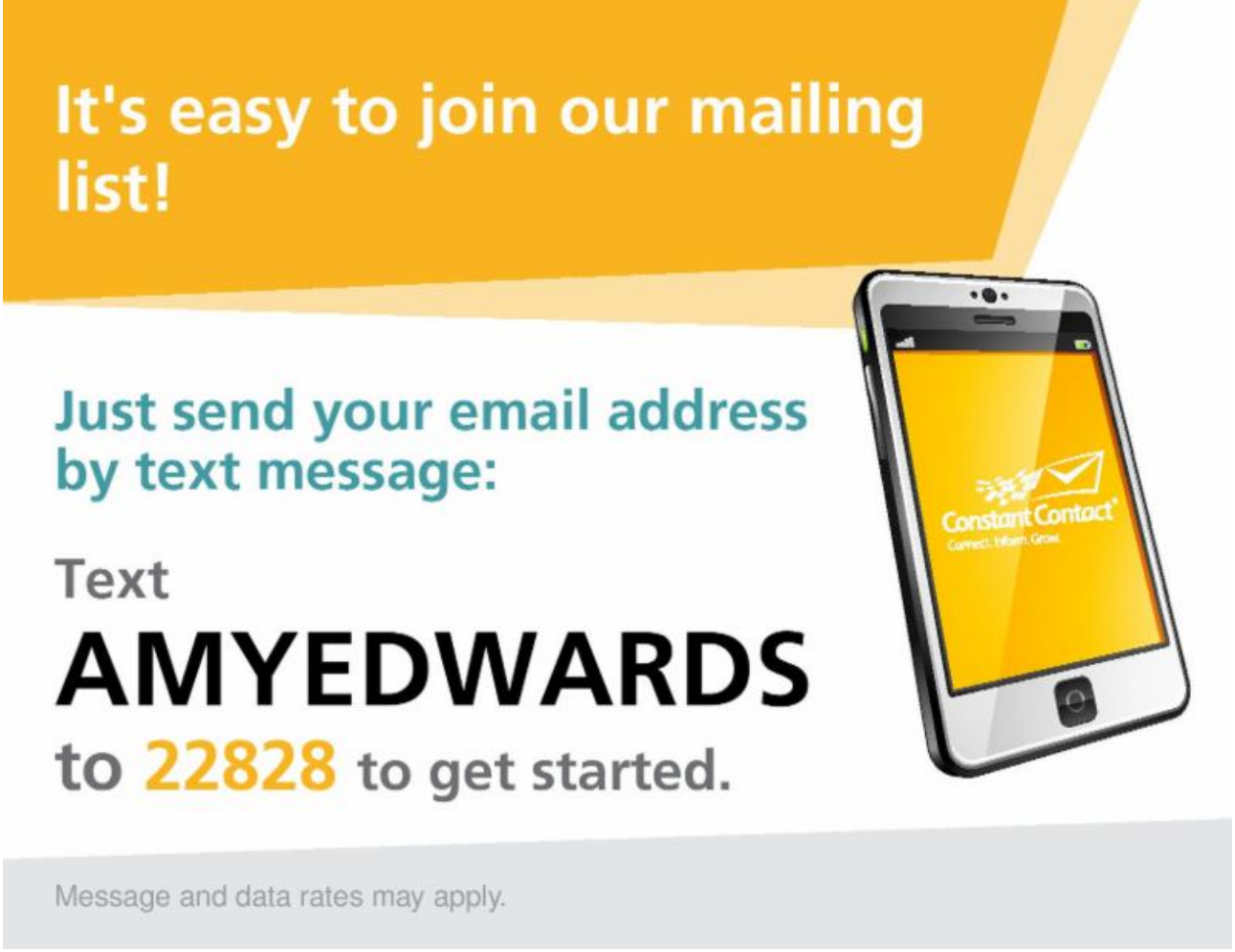

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Sincerely,
Amy A. Edwards