



INTER ALIA

NOVEMBER/DECEMBER 2018

NEWSLETTER OF THE MANATEE COUNTY BAR ASSOCIATION

DIVORCE Q&A FOR THE NON-DIVORCE-PRACTITIONER

By Paul F. Grondahl, Esq., MCBA Past President



As an attorney who practices almost exclusively in marital and family law, I am often approached in informal settings by laypersons and non-family lawyers who voice recurring family law questions. I hear many of these same questions over and over again:

Q: My husband bought me a BMW for our tenth anniversary. If we get divorced, don't I get to keep the car because it was a gift?

A: No. Florida Statutes Section 61.075(6)(a) defines "marital assets" to include "interspousal gifts during the marriage". Thus, while the court may allow the wife to retain her vehicle, the BMW will be "divided" as a marital asset, i.e., the husband will receive an asset of equal value.

Q: So all gifts are marital assets? That means my husband gets my engagement and wedding rings back?

A: No. It is a great blessing to family lawyers that these emotionally-charged and valuable items are usually a non-issue in divorce cases (assuming the rings were purchased prior to the marriage).

Florida Statutes Section 61.075(6)(b) defines non-marital assets as those items "acquired by either party prior to the marriage". This would typically include engagement and wedding rings, which if unconditionally gifted become the property of the donee. See, e.g., *Randall v. Randall*, 56 So.3d 817 (2nd DCA 2011). Keep in mind that the rule regarding interspousal gifts during the marriage may apply in the rare case that an engagement or wedding ring is purchased after the marriage, or in cases where such rings are upgraded after the marriage.

Q: I owned a house for twenty years before I married my husband. When we refinanced the house last year, I put his name on the title, just so that it would feel like his house too. The house is still mine, right?

A: Probably not. Florida Statutes Section 61.075(6)(a)(2) provides that "all real property held by the parties as tenants by the entireties, whether acquired prior to or during the marriage, shall be presumed to be a marital asset". The retitling of the property is presumed to constitute a gift of a one-half interest in the property

(continued on page 8)

Please join us to celebrate the Season!

MANATEE COUNTY BAR ASSOCIATION HOLIDAY PARTY

FRIDAY, DECEMBER 7, 2018
5:00 - 8:00 PM
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President's Message



by Alexandra St. Paul, Esq.

We are living in difficult times. Hardly a week goes by when we do not hear about some terrible act of violence in our country or abroad. When I was younger, it used to feel like it happened abroad but not here, not in our country. These days, it seems like it is as prevalent here as elsewhere. As a child, I knew little or nothing of violence. The children of today are not so lucky. When violence invades our public and private buildings, schools and places of worship, we are devastated. We believe that places that represent peace and security, happiness and love should be safe. Our hearts break every time we learn that someone was killed, and it is especially heinous when it is without cause or because of their background, race, religion, ethnicity, beliefs or sexual orientation.

We will not let ourselves become jaded because of this violence. We must remember those who have lost their lives. Their memories should inspire us to reject hate, discrimination and intolerance. We will not tolerate violence.

The Manatee County Bar Association believes in justice for everyone, regardless of their backgrounds or beliefs. EVERYONE. We owe it to ourselves, our children, our community and our country to combat violence, hatred and discrimination. We can contribute by standing firm to make this world a better place and we must do so.

SPOTTED:

Enjoying a beautiful autumn day, al fresco!



Kim Bald, Aaron Crittenden, and Adam Mohammadbhoy.

The Manatee County Bar Association supports diversity and inclusion in our membership and welcomes lawyers of all backgrounds, ethnicities, races, religions, cultures, sexual orientations and abilities. As part of this initiative, the Manatee County Bar Association has created the Diversity and Inclusion Committee (DAIC) and fully supports its mission to increase the diversity of our membership and the local legal community.

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CONGRATULATIONS!

Congratulations on 35 Years of Dedicated Service!

Donna McHammond

Judicial Assistant to Judge Gilbert Smith, Jr.

On Friday, October 19, 2018, Court Administration for the 12th Judicial Circuit held its Employee Recognition Ceremony at the Judge Lynn N. Silvertooth Judicial Center.

Donna McHammond was recognized for her 35 years of service by helping the circuit maintain its duty of attaining justice and ensuring all citizens have equal access to the courts.

Donna has served as a judicial assistant for Judge George Brown and Judge Durand Adams and continues to serve for Judge Gilbert A. Smith Jr.



Congratulations to Judge Thomas Gallen, Jr.



On October 25th, Judge Thomas Gallen, Jr. was awarded the Senator Edgar Price Lifetime Achievement Award by the Manatee County Rural Health Services Foundation for his contributions to the health and welfare of residents of Manatee County.

Congratulations NSDAR Medal of Honor Recipient, Judge Lee Haworth!



Recently, Judge Lee Haworth received the Sara DeSoto Chapter's Daughters of the American Revolution 2018 NSDAR Medal of Honor. The Medal of Honor is NSDAR's highest award for citizens who have shown leadership, trustworthiness, patriotism, and service.

Proud sponsors of the MCBA!



YLD News & Happenings

Are Your Electronic Files Truly Protected?

By Dustin Wagner, Esq., YLD Director



On October 17, 2018, the Manatee County YLD hosted the Florida Bar YLD's Technology Roadshow CLE. The Manatee County Bar Association made their presence felt with the 2nd highest turnout for this CLE within the state so far. However, the CLE was a must for everyone. Whether you are a proud tech-wonk or a head nodder (someone that nods their head pretending to understand anytime technology is explained), everyone that attended learned valuable insights from the seminar.

One of the more eye-opening topics discussed, regarded securing electronic files. For example, you may be at risk if your law practice utilizes mobile devices, like cell phones, and you are of the mindset that there is limited exposure because of your limited use. In other words, even if you simply use your device to check emails, you may inadvertently open yourself up for a breach. We tend to forget these devices could be another exposure for our law firms if they are not properly protected. Specifically, you may be an easy target for a virtual "stick-up" for all your stored data in exchange for money. In case you were not aware, law firms are aggressively targeted these days with ransomware. Apparently, the bad guys have figured out that law firms are often vulnerable, especially if they store electronic data without proper protection to their access points or if they lack adequate backups.

Ransom malware or ransomware is a type of malicious software that prevents users from accessing their systems and files. The perpetrators then demand a ransom payment to restore the user's access. These cyber-thieves are the new "Jesse James", and like most criminals, they want a lot of money for something that requires little effort. Would-be hackers can easily purchase large amounts of email addresses illegally. Once the thieves obtain the email addresses, they cast their phishing lines out into the deep blue email sea – hoping to catch their shark.

How could this happen to me? Many of the ransomware culprits use social engineering to lure you into their trap. Often, the emails with infected attachments and malicious website links will appear to have originated from a trusted source, such as a friend, family member, business or even law enforcement.

Another popular method includes malicious advertising, known as malvertising. The culprits will run advertisements, even on legitimate websites, to lure in unsuspecting users. Sometimes this hijacking requires no effort or link clicking from the end user. Then after you are redirected to the criminal's server, they gather as much information as possible about you and your PC, tablet or phone. This helps them determine the best method of attack against you. Regardless of the method used, once infected, your computer will

start misbehaving because you have downloaded a sophisticated virus that will prevent you from accessing your device or any of your files unless you are willing to cough up money.

Sound far-fetched? According to Cisco, 49% of businesses reported at least one cyber-attack in 2016, of which 39% were ransomware attacks. The US alone recorded a 300% rise in ransomware attacks between 2015 to 2016. Furthermore, no one is immune. From small to large law firms; from government organizations to healthcare systems – everyone needs to be on their A-game. According to Cybersecurity Ventures, ransomware damages reached \$5 billion in 2017.

Anyway, there was a lot more to the Technology Roadshow than ransomware and there is a lot more to ransomware than what you just read. Hopefully, if you have not done so, you will make sure you have taken the necessary steps to protect your yourself in the digital era. You could also contact the Technology Roadshow CLE hosts @ LawTechPartners.com for a request of the materials covered. Good luck.

TECHNOLOGY ROADSHOW ROLLED INTO TOWN

During mid-October, the MCBA Young Lawyers Division hosted The Florida Bar's Young Lawyers Division TECHNOLOGY ROADSHOW at the Historic Hampton Inn, in downtown Bradenton. Attendees received their full CLE credits for technology while enjoying a catered lunch by Pier 22. Thank you to Event Chair, Melissa Casanueva and The Florida Bar YLD for making this event possible.

WILL SEARCH - Heinsohn

Name: James (Jim) L Heinsohn

Born: May 7, 1953, St Paul Minnesota

Died: November 1, 2018, Ellenton Florida

Current residence:

4403 7th Street E #5, Ellenton, FL 34222

Past Residence:

4015 14th Ave W, Bradenton, FL 34205

Marriages:

Kimberly (Travis) Heinsohn, Deborah Heinsohn

Owned a business:

Bristol Bay Automotive

Children:

Anthony Heinsohn, James Heinsohn,
Nathan Heinsohn, Danielle Travis

Please contact with any information:

Danielle Travis
941-799-9069



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YLD News & Happenings

Art Creations in the Courthouse



On October 30th, the Young Lawyers Division of the MCBA sponsored ART CREATIONS IN THE COURTHOUSE. Approximately 70 guests including student artists, their families, teachers, principals, attorneys and judges enjoyed lite bites and beverages while viewing the newly displayed student artwork. Students were eager to share their inspiration with attendees and were excited to receive awards on behalf of the MCBA Young Lawyers Division, and event Chairperson, Grace Reeves. The MCBA encourages you to view the artwork on the 5th floor of the MCJC.



News and Updates From the Clerk of the Circuit Court

Angel Colonnese:

Angelina "Angel" Colonnese, the Manatee County Clerk of Court, is preparing to launch an upgraded version of her website at www.manateeclerk.com. The new site will be mobile friendly and has an updated look. If any MCBA members would like to preview the new website, they can contact Dr. Carole Pettijohn, Director of IT Services, to sign up for one of the demonstrations that are being scheduled. Dr. Pettijohn can be reached at: carole.pettijohn@manateeclerk.com or (941) 742-5851.

The Manatee County Clerk of Court's old Court Case search website, www.manateeclerk.org, will be taken offline permanently on 12/1/2018. Email notifications were sent to all subscribers in May, 2018, with instructions for signing up on the new search site: www.records.manateeclerk.com. After December 1st, access that Attorneys, Parties, and Registered Users have to certain case types, including Probate cases, may change. These changes are in accordance with the Florida Supreme Court's Standards for Access to Electronic Court Records and the Access Security Matrix which govern electronic access to court records. Any questions regarding access to electronic court records can be directed to the Clerk's General Counsel, Matt Whyte. Matt can be reached at: matt.whyte@manateeclerk.com or (941) 741-4005.

Current Events in the Title World



On November 8th, the Real Property Section met for its first CLE, Current Events in the Title World, sponsored by Old Republic Title. Special thanks to Chairman, Joe Battaglia, for planning the event.

Tampa Bay



SINGLE GAME TICKETS

- ☐ 4 great infield seats, on aisle, 7 rows behind the visitor's dugout
- ☐ VIP parking!



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OCTOBER 31, GENERAL MEMBERSHIP LUNCHEON

Members are still raving about the October General Membership Luncheon and our speaker, David Lawrence. Mr. Lawrence gave an inspirational talk regarding lessons he has gleaned throughout his life, wellness, and leadership. If you missed this electrifying event, you may view it on METV's Youtube sight. Special thanks to the following firms who helped make the event possible:

Dye, Harrison, Kirkland, Petruff, Pratt & St. Paul, PLLC
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 Barnes Walker
 Harlee & Bald, PA
 Andrea Johnson, PA
 Green, Hamrick, Quinlan & Schermer, PA



Judge Gilbert Smith, Jr., Bob Blalock, Jeff Goethe and Jack Manson



Chuck Pratt, Retired Judge Doug Wallace, MCBA President Alexandra St. Paul, Tom Harrison and David Deitrich



Chris De Carlo, Dustin Wagner, and James Lynch



David Deitrich, MCBA President Elect Charles Telfair, MCBA President Alexandra St. Paul, David Lawrence, Senator Jim Galvano, and Judge Gilbert Smith, Jr.



Speaker, David Lawrence

NO GENERAL MEMBERSHIP MEETING IN NOVEMBER OR DECEMBER.

(Divorce Q&A continued from Pg.1)

from the one spouse to the other. The gift presumption can be overcome in rare cases, but requires clear and convincing evidence that a gift was not intended.

Q: *Now that I looked into it, I actually didn't put my husband's name on the title! Whoopee!...the house is all mine!!!*

A: Not so fast. Especially if there existed a mortgage loan on the property at the time of the marriage, a fairly sophisticated analysis goes into determining the parties' non-marital and marital interests for purposes of equitable distribution of this asset (beyond the scope of this article).

Q: *I make a lot of money and my husband doesn't work. If I hire a private detective to prove he's having an affair, I won't have to pay alimony, right?*

A: Save your money on the private investigator. Although the alimony statute, Florida Statutes Section 61.08(1), still provides that "the court may consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded", this part of the statute has been largely eroded by case law. In *Noah v. Noah*, 491 So.2d 1124 (Fla. 1986), the Supreme Court found it difficult to reconcile that Florida is a "no-fault" divorce state with the "vestige of fault" that remains in 61.08. And the many decisions that have followed over the years include holdings that "it is improper to refuse to award alimony or reduce the amount of alimony merely because of the existence of evidence of the requesting spouse's adultery" (*Phillips v. Phillips*, 504 So.2d 412 (Fla. 4th DCA 1987)), and that "absent a showing of a related depletion of marital assets, a party's adulterous misconduct is not a valid reason to award a greater share of those marital assets to the innocent spouse or to deny the adulterous spouse alimony". *Childers v. Childers*, 640 So.2d 108 (4th DCA 1994). In my experience, absent relevance to a particular custody issue and absent an "adulterous depletion of marital assets", most judges are not inclined to hear any testimony regarding adultery.

Q: *Is Manatee County a 50/50 custody county?*

A: It sounds like such an awkward question, doesn't it? But I've heard it phrased exactly that way many times. I interpret the question to mean, "Is it the law in Florida that Manatee County judges must follow a presumption in favor of an equal custody (by statute called "timesharing") schedule?" Florida Statutes Section 61.13(2)(c)(1) states that "there is no presumption for or against any specific timesharing schedule". However, while there is no such presumption, "it is the public policy of this state that each minor child has frequent and continuing contact with both parents...and to encourage parents to share the rights, responsibilities, and joys of childrearing". *Id.* While I would not venture a guess on the statistics, suffice it to say that equal overnight, or "50/50", timesharing schedules are very common these days. That said, the Section 61.13 timesharing factors to be considered by judges sometimes do not sway the court toward awarding equal timesharing. Factoring into a judge's decision could be something so extreme as one parent having a difficult drug or alcohol problem, to something more innocuous, such as one parent having an erratic work schedule whereby regular overnight timesharing is simply impractical. Ultimately, the judges in this and every other county in Florida are challenged with weighing the twenty factors in Section 61.13 to devise a timesharing schedule that strives for the ideal of "frequent and continuing contact" while focusing on the child(ren)'s overall best interests. The notion that there exists any "50/50 county" or "50/50 judge" in Florida ignores

the gravity and unique complexities of custody decisions.

Q: *My husband has been acting very unusual lately. He's been drinking more than usual, and frequently yells at me the kids. He's moved out, but anymore I just don't know what he might be capable of. Can't I get a restraining order against him?*

A: Based on these limited facts, probably not. A restraining order (better known to criminal and family lawyers as an "injunction for protection against domestic violence") is a civil remedy which judges do not take lightly, as it significantly limits many freedoms and liberties of the non-movant, can create employment problems for them, etc. The party seeking an injunction must demonstrate to the court that he or she is either the victim of domestic violence (as defined by Section 741.28, Florida Statutes) or has reasonable cause to believe he or she is in imminent danger of becoming a victim of domestic violence. See Florida Statutes Section 741.30(6) (a). "Where fear alone is the 'reasonable cause' alleged to support injunction for protection against domestic violence, then not only must the danger feared be imminent, but the rationale for the fear must be objectively reasonable as well". *Zapiola v. Kordecki*, 210 So.3d 249 (Fla. 2nd DCA 2017). In other words, speculation regarding what someone demonstrating erratic behavior "might do next" will rarely cut it.

Paul F. Grondahl, Esq. is Immediate Past President of the Manatee County Bar Association, has served as Chair of the Manatee County Family Law Section, and is Board Certified by the Florida Bar in Marital and Family Law.

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IN MEMORIAM: RORY J. ZINNA.

It is with great sadness that we announce the passing of Rory J. Zinna, who passed on November 4, 2018 (after a prolonged battle with cancer). He was 37 years old.

Rory was born in Long Island, NY. He moved to Manatee County at the age of 4, where he has resided ever since. Rory attended Manatee High School where he was a member of the wrestling team. Upon graduating from Manatee High in 2000, Rory attended the University of Florida where he received his Bachelor's of Science in Business. Following completion of his undergraduate studies, Rory attended Florida State University where he obtained his Juris Doctorate in 2008.

Following graduation and passing the bar exam, Rory returned to Manatee County where he began his legal career as an Assistant State Attorney for the Honorable Earl Moreland in the 12th Judicial Circuit. Rory rose through the ranks at the State Attorney's Office, where he was assigned to the Violent Crimes



Unit, tasked to prosecute violent felonies until leaving the office in May of 2017. Upon leaving the State, Rory joined the firm of Dickinson & Gibbons, P.A. where he continued to practice law until his passing.

While working at the State Attorney's Office, Rory met the love of his life and eventual wife, Kristy Guy. They married on December 28, 2013. In January of 2015 Rory and Kristy welcomed their daughter, Brooklyn into the world. Rory is survived by his wife, Kristy, his daughter, Brooklyn, his step-daughter, Mackenzie, his mother, Patty Zinna, his brother, Bryan Zinna, and his sister, Amy Bower.

Aside from his passion for the law, Rory was an avid Florida Gator and Chelsea, F.C. fan. Rory was a loving family man, who enjoyed spending his weekends with his daughters and wife. He also was an avid movie fan; and enjoyed watching football with his friends.

Rory will be deeply missed by his family, friends, and colleagues.



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BCC is accepting a limited number of new members, so be sure to visit our website for more information: www.bradentoncc.org or just stop in and take a look for yourself at all the beauty and the value you will experience at Bradenton Country Club.

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5 Things You Didn't Know About Me:



Judge Ed Nicholas

1. I was born in Manatee Memorial Hospital.
2. My father died of a heart attack when I was two, leaving my mother with five children and pregnant with my younger brother.
3. After college, I taught high school English for three years in the Bronx and locally at Harlee Middle School.
4. I worked as a waiter through law school at the Pewter Mug, at the time one of the only restaurants in Bradenton.
5. My wife, Ann Marie, is an artist who owns a gift shop/studio on Anna Maria Island. Our son, Steve, is in law school.



Rebecca Proctor, MCBA Director and Guardianship & Probate Section Chair

1. I love to collect Rocks.
2. I love to camp and hike.
3. I was born and raised in West Virginia.
4. I write poetry, when the mood hits me!
5. I love to walk in the rain.



Scott Brownell
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Mock Trial/Leadership Manatee

All Rise! On October 17th, 2018, a mock trial was held in the Historic Courtroom for the 2018 Manatee Chamber Leadership Class with Judge Gilbert Smith, Jr. presiding. Several MCBA members participated including Sean Flynn and James Lynch along with other area professionals.



SEARCH FOR MISSING WILL

SHEILA ANN HAWTHORNE

DOB 11/12/1950

Please contact Law Office of Audrey Bear

941-955-8880

Audrey@AudreyBearLaw.com

SAVE THE DATE!

Join the Suncoast Chapter of the
Paralegal Association of Florida, Inc.
for a half-day seminar

Saturday, February 9, 2019

8:45 a.m. to 1:00 p.m.
at SCF Lakewood Ranch

*Seating is limited, so join the fun and be
one of the first 60 people to sign up to:*

*"Be a CSI for a Day and Help Determine
if Goldilocks Was Guilty of Eating Baby
Bear's Porridge"*



SPEAKERS:

Chief Judge Charles E. Williams
Judge Stephen Walker
State Attorney Ed Brodsky
Lt. Cunningham, Manatee County
Sheriff's Office

For more information regarding the seminar or
sponsorship opportunities, please contact:

Malora Shaw, Seminar Chair;
mshaw941@hotmail.com; 941-920-4913.

Highlights from Vintage Attorneys Night!

Recently, the "Vintage Attorneys" met at O'Bricks for a night of fun, food, and fond memories. Guests were treated to a night full of delicious hors d'oeuvres and beverages, and a special video presentation created by James Lynch, Esq. as well as party tunes spun by "DJ Lynch" and "DJ AC" aka Aaron Crittenden. Special thanks to the sponsors of this year's first inaugural party: Blalock Walters, Dye, Harrison, Kirkland, Petruff, Pratt & St. Paul, Greene, Hamrick, Quinlan & Schermer, Harllee & Bald, Lutz, Bobo & Telfair and Porges, Hamlin, Knowles & Hawk.



Highlights from Vintage Attorneys Night!



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DATES TO REMEMBER:

December 7, 2018	Holiday Party
December 13, 2018	Diversity & Inclusion Committee Meeting
January 17, 2019	Diversity & Inclusion Committee Meeting
January 30, 2019	General Membership Luncheon
February 14, 2019	Diversity & Inclusion Committee Meeting
February 27, 2019	General Membership Luncheon
March 5, 2019	Past Presidents Luncheon
March 14, 2019	Diversity & Inclusion Committee Meeting
March 15, 2019	MCBA Scavenger Hunt
March 27, 2019	General Membership Luncheon
April, 2019	Beach Party/Social
April 11, 2019	Diversity & Inclusion Committee Meeting
May 9, 2019	Diversity & Inclusion Committee Meeting
May 29, 2019	General Membership Luncheon - LAW DAY
June 26, 2019	General Membership Luncheon – Annual Meeting

*dates are subject to change



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The firm's attorneys practicing in the areas of Wills, Trusts and Estates are currently accepting referrals and new clients in the following areas:

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- Probate and trust administration;
- Probate, trust and guardianship litigation
- Homestead issues
- Elder Law
- Elective share
- Rights of surviving spouse
- Public benefits and Medicaid planning
- Veteran's benefits
- Guardianship.



Jeffrey S. Goethe, Esq.

- Admitted to the Florida Bar in 1990
- Florida Bar Board-Certified in Wills, Trusts & Estates
- Fellow, American College of Trust and Estate Counsel
- AV-rated by Martindale-Hubbell
- Current member and past chair of the Florida Probate Rules Committee
- The Florida Bar's RPPTL Section Executive Council, Homestead Committee Co-Chair, Bar Journal Co-Chair
- Past Director and President of the Manatee County Bar Association



Lawrence W. Thomas, Esq.

- Admitted to the Florida Bar in 1985
- Past Director and Secretary of the Manatee County Bar Association
- Practice areas include wills, trusts, estates, guardianship and elder law



M. Brandon Robinson, Esq.

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- United States Department of Veteran's Affairs Accredited Attorney
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