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Social Networking Abuse and Its Impact on Contemporary Family Law Practice

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Technology is a life-saver. It helps to keep our children safe and connected with us. But technology used in the context of separation and divorce is not always of the facilitating variety. To the contrary, family court judges and lawyers frequently observe how that same technology is used as a weapon — either to gain an advantage in litigation or to intimidate or harass an opponent. Examples: An estranged spouse sends a text using capital letters or exclamation marks, demanding the return of a child's article of clothing. A parent makes a snarky comment on Facebook about her ex's new "significant other." A custody litigant unwisely cuts and pastes parts of an unflattering psychologist's evaluation on the Web. A YouTube video is made flaunting a child's happiness in the presence of a new boyfriend or girlfriend, just to spur an ex's jealousy.

The Lacy Case

Call it the dark side of technology, but with spyware and GPS used more for the purpose of gathering evidence in a divorce or custody dispute than to safeguard a child's physical well-being, it is no wonder that family courts are now more than ever entering special relief and injunctive orders regarding a parent's use of social media. On March 25, 2013, the Court of Appeals of Georgia affirmed the entry of such an order in a fact pattern that is all too common today. In *Lacy v. Lacy*, 2013 WL 1189289 (Ga. App. 2013), a family court judge "restrained and enjoined [the parties] from posting matters about each other or their current litigation on Facebook or other social networking sites." Both parents made disparaging and derogatory comments about the other on Facebook. Moreover, the father was accused of telling the children that if he had to pay child support, he would have to sell all of his belongings and move out of the state to get a job, and that as a result, he would not be able to exercise visitation.

The father appealed the ruling, equating it to a "gag order." But the appellate panel affirmed the lower court's decision, stating that it had jurisdiction to make prohibitive or mandatory orders upon such terms and conditions as it may deem just. It compared the anti-social networking order with those directing parties not to telephone each other at work or enjoining them from making comments that alienate — or attempt to alienate — a child's affection for his or her parents. In *Lacy*, the family court judge was confronted with litigants who use technology to tweak, pester, and intimidate. Indeed, in one of the mother's posts on Facebook, she implied that the lower court's custody decision was the result of a meeting between the family law judge and the mother's father one week before the adjudication.

What Happens Then?

The temptation to use technology for illicit purposes in divorce or custody litigation is overpowering. A litigant may feel the need to send a late-night text before going to sleep. It provides a false sense of solace, however. On the next day, the retaliation begins with a vicious wall post. And from there, the cycle repeats — one of the most destructive in all of family law. What can family lawyers do about it? For one thing, litigants worry about the cost of their lawyers reviewing what some regard as trivial electronic jabbing. But when these barbs accumulate and are witnessed by children, family lawyers have to make a decision to involve the court. Filing for special or injunctive relief is expensive, but if the electronic assault goes unchecked, real damage can be done psychologically.

Parents besieged by sniper texts may decide to petition for relocation, thinking that physical distance will reduce the impact of an ex's misuse of technology. Of course, the technology is all the more potent today because it can be used at a great distance, and some family law litigants fear they will never escape the incessant ping of an ex's cell phone. A family law judge who presides over a case in which one or both parties harass each other electronically can enter an injunctive relief order, the violation of which may result in a civil contempt finding. Or an aggrieved party may go to the police and request that harassment or other criminal charges be brought. Another major concern is "virtual stalking." Protective orders to prevent domestic violence are at an all-time high in the digital age.

The Courts' Role

Many custody litigants today say that having reasonable electronic access to a child is as important (if not more important) than telephonic access. Survey after survey shows that texting is the first and last thing a teenager does every day. Just like adults, they check their cell phones in bathrooms or at worship services. But if incessant texting is disrupting a child's sleeping patterns or interferes with his or her ability to do homework, then rules need to be laid down, and that is much more difficult to do when the parents are at odds. Strangely, when digital technology was coming into the mainstream over a decade ago, family law judges saw it as a way to keep parents and their children connected. While that still may be the case today, some family court judges are using technology to keep parties in high-conflict cases accountable.

A Case in Point

In a non-precedential decision of the Pennsylvania Superior Court, filed on Jan. 29, 2013, a family court's finding of contempt and award of counsel fees and expenses was upheld. In *M.B. v. L.G.*, No. 1064 EDA (Pa. Super. 2013), the initial custody order from 2011 gave the mother primary custody, with the father having visitation on alternating weekends. But the court order also directed the parties to purchase special software with which to input the child's schedule and activities. At some point in 2012, the father filed for contempt, alleging that the mother was violating a provision of the order dealing with transportation. In his application, he also alleged that the mother failed to update her computer software, resulting in his missing some of the child's extracurricular activities. In her testimony, the mother stated that she had no obligation to notify the father of any of the children's activities through the use of the software, and that he had an affirmative obligation to contact the school to learn about school-related events.

On appeal, the lower court's decision was affirmed. The mother's refusal to post updates on her software resulted in the father missing specific non-school-related events. The award of counsel fees and costs, therefore, was held not to be an abuse of discretion, and accordingly, the mother's appeal was denied. This case is just one example of a lower court trying to use technology to facilitate communication in a high-conflict case. The family law judge made it clear

that she expected all texts and e-mail messages to be civil, and one assumes that if they were not, this argument would have been made by the mother at the contempt hearing. But one can envision a case where software like this can be overused, to the point where it is perceived by one party to be annoying or harassing. Drawing that line is sometimes difficult.

One party may have been a victim of repeated verbal abuse during a marriage, or worse, domestic violence. One party may use scheduling software to exert a virtual influence in an ex's life. Or one party may be more proficient in the use of technology than another party, and that imbalance needs to be taken into account.

Conclusion

To put this in context, when the American Law Institute published its Principles of the Law of Family Dissolution in 2002, there was no analysis of these forms of electronic communication and their affect on children. In many custody disputes today, the form of communication between parents is almost as important as the allocation of custodial time. How parents interact once the custody order is entered remains a critical factor. It is hoped that this article motivates law students and young family lawyers to develop rules of conduct that are in touch with the modern social reality, including social networking abuse.

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