11-2016

Family Law

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FAMILY LAW

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In the past year, Virginia courts have addressed a range of family law questions—new and old—that reflect the changing landscape of families and marriage. Questions related to same-sex marriage and divorce have begun to appear on Virginia court dockets, including an important case the Supreme Court of Virginia decided this year with respect to same-sex couples cohabiting and the termination of spousal support. Family law courts also saw shifts in gender norms—wives paying spousal support to their husbands and fathers being awarded physical custody of their children. These legal questions tested the limits of statutory language and helped to expand the legal understanding of marriage, family, and parenthood. In addition, recurring questions about entry into and exit from marriage persisted. Courts addressed varied claims relating to marriage validity, equitable distribution, separate property, spousal and child support, and visitation rights. This brief article provides an overview of some of the most salient cases, and those cases that will most likely have a lasting impact on this state's family law jurisprudence.

I. GETTING MARRIED

In a year in which big changes happened on the federal front with respect to entry barriers to marriage,[1] small things happened on the state level in Virginia. Most significantly, the Virginia legislature tightened restrictions on requirements for minors to marry. Courts addressed the question of what constitutes a valid marriage, providing an extremely technocratic answer in *MacDougall v. Levick*.[2]

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1. *See* Obergefell v. Hodges, __ U.S. __, 134 S. Ct. 2584 (2015).

2. MacDougall v. Levick, 66 Va. App. 50, 782 S.E.2d 182 (2016); *see* discussion *infra* Part I.B.

A. *Legislation*

In the legislative realm, Virginia Code sections 20-23 and 20-26 were amended to provide that persons authorized to perform marriages are not required to take an oath to do so.[3] In addition, the amendments provide that these individuals shall not be considered Officers of the Commonwealth of Virginia.[4]

Addressing the question of minors marrying, the legislature also amended state rules in order to clarify the procedure. Specifically, changes to Virginia Code sections 16.1-331, 16.1-333, 16.1-333.1, 20-45.1, 20-48, and 20-89.1 implement procedures dealing with the marriage of individuals over the age of sixteen, but under the age of eighteen.[5] The basic requirement is that individuals in this age group must file a petition before the appropriate Juvenile and Domestic Relations District Court. They must identify the identity of the persons to be married, as well as any relevant criminal history and history of protective orders.[6] In addition, these individuals must also be emancipated for the purpose of being married and must present a copy of the emancipation order with the application for a marriage license.[7] Upon receiving the petition, the court must hold a hearing in order to ensure that the minor is entering into the marriage of her own free will, that she is sufficiently mature to marry, that the marriage will not endanger the safety of the minor, and that the marriage serves the minor's best interests.[8] If either party fails to obtain an emancipation order and follow the required procedures, the marriage will be declared void, unless the marriage was lawfully entered into in another jurisdiction.[9]

B. *Case Law*

In the courtroom, questions about how to lawfully enter into marriage likewise emerged. A case of particular interest was

3. VA. CODE ANN. §§ 20-23, -26 (Repl. Vol. 2016).

4. *Id.*

5. VA. CODE ANN. §§ 16.1-331, -333, -333.1 (Cum. Supp. 2016); *id.* §§ 20-45.1, -48, -89.1 (Repl. Vol. 2016).

6. VA. CODE ANN. § 16.1-331 (Cum. Supp. 2016); *id.* § 20-48 (Repl. Vol. 2016).

7. *Id.* § 20-48 (Repl. Vol. 2016).

8. *Id.* § 16.1-333.1 (Cum. Supp. 2016).

9. *Id.* § 20-45.1(C) (Repl. Vol. 2016).

MacDougall v. Levick,[10] in which the Virginia appellate court was called upon to determine whether a valid marriage had been contracted in the absence of licensing.[11] The couple in question participated in a marriage ceremony with a rabbi, but they did not have a license at the time because it was "an extraordinarily busy time."[12] The couple had been planning their wedding, purchasing a home, and moving all at the same time.[13] Moreover, "[n]either Levick nor MacDougall thought about obtaining a marriage license because neither realized that they needed one."[14] When they realized at the ceremony that they had no license, "[t]he rabbi and the parties decided to 'deal with that later because' everyone was 'ready to do the wedding.'"[15] The rabbi instructed the couple to obtain a license as soon as possible and send it to him for his signature.[16] The couple did just that, sending the marriage license to the rabbi for his signature shortly after the solemnization ceremony.[17] Consequently, neither party was present when the rabbi signed the license.[18] Nevertheless, the couple assumed that they were legally married in the ensuing years.[19]

Almost a decade later, in 2011, the wife filed for divorce and, with her divorce complaint, she filed a copy of a marital agreement the couple had executed two years prior.[20] The agreement stipulated that, in the case of divorce or separation, the husband would pay the wife spousal support in the amount of $150,000.[21] The wife sought pendente lite support according to the terms of this agreement, and the court ultimately awarded her $12,500 per month until the final terms of support were established.[22] In the middle of litigation, however, the husband opened a new line of inquiry by filing a petition for declaration of marital status.[23]

10. 66 Va. App. 50, 782 S.E.2d 182 (2016).
11. *Id.* at 57, 782 S.E.2d at 185–86.
12. *Id.* at 58, 782 S.E.2d at 186.
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*
17. *Id.*
18. *Id.* at 59, 782 S.E.2d at 186.
19. *Id.*
20. *Id.*
21. *Id*
22. *Id.*
23. *Id.*

The husband changed course and contended that, because of the faulty procedure with the marriage license, the couple was not lawfully married.[24] Consequently, he argued, the marital agreement was invalid and he was not responsible for spousal support.[25]

Addressing the question of whether the couple had a valid marriage, the appellate court began by stating: "The public policy of Virginia . . . has been to uphold the validity of the marriage status as for the best interest of society, except where marriage is prohibited between certain persons."[26] The court also noted that Virginia public policy was to favor marriage.[27] In the case at hand, however, the court concluded that these public policies in favor of finding a valid marriage did not apply.[28] Looking to the technical details of state marriage law, the court observed that Virginia "requires a license, followed by solemnization, to contract a lawful marriage."[29] These requirements, the court further remarked, were "mandatory rather than directory."[30] Despite the statement, then, that "[t]he state has no official interest in the place where a marriage occurs, or in the ceremony or ritual which surrounds the act,"[31] the court did take an official interest. According to the court: "Mailing a license via express mail for a signature when the parties are not even present does not constitute 'solemnization' under any reasonable definition of the term."[32] The parties were not, therefore, married and the husband was not beholden to the terms of the marital agreement. Moreover, the court concluded, the husband was not under any financial obligation whatsoever to his erstwhile wife.[33]

24. *Id.*

25. *Id.*

26. *Id.* at 63, 782 S.E.2d at 188.

27. *Id.*

28. *Id.* at 68–69, 782 S.E.2d at 191.

29. *Id.* at 64, 782 S.E.2d at 189. The court went on to say, "[e]very marriage in this Commonwealth shall be under a license and solemnized in the manner herein provided." *Id.* (quoting VA. CODE ANN. § 20-13 (Repl. Vol. 2016)).

30. *Id.* at 67, 782 S.E.2d at 190.

31. *Id.* (citing Cramer v. Commonwealth, 214 Va. 561, 565, 202 S.E.2d 911, 914 (1974) (per curiam)).

32. *Id.*

33. *Id.* at 76, 782 S.E.2d at 195 ("Our conclusion that the parties were never married means that MacDougall cannot obtain the distribution of marital property through equitable distribution because no marital estate ever existed, and neither can she obtain post-divorce spousal support, because in the eyes of the law she was never a spouse to Levick.").

Arguing against this, the wife contended that curative or equitable doctrines could and should intervene to help her obtain a financial settlement.[34] As she pointed out, courts in other states routinely apply equitable doctrine in such cases in order to stem the unjust enrichment of the spouse who avoids support obligations.[35] Curative doctrines, the court remarked, did not apply because there was no actual defect to cure with respect to the license: "The medicine in Code § 20–31's cabinet is not formulated so as to spring to life a marriage that, in the eyes of Virginia law, never was."[36] The court likewise refused to apply equitable doctrines to help the wife obtain any form of financial compensation, stating that public policy in Virginia militated against such application.[37] The court invoked an institutional role argument, observing: "The legislature is the rightful branch of government to set Virginia's public policy with regard to an institution so foundational, and of such paramount importance to society, as marriage."[38] The conclusion was not so much a call for reform, as a rationalization for a result that was clearly unjust to the wife. Without some change in law or judicial policy, this type of holding can and will injure divorcing spouses—many times women—placed in an economically vulnerable position at divorce.

II. GETTING DIVORCED

While getting married occupied one part of the legislature's and court system's attention, the great majority of time and analysis went into questions surrounding divorce. Claims about equitable distribution, spousal support, child support, and child custody were at the forefront on court dockets.

A. *Equitable Distribution*

The legislature made one particularly long-awaited amendment concerning separate property this past year. Legislators amended section 20-107.3(C) to provide that, if a court finds the

34. *Id.* at 78, 782 S.E.2d at 196 ("MacDougall, citing decisions from other states, also urges us to adopt the concept of marriage by estoppel.").

35. *Id.*

36. *Id.* at 70, 782 S.E.2d at 192.

37. *Id.* at 78–79, 782 S.E.2d at 196.

38. *Id.* at 78, 782 S.E.2d at 196.

separate property of one spouse in the possession or under the control of the other, then a court can order the transfer of such property back to the proper owner.[39]

In case law, courts continued to confront continually occurring questions concerning property characterization, valuation, and distribution in the context of equitable distribution. One especially interesting valuation case involved a divorcing couple and their family-owned restaurant. In *Zhang v. Tung*,[40] the husband contested not only the valuation but also the court-ordered use of an expert accountant.[41] The husband claimed that the trial court erred in appointing an expert accountant to perform the valuation and, furthermore, that "the testimony of the expert witness did not prove helpful to the trial court."[42] The husband based this claim on the fact that the expert witness came up with two different valuations and presented both to the court.[43]

The story began when the couple filed for divorce and the restaurant, that they jointly owned and operated, was one of the major marital assets.[44] They had acquired the restaurant, Shun Xing Chinese Restaurant, in 2000 while they were married, and in 2013, when they were divorcing, the value of the restaurant became relevant for distribution purposes.[45] The husband offered no valuation of his own, and the wife requested an "award of fees and costs to allow her to retain an expert to determine the value of the Shun Xing Chinese Restaurant and carry on this suit."[46] The court, pursuant to this request, appointed an accounting firm to prepare a business valuation, and the husband did not timely object.[47]

Accordingly, the accounting firm began to prepare its valuation. The accountant, however, ran into a problem with "conflicting financial data."[48] The conflict arose from differing financial

39. VA. CODE ANN. § 20-107.3(C) (Repl. Vol. 2016).

40. No. 1325-15-1, 2016 Va. App. LEXIS 24, at *1 (Ct. App. Feb. 2, 2016) (unpublished decision).

41. *Id.* at *1, *7.

42. *Id.* at *2, *7.

43. *Id.* at *9.

44. *Id.* at *2–3.

45. *Id.*

46. *Id.* at *7.

47. *Id.* at *8.

48. *Id.* at *9–10.

records that the husband and wife provided, records that offered vastly different pictures of the restaurant's financial health.[49] The husband provided the restaurant's tax returns, stating that they accurately reflected the restaurant's income and expenses.[50] The wife, on the other hand, stated that the tax returns did not reflect many of the restaurant's cash transactions.[51] She provided the accountant with "handwritten records showing cash sales, cash paid for supplies, and cash wages paid to employees."[52] The resulting difference in valuation was significant. Using the husband's numbers, the restaurant was worth $34,000.[53] Using the wife's information, the value of the restaurant was $399,000.[54] The accountant subsequently presented both valuations to the court, explaining the source of the difference, and offering the handwritten documents for the court to review.[55] On review, the court endorsed the second valuation done using the wife's information.[56] This valuation increased the value of the marital estate, and consequently, when the court awarded the restaurant to the husband and the marital home to the wife, the court also ordered the husband to pay $67,400 to equalize the values of the two properties.[57] On appeal the court, not surprisingly, affirmed the trial court's decision.[58] What was surprising, on the other hand, was the fact that the husband sought an appeal when the case clearly brought to light certain discrepancies between declared and actual taxable income.

Other cases dealt with factors used by trial courts to determine the final distribution of assets. For example, in the case of *Ozfidan v. Ozfidan*,[59] the appellate court addressed the question of what factors the trial court used and how the court applied them in distributing property.[60] The couple married in 1998, while they

49. *Id.* at *10.
50. *Id.*
51. *Id.*
52. *Id.*
53. *Id.*
54. *Id.*
55. *Id.*
56. *Id.* at *11.
57. *Id.* at *3.
58. *Id.* at *11.
59. Ozfidan v. Ozfidan, No. 1265-14-2, 2015 Va. App. LEXIS 148, at *1 (Ct. App. May 5, 2015) (unpublished decision).
60. *Id.* at *15–17.

were living in Texas and the husband was working toward a doctorate in economics.[61] The wife worked at an advertising agency and as a flight attendant.[62] When the husband graduated and accepted a job in Virginia, the couple moved to Richmond and the wife soon became pregnant.[63] The couple agreed that the wife would stay at home with the children, at least until they started school.[64]

In 2012, the wife filed for divorce, alleging that the husband was at fault on grounds of cruelty.[65] When it came to the equitable distribution of marital assets, the trial court found that there was little to distribute because the couple had significant credit debt and because the husband had committed waste of marital property during the separation period.[66] The husband had, in fact, kept a truck that belonged to the family, depleted three credit union accounts, as well as an Ameritrade account, and taken gold that the couple owned.[67] Accordingly, the court awarded any profit from the sale of the marital home to the wife.[68] She also received the home furnishings as well as her diamond ring.[69] The car went to the wife, as did her IRA, and a portion of her husband's pension.[70] The debts were distributed to the husband.[71]

The husband appealed this distribution, arguing that the trial court's decision was not supported by the factors listed in relevant Virginia Code provisions and that the trial court had not adequately explained its use of the factors.[72] On appeal, the court observed that the trial court had done "more than simply state that all of the statutory factors had been considered."[73] The appellate court observed that the trial court had discussed the various factors in some detail in two separate rulings.[74] Specifically, the trial

61. *Id.* at *1–2.
62. *Id.* at *2.
63. *Id.*
64. *Id.*
65. *Id.* at *4.
66. *Id.* at *7.
67. *Id.* at *6–7.
68. *Id.* at *7.
69. *Id.*
70. *Id.*
71. *Id.* at *8.
72. *Id.* at *15–16.
73. *Id.* at *17.
74. *See id.*

court had addressed: "the circumstances and factors which contributed to the dissolution of the marriage, . . . including any ground for divorce under the provisions of subdivisions (1), (3) or (6) of § 20-91 or § 20-95";[75] the "debts and liabilities of each spouse, the basis for such debts and liabilities, and the property which may serve as security for such debts and liabilities";[76] and the "use or expenditure of marital property by either of the parties for a nonmarital separate purpose or the dissipation of such funds, when such was done in anticipation of divorce or separation or after the last separation of the parties."[77]

The appellate court also mentioned that Virginia law has no presumption of equal distribution that would require a trial court to justify an unequal one.[78] Moreover, the wife had successfully proven cruelty, a factor that the trial court was justified in considering during distribution.[79] The trial court had not, therefore, abused its discretion and the appellate court affirmed the distribution.[80]

B. *Spousal Support*

In the legislative arena, section 20-107.1(E) was amended to specifically state that courts can appropriately consider "circumstances and factors which contributed to the dissolution . . . specifically including . . . any . . . ground for divorce" in awarding spousal support.[81] This amendment reinforces the authority that courts have to factor fault into support calculations and addresses the amount and duration of an award. The legislature amended part (A) of the same provision to provide that a court may award spousal support "notwithstanding a party's failure to prove his grounds for divorce, provided that a claim for support has been properly pled by the party seeking support."[82] In addition, the legislature amended section 20-103(A1) to clarify that spousal support "shall be paid from the post-separation income" and that the

75. *Id*. (citing VA. CODE ANN. § 20-107.3(E)(5) (Repl. Vol. 2016)).

76. *Id*. at *17–18 (citing VA. CODE ANN. § 20-107.3(E)(7) (Repl. Vol. 2016)).

77. *Id*. at *18 (citing VA. CODE ANN. § 20-107.3(E)(10) (Repl. Vol. 2016)).

78. *See id.* at *18–19 (citing Matthews v. Matthews, 26 Va. App. 638, 645, 496 S.E.2d 126, 129 (1998)).

79. *See id*. at *20.

80. *See id*. at *6–7.

81. VA. CODE ANN. § 20-107.1(E) (Repl. Vol. 2016).

82. *Id.* § 20-107.1(A) (Repl. Vol. 2016).

court has the authority to order support payments be made from specific funding sources.[83]

In the courts, questions concerning spousal support arose often and in many forms. One important and recurring question was when the denial of a spousal support award because of adultery constitutes manifest injustice. In *Giraldi v. Giraldi*, the question of manifest injustice appeared in the context of a reservation of support.[84] In that case, the court set forth very plainly the principles on which reservation of support is awarded as well as the factors that trial courts should use in determining whether reservation is appropriate.[85] The husband in *Giraldi* was awarded a divorce from his wife on the ground of her adultery.[86] They had been married for just over a decade in 2012 when he filed for divorce, and the wife testified at trial that she had been having an affair to seek "emotional support."[87] At the time of the divorce, the husband's monthly income was $16,432, although his income was not guaranteed past 2015.[88] The wife earned $3369 on a monthly basis from her position as a schoolteacher.[89] At the end of the trial, the circuit court judge ruled:

> I don't know what's going to happen in the future with reference to either one of you. Notwithstanding the adultery that's the grounds for the divorce in this case. I think it would constitute a manifest injustice to deny a reservation quite different in a matter of support so each of you will have a reservation one to the other.[90]

Each party was, accordingly, awarded a reservation of spousal support for a period of six years and two months, as determined by the length of the marriage.[91]

On appeal, the husband argued that the trial court erred by awarding a reservation of spousal support to the wife, and the appellate court agreed with him.[92] The court, stating the basics,

83. *Id*. § 20-103(A1) (Repl. Vol. 2016).
84. *See* 64 Va. App. 676, 679, 771 S.E.2d 687, 689 (2015).
85. *See id*. at 683, 771 S.E.2d at 691.
86. *Id*. at 679, 771 S.E.2d at 689.
87. *Id*. at 680, 771 S.E.2d at 690.
88. *Id*. at 681, 685, 771 S.E.2d at 690, 692.
89. *Id*. at 681, 771 S.E.2d at 690.
90. *Id*.
91. *Id*. at 679 n.2, 681, 771 S.E.2d at 689 n.2, 690.
92. *Id*. at 679–80, 771 S.E.2d at 689.

reiterated that adultery is generally a bar to receiving spousal support[93] except when denying support would result in "manifest injustice."[94] Manifest injustice, the court explained, must be proved by clear and convincing evidence based on two factors: (1) the respective degrees of fault of the parties during the marriage and (2) the relative economic circumstances of the parties.[95] The court remarked that "the circuit court never expressly mentioned the two factors upon which a clear and convincing demonstration of manifest injustice must be based."[96] Moreover, the court stated that, "'manifest injustice' cannot be speculative."[97] When the trial court remarked, "I don't know what's going to happen,"[98] the judge was speculating about the possibility of manifest injustice at a future point in time. This, the appellate court stated, was incorrect and incompatible with the idea of injustice being "manifest."[99] The trial court's failure to use the two factors of respective fault and economic circumstances in deciding to reserve spousal support, coupled with the trial court's speculative approach, constituted reversible error.[100]

In *Mundy v. Mundy*, another case about manifest injustice, the court further clarified what circumstances might constitute manifest injustice and lead to the denial of spousal support.[101] Again relying on the manifest injustice exception, the trial court awarded support to the wife, who had committed adultery.[102] The wife "admitted to numerous acts of adultery with a member of the rock band in which she participated and with her personal trainer."[103] The husband, on the other hand, "took the family on vacations" and the couple "shared weekend trips together, and they went to fine restaurants, the theater, the opera, and the symphony."[104] He

93. *Id.* at 682, 771 S.E.2d at 691.
94. *Id.* at 683, 771 S.E.2d at 691.
95. *Id.*
96. *Id.* at 684, 771 S.E.2d at 691.
97. *Id.* at 685–86, 771 S.E.2d at 692.
98. *Id.* at 681, 771 S.E.2d at 690.
99. *Id.* at 685–86, 771 S.E.2d at 692.
100. *Id.* at 684, 771 S.E.2d at 691.
101. 66 Va. App. 177, 179, 783 S.E.2d 535, 536 (2016).
102. *Id.* at 179, 783 S.E.2d at 536.
103. *Id.* at 181, 783 S.E.2d at 536.
104. *Id.* at 180, 783 S.E.2d at 536.

supported her interest in the arts, and he "attended and recorded her performances in her rock band."[105]

The divorce settlement gave the wife "assets worth approximately $1.8 million, including about $397,000 in cash and over $1.3 million in retirement funds."[106] The husband retained the marital residence and agreed to pay all educational expenses for the children, one of whom was in college and the other in medical school.[107] The husband earned an annual salary in excess of $850,000, while the wife had not engaged in significant paid work outside the home.[108] Nevertheless, the court noted that she had a degree in mechanical engineering and "could find part-time employment earning approximately $22 per hour."[109] Because of the significant disparity in earning capacities, the trial court relied on the exception for manifest injustice and awarded support to the wife despite her adultery.[110]

On appeal, the husband claimed that circumstances did not demonstrate that denial of support would produce a manifest injustice.[111] The appellate court agreed. Using the analytic framework of relative fault and economic circumstances, the appellate court concluded that the trial court had erred and that no manifest injustice would be produced by a denial of spousal support for the wife.[112] In terms of fault, the court stated that the wife was clearly at fault and that the trial court had even stated that "the relative degree of fault" weighed "heavily in favor" of the husband.[113] Moreover, the court concluded that the wife had received a sufficiently substantial settlement, such that she would not be put in circumstances of economic hardship without support.[114] Ultimately, the court reasoned: "It would be a manifest injustice to

105. *Id.*
106. *Id.* at 181, 783 S.E.2d at 536.
107. *Id.* at 181, 783 S.E.2d at 536–37.
108. *Id.* at 180, 783 S.E.2d at 536.
109. *Id.*
110. *Id.* at 179, 783 S.E.2d at 536.
111. *Id.*
112. *Id.* at 184, 783 S.E.2d at 538.
113. *Id.* at 183, 783 S.E.2d at 538.
114. *Id.* at 181, 783 S.E.2d at 536.

require a faultless spouse to pay support to a work-capable, millionaire spouse, guilty of repeated acts of adultery with several co-respondents."[115]

Other cases addressed support modification, including *Bailey v. Bailey*.[116] The couple in Bailey divorced in 2013, at which time the court ordered the husband to pay spousal support of $22,500 monthly for a period of three years and then $20,000 for a period of twelve years.[117] The support payments were scheduled to terminate at the end of the fifteen-year period.[118] The husband also agreed to pay the private school tuition up to $15,000 per child per year through high school, as long as his annual income did not fall below 80 percent of his 2012 income, which was $912,000.[119]

Two years later, in February 2015, the husband filed a request for the modification of his support obligations on the grounds of a substantial reduction in his income.[120] He was an equity partner in a law firm and specialized in intellectual property litigation.[121] He had stated at the time of the settlement, and his wife had agreed, that his income fluctuated from year to year—in 2012 he earned approximately $1,040,000, in 2013 he earned approximately $990,000, and in 2014 he earned approximately $850,000.[122] His projected income for 2015, however, was $668,710.[123]

In response to his modification request, the wife argued that the husband knew at the time he negotiated the divorce settlement not only that his income fluctuated, but also that it was likely to decrease.[124] At that time, the husband knew his billable hours were down and that he had lost several important clients.[125] Additionally, there was uncertainty within the firm because of a

115. *Id.* at 184, 783 S.E.2d at 538.

116. No. 0981-15-4, 2016 Va. App. LEXIS 80, at *1 (Ct. App. Mar. 22, 2016) (unpublished decision).

117. *Id.* at *1–2.

118. *Id.* at *2.

119. *Id.* at *2–3.

120. *Id.* at *3.

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.* at *5.

125. *Id.* at *3–4.

prospective merger.[126] Based on these facts, the trial court denied the motion for support modification, reasoning that "there were times during the marriage that husband's compensation went up or down, and, therefore, it was something the parties contemplated."[127] The provision exempting the husband from paying the private school tuition if his income dropped below a certain level, the court stated, confirmed that the parties knew there was a possibility of fluctuation.[128]

On appeal, the court reiterated the standard that "the court may increase, decrease or terminate the amount or duration of the award upon finding that . . . there has been a material change in the circumstances of the parties, not reasonably in the contemplation of the parties when the award was made."[129] It was true, the court observed, that the husband knew at the time of the settlement that he was likely to experience some sort of decline in income.[130] However, the court added, the husband did not know with certainty that the decline would happen, nor did he know at the time how drastic it would be.[131] At the time, the husband also believed—incorrectly, it turned out—that he "would be able to win new clients to compensate for the loss of the major client who had left."[132] What the husband ultimately experienced was nearly a 40 percent decline in income, which, the court remarked, even the wife's own expert witness testified was a significant drop.[133] The amount of the decline, therefore, constituted a "material change" and the appellate court reversed the denial for modification.[134]

Finally, one of the most interesting support cases in light of the new status of same-sex marriage and the inescapable frequency with which same-sex divorces will begin to occur, was *Luttrell v. Cucco*.[135] In *Luttrell*, the court addressed the termination of spousal support when the party receiving support is in a same-

126. *Id.* at *4.
127. *Id.* at *5.
128. *Id.* at *5–6.
129. *Id.* at *8.
130. *Id.* at *3–4.
131. *See id.* at *11–12.
132. *Id.*
133. *Id.* at *10–12.
134. *Id.* at *13.
135. 291 Va. 308, 784 S.E.2d 707 (2016).

sex relationship. The husband, who had been paying spousal support to his ex-wife since the divorce, sought to terminate payments on the grounds that his ex-wife was "engaged to be married" and had been "cohabiting continuously" with another woman.[136] He sought this relief pursuant to section 20-109 of the Virginia Code, which provides that support may be terminated "[u]pon order of the court based upon clear and convincing evidence that the spouse receiving support has been habitually cohabiting with another person in a relationship analogous to a marriage for one year or more."[137] The ex-wife did not dispute the allegations that she was cohabiting with another person.[138] Instead, she argued that because that other person was a woman, they were not cohabiting within the Code's meaning.[139] Both the trial and appellate court agreed with the ex-wife, concluding, "only opposite-sex couples could cohabit for purposes of [the Code]."[140] Same-sex marriage had not been legal in Virginia in 1997, when the statutory language had been enacted, and consequently cohabiting "in a relationship analogous to marriage" was not possible for same-sex couples.[141]

On appeal, the Supreme Court of Virginia reversed the ruling. Looking to the legislative history, the court observed that in 1997, the General Assembly had amended the relevant code provision.[142] Originally, when the amendment was introduced, the proposed language specifically stated that cohabitation "with a person of the opposite sex" was ground for termination of support.[143] This modification was not, however, approved. The court reasoned, "[b]y declining to modify the word 'person' with the phrase 'of the opposite sex,' the General Assembly signaled its intention that 'person' would include individuals of either sex."[144] The court

136. *Id.* at 311, 784 S.E.2d at 708.

137. *Id.* at 311–12, 784 S.E.2d at 708; VA. CODE ANN. § 20-109(A) (Repl. Vol. 2016).

138. *Luttrell*, 291 Va. at 312, 784 S.E.2d at 709.

139. *Id.*

140. *Id.*

141. *Id.*; *see* VA. CODE ANN. § 20-45.2 (Cum. Supp. 1997) (stating that same-sex marriage was illegal in Virginia in 1997).

142. *Luttrell*, 291 Va. at 318, 784 S.E.2d at 712.

143. *Id.* at 315, 784 S.E.2d at 711 (quoting H.B. 1341 Va. Gen. Assembly (Reg. Sess. 1997)).

144. *Id.* at 316, 784 S.E.2d at 711.

stated that the fact that same-sex marriage had not been legal in 1997 was not relevant.[145]

Rather, the court stated, the legislature meant to recognize "that an individual who has entered a committed, financially interdependent relationship with a third person is no longer dependent upon his or her ex-spouse in the same manner as when the agreement was executed."[146] The rules, therefore, were designed to "prevent one former spouse from obtaining a windfall at the expense of the other."[147] If the provision was read to exclude cohabiting same-sex couples, the court remarked, the results would in fact be unjust because "two identically situated individuals with identical spousal support awards would receive opposite treatment" based on whether the party receiving support was in a same-sex or different-sex relationship.[148] This conclusion righted two lower court opinions that would have set an unfair and illogical precedent at a time when same-sex divorce and cohabitation cases are poised to appear in great numbers on state court dockets.

C. *Child Support*

Support modifications were an issue for Virginia courts not only in the context of spousal support, but also child support. In *Everett v. Carome*,[149] for example, the husband sought a downward adjustment of his child support obligations, as set forth in the divorce decree.[150] The husband and wife were divorced in 2005 and, per the property settlement agreement ("PSA"), the husband was responsible for paying child support for the couple's two children, a son and daughter.[151] The PSA provided that the husband pay the wife $5000 on a monthly basis to help cover the costs of "two private-school tuition [payments], summer camps, work-related child care, transportation, insurances, in addition to food, clothing and housing."[152] The payments were to begin in July 2004, and

145. *Id.*
146. *Id.* at 317, 784 S.E.2d at 711.
147. *Id.*
148. *Id.* at 317, 784 S.E.2d at 711–12.
149. 65 Va. App. 177, 775 S.E.2d 449 (2015).
150. *Id.* at 181, 185–86, 775 S.E.2d at 451, 453.
151. *Id.* at 180, 775 S.E.2d at 451.
152. *Id.*

continue until each child had graduated from college.[153] The ex-spouses were to share the costs of undergraduate education for both children.[154] The agreement also stated: "In the event that Husband ever seeks a downward adjustment in his child support obligations, Wife shall be entitled to pursue her marital share of Husband's business interests and to pursue spousal support, both of which were waived to obtain child support beyond Virginia's guidelines."[155]

When the husband filed his motion to modify the child support, he cited a material change in circumstances based on the fact that the son had turned eighteen years old and had enrolled in college.[156] In addition, the husband noted that because the daughter had turned fourteen, childcare costs had decreased.[157] Furthermore, the daughter had begun receiving a scholarship at her private school, and the wife was enjoying a significant increase in her income.[158] The wife, however, argued that the PSA clearly required the husband to pay $5000 monthly until both children had finished college, and that the court could not modify what was set forth in the PSA.[159] The wife further argued that, even if a reduction could be made for one child, then the "husband would need to make up for such a reduction by increasing his support payments attributable to [the son], so that husband's monthly payments still had to total at least $5000."[160]

The court did not, however, find the wife's arguments persuasive. To begin, the court stated that no judicial modification by the trial court was possible for children who were no longer minors.[161] Addressing the modification request more generally, the court stated that there were two possible outcomes were the wife's argument to prevail.[162] The circuit court could potentially allow a downward adjustment of the daughter's support and then

153. *Id.* at 181, 775 S.E.2d at 451.

154. *Id.*

155. *Id.* Another provision of the PSA also stated that "in the event Husband seeks a downward adjustment in his child support obligations, he shall be responsible for all of Wife's attorney's fees and costs." *Id.*

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.* at 181–82, 775 S.E.2d at 451.

160. *Id.* at 182, 775 S.E.2d at 452.

161. *Id.* at 187, 775 S.E.2d at 454.

162. *Id.* at 190, 775 S.E.2d at 455.

the support going to the son would have to increase to reach the $5000 total.[163] Alternately, if the son's support amount was not modifiable, then the amount the daughter was receiving would also have to stay the same in order to stay at $5000 total.[164]

Quite to the contrary, the court concluded, nothing in the PSA stated that the "amount of support cannot be apportioned between the parties' two children—or that support must remain fixed at $5,000 per month even if modification in child support for the minor child may otherwise be warranted."[165] The court also remarked that the couple clearly contemplated that the support amount could be modified because they had inserted the PSA provision concerning possible modification and the consequences of doing so.[166] Ultimately, then, the court held that the husband's "total monthly child support obligation may be apportioned between the parties' two children and that the total amount of support may be adjusted downward (as well as upward) so long as the parties' daughter, S.E., is still a minor."[167] The case was remanded back to the circuit court with instructions to determine both how to divide the total support between the two children and whether there was a material change that would warrant the downward modification of support for the daughter, thereby reducing the husband's overall payment.[168]

In *Milam v. Milam*,[169] the husband likewise petitioned the court for a downward modification of his child support. To his surprise, however, he ended up with a court-ordered increase instead.[170] In that case, the father and mother were married from 1994 until 2012 and had five children together.[171] The father's petition was based on the fact that one child had reached the age of eighteen and, consequently, only three children were therefore eligible for support.[172] After the hearing to reduce support, the trial court issued an opinion stating that the father's income was $11,199 per month while the mother's income from employment alone was

163. *Id.* at 190, 775 S.E.2d at 455–56.
164. *Id.* at 190, 775 S.E.2d at 456.
165. *Id.*
166. *Id.* at 190–91, 775 S.E.2d at 456.
167. *Id.* at 192, 775 S.E.2d at 457.
168. *Id.*
169. 65 Va. App. 439, 778 S.E.2d 535 (2015).
170. *Id.* at 446, 778 S.E.2d at 538.
171. *Id.* at 447, 778 S.E.2d at 539.
172. *See id.*

about $745 per month.[173] Because the mother's income was low, the court also determined that her income was below 150 percent of the federal poverty level for all relevant purposes.[174] The court found, based on the mother's income, that the father's support obligation was $1380 monthly for the support of the three children who were minors.[175] The court also addressed the father's failure to pay to that point and the fact that he had arrearages in the amount of $23,559.94.[176]

On appeal, the father argued that, as a matter of law, the court erred in increasing his support obligation when he had filed a motion for reduction.[177] The relevant statute, Code section 20-108, provided:

> The court may, from time to time . . . on petition of either of the parents, or on its own motion . . . revise and alter such decree concerning the care, custody, and maintenance of the children and make a new decree concerning the same, as the circumstances of the parents and the benefit of the children may require.[178]

The father established a material change and, consequently, the circuit court was "required to determine the presumptive child support amount by using the statutory guidelines."[179] Nevertheless, using these guidelines, the court increased rather than decreased the support obligation.[180] This was, the appellate court concluded, appropriate and correct:

> [W]e hold that when a motion for modification of child support is before the court, the court may increase or decrease the amount of child support pursuant to the statutory guidelines, regardless of the wording of the motion seeking modification and regardless of whether the other parent specifically requests such relief.[181]

The father also argued that the trial court had erred by including one of the adult children as part of the household for purposes of determining the mother's status vis-à-vis the poverty guide-

173. *Id.* at 448–49, 778 S.E.2d at 539–40.
174. *Id.* at 449, 778 S.E.2d at 540.
175. *Id.*
176. *Id.*
177. *Id.* at 446, 778 S.E.2d at 538.
178. VA. CODE. ANN. § 20-108 (Repl. Vol. 2016).
179. *Milam*, 65 Va. App. at 452, 778 S.E.2d at 541.
180. *Id.*
181. *Id.* at 454, 778 S.E.2d at 542.

lines.[182] The father argued that by including children he was not obligated to support in the household size, the court "creat[ed] a *de facto* obligation for [father] to support a grown child whom he . . . otherwise has no legal obligation to support."[183] The appellate court disagreed, remarking that the determination of a poverty guideline amount "has nothing to do with the number of children father is obligated to support."[184] Rather, the court stated, "the determination of whether mother's income falls below 150 percent of the poverty guideline is to help ensure that her support obligations do not seriously impair her ability to maintain minimal adequate housing and to provide other basic necessities for her minor children."[185]

A third child support case examined the question of income imputation in relation to a downward support modification. In *Murphy v. Murphy*,[186] the father and mother divorced in 2013 and the father had primary physical custody of the couple's two sons and received child support from the mother.[187] A year later the court modified the mother's support, reducing it based on a reduction in her salary from $170,000 to $108,000 after she changed jobs.[188] The father appealed the modification, arguing that the mother was voluntarily under-employed and should have been required to pay support "based on an imputation of her prior income."[189]

At the time of the divorce, the mother earned between $140,000 and $170,000 annually (variable because of commissions) in a position that required long hours as well as evening and weekend work.[190] After the divorce, the mother "took a position that offered traditional hours and the ability to work from home."[191] The drawback was that she reduced her salary to approximately $110,000 per year.[192] The court modified her support based on this

182. *Id.* at 454, 778 S.E.2d at 542.
183. *Id.* at 457, 778 S.E.2d at 543–44 (emphasis in original).
184. *Id.* at 457, 778 S.E.2d at 544.
185. *Id.*
186. 65 Va. App. 581, 779 S.E.2d 236 (2015).
187. *See id.* at 584, 779 S.E.2d at 237.
188. *Id.* at 583, 779 S.E.2d at 236–37.
189. *Id.* at 583, 779 S.E.2d at 237.
190. *Id.* at 584, 779 S.E.2d at 237.
191. *Id.*
192. *Id.*

salary reduction, using the statutory guidelines.[193] The father argued that the court should have deviated from the guidelines because the mother was voluntarily under-employed and "[i]ncome may be imputed 'to a party who is voluntarily unemployed or voluntarily underemployed.'"[194]

The appellate court first dispelled any notion that there was a "mandatory imputation rule" by reviewing the case law prior to 2006.[195] For example, in the *Antonelli*[196] case, the state supreme court had concluded that a lower court did not err, in *Murphy*, when it imputed income to a father who had taken a new position because "the father assumed the risk of making less money, and that risk should not be borne by his children."[197] There was not necessarily, however, a mandatory imputation. Moreover, in 2006, the legislature enacted amendments that "plainly supersede any 'mandatory imputation' rule."[198] At that time, the legislature added language stating that:

> [A]ny consideration of imputed income based on a change in a party's employment *shall be evaluated with consideration of the good faith and reasonableness of employment decisions* made by the party, including to attend and complete an educational or vocational program likely to maintain or increase the party's earning potential.[199]

The new rules required a judge to consider not just the party's underemployment, but also whether the decision to take a reduction in salary was done in good faith and reasonableness. "Imputation," the appellate court remarked, "cannot be mandatory in all cases of voluntary under-employment, as that would prevent a judge from performing this inquiry."[200]

Applying the rule to the facts, the circuit court considered:

> [A]ll the relevant evidence, including the advantages children receive from having two active and present parents, mother's availability in

193. *Id*. at 584–85, 592, 779 S.E.2d at 237, 241.

194. *Id*. at 583, 585, 779 S.E.2d at 237 (quoting Brody v. Brody, 16 Va. App. 647, 650, 432 S.E.2d 20, 22 (1993)).

195. *Id*. at 585–86, 779 S.E.2d at 238.

196. Antonelli v. Antonelli, 242 Va. 152, 156, 409 S.E.2d 117, 119–20 (1991).

197. *Murphy*, 65 Va. App. at 588, 779 S.E.2d at 239.

198. *Id.* at 586, 779 S.E.2d at 238.

199. *Id.* at 591, 779 S.E.2d at 240 (emphasis in original); Act of Apr. 6, 2006, ch. 785, 2006 Va. Acts 1149, 1149–50 (codified as amended at VA. CODE ANN. § 20-108.1(B)(3) (Cum. Supp. 2006)).

200. *Id*.

> the event of emergencies, her ability to attend school events and take the children to doctor's appointments, reduced child care costs, and the other benefits that flowed to the children from her flexible schedule.[201]

The mother's choice to reduce her salary and take a new position was in the best interest of her children. Had the trial court decided to impute income to the mother, the court would have been obliged "to make express findings on the record to support the deviation from the presumptive amount. Imputing income is the exception, not the rule."[202] Accordingly, there was no error and the modification stood.[203]

D. *Child Custody and Visitation*

In the custody and visitation realm, one particularly interesting case involved the termination of grandparental rights upon adoption. In *Harvey v. Flockhart*,[204] the visitation dispute occurred between the grandparents and the adoptive parents. The adoptive parents, the Flockharts, received custody of the two children in question through a Shenandoah County Department of Social Services foster placement in 2011, when one child was approximately one-and-one-half years old and the other was approximately six months old.[205] The rights of the natural parents were subsequently terminated and, at that time, both the Flockharts and the grandparents, the Harveys, petitioned for custody of the children.[206] In 2012, over a year after the termination of parental rights, the court awarded the Flockharts legal custody and granted visitation rights to the grandparents.[207] Soon after that, the Flockharts filed a petition for adoption, which the court granted.[208] The grandparents, however, filed a motion to vacate the order on the grounds that "they had not received notice of the adoption proceedings."[209] The court granted that motion, scheduled a

201. *Id.* at 592, 779 S.E.2d at 241.
202. *Id.*
203. *Id.* at 593, 779 S.E.2d at 241.
204. Harvey v. Flockhart, 65 Va. App. 131, 775 S.E.2d 427 (2015).
205. *Id.* at 135, 775 S.E.2d at 428.
206. *Id.* at 135, 775 S.E.2d at 428–29.
207. *Id.* at 135, 775 S.E.2d at 429.
208. *Id.*
209. *Id.*

hearing on the Flockharts' petition, and allowed the grandparents to intervene.[210]

Subsequently, the Department of Social Services completed a report concerning the Department's investigation into the Flockharts' suitability.[211] The Department was, however, forced to file an addendum shortly thereafter because of a complaint—from an anonymous source that turned out to be the grandmother—that the children were living in unsafe conditions in the Flockharts' basement and that the swimming pool in the backyard was not properly gated.[212] The Flockharts fixed the problems by moving the children into bedrooms on the main floor that were equipped with smoke alarms and placing a lock on the pool gate.[213]

At a hearing on the Flockharts' petition for adoption, the court heard testimony from a licensed social worker who testified about her home observations. She stated that the children were "very bonded" to the Flockharts and loved them "very much."[214] She also testified about the children's ambivalence about visitation with their grandparents: "[T]hey experience confusion 'about what they're told [at the Harveys'] versus when they're home' . . . . And it has a direct impact on them with their relationship with their parents and their siblings."[215] The social worker also "expressed concern that the visitation triggered '[l]ots of anxiety' in [the children] and, for one of them, some 'regressive behaviors.'"[216] The Flockharts themselves testified that "the visitation was having an adverse effect on the children and on the family unit."[217] At the end of the hearing, the court granted the Flockharts' petition for adoption.[218] The court found that "[t]he parties are unable to cooperate in and resolve disputes regarding the children, in part, because the Harveys refuse to recognize the Flockharts as the parents of the children."[219]

210. *Id*.
211. *Id*.
212. *Id*. at 135–36, 775 S.E.2d at 429.
213. *Id*.
214. *Id*. at 137, 775 S.E.2d at 430.
215. *Id*.
216. *Id*.
217. *Id*. at 136, 775 S.E.2d at 429.
218. *Id*. at 137–38, 775 S.E.2d at 430.
219. *Id*.

At the same time, the court terminated the Harveys' visitation rights.[220]

The Harveys, on appeal, argued that their rights had been improperly terminated because these rights derived not just from their status as grandparents but also from being "persons of interest."[221] The court held on appeal, however, that 1997 legislative amendments had overruled *Thrift v. Baldwin*,[222] which had held that grandparents held a legitimate interest even after adoption of the children by another family.[223] The court noted that Code section 63.2-1215 was amended, for example, to read that:

> The birth parents, and the parents by previous adoption, if any, *except where a final order of adoption is entered pursuant to § 63.1–231, and any other person whose interest in the child derives from or through such parent or previous adoptive parent, including but not limited to grandparents, stepparents, former stepparents, blood relatives and family members*, other than any such parent who is the husband or wife of one of the petitioners, shall, by such final order of adoption, be divested of all legal rights and obligations in respect to the child *including the right to petition any court for visitation with the child*.[224]

These amendments were designed, the court stated, to "reflect the General Assembly's intention that an adoption order fully sever the adopted child's legal ties to the previous family."[225] Moreover, "[i]n providing for this clean break, the General Assembly eliminated a potential source of disruption in the growing bond between the adopted child and the adopting family."[226] The statute, the court remarked, was meant to eliminate conflictual situations with the potential to do harm to the children[227]—the very situation that was playing out between the Flockharts and the Harveys.

Finally, the grandparents argued that the adoption was not in the best interest of the children.[228] The court did not find this ar-

220. *Id.* at 138–39, 775 S.E.2d at 430.

221. *Id.* at 141, 775 S.E.2d at 431.

222. *Id.* at 139, 775 S.E.2d at 431.

223. Thrift v. Baldwin, 23 Va. App. 18, 20, 473 S.E.2d 715, 716 (1996).

224. *Harvey*, 65 Va. App. at 140, 775 S.E.2d at 431 (emphasis in original) (citing Act of Mar. 21, 1997, ch. 690, 1997 Va. Acts 1644, 1649).

225. *Id.* at 140, 775 S.E.2d at 431.

226. *Id.*

227. *Id.*

228. *Id.* at 144–45, 775 S.E.2d at 433.

gument persuasive. The court said that the report prepared by the Department of Social Services provided ample evidence that "the Flockharts and the children have bonded over a period of years and that the Flockharts can provide the children with a stable, nurturing, and loving upbringing."[229] The Flockharts gained custody and the grandparents, driven to create conflict and animosity, lost all rights to see their grandchildren.[230]

Relocation, in other cases, was also an issue with respect to visitation and custody rights. In *Wheeler v. Wheeler*,[231] the court of appeals took up the question of relocation and visitation. The mother and father in that case were married in 2004, at which time the mother was in the Navy.[232] The father had been in the Navy as well but was discharged on account of a "personality disorder."[233] In 2007, the couple moved to Virginia because of the mother's orders and she continued to be deployed until 2013 when she received a "humanitarian package reassignment" that allowed her be at home with her husband, who had been diagnosed with severe anxiety and depression, and the children.[234] The time at home brought more conflict, however, and the couple decided to divorce in 2013.[235] The mother was required to go back out to sea and sought assignments that were "less arduous and shorter in duration," ultimately obtaining a position in San Diego.[236] After receiving orders from the Navy to transfer to San Diego, the mother petitioned the court for permission to relocate there with the children.[237] The father objected, but the trial court granted the relocation.[238]

On appeal, the father argued that the circuit court had erred by granting the mother "additional latitude" because of her military status and career.[239] At trial, the court stated: "The Court feels that it has additional latitude, however, to treat the case of a uni-

229. *Id.* at 145, 775 S.E.2d at 434.

230. *See id.* at 134, 775 S.E.2d at 428.

231. No. 2230-14-1, 2015 Va. App. LEXIS 173, at *1 (Ct. App. May 19, 2015) (unpublished decision).

232. *Id.* at *2.

233. *Id.*

234. *Id.* at *2–3.

235. *Id.* at *3.

236. *Id.*

237. *Id.*

238. *Id.* at *3–4.

239. *Id.* at *5.

formed member of the Armed Forces of the United States bearing military orders to report to a new duty station as something other than a generic relocation case."[240] Relying on *Rubino v. Rubino*, the father argued that the Virginia Military Parents Equal Protection Act "does not establish a generalized preference for the military parent for purposes of child custody or visitation."[241] The appellate court noted that, while the trial court had indeed mentioned her military status, the trial court had used the appropriate statutory factors in determining whether relocation was appropriate and had kept "primary focus" on the best interest of the children.[242] Specifically, the trial court had concluded that: "If the Court refused [mother's] request and she separates from the Navy, as she testified she would, the children will lose a significant source of stability—the family's only income, their health insurance, and other military benefits; such circumstances would be a disruption in the status quo."[243]

The father also argued that the trial court accorded inappropriate weight to the "potential harm in mother's career if she did not relocate, rather than to the benefits of the children."[244] The appellate court, however, agreed with the trial court's emphasis on the fact that the mother was the sole wage earner in the family.[245] The father had not worked for many years and provided no financial contributions to the family; and the court mentioned that "[w]ith his previous hospitalizations, father proved that he was incapable of caring for the children on an extended basis."[246] For that reason, the mother's career was of significant importance to the family and to the care of the children.

Lastly, the father contended that the children's move to San Diego would irreparably harm his relationship with them.[247] The appellate court reiterated that the trial court had encouraged the father to relocate with the rest of the family, which he could do because he was not tied down with a job.[248] Alternatively, the trial

240. *Id*. at *6.

241. *Id.* at *6–7 (emphasis omitted) (quoting Rubino v. Rubino, 64 Va. App. 256, 263, 767 S.E.2d 260, 264 (2015)).

242. *Wheeler*, 2015 Va. App. LEXIS 175, at *7–8.

243. *Id*. at *5–6 (alteration in original).

244. *Id*. at *8.

245. *Id*. at *9.

246. *Id*. at *9–10.

247. *Id*. at *10.

248. *Id*.

court was willing to grant the father summers in Virginia and liberal visitation in California with the children if he chose not to relocate.[249] The father, however, stated he had an "intense fear of flying" and "would not go to California to exercise his visitation."[250] Because of this statement, the appellate court concluded: "[I]t is apparent that his fears, not the trial court, are preventing him from visiting with his children."[251] The mother and children were free, subsequently, to move to San Diego.

Against a backdrop of both new scenarios of social change and familiar ones of family conflict, the Virginia courts evaluated a wide swath of family law claims and helped to make family law in the state both more precise and more equitable.

249. *Id.* at *11.
250. *Id.*
251. *Id.*