

CASE OF THE MONTH:

A wonderful homeowner in Wesley Chapel bought a brand new air conditioning unit for \$13,000 from a well-known home improvement company. Once installed, she noticed multiple problems with the unit, and called to have it serviced—requesting a refund if repairs could not be made.

The company failed to honor the warranty and as a result, the client's home developed flooding issues (which escalated to mold damage) as a result of the poor installation job.

A demand letter was sent on our client's behalf, resulting in a promise of a full refund. After our client received the refund she called to tell us that the A/C unit was removed as requested. She was very happy. Our office also verified that all disparaging credit references on our client's credit report for refusing to pay for the faulty A/C unit were deleted.

CASE OF THE MONTH: Our client gets divorced in one month and five days.

Our client was a wonderful man who had Parkinson's disease. He had been a good saver during his career at a local telephone company. He was sued for divorce by his wife. He came to our office and asked how he could get divorced as quickly and efficiently as possible because his health was declining and he did not want the anxiety of going through divorce court for years on end.

What to do? Our client agreed to follow our advice and did the following:

He completed financial disclosures immediately and had our office serve his wife's attorneys with complete and full financial disclosure including a financial affidavit.

Our client agreed to share the money he had saved during the course of the marriage by offering to give his wife half his savings.

Our client allowed us to set a quick mediation in the case and we were able to schedule his case with an aggressive mediator who realized that the issues in the case needed to be resolved right away given our client's health.

Lastly, the man's wife although hostile, accepted the arguments we made at a mediation that if the case was drawn out our client may not be able to go to trial because he would be hospitalized due to his condition. (She apparently wanted to get divorced just as badly as our client.)

We settled the case and set an "uncontested hearing" before the judge a few days later ending the marriage.

Practice hint: Florida's rule of family law procedure 12.285 requires voluntary disclosure of finances such as providing copies of tax returns, bank statements, 401k statements, and a financial affidavit stating income, expenses and a balance sheet of what you own and owe.

If you are in a divorce be aware that you are required to voluntarily provide all of your financial information without being requested by the other side.

FISHER'S LAW OFFICE KEEPS A MAN'S CHILD WITH HIM IN TAMPA

Our client, a loving father, received lawsuit papers in which the mother of his child wanted to relocate with his daughter to a far away state with a man she had recently married.

Our client and his parents were in a panic. If the relocation was allowed they were afraid they would never see the little girl again.

We looked at the situation and the relevant statute, Florida Statute section 61.13001 and realized our client could show the court the move was against his daughter's best interests.

We hired a psychologist who met with the child and her father's family. The psychologist wrote a report to present to the judge and came to the trial to testify.

A trial took place in Tampa before a Circuit Court Judge that lasted a half day.

During the hearing it came out that the women knew very little about the new area where the child would live and had never visited her daughter's new school.

She also had an unstable lifestyle as an exotic dancer and she had moved often in the last few years creating anxiety and instability in her daughter's life.

Meanwhile the father, our client, was current on his child support, provided health insurance for the child, lived in a stable home with his parents on a farm and was positive influence in his daughter's life.

The court reviewed all of the factors contained in Florida Statute Section 61.13001 including: the quality of the child's relationship with her parents and others and her existing home, the age of the child, what substitute arrangements for visitation can take place or could be constructed, the child's preference, whether relocation will increase the quality of life for the child, the reasons for the relocation including employment opportunities of the relocating parent, whether the relocation is based on good faith and Any other factor affecting the child.

In our case a school psychologist testified that the child did not want to leave her father's family in Tampa and that the little girl enjoyed the company of her father and her father's family including her grandparents, her pet cow, and her pet dog Rocco.

Result? The court denied the relocation and our client was very happy.

Our client gets attorney's fees after a credit card case against him is dismissed by the judge!

Our client had fallen behind on his credit card payments with a large national bank. The bank sued him and our client had our office file a responsive pleading on his behalf. We asked for copies of the credit card statements showing that our client was behind on his credit card payments. After some delay, a few of the statements were set by the bank, but no other action took place on the case for over three years.

The court called up for hearing the matter and stated that the case would be dismissed unless activity was shown in the file. No activity occurred and the case was eventually dismissed and our client was awarded a substantial attorneys fee award because the credit card contract had a provision that whoever won the case would be entitled to attorneys fees.

Moral to the story? If you are sued for a credit card or other consumer debt, consider consulting with an attorney as you may have valid defenses to the claim and the plaintiff may lose interest in the case and the case may be dismissed.

WHAT HAPPENS WHEN SOMEONE DIES AND THEY OWE YOU MONEY?

A client came to us with a problem. He was an engineer who'd done work for a prominent sports personality who died unexpectedly.

The engineer was owed money from the decedent and he wanted to know how to make a claim for the money owed to him. We checked the public records and no estate had been filed in the county where the sports personality lived.

The solution? We suggested that our client file a caveat, a notice that officially notifies the clerk that a creditor of an estate has a claim. Thereafter, if an estate is filed, the clerk of the court will send a notice to the person who issued the caveat to inform him that the estate is being processed. Our client will be informed now that he has filed his caveat.

Children of a decedent and other interested persons can also file a caveat if they are fearful that an estate will be probated without them being notified. If such a person files a caveat, the court may not admit a will to probate or appoint a personal representative until formal notice of the petition for administration has been served on the caveator.

Our client wins his foreclosure case!

Our client was behind on his mortgage and was sued by US Bank National Association. Under Florida's "legal standing" rule, a bank cannot sue a homeowner to foreclose on a mortgage unless the bank owns the loan before it files the lawsuit.

There was a recorded assignment of mortgage to US Bank NA, but we were suspicious. The notary stamp on the assignment of mortgage was dated May 19, 2012 meaning the stamp was manufactured in May 2008.

Meanwhile, the assignment was dated December 2007, almost six months prior to the date the stamp came into existence!

We brought the fraudulent back dated assignment to the attention of the court.

As a result the court dismissed the case against the homeowner "with prejudice", meaning the bank can not sue our client again.

Moral to the story? Always see a lawyer if you are sued for foreclosure. The bank suing you may not have standing to sue because it does not own the loan or have authority to sue.

A woman is sued by her ex-husband and she defends herself. An elderly client whose husband has been employed as a truck driver came to Fisher's Law Office, P.A. She was being sued by her former husband to reduce her \$100.00 per week alimony. She offered to lower the alimony to \$50.00 a week so as to not go to trial but her former husband insisted on having a trial.

After a lengthy battle, the court awarded her \$5,000.00 in attorney's fees and made her former husband continue to pay her the \$100.00 a week and ordered him to pay an additional \$25.00 a week to make up for the time he had missed paying her during the litigation.

- A man with a valid Prenuptial Agreement is sued for divorce. A well-known attorney from another state who had moved to Florida was sued for divorce. He had a properly written Prenuptial Agreement which his wife challenged. He offered to give her \$25,000.00 to leave him alone and to consent to an uncontested divorce. She refused. The case went to an all day trial.

During the trial, it came out that the wife had personally corrected grammar and made substantive changes to the Prenuptial Agreement. It was also determined that full financial disclosure had been made. The court upheld the agreement and gave the woman no relief. The judge also denied the woman all attorney's fees and Fisher's Law Office's client was very happy.

A client's child support withholding was kept by his employer. Our client discover-ed that his employer was refusing to pay the money deducted to his former spouse for child support. When Fisher's Law Office filed for a contempt against the former employer, the employer went bankrupt.

Fisher's Law Office went to bankruptcy court and had the "stay" lifted in order to impose a jail sentence on the employer. The employer eventually paid all of the child support owed and began to properly deduct and pay over the monies to the client's former wife.

- **The IRS takes a woman's earned income credit (EIC) and personal exemption. A divorced woman using her former husband's last name came to Fisher's Law Office in tears. That day she'd received a threatening letter from the Internal Revenue Service (IRS). The letter said the IRS had taken her "personal exemption" and EIC away and reduced her refund from over \$2,000.00 to \$182.00! She needed the money for her to live on because she'd just been laid off from her job where she'd worked for 17 years.**

Attorney Ralph B. Fisher read the letter and realized the problem: This client's last name on her Social Security card was different from the name on her U.S. Federal Income Tax return. Unless the two are the same, a taxpayer can't take a "personal exemption" or the earned income tax credit (EIC). Solution? We had the client call the IRS service center and explain the situation. The IRS employee asked her questions on the speaker telephone. We helped guide her answers during the conference. Our client went to the social security office and "changed" her name in their records to her "IRS name". In this case, the IRS authorized the full refund over the telephone. What is the moral to the story? Always make sure your name in the social security administration records is the same as the name you use on your federal tax return. The IRS has never enforced this before so MILLIONS of women in the U.S. are affected by this new enforcement.

- **Fisher's Law Office keeps another client on the road. Our client fell behind on his child support and had his driver's license threatened by the Florida Department of Revenue (DOR). Our client had only 15 days to file a Motion to Contest Notice of Delinquency or risk losing his ship captain's license and his Florida driver's license.**

Ralph B. Fisher, attorney, filed a motion asking the court to let the man still drive and fish while he tried to catch up his child support. The most important points in the court's ruling allowing him to keep his licenses? 1) He paid what he could even though he couldn't pay the full amount, and 2) he filed a Petition for Modification requesting the court to lower his child support because of his reduced income. Moral? Always see a lawyer if you get a Notice of Driver's License Suspension in Florida.

- **A woman had a baby and her husband wasn't the father. A client had been separated from his wife for two years. During the separation, the woman had a child with another man and used the Florida Department of Revenue to sue our client seeking child support. The lawsuit was brought in a far-away county in Florida where none of the parties lived.**

Fisher's Law Office got the case transferred to Pasco County, where the parties lived and CROSS-CLAIMED against the real father of the child. The real father signed an "Acknowledgment of Paternity" which Fisher's Law Office show to the judge. The judge ruled that our client was NOT the father of the child even though he was married to the mother and he did not have to pay child support.

What is the moral to the story? If you are a man going through a domestic proceeding, insist on a paternity test when you get divorced. Under the law, you have a right to a DNA test. In 25% of domestic cases filed, the accused father is not the real father. Do not be a victim of the system; get a paternity test before you pay child support.

- **A woman is harassed by her ex-husband who kept sending her e-mail demanding she give in to a list of unreasonable demands regarding the parties' children. The woman came to Fisher's Law Office for help. While talking to her, it became apparent her husband (an executive with a local company) was paying only \$300.00 a month to support her two children while earning well over \$60,000 a year! The child support seemed too low and it was.**

Fisher's Law Office prepared a Petition to Modify the Final Judgment and raise the child support to "guideline" child support in accordance with Florida law. The child support will now be over \$1,000.00 a month. The harassment of the woman has stopped and her children have the benefit of their father's improved fortune in life. If your former spouse's job or income has increased since your divorce, consider a modification action to increase the child support. It's the law.

- **A woman fights to keep her home against an ex-boyfriend. Our client foolishly allowed her former boyfriend's name to be added to the title to her house. Later, when the couple broke up, the man sued for her for his share of the house's value. His suit seeks to sell the property and divide the proceeds.**

Such cases are allowed under Florida law (see F.S. 64.041) through a Partition action. With more couples living together and not getting married, this type of litigation is becoming more frequent.

Under the law, the circuit judge has the right to sell the house (F.S. 64.071) at the courthouse and give each party their fair share of the sale price based on each person's contribution to the property. (See F.S. 64.051). Plus, under the statute, attorney's fees can be awarded from the sale proceeds. Often houses sell for less than they are worth.

- **A prominent professor found a cell phone account he never authorized. Our client was a college professor with perfect credit. He received a telephone call from a cell phone company that his account was overdue. Our client didn't have a cell phone. When he called to explain this, the cell phone company threatened legal action against him if he didn't pay.**

He came to Fisher's Law Office, P.A.; Attorney Ralph Fisher obtained a copy of the police report where the client had reported the matter. Our office prepared an affidavit and a demand letter directed to the cellular telephone company explaining that under the Fair Credit Reporting Act, our client disputed the debt. We sent the affidavit and the police report. After a short delay, they corrected the professor's account. The criminal was never located.

Moral: Always get a copy of your credit report and listen carefully when bill collectors call. It could be that you are a victim of identity theft.

- **A military serviceman is called to war during his divorce case. Our client was in a terrible jam. He was sent away to the Persian Gulf on active duty while in the middle of his contested divorce. He came to Fisher's Law Office and asked for help. We advised our client to have filed a "Motion to Stay Divorce Proceedings". Under the Soldiers and Sailors Relief Act of 1940, our client would not have to appear in civil court while he was away at war. The court granted the stay and the case is frozen until our client returns from the war.**

- **A restaurant recovers money paid a radio station. Our client, the owner of a popular restaurant, sued to recover for advertising that hadn't been delivered. The client lost the case. The client asked Fisher's Law Office to file a motion asking the judge to "re-hear" the case. The rehearing was granted and eventually a new trial took place. The client won the second trial and the defendant paid the judgment.**

- **A woman obtains possession of her deceased son's German Shepherd dog. Our client, a loving mother, was appointed by the court to oversee her son's estate. One of the assets was her son's dog. A younger woman who knew her son refused to give up the dog. After a trial in circuit court, the judge ruled for our client. The dog was brought to our client three days before Christmas!**