

## FAMILY LAW

*Allison Anna Tait* \*

Another year of family law activity in Virginia brought both new legislation, which will likely have long-term impacts, as well as a new set of judicial opinions that will bring changes to the Virginia rules. The terrain covered in the legislation and opinions varies, but it includes certain fixtures such as marriage and divorce requirements, equitable distribution, spousal and child support, and child custody. This brief overview addresses all these areas, beginning with the legislative changes and then moving to the courts.

### I. IN THE LEGISLATURE

The legislature passed particularly important pieces of legislation this year regarding divorce and life insurance. What the legislature failed to pass and what was vetoed, however, are of interest as well.

#### A. *ABLE* Accounts

In the child support arena, the legislature amended Virginia Code sections 16.278.15(A) and 20-124.2(C) to provide that a court may order support payments be made to an Achieving a Better Life Experience (“ABLE”) savings trust account.<sup>1</sup> ABLE accounts are tax-advantaged savings accounts for eligible individuals with disabilities, which act in a number of ways like a special needs trust.<sup>2</sup>

---

\* Assistant Professor, University of Richmond School of Law. Thanks to the *University of Richmond Law Review* and Brian Melnyk for inviting me to write this overview and to the staff for their excellent editorial work.

1. Act of Feb. 20, 2017, ch. 95, 2017 Va. Acts \_\_, \_\_ (codified as amended at VA. CODE ANN. § 16.1-278.15(C) (Cum. Supp. 2017); *id.* § 20-124.2(C) (Supp. 2017)).

2. David A. Rephan & Joelle Groshek, *ABLE Act Accounts: Achieving a Better Life Experience for Individuals with Disabilities with Tax-Preferred Savings (and the Old Reliable Special and Supplemental Needs Trusts)*, 42 MITCHELL HAMLIN L. REV. 963, 974, 976 (2016).

## B. *Life Insurance*

The most significant family law legislation of the year was undoubtedly the enactment of a new law permitting courts to order one party to a divorce to maintain life insurance with the other party as the designated beneficiary.<sup>3</sup> This new Code provision effectively overrules *Lapidus v. Lapidus*, which held that nothing in the domestic relations code empowered Virginia courts to order that a party maintain or contract for life insurance policies for the benefit of the other party.<sup>4</sup>

The new law (Virginia Code section 20-107.1:1), which went into effect July 1, 2017, states that a court has the ability to decree that one spouse maintain his or her life insurance policy with the other spouse as beneficiary if the policy “was purchased during the marriage, is issued through the insured’s employment, or is within effective control of the insured.”<sup>5</sup> A court still does not have the statutory authority to order a party to obtain a new life insurance policy for the benefit of the other spouse. In addition, the party ordered to maintain the policy must have the right to designate a beneficiary and the other spouse must have been designated as a beneficiary of the policy during the marriage and must be a party with an insurable interest.<sup>6</sup> The court may order the payee spouse to be designated as beneficiary of “all or a portion” of the life insurance policy.<sup>7</sup> The court may also allocate the premium cost of the life insurance between the parties, provided that all premiums are billed to the policyholder and order the insured party to execute all appropriate forms and written consents.<sup>8</sup> Any such requirement imposed by the court, however, ends on the termination of the “obligation to pay spousal support.”<sup>9</sup>

In making such an order, there are a number of factors that the court must consider. These factors include the age and health of both parties, the cost of the policy and prevailing insurance rates,

---

3. Act of Apr. 5, 2017, ch. 797, 2017 Va. Acts \_\_, \_\_ (codified at VA. CODE ANN. § 20-107.1:1(A) (Supp. 2017)).

4. 266 Va. 575, 579, 311 S.E.2d 786, 788 (1984).

5. Ch. 797, 2017 Va. Acts \_\_; VA. CODE ANN. § 20-107.1:1(A) (Supp. 2017).

6. VA. CODE ANN. § 20-107.1:1(A) (Supp. 2017). *See id.* § 38.2-301(B) (Repl. Vol. 2014) (“Insurable interest” is defined as, “[i]n the case of individuals related closely by blood or by law, a substantial interest engendered by love and affection.”).

7. *Id.* § 20-107.1:1(A) (Supp. 2017).

8. *See id.*

9. *Id.*

the amount and duration of the support order, and the ability of either spouse to pay the premium cost of the life insurance.<sup>10</sup> Any order to maintain life insurance may be modified by either party if there is a material change in circumstances.<sup>11</sup> Such a change might include the remarriage of the party maintaining the policy.<sup>12</sup> The enactment of this new law demonstrates the Commonwealth's commitment to providing financial protection for an ex-spouse who is receiving spousal support in the event of the payor spouse's death and to the continued privatization of family support.

### C. *Enacted But Vetoed*

The Governor vetoed a bill—passed by both houses of the legislature—which provided:

[N]o person (individual, religious organization, clerk or clergy member and others) shall be required to participate in the solemnization of any marriage or be subject to any penalty, tax, tax disallowance or other monetary penalties listed, solely on account of such person's belief, speech or action in accordance "with a sincerely held religious or moral conviction that marriage is or should be recognized as the union of one man and one woman."<sup>13</sup>

The bill was a clear attempt to circumvent the administration and implementation of the Supreme Court's mandate of same-sex marriage, as set forth in *Obergefell v. Hodges*.<sup>14</sup>

### D. *Bill That Failed*

In a similar push against the ruling in *Obergefell v. Hodges*,<sup>15</sup> another bill which would have repealed Virginia's prohibitions against same-sex marriage and civil unions<sup>16</sup> failed to be reported

---

10. *See id.* § 20-107.1:1(B) (Supp. 2017).

11. *Id.* § 20-107.1:1(A), (C) (Supp. 2017).

12. *Id.* § 20-107.1:1(C) (Supp. 2017). However, "[t]his *provision* shall not permit the change in marital status of the payor spouse to be considered as a factor under § 20-107.1 or considered a material change in circumstances in any proceeding related to the modification of spousal support." *Id.*

13. Lawrence D. Diehl, *Legislative Update: 2017 General Assembly Session*, 37 VA. FAM. L.Q. 5, 7, 15 (2017) (quoting H.B. 2025, Va. Gen. Assembly (Ex. Sess. 2017)).

14. 576 U.S. \_\_\_, \_\_\_, 135 S. Ct. 2584, 2608 (2015) (holding the Constitution guarantees the fundamental right to marriage to same-sex couples and heterosexual couples, alike); *see e.g., Miller v. Davis*, No. CV 15-44-DLB, 2017 U.S. Dist. LEXIS 113637, at \*44–45 (E.D. Ky. July 21, 2017) (ordering Kentucky to pay fees on behalf of Kim Davis).

15. 576 U.S. at \_\_\_, 135 S. Ct. at 2608.

16. *See* H.B. 1395, Va. Gen. Assembly (Reg. Sess. 2017) (repealing VA. CODE ANN. §§

out by its committee.<sup>17</sup> This bill would have brought Virginia law into alignment with the *Obergefell* ruling and demonstrated a commitment not only to marriage equality, but also to LGBTQ rights more generally.

## II. IN THE COURTS

In the last year, Virginia courts put forth opinions concerning all parts of marriage—from entry to exit, providing interesting fodder for analysis and, in some cases, righting some wrongs in lower court opinions.

### A. *Grounds for Terminating a Marriage*

One case that reappeared last year—as the result of an appeal to the Supreme Court of Virginia—is *MacDougall v. Levick*,<sup>18</sup> which offered an especially technocratic and inequitable opinion by the appellate court last time around. The central issue in the case was that the couple in question had solemnized their marriage without properly acquiring a marriage license.<sup>19</sup> The couple participated in a traditional marriage ceremony officiated by a rabbi; however, they failed to obtain a license in the midst of moving and planning the wedding.<sup>20</sup> When the couple realized the mistake, they obtained a license after the fact, sent it to the rabbi for his signature, and then went about the business of being married.<sup>21</sup>

Over a decade later, when the couple began divorce proceedings, the husband sought to avoid equitable distribution or spousal support by contending that the marriage was void *ab initio*.<sup>22</sup> The trial court agreed with this contention.<sup>23</sup> The appellate court disagreed and concluded that the marriage was, rather, voidable.<sup>24</sup> Nevertheless, even though the court concluded that the marriage was voidable instead of void *ab initio*, the court declined to equitably divide

---

20-45.2 to -45.3 (Repl. Vol. 2016)).

17. *HB 1395 Same-sex Marriages; Civil Unions*, VA.'S LEGIS. INFO. SYS., <http://lis.virginia.gov/cgi-bin/legp604.exe?ses=171&typ=bil&val=hb1395> (last visited Sept. 27, 2017).

18. 66 Va. App. 50, 782 S.E.2d 182 (2016).

19. *Id.* at 58–59, 782 S.E.2d at 186.

20. *Id.* at 58–59, 782 S.E.2d at 186.

21. *Id.* at 58–59, 782 S.E.2d at 186.

22. *See id.* at 59–60, 782 S.E.2d at 187.

23. *Id.* at 60, 782 S.E.2d at 187.

24. *Id.* at 75, 782 S.E.2d at 194.

property or award any spousal support on the theory that the marriage never existed.<sup>25</sup>

Making matters worse, the appellate court declined to deploy any equitable doctrines to rectify the wife's situation. Equitable estoppel, the court remarked, did not apply: "[The wife] urges us to adopt the concept of marriage by estoppel. We must decline the invitation. 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."<sup>26</sup>

On appeal to the Supreme Court of Virginia, however, the court settled the definition and rights accompanying a voidable marriage. The supreme court held that the appellate court erred in holding that the marriage was voidable.<sup>27</sup> Additionally, the supreme court held that even if the marriage had been voidable, the appellate court erred in holding that the wife had no property or support rights arising from a voidable marriage and in holding that equitable estoppel was unavailable as a remedy as well.<sup>28</sup> The court also concluded that both statutory language and precedent compelled the conclusion that the marriage was void *ab initio*.<sup>29</sup> In the wife's favor, the court concluded that the appellate court had erred in affirming that the husband had not waived his right to contest the parties' marital agreement.<sup>30</sup> Finally, the court also concluded (in agreement with the husband) that the court of appeals erred by declaring non-compliant attempted unions to be voidable because such a conclusion essentially approved a "form of common law marriage, contrary to long-standing Virginia law and public policy."<sup>31</sup>

---

25. *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.").

26. *Id.* at 78, 782 S.E.2d at 196. The appellate court did partially uphold the marital agreement, based on mistake of fact, and allowed the wife to keep the pendente lite payments she had received. *Id.* at 81, 782 S.E.2d at 197. The Supreme Court of Virginia ruled that it had been mistake of law. *MacDougall v. Levick*, No. 160551, 2016 Va. LEXIS 204, at \*1 (Dec. 27, 2016).

27. *MacDougall*, 2016 Va. LEXIS 204, at \*1.

28. *Id.* at \*1-2.

29. *Id.* at \*2.

30. *Id.* at \*1.

31. *Id.* at \*3.

The Supreme Court of Virginia consequently restored the rights attendant to a voidable marriage as well as the right to claim equitable estoppel in such a situation. In addition, the court restored a distinction between void and voidable that hewed to both statutory language and precedential authority.

In another case about grounds for divorce, the court clarified how abandonment and desertion work when a husband keeps telling his wife that she is overweight. In *Mabe v. Mabe*, the wife petitioned for and was granted a divorce based on her husband's desertion.<sup>32</sup> The husband denied the allegations of desertion, claiming it was constructive desertion.<sup>33</sup> The husband appealed the final divorce decree, claiming that the parties had "agreed that he would leave the marital home after he finished his exams for the spring" and that his wife told him "he could not return to the marital home because 'the marriage was over.'"<sup>34</sup> The wife, in her petition, told a different story. The wife claimed that her husband continually "belittled her about her weight and threatened to leave her if she did not lose weight."<sup>35</sup> She stated that she had not wanted her husband to leave the home or the marriage.<sup>36</sup>

In weighing these differing accounts of marital breakdown, the trial court found that the couple's marriage "had been in trouble for many years."<sup>37</sup> And one of the main sources of conflict was that the wife was not able "to keep up" with her husband's demands relating to her weight and "her performance in the bedroom."<sup>38</sup> The wife presented evidence that the husband "belittled" her for not being able to meet his demands, while the husband testified that the wife made the marriage "unbearable."<sup>39</sup> Ultimately, while admitting that "tensions were high" between the parties, the court concluded that the husband became frustrated and left the marriage voluntarily.<sup>40</sup> The appellate court agreed.<sup>41</sup>

---

32. No. 0007-16-3, 2016 Va. App. LEXIS 185, at \*2 (Ct. App. June 14, 2016) (unpublished decision).

33. *Id.* at \*2 (noting that the "[h]usband sought a divorce based on cruelty and constructive desertion").

34. *Id.* at \*4.

35. *Id.*

36. *Id.* at \*3.

37. *Id.*

38. *Id.* at \*4.

39. *Id.* at \*5.

40. *Id.* at \*4-5.

41. *Id.* at \*9.

While the couple clearly stopped cohabiting, the intention of the husband to desert the wife was not crystal clear. The court, however, found the wife's statements and evidence not only sympathetic but also credible—credible enough to grant her divorce on the grounds of abandonment and desertion.

### B. *Equitable Distribution*

In the realm of equitable distribution, Virginia courts were quite active and a number of interesting questions came before them. These questions included ones about the valuation of family businesses, the division of special assets, and even fraud.

In *Wagner v. Wagner*, the court was asked to reopen a divorce case from 1999 in which the wife had lied about the value and whereabouts of a particular piece of artwork during the trial.<sup>42</sup> In 2015, the husband tried to have the divorce order set aside on the basis of fraud and the circuit court dismissed his action.<sup>43</sup> In 2016, the appellate court affirmed, after engaging in a useful discussion about the difference between intrinsic and extrinsic fraud.<sup>44</sup>

The facts of the case: the couple went through divorce proceedings in 1999, and during those proceedings there was a question about the value of a painting owned by the couple.<sup>45</sup> The wife testified under oath that she had given the painting away at a flea market.<sup>46</sup> The husband wanted to have an expert witness testify about the value of the painting, but the expert was excluded due to the husband's failure to designate the witness in a timely manner.<sup>47</sup> The judge, consequently, assigned a \$2000 value to the painting based on the cost incurred to restore it.<sup>48</sup> That value was used in the equitable distribution award and the final decree was issued.<sup>49</sup>

Fast forward five years when the husband filed a complaint to set aside the final divorce decree, alleging that during the divorce,

---

42. No. 1733-15-4, 2016 Va. App. LEXIS 257, at \*2–3 (Ct. App. Oct. 4, 2016) (unpublished decision).

43. *Id.* at \*1–2.

44. *Id.* at \*6–8, \*14.

45. *Id.* at \*1–2.

46. *Id.* at \*2.

47. *Id.*

48. *Id.*

49. *Id.*

the wife “hid the painting, lied about it during discovery, and committed perjury when she testified that she had given it away.”<sup>50</sup> After a three-day hearing, the circuit court found that the wife had not given away the painting but rather had hidden it during the divorce, and that “her testimony at the divorce hearing, that she did not have knowledge of the whereabouts of this asset and did not have control of the whereabouts of this asset . . . [was] completely false.”<sup>51</sup> The court even remarked that the wife was “the least credible witness in this case of all the witnesses.”<sup>52</sup>

Nevertheless, the circuit court determined that the wife’s actions constituted intrinsic rather than extrinsic fraud because those actions “did not prevent ‘a fair submission’ of the equitable distribution matter.”<sup>53</sup> Examples of extrinsic fraud, the court suggested, included “a litigant’s [k]eeping the unsuccessful party away from the court by a false promise of a compromise, . . . purposely keeping him in ignorance of the suit; [and] . . . an attorney[’s] fraudulently pretend[ing] to represent a party[] and conniv[ing] at his defeat.”<sup>54</sup> Intrinsic fraud, on the other hand, included “perjury, forged documents, [and] other incidents of trial related to issues material to the judgment.”<sup>55</sup> In essence, the court stated, intrinsic fraud was “obscuring facts.”<sup>56</sup> The distinction was critical, the court further observed, because intrinsic fraud is voidable by direct attack but only until the judgment becomes final.<sup>57</sup> Based on this definition, the court affirmed the lower court’s ruling, stating that the husband failed to prove extrinsic fraud and therefore no longer had any grounds for reopening the claim against his wife for fraud related to the equitable distribution of marital property.<sup>58</sup>

---

50. *Id.*

51. *Id.* at \*2–3 (alterations in original).

52. *Id.* at \*3.

53. *Id.* at \*4 (alterations in original).

54. *Id.* at \*7 (alterations in original) (quoting *McClung v. Folks*, 126 Va. 259, 270, 101 S.E. 345, 348 (1919)).

55. *Id.* at \*7 (alteration in original) (quoting *State Farm Mut. Auto. Ins. Co. v. Remley*, 270 Va. 209, 218, 618 S.E.2d 316, 318 (2005)).

56. *Id.* at \*7–8 (citing *Peet v. Peet*, 16 Va. App. 323, 326, 429 S.E.2d 487, 490 (1993)).

57. *Id.* at \*7.

58. *Id.* at \*8–9.

Several other equitable distribution cases—including *Pence v. Pence*,<sup>59</sup> *Hassell v. Hassell*,<sup>60</sup> and *Allen v. Allen*<sup>61</sup>—addressed questions concerning the valuation and distribution of business assets. *Pence v. Pence*, for example, addressed the relationship between marital fault and property distribution.

In *Pence*, the husband and wife married in 2001 and had three children.<sup>62</sup> Early in the marriage, the husband started a business, Pence Quality Homes (“PQH”), building and renovating homes.<sup>63</sup> In the early years of the business, the wife “assisted in some of the office and bookkeeping responsibilities of PQH.”<sup>64</sup> The couple acquired properties for renovation and often utilized the acquired property as the marital home during renovations.<sup>65</sup> Moreover, the wife used a trust fund that had been established for her benefit by her grandparents to support real estate loans for the business.<sup>66</sup> Around 2012, the wife began “expending increasingly large sums on personal travel and recreation and detaching herself from involvement in family and business affairs.”<sup>67</sup> The next year, the husband confronted her about an affair she was having with her personal trainer, and in 2014, the couple separated.<sup>68</sup> In 2015, the court granted the husband’s petition for a divorce on the ground of his wife’s adultery.<sup>69</sup>

The trial court, in dividing the marital property, gave the vast majority of the business assets to the husband, finding that, “[g]iven the overall contributions of [husband] to the business—he was the face of the business . . . it is clear that [husband] contributed more personal equity, financial risk, and personal good will than [wife] did to the endeavor.”<sup>70</sup> The trial court acknowledged the

---

59. Nos. 1567-15-4, 1591-15-4, 1813-15-4, 2016 Va. App. LEXIS 275 (Ct. App. Oct. 18, 2016) (unpublished decision).

60. No. 0414-16-4, 2016 Va. App. LEXIS 310 (Ct. App. Nov. 15, 2016) (unpublished decision).

61. No. 0562-16-4, 2017 Va. App. LEXIS 54 (Ct. App. Feb. 28, 2017) (unpublished decision).

62. *Pence*, 2016 Va. App. LEXIS 275, at \*2.

63. *Id.*

64. *Id.*

65. *Id.* at \*3.

66. *Id.* at \*2–3.

67. *Id.* at \*3.

68. *Id.*

69. *Id.*

70. *Id.* at \*4 (alterations in original).

wife's early contributions to the business, but stated that her husband "more than matched" these contributions.<sup>71</sup> In addition, the court suggested that the "[wife] clearly became disenchanted with her role as wife and mother and was enjoying spending 'quality time' outside of the home" in the later years of the marriage.<sup>72</sup>

On appeal, the wife argued that the trial court erred in making a disproportionate award in favor of the husband "while at the same time finding that both he and [the] wife contributed to these properties."<sup>73</sup> The court was, the wife claimed, inappropriately and punitively using fault as a factor in the equitable distribution when her fault did not affect the marital finances or the operation of the business.<sup>74</sup> Reviewing the trial court's decision, the appellate court noted the trial court's finding that the "wife curtailed her contributions to the family and home early in the marriage such that 'outside help' was needed for cooking, cleaning, and child care. Further, by the time of their separation, what little efforts [the] wife had contributed to managing the books for PQH had entirely ceased."<sup>75</sup> Consideration of the contributions of both parties was, the appellate court stated, fair.<sup>76</sup> Moreover, "while equitable distribution is not a vehicle to punish behavior, the statutory guidelines authorize consideration of [infidelity] as having an adverse effect on the marriage and justifying an award that favors one spouse over the other."<sup>77</sup> The trial court's decidedly uneven awarding of the business assets was, consequently, not an abuse of discretion.<sup>78</sup> This result begs the question of whether any type of fault may contribute to a radically unequal distribution of marital assets, even if the fault was non-economic, and, if so, what the role of fault considerations in spousal support is.

In *Hassell v. Hassell*, on the other hand, the trial court failed to value a closely held business started by the husband and yet allocated marital debt in a certain amount based on a certain assumed company value.<sup>79</sup> The couple was married in 1993 in New York

---

71. *Id.*

72. *Id.* at \*3-4 (alteration in original).

73. *Id.* at \*8-9.

74. *Id.*

75. *Id.* at \*9-10.

76. *Id.* at \*11.

77. *Id.* at \*10 (alteration in original) (quoting *O'Loughlin v. O'Loughlin*, 20 Va. App. 522, 527, 458 S.E.2d 323, 325 (1995)).

78. *Id.* at \*11.

79. No. 0414-16-6, Va. App. LEXIS 310, at \*14-16 (Ct. App. Nov. 15, 2016).

and, prior to the marriage, the husband had founded Repton Group, Inc., a company specializing in global finance.<sup>80</sup> The husband owned a little over ninety-seven percent of the business.<sup>81</sup> The wife never worked directly for the business and had a job in the pharmaceutical industry, where she earned a salary approximating \$80,000.<sup>82</sup> In 1994, however, she left her job when their first son was born.<sup>83</sup> Another son was born in 1997, and in 1998 the family moved to Virginia from New York, although the husband continued to manage his business in New York.<sup>84</sup>

During the marriage, the business was the family's main source of income and it provided the family with "horses, overseas vacations, and private-school education and a nanny for the children."<sup>85</sup> The husband, at a certain point, inherited \$2.5 million from his mother's estate.<sup>86</sup> Nevertheless, by 2010, the couple was in financial distress and was forced to sell numerous assets, including a Virginia farmhouse.<sup>87</sup> By 2014, the marriage was on the rocks and the wife filed a divorce petition.<sup>88</sup>

The court issued its ruling by letter in November 2015, finding that the marital estate was composed of the couple's New York apartment, three vehicles, and a 97.5% interest in Repton.<sup>89</sup> In addition, the court valued each of these items, assigning a definite dollar amount to each—except Repton.<sup>90</sup> The court remarked that, because the company was closely held, the value was difficult to determine and that the court was to look to the "intrinsic value of

---

80. *Id.* at \*2.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.* at \*3.

86. *Id.* (In 2008, the parties established a trust, the von Hassell Virginia Trust. "Regarding the husband's management of the trust, the trial court specifically found that '[t]o sustain [his] lavish lifestyle over a sustained period of time, [h]usband expended approximately \$1 million in funds that had been inherited from his mother's estate, but that [remaining proceeds from the inheritance] were transferred to a trust established for the benefit and wellbeing of the parties' two sons.'" (alterations in original).

87. *Id.* (explaining that "[e]-mails between the parties from 2011 show their discussions regarding their financial status, including what to sell and how to pay for things such as college tuition").

88. *Id.*

89. *Id.* at \*4.

90. *Id.* at \*5.

the property to the parties to measure value for equitable distribution purposes.”<sup>91</sup> The court also mentioned the goodwill value of the company and found that “‘the intrinsic value of the business is inextricably linked with the [h]usband’s professional ability,’ so that without him, ‘its value is simply the fair market value of the business assets . . . .”<sup>92</sup> So saying, the court did not attempt to value either professional goodwill or the business assets. Even more surprisingly, neither party attempted to present any expert testimony about the value of the business.<sup>93</sup> The court only determined that the husband’s interest in the company was marital property.<sup>94</sup>

Subsequently, the court allocated approximately \$250,000 in marital debt to the husband to compensate the wife for her share in the business.<sup>95</sup>

Specifically, the trial court ruled, “Husband shall retain ownership of the Repton Group in his sole name. *To compensate Wife for her interest in that entity*, and for the [husband]’s mismanagement and waste of marital resources, the [husband] shall retain full responsibility for and hold the [wife] harmless from the Marital Debt.”<sup>96</sup> The court did not specify what part of the \$249,000 was in compensation for the wife’s interest in the company and what part was to compensate for the husband’s financial mismanagement.

On appeal, the husband challenged this characterization of the asset. However, the appellate court declined to address this objection because the husband first raised it on appeal.<sup>97</sup> The appellate court did, nevertheless, take up the issue of business valuation, stating, “The failure or inability of a trial court to assign a monetary value to a marital asset has significant implications for an equitable distribution award.”<sup>98</sup> The appellate court also noted that the wife bore the burden of presenting evidence of the company’s

---

91. *Id.*

92. *Id.* (alterations in original).

93. *See id.* at \*16; *cf. Shuler v. Shuler*, No. 0082-16-3, 2016 Va. App. LEXIS 243, at \*5–6 (Ct. App. Sept. 13, 2016) (unpublished decision) (explaining that the husband offered no evidence as to the value of his own company, whereas the wife introduced credible evidence and so the court accepted her proposed value).

94. *Hassell*, 2016 Va. App. LEXIS 310, at \*14–15.

95. *Id.* at \*17.

96. *Id.* (alterations in original).

97. *Id.* at \*14.

98. *Id.* at \*16.

value in order to be entitled to her marital share.<sup>99</sup> Failure to establish the value of the company, the court observed, meant that the property would need to be excluded from the equitable distribution formula: “Thus, a finding that insufficient evidence of value was presented regarding the value of Repton should result in no equitable distribution award related to husband’s interest in Repton.”<sup>100</sup>

The appellate court concluded that the trial court’s failure to find the company’s value and its decision to award \$249,000 to the wife in compensation for her interest in the company were “contradictory and cannot be reconciled.”<sup>101</sup> This set of contradictory actions, the appellate court determined, was an abuse of discretion.<sup>102</sup> The court consequently remanded the issue of valuation and distribution of the husband’s interest.<sup>103</sup>

Finally, in *Allen v. Allen*, the question turned on whether proceeds from the sale of an application (“app”) constituted marital property when the sale was structured as compensation coming after the marriage.<sup>104</sup> The couple married in 1999 and “[i]n late 2008 and early 2009, [the] husband developed the concept for ZipList, a mobile application that allowed users to add recipe ingredients to a shopping list.”<sup>105</sup> In 2009, he found investors and the following year he launched the app.<sup>106</sup> In 2012, he sold ZipList to Condé Nast for upward of \$12 million, and the parties entered into a Stock Purchase Agreement (“SPA”).<sup>107</sup> Pursuant to the SPA, the husband was to receive payments for the sale of his stock when the SPA was signed in 2012 and subsequently on the anniversary of the signing in 2013, 2014, and 2015.<sup>108</sup> In addition, the husband signed a non-compete agreement and became an employee of Condé Nast, for which he was compensated separately from the stock sale.<sup>109</sup>

---

99. *Id.*

100. *Id.* at \*16–17.

101. *Id.* at \*19 (“Thus, the trial court erred either in concluding that the evidence did not allow it to determine a value for Repton or in compensating wife for an asset it had concluded could not be valued because of a lack of evidence.”).

102. *Id.*

103. *Id.*

104. No. 0562-16-4, 2017 Va. App. LEXIS 54, at \*3, \*6 (Ct. App. Feb. 28, 2017) (unpublished decision).

105. *Id.* at \*3.

106. *Id.*

107. *Id.* at \*4, \*9 (explaining that the agreed purchase price at the time of the sale was set at \$12,194,193.71).

108. *Id.* at \*4.

109. *Id.*

In 2013, the couple separated and soon after, the wife filed for divorce.<sup>110</sup> In 2016, the circuit court issued a ruling with respect to property and declared that “all the property, including the ZipList stock payments,” were hybrid property.<sup>111</sup> Based on this classification, the court used a coverture fraction to determine the marital share of the ZipList stock proceeds.<sup>112</sup> On appeal the wife argued that, despite the extended payments of the ZipList proceeds of sale over several years, all proceeds were marital property because the husband created ZipList and sold it during the marriage.<sup>113</sup> The husband argued that the hybrid classification was correct, because the “portion earned during the marriage constituted marital property and the portion earned post-separation constituted his separate property.”<sup>114</sup>

The appellate court agreed with the husband, affirming the trial court’s ruling.<sup>115</sup> The court found no error in the “threshold finding that the SPA instituted a deferred compensation plan.”<sup>116</sup> In the husband’s favor, however, the court also affirmed that the deferred payments from the stock sale derived from work performed by the husband both during and after the marriage, and, therefore the hybrid classification was correct.<sup>117</sup>

### C. Spousal Support

In the spousal support arena, one case in particular stood out, *Ruane v. Ruane*.<sup>118</sup> The case is interesting because it addresses a number of topics including the incorporation of separation agreements, requests for determination of support, and *pendente lite* support, and, of course, attorney’s fees. The marriage between the

---

110. *See id.*

111. *Id.* at \*5.

112. *Id.* at \*12 (“The numerator of the coverture fraction the circuit court applied was comprised of the number of days from the date ZipList was founded to the date of the parties’ separation. The denominator of the coverture fraction was comprised of the number of days from the date ZipList was founded to the date of the final payout. Based on that formula, the circuit court determined the marital component of the deferred payments and held that ‘about 73 percent of this asset is marital.’”).

113. *Id.* at \*6.

114. *Id.*

115. *Id.* at \*14, \*18.

116. *Id.* at \*16.

117. *Id.* at \*18.

118. No. 1285-15-2, 2016 Va. App. LEXIS 320 (Ct. App. Nov. 22, 2016) (unpublished decision).

two spouses was a long-term one, starting in 1987.<sup>119</sup> The husband had been in the United States Marine Corps and the wife had primarily been a stay-at-home parent to their three children (who had all reached majority age at the time of the divorce), but at the time of the divorce was employed by a care facility for senior citizens.<sup>120</sup>

The couple first separated in March 2010, and signed a separation agreement.<sup>121</sup> They reconciled briefly, but their reconciliation ultimately failed and in December 2013, “the parties formed the intention to remain permanently separated.”<sup>122</sup> After that, they lived separate and apart without interruption.<sup>123</sup> In March of the following year, the “[w]ife filed for divorce on adultery grounds,” and “[h]er complaint requested the incorporation of the terms of the separation agreement into a final decree of divorce.”<sup>124</sup> She also filed a motion for *pendente lite* relief and “asked the circuit court to incorporate the terms of the separation agreement into any order granting *pendente lite* relief.”<sup>125</sup>

The “[h]usband argued that the separation agreement had been abrogated by the [couple’s] subsequent reconciliation.”<sup>126</sup> The circuit court, however, entered its order for *pendente lite* relief, incorporating the terms of the separation agreement.<sup>127</sup> In December 2014, the husband filed his complaint for a no-fault divorce, “on the grounds that the parties had lived separate and apart, without interruption or cohabitation, for a period in excess of one year.”<sup>128</sup> In his complaint, he requested equitable distribution of the marital property and that the court “make an appropriate award of spousal support.”<sup>129</sup> The circuit court granted the husband his divorce, declining to incorporate the terms of the separation agreement after concluding that the separation agreement had been “rendered unenforceable” by the reconciliation.<sup>130</sup> Based on the husband’s conduct leading up to the marital breakdown as well as his superior

---

119. *Id.* at \*2.

120. *Id.*

121. *Id.*

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.* at \*2–3.

126. *Id.* at \*3.

127. *Id.*

128. *Id.* at \*3–4.

129. *Id.* \*4.

130. *Id.*

income and earning capacity, the court ordered the husband to pay his wife \$4000 monthly in spousal support.<sup>131</sup> The court also ordered the husband to pay the wife's attorney's fees, totaling \$25,000, based on the wife's "good-faith pursuit of a divorce based on adultery, the economic disparity of the parties, and [the] husband's 'significant negative non-monetary contributions leading to the dissolution of the marriage.'"<sup>132</sup>

Appealing the final divorce decree, the husband claimed, among other things, that the trial court erred in awarding any spousal support whatsoever.<sup>133</sup> The husband argued that the wife had never specifically asked for support—rather, her divorce petition had asked for an incorporation of the separation agreement terms.<sup>134</sup> He also argued, alternatively, that the wife's failure to prove her divorce on fault grounds meant that she had no valid pleading for divorce upon which the circuit court could base its award of spousal support to her.<sup>135</sup> Responding to this claim, the appellate court observed that the husband's complaint had made a request for the court to determine issues regarding property and support, specifically requesting that "the Court make an appropriate award of spousal support."<sup>136</sup> The court also noted that the husband had testified to his willingness to pay spousal support at trial, remarking, "My position on spousal support is *I want to pay my wife what she deserves*, what is fair and right. We were married a very, very long time. She followed me around the Marine Corps. She sacrificed just like I did. I just want to pay what is fair."<sup>137</sup> The appellate court, consequently, concluded that the trial court had not erred in awarding spousal support and that the amount awarded did not constitute an abuse of discretion.<sup>138</sup>

Second, the husband argued that the first circuit court erred by incorporating the 2010 separation agreement into the *pendente lite* order.<sup>139</sup> Here, he was on firmer ground. The appellate court agreed

---

131. *Id.* at \*4–5.

132. *Id.* at \*5.

133. *Id.*

134. *See id.* at \*5–6.

135. *Id.* at \*6.

136. *Id.* at \*8.

137. *Id.* at \*9.

138. *Id.* at \*9–11.

139. *Id.* at \*11.

with the husband that the separation agreement was clearly unenforceable because the reconciliation had occurred prior to the *pendente lite* award that incorporated the terms of the agreement.<sup>140</sup> Unfortunately for the wife, the trial court had relied solely on the terms of the agreement and not heard any evidence about the husband's ability to pay or the wife's need for spousal support.<sup>141</sup> This, the appellate court concluded, was reversible error.<sup>142</sup> The appellate court also concluded that the husband was entitled to a \$49,000 credit against future spousal support payments based on the fourteen months of such overpayments made pursuant to the *pendente lite* order.<sup>143</sup> Making it even worse for the wife, the trial court also "impermissibly" awarded the wife fifty percent of her husband's military retirement pension by making the award before the final divorce decree.<sup>144</sup> The appellate court observed, "The equitable distribution of such a marital asset cannot be made prior to the entry of the final decree of divorce and a proper hearing determining valuation of the asset."<sup>145</sup> The wife, then, was also obligated to repay any and all payments made to her from this pension.

The awarding of attorney's fees was the only real way in which the court could help the wife financially. Discussing attorney's fees, the appellate court began by stating that while the husband had a monthly income of \$19,627.73, his wife's annual income was \$17,390.85.<sup>146</sup> The wife had incurred \$42,000 in attorney's fees and the trial court had ordered the husband to pay \$25,000 of that amount.<sup>147</sup> Referring again to the circumstances of the marital breakdown and the husband's adultery (in addition to the income disparity), the appellate court determined that there had been no

---

140. *Id.* at \*11, \*14.

141. *Id.* at \*15.

142. *Id.* at \*16.

143. *Id.* at \*15–16. ("Husband now requests an award of \$49,000 to remedy the circuit court's error—the difference between the *pendente lite* support payments (\$7,500/month) and the actual financial need established by both the Wife and eventually ordered by the Trial Court (\$4,000/month) for a total of \$49,000 from March 2014 to May 2015 (\$3,500/month X 14 months).").

144. *Id.* at \*18.

145. *Id.* ("The circuit court's division of this largely marital asset also occurred without first having an evidentiary hearing to determine what is the marital share of [the] husband's military pension—and what share of the pension is his separate property.").

146. *Id.* at \*20 (explaining that the circuit court also found that wife was not underemployed).

147. *Id.* (ordering \$25,000 "to be paid from the equity in the home and not until the home is sold").

abuse of discretion in the award.<sup>148</sup> A small victory for the wife, who was still obligated to pay \$17,000 in attorney's fees and to repay everything she had been awarded through the *pendente lite* order.<sup>149</sup>

#### D. *Custody and Visitation*

In the child custody arena, the most talked about case this last year may have been *Vechery v. Cottet-Moine*, in which the judge's order banned the child from playing competitive golf for a year.<sup>150</sup> In that case, a 2014 custody and visitation order had the child's mother and father share joint legal custody, although the mother had "tie-breaking authority."<sup>151</sup> Soon after, when the father moved from Montgomery to Loudoun County, he filed a motion to amend the order, and the Loudoun County Juvenile and Domestic Relations District Court awarded sole custody of the child to the mother.<sup>152</sup> The father appealed to the circuit court; that court ruled in May 2016, awarding sole legal and physical custody to the mother and modifying the father's visitation.<sup>153</sup> The circuit court went further, however, and ruled that the father was not allowed to attend the child's gymnastics practices and that the child was not to play competitive golf for one year.<sup>154</sup> The father, unsurprisingly, appealed.

At the court of appeals, the judges considered these issues, among others, and, finding no error, affirmed the circuit court. With respect to attending gymnastic practice, the court of appeals agreed with the circuit court that credible evidence tended to prove that the father was a disruptive force at these practices.<sup>155</sup> He

---

148. *Id.* at \*20–21.

149. *See id.* at \*18–19, \*20, \*21.

150. No. 1143-16-4, 2017 Va. App. LEXIS 95, at \*14 (Ct. App. Apr. 4, 2017) (unpublished decision).

151. *Id.* at \*2.

152. *Id.*

153. *Id.* at \*2, \*3–4.

154. *Id.* at \*7, \*12–13 (“[The child] shall not be permitted to play competitive golf for one year. Competitive golf is defined by the court as no tournaments and no lessons with any golf pro with the exception of the Father. The Father and [the child] may play no more than one (1) round of golf per week or five (5) hours with putting and practice whichever is greater. When [the child] returns to Golf Tournaments the Father shall inform in advance to the Mother of all tournament[s] the child is involved and signed up for with the location day and time.”) (alterations in original).

155. *Id.* at \*7.

would “show up at gymnastics practice, interrupt the class, and pull the child out of practice. She would not return to the practice until [the] mother told her to do so.”<sup>156</sup>

Concerning participation in golf tournaments, the father argued on appeal that there was no evidence to suggest that a ban on competitive golf was in the child’s best interests.<sup>157</sup> The appellate court disagreed.<sup>158</sup> Both parents had previously testified that the child was a talented golfer and enjoyed the sport.<sup>159</sup> The father presented evidence that she was “phenomenal” and had “the potential to definitely make it on the LPGA [tour].”<sup>160</sup> In fact, prior to the first hearing, the child participated in nineteen golf tournaments, and the father—who was also her coach—was planning for her to play in up to twenty-five golf tournaments in the upcoming year, some of which involved missing school and travel.<sup>161</sup>

In addition, the father was disturbed by the mother’s involvement in the child’s golfing. He complained about the mother taking “the child to a different golf pro for a lesson because father believed that the lesson negatively affected the child’s swing.”<sup>162</sup> The father was upset when the mother and child participated in a parent-child golf event, emailing her to say that “he did not want the child to play any competitive golf on mother’s weekends without his approval.”<sup>163</sup> He also objected to the mother attending any of the child’s golf tournaments.<sup>164</sup>

The circuit court, assessing the evidence, found that the child was “probably a very talented golfer.”<sup>165</sup> Nevertheless, the court decided that the competitive golfing and the family stress around golfing “affected the child’s welfare.”<sup>166</sup> The court concluded, “It is too much stress and I just think maybe if we take that out of the equation, perhaps things will calm down a bit.”<sup>167</sup> This, the court

---

156. *Id.*

157. *Id.* at \*11.

158. *Id.* at \*14.

159. *Id.* at \*11.

160. *Id.* at \*12 (alteration in original).

161. *Id.*

162. *Id.*

163. *Id.*

164. *Id.*

165. *Id.* at \*13.

166. *Id.* at \*14.

167. *Id.*

of appeals concluded, did not constitute an abuse of discretion.<sup>168</sup> Golfing, by this account, was definitely not in the best interest of the child even though she excelled at it and may have enjoyed the game.

Another case, *Bedell v. Muller*, addressed the issue of relocation and turned on a father's request for the court to enjoin the mother from moving.<sup>169</sup> The parties in the case were married in 2005 and resided in Fairfax County, where they had three children.<sup>170</sup> After eight years of marriage, the couple separated and agreed, as part of their settlement, to share joint legal custody of the children.<sup>171</sup> The mother was to have primary physical custody and the father had visitation every other weekend and one evening each week for dinner.<sup>172</sup> The agreement stipulated that the children would remain enrolled in Catholic school, although the agreement did not specify any particular school.<sup>173</sup>

Subsequent to the separation and agreement, the mother wanted to move with the children to California in order to attend graduate school to increase her earning potential.<sup>174</sup> A judge denied the mother's request to move, concluding that she failed to prove it was in the best interest of the children.<sup>175</sup> Only nine days after this ruling, the mother notified the father that she was planning instead to move with the three children to Front Royal, Virginia, where she had found a job as a teaching assistant.<sup>176</sup> The father filed a motion to enjoin this move, but while the motion was pending, the mother moved to Front Royal and enrolled the children in the local Catholic Montessori school, where she had obtained her job.<sup>177</sup>

The judge, after a hearing, denied the father's motion after finding that the move—of sixty-four miles—was actually in the best interests of the children.<sup>178</sup> The judge remarked that the move to

---

168. *Id.*

169. No. 1618-15-4, 2016 Va. App. LEXIS 294, at \*1 (Ct. App. Nov. 1, 2016) (unpublished decision).

170. *Id.* at \*2.

171. *Id.*

172. *Id.*

173. *Id.* at \*3.

174. *Id.*

175. *Id.* at \*3.

176. *Id.* at \*4–5.

177. *Id.*

178. *Id.* at \*5.

Front Royal would provide the mother with a stable income and that the children would be attending the Catholic Montessori where the mother would be working—an arrangement that would save on childcare expenses.<sup>179</sup> This was important, because not only did the mother have to leave the marital residence so that they could sell it, but her spousal support was also scheduled to decrease significantly in 2016, from \$4191 to \$2500 per month.<sup>180</sup> With the drop in support, the mother could no longer afford to continue living with the children in Great Falls or keep the children enrolled in Catholic Montessori school in Fairfax County.<sup>181</sup> This drop in support, coupled with the need to find affordable housing, constituted a material change in circumstances.

Adding to the best interests of the children analysis, the mother also testified that she and the children had spent a lot of time in Front Royal and knew some families there.<sup>182</sup> Moreover, the children would be able to “keep their animals” because they would be moving to a detached home on an acre of land.<sup>183</sup> With respect to the relationship between the father and children, the judge concluded that the distance would not “deprive the children of a relationship with the father” even though there was evidence that the father’s attendance at the children’s events had been “sporadic at best.”<sup>184</sup> The judge concluded that the mother was not purposefully trying to keep the children from the father, especially since she stated that “she was willing to drive the children to meet the father for his midweek dinner visitation.”<sup>185</sup> For all these reasons, the court of appeals affirmed the decision to deny the motion to enjoin the move. California was too far for the court; Front Royal was just right.

Finally, a third case, *Coomer v. Commonwealth*, took up the question of felony child endangerment when the mother had been drinking and then drove with her infant child in the car.<sup>186</sup> Coomer went to a local pub with her fiancé for “date night.”<sup>187</sup> At the pub,

---

179. *Id.*

180. *Id.* at \*15–16.

181. *Id.* at \*16.

182. *Id.* at \*17.

183. *Id.*

184. *Id.* at \*5–6, \*19–20.

185. *Id.* at \*20.

186. 67 Va. App. 537, 543, 797 S.E.2d 790 (2017).

187. *Id.* at 540, 797 S.E.2d at 788.

the couple had dinner and a pitcher of beer.<sup>188</sup> After dinner, they ordered a second pitcher of beer, planning to remain and play games.<sup>189</sup> Soon after they ordered the second pitcher, however, Coomer received a phone call from her babysitter.<sup>190</sup> The babysitter was “having issues” with her boyfriend and was going to leave, so Coomer arranged to meet the babysitter to pick up her twenty-two-month-old daughter.<sup>191</sup> Before leaving to pick up her daughter, Coomer quit drinking, ate some French fries, and waited for approximately twenty minutes.<sup>192</sup> Then, she drove to the meeting spot and arrived without any problem.<sup>193</sup> However, driving home things did not go so smoothly. It was dark and raining, and the car ahead of Coomer slowed down due to unevenness in the road due to resurfacing.<sup>194</sup>

Coomer hit the bumper of the car in front of her, but both cars were traveling under the speed limit on account of the bad weather conditions.<sup>195</sup> The police arrived when called by the other driver and one officer later remarked that he detected “an odor of alcohol about [Coomer’s] person.”<sup>196</sup> When asked about her alcohol consumption, Coomer told the officer that she had consumed approximately two beers two hours before the accident.<sup>197</sup> The officer performed several sobriety tests, which she failed—although the officer stated, “I mean, it wasn’t one of those where I had to, you know, help support her.”<sup>198</sup> Coomer also took a breath test for blood alcohol content, which was over the legal limit at 0.097; and, after failing that test, she was arrested for driving under the influence of alcohol.<sup>199</sup> There was no accident report because there was no damage to either vehicle and Coomer’s daughter slept through the entire incident.<sup>200</sup>

---

188. *Id.* at 540, 797 S.E.2d at 788.

189. *Id.* at 540, 797 S.E.2d at 788.

190. *Id.* at 540, 797 S.E.2d at 788.

191. *Id.* at 540, 797 S.E.2d at 788.

192. *Id.* at 540, 797 S.E.2d at 788.

193. *Id.* at 540, 797 S.E.2d at 788.

194. *Id.* at 541, 797 S.E.2d at 788–89.

195. *Id.* at 541, 797 S.E.2d at 788–89.

196. *Id.* at 541, 797 S.E.2d at 789.

197. *Id.* at 541, 797 S.E.2d at 789.

198. *Id.* at 541–42, 797 S.E.2d at 789.

199. *Id.* at 542, 797 S.E.2d at 789.

200. *Id.* at 542, 797 S.E.2d at 789.

The trial court, reviewing the evidence, stated that, “Driving under the influence has inherent dangers that are presented to everyone on the highways, and certainly all passengers in a vehicle being operated by someone who’s impaired by alcohol.”<sup>201</sup> The court noted that there was an objective standard to determine criminal negligence and that criminal negligence could be found to exist when the defendant “either knew or should have known the probable results of his[/her] acts.”<sup>202</sup> The trial court, however, concluded that Coomer fit this description and convicted her of felony child endangerment, in violation of Virginia Code section 18.2-371.1, and sentenced her to three years of imprisonment, with all three years suspended.<sup>203</sup> Coomer was also placed on two years of supervised probation and one year of unsupervised probation.<sup>204</sup>

On appeal, Coomer argued that the trial court erred in finding that she “committed a willful act or omission that was gross, wanton, and culpable as to show a disregard for human life.”<sup>205</sup> And the court of appeals agreed.<sup>206</sup> Analyzing the case, the court observed that “the disposition of this case depends on whether the totality of Coomer’s actions leading up to the accident created a ‘substantial risk’ or a ‘probability’ or the ‘potential’ of serious injury or death to the child.”<sup>207</sup> The answer was no.<sup>208</sup> The appellate court looked at Coomer’s low driving speed on the “wet and curvy road.”<sup>209</sup> The court also took into account the fact that neither car sustained any damage and that there was no indication that Coomer was driving in a way that was unsafe or unstable.<sup>210</sup> There was, the court noted, “*nothing* in Coomer’s conduct other than the consumption of alcohol that suggests any negligence on her part.”<sup>211</sup> Her actions, therefore, did not rise to the requisite level of culpability, and she did not show a gross or wanton disregard for human life.

---

201. *Id.* at 543, 797 S.E.2d at 790.

202. *Id.* at 546, 797 S.E.2d at 791.

203. *Id.* at 544, 797 S.E.2d at 790.

204. *Id.* at 544, 797 S.E.2d at 790.

205. *Id.* at 540, 797 S.E.2d at 788.

206. *Id.* at 552, 797 S.E.2d at 794.

207. *Id.* at 547, 797 S.E.2d at 792.

208. *See id.* at 551, 797 S.E.2d at 794.

209. *Id.* at 547, 797 S.E.2d at 791–92.

210. *Id.* at 541, 550–51, 797 S.E.2d at 789, 793.

211. *Id.* at 550, 797 S.E.2d at 793.

Without condoning driving under the influence, then, the court recognized the difficulty of “[p]olicing the line between the ever present ‘possibility’ of serious injury and the more concrete ‘probability’ or ‘substantial risk’ of serious injury or death.”<sup>212</sup> The second pitcher of beer was probably not a good idea, even on date night, but given her non-erratic behavior and the lack of any real harm or injury, Coomer was not criminally negligent.

Drilling down, then, into questions about marriage and divorce, equitable distribution and support, visitation and custody, the Virginia courts continued their work of refining the answers to legal questions both new and recurring.

---

212. *Id.* at 551, 797 S.E.2d at 794.