

ILLINOIS TRIAL COURT
 **DIVORCE
DIGEST™**

court had found that the ex-wife's attorney's fees had not been discharged in the ex-husband's bankruptcy, the ex-wife's Petition for Fees should also not be dismissed pursuant to 735 ILCS 5/2 619(a)(9).

Custody Judgment Fails to Survive

The wife sought to enforce the terms of a Custody Judgment which had been entered prior to the dismissal of the underlying of the Petition for Dissolution. The husband objected and argued that the Custody Judgment did not survive the dismissal of the underlying Petition for Dissolution. Judge Carole Bellows found that in order for the Custody Judgment to survive the dismissal, it would have had to have been based on an independent petition, citing *In re the Marriage of Krol* (2015 IL APP (1st) 140976).

The husband was represented by Kevin M. Rosner. The wife was represented by Tracy M. Rizzo of the Law Offices of Tracy M. Rizzo.

The parties were married on May 30, 1998. They had three children—two daughters ages 15 and 14 and a 13-year-old son. The parties had previously filed for dissolution of their marriage in 2011 (hereinafter referred to as “the 2011 divorce case”). In the 2011 divorce case, the parties entered into a Final Custody Judgment/Order Incorporating Joint Parenting Agreement on March 12, 2012. However, the divorce case was voluntarily dismissed by the parties' August 7, 2013 agreement.

On July 29, 2014, the husband filed his Petition for Dissolution. On November 25, 2014, he filed a Motion for Mediation and Other Relief, seeking to have the parties attend mediation in an attempt to resolve custody and visitation issues. When the Motion for Mediation was presented, this court ordered the parties to attend mediation

through Cook County Family Mediation Services. On January 28, 2014, the wife filed a Motion to Strike Mediation Dates and Enforce Terms of Custody Judgment. The wife's Motion asked the court to enforce the Custody Judgment entered in the 2011 divorce case.

The wife argued that pursuant to Illinois Supreme Court Rules 922 and 304(b)(6) the Final Custody Judgment/Order incorporating Joint Parenting Agreement from the 2011 divorce case survived the dismissal of the underlying Petition for Dissolution. The husband, on the other hand, argued that the Final Custody Judgment from the 2011 divorce case did not survive the dismissal of the underlying Petition for Dissolution because a series of case law precedents had shown that a Petition for Dissolution advances a single claim and the ancillary issue of custody cannot survive dismissal of the underlying Petition for Dissolution.

Judge Bellows found that in order for the Custody Judgment to survive the dismissal of the Petition for Dissolution, it would have had to have been based on an independent petition. She found *In re the Marriage of Krol* (2015 IL APP (1st) 140976) to be controlling. In *Krol*, a voluntary dismissal of the Petitioner's Petition for Dissolution was granted. There was, however, an underlying Hague Convention Petition which was also dismissed. The Appellate Court held that the Hague Petition “stood alone” following the dismissal of the Petition for Dissolution of Marriage. The *Krol* court analogized the Hague Petition to the survival of an order of protection after dismissal of a Petition for Dissolution. The *Krol* court indicated that survival of orders beyond a dismissal of the underlying petition for dissolution can only occur when those orders are based upon an independent petition, such as a petition for an order of protection, commenced independently of the Petition for Dissolution; or



of a Hague Petition which is an independent action. (See *Krol*, 2015 IL APP (1st) 140976).

In the instant case, Judge Bellows held that allowing the Custody Judgment to survive the dismissal of the 2011 Petition for Dissolution would create circumstances in which married parents would have to comply with parenting schedule terms, such as the husband having alternate weekends. This was clearly not the parties' intention when they dismissed the 2011 divorce case. Finally, the 2011 Petition for Dissolution was filed and given the case number 11 D 5703. When the parties voluntarily dismissed case number 11 D 5703, there was no longer any case in which to modify the Custody Judgment or a mechanism by which to seek enforcement of the Custody Judgment, because it was not its own independent action.

Illinois Divorce Digest, Inc.
Publisher: Maol Murray Sloan
Staff Assistant: Colleen C. Wilson
P.O. Box 64876
Chicago, Illinois 60664-0876
Phone: (312) 332-3773
Illinoisdivorcedigest@gmail.com

Appellate Review:

Terms of Agreement Trump

In the April 2014 issue of the Digest, Judge Renee Goldfarb cited 750 ILCS 10/7 relative to Premarital Agreements as well as case law and found that the Premarital Agreement was not unconscionable. She granted the wife's Petition for Declaratory Judgment. She also awarded the wife the parties' dogs citing an article entitled "*Puppy Love: Providing for the Legal Protection of Animals When Their Owners Get Divorced.*" In the November 2014 issue, the *Digest* reported on Judge Renee Goldfarb's interpretation and implementation of the Agreement which she had previously found to be enforceable. Both of these decisions were appealed.

On December 31, 2015, the 1st District Appellate Court affirmed each of the rulings of Judge Goldfarb. 2015 IL App (1st) 142435. To read the decision, please sign on to www.illinoisdivorcedigest.com.