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A *Ricketts* reminder

Appellate court again clarifies jurisdiction in custody-with-cohabitation cases

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A circuit court has jurisdiction to resolve a child custody dispute when the parents are still living together and regardless of their marital status, the Court of Special Appeals has held.

The ruling in *Holbrook v. Newell*, extends the logic of a 2006 Court of Appeals case, *Ricketts v. Ricketts*, which held a trial court could resolve a custody dispute in a divorce action with cohabitating parents.

"The case before us is not a divorce proceeding but we can conceive of no reason why the State's interest in protecting the welfare of a child should depend upon the present or former marital status of the parents," Judge Christopher B. Kehoe wrote for a unanimous three-judge panel.

In the underlying case, James Holbrook requested to modify an initial joint custody order for a minor child because the mother, Hannah Newell, was unable to care for the child, according to the opinion. The biological parents of the child were unmarried but Newell was staying with Holbrook at the time because she did not have a fixed address.

A Cecil County Circuit Court judge court judge dismissed the case in May when he learned the parties were cohabitating. A section of the law allows a court to award custody "if the parents live apart" but the *Ricketts* court pointed to precedent that courts can determine custody and support without regard to whether the parents live separately.

The Court of Special Appeals, citing *Ricketts*, reversed the trial court in a published opinion Feb. 1.

Kevin Urick, who represented Holbrook, said he was surprised by the trial court's decision because he did not anticipate the parties' shared residence to be an issue in light of *Ricketts* and other case law.

"I didn't think it was controversial at all," said Urick, a solo practitioner in Elkton.

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Though the Court of Appeals for a decade has allowed judges to make a custody determination without the parties having separate residences, judges still are hesitant to do so, says family law attorney Jeffrey N. Greenblatt. 'The question that they probably asked themselves silently is, "How am I going to make a decision when these two are still living together?"' he says.

Ignored precedent

Holbrook presented relatively unique circumstances but it is not uncommon for one parent, married or not, to have the desire but not the means to leave the family home, according to family law attorney Ferrier R. Stillman. But Stillman said judges have been reluctant to use *Ricketts* even though the ruling is a decade old.

"I have clients all the time who desperately want to separate but can't, either because they are the economically dependent spouse and/or *Ricketts* is not being enforced," said Stillman a partner at Tydings & Rosenberg LLP in Baltimore. "It's not for lack of situations out there."

The extension of *Ricketts* to unmarried couples, though a natural extension of the Court of Appeals' logic, may not have a practical impact if courts don't use it, Stillman said.

"I think, partly, it's tradition and it's very hard to change how things have always been done and partly it's harder to determine who should have custody when the parents live together than it is when they have already separated," she said.

Without the parties having separate residences, judges may wonder how to make a custody determination, according to attorney Jeffrey N. Greenblatt.

"The question that they probably asked themselves silently is, 'How am I going to make a decision when these two are still living together?'" he said.

Greenblatt, a principal at Joseph, Greenwald & Laake P.A. in Rockville, said he has successfully sought a custody hearing for a client who still lived with a spouse but it is rare.

"(*Ricketts*) was decided but for whatever reason, as soon as the court hears that the couple is living together… they say, 'Go away,'" he said.