EDITION: U.S.
CA Canada US United States UK United Kingdom

September 26, 2011

HUFF POST DIVORCE

THE INTERNET NEWSPAPER: NEWS BLOGS VIDEO COMMUNITY

Like
2K

CONNECT
Search the Huffington

Edra J. Pollin

Family Law Attorney

GET UPDATES FROM Edra J. Pollin

Like
3

Medical Marijuana Lights Up Child Custody Court

Posted: 9/26/11 04:10 AM ET
React

Amid the flurry of accusations in child custody disputes, allegations of marijuana use rank high on the list. Until recent years, the court's position on this subject was easy to predict since judges and child custody evaluators maintained a zero tolerance policy toward smoking pot. In child custody cases within the greater Denver area, attorneys routinely admonished our clients that even if you're smoking only when the kids are with the other parent, enjoying a Rocky Mountain high is illegal, ill-advised and potentially devastating to your parenting time request. In court, when one parent cried marijuana, the other parent was ordered to a drug testing facility for a hair follicle test or random urinalysis. If the offending parent flunked the drug test, the next visit with their ten year old just might be under the supervision of a local agency.

Flash forward to 2011. The *soup du jour* is medical marijuana, and MM dispensaries have been sprouting up like weeds throughout the Denver/Boulder area and the entire country. Since implementation of Amendment 20, which amended the Colorado Constitution to recognize medical marijuana, the MM business has flourished. According to a recent report from *The Daily*, Denver now has more MM dispensaries than Starbucks and at least 125,000 Colorado residents have a license to smoke MM. If smoking irritates the lungs, one can always opt for medicated pizza or cheesecake at the edible outlet. In a state which is otherwise known for its healthy, fit and youthful population, a surprising number of people now require regular medication for the treatment of sore joints, chronic pain or additional physical ailments.

While Colorado is particularly fertile ground for growers and users of MM, all indications are that the legalization of medical marijuana is becoming a national phenomenon. A recent report from ProCon.org states that sixteen states plus Washington DC now have laws legalizing medical marijuana. According to the See Change Strategy report of March of 2011, the medical marijuana industry nationwide is a $1.7 billion dollar market with 24.8 million potential customers. In Phoenix, Arizona, where voters approved medical marijuana last fall, a local big box store which does not sell marijuana but which specializes in hydroponic equipment for marijuana growers is commonly referred to as the "Walmart of Weed."

The explosion in medical marijuana has caused a corresponding relaxation in the national attitude about use of this drug with or without an MM license. All of this poses new questions and challenges for the courts in cases where one parent's allegation of substance abuse is solely related to marijuana. If a parent is a card-carrying marijuana patient, does this give the parent a carte

blanche license to take their medication before or during their court ordered parenting time? Since the doctor's prescription for this medicine has no specific dosage, can the court rationally determine that a particular patient is over-medicating? When one parent's use of marijuana is undisputed, is that conduct sufficient to order supervised parenting time or must the accusing parent also establish that unsupervised parenting time would endanger the children's physical health or emotional development?

The latter question was answered by the Colorado Court of Appeals in the 2010 case of *Marriage of Parr*, 240 P.3d 509 (Colo.App.Div.1 2010). At the time of their divorce, the parties' parenting plan required the father to take ongoing UA's to show that he did not return to marijuana use. Shortly after the divorce, dad got his MM license. Dad filed a motion to waive the drug testing and, when it was denied, mom filed a motion to restrict dad's parenting time. One year later, after dad had been exercising unsupervised parenting time for the past eighteen months, the trial court ordered dad back to supervised parenting time with mandatory hair follicle testing. The Colorado Court of Appeals reversed this portion of the trial court's order upon a finding that the trial court could not require supervised parenting time for dad based solely on his marijuana use without a specific finding that dad's conduct endangered the child physically or impaired the child's emotional development as set forth in C.R.S. §14-10-129(1)(b)(I). Since Colorado follows the Uniform Dissolution of Marriage Act, it is likely that the *Parr* case will be cited as legal precedent in other states which have legalized medical marijuana. (Note that the *Parr* decision does not address the parties' property settlement but the rumor is that mom was awarded the house and dad got the potato chips.)

In the wake of the *Parr* decision, attorneys and litigants in child custody disputes have some measure of guidance when addressing one parent's accusation regarding the other parent's marijuana use. If you're the parent who is seeking supervised parenting time for your pot smoking partner, whether or not they have an MM license, be prepared to present credible and specific evidence that the other parent's conduct endangers the child's physical health or emotional development. If you're the smoking parent, your first and arguably best approach in a child custody dispute is to do a cost/benefit analysis of the situation and "Just say no" to future marijuana use. When that's not a viable option, be ready to show a strong pattern of competent, child-focused parenting along with evidence that your consumption of marijuana has never endangered your child. That said, if your testimony lacks conviction and you're sinking fast under a blistering cross examination, you may have to switch gears at the end and employ the defense of a former president, "I didn't inhale".

Sponsored Links

Truth About Annuities?
Don't Buy Any Annuity Until You Watch This Special Video Report!
SeniorAnnuityAlert.com

Axe® Deodorant Body Spray
Experience Axe® Body Spray. Watch How To Protect Your Mannequin!
www.youtube.com/AXE

Dermatologists' Hate Her
BREAKING: New anti-aging methods are helping women look younger fast.
www.HealthHeadlines.com

Man "Cheats" Credit Score
He Added 183 Points to His Credit Score Using This 1 Easy Tip
www.TheCreditSolutionProgram.com

Buy a link here

More in Divorce...

- Comments
- 185
- Pending Comments
- 7
- View FAQ

View All
Favorites
Recency |
Popularity
Page: **1** 2 3 4 5 Next › Last » (5 total)

Page: **1** 2 3 4 5 Next › Last » (5 total)