

# CERTIORARI

## Journal of Consumer Advocacy

CONSUMER INFORMATION FOR THE CLIENTS AND FRIENDS OF FRASIER, FRASIER & HICKMAN, LLP

Page 28

**McGirt Case  
Has Consequences**

Page 38

**Powers of Attorney**

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● **ELECTION**

## Frasier Participates in Voter Protection Project

In the past election, Frank Frasier was one of the army of lawyers serving as an election monitor, as part of the American Association for Justice non-partisan Voter Protection Action Committee.

AAJ is the nation's premier organization of trial lawyers fighting to defend Americans' right to trial and our civil justice system.

Frasier, a member of the AAJ Board of Governors, was assigned to monitor elections in Blackhawk County, Iowa – that state's second largest county. In this effort, he led a team to help monitor the counting of absentee ballots to ensure each was properly handled and then tabulated.

Like lawyers around the country, Frasier and his team monitored how election workers adhered to the processes put in place to make sure Iowa's votes were tabulated correctly. He was assigned as a team leader because of his experience with these processes, having participated in election protection work in the past in Ohio and Oklahoma.

"It turned out to be a wonderful experience," said Frasier. "As an American, it is reassuring to see volunteers of Democrats and Republicans work together to



AMERICAN  
ASSOCIATION *for*  
**JUSTICE**

**Frasier led a team to help monitor the counting of absentee ballots to ensure each was properly handled and then tabulated.**

make our democracy work. This year's election was one of the most important of a generation.

"While it meant time away from the office and family during a pandemic, I felt I had to do my part to ensure everyone's vote counted," Frasier said. "Thankfully, there were no problems with the processes put in place by Iowa's election officials and the election volunteers took their work seriously. I am even more thankful it all took place safely and no one on my team contracted the COVID virus."

## ● FAMILY

# Issues for Divorced Parents Complicated by COVID-19 Issues

By John Flippo

This office has fielded numerous questions from divorced or separated parents regarding their legal rights as parents during the pending Corona Virus pandemic. Most parents in our jurisdiction have been able to co-operate with each other and agree on parenting issues. Among the issues parents face is whether or not the child should wear a face mask, wash hands and social distance and whether or not children should attend in-person school or virtual school.

Typically, the custodial parent makes those decisions. Joint custody parents are to jointly make decisions affecting their children's medical needs and education.

Sometimes, a non-custodial parent gets frustrated with the custodial parent because they are not making appropriate health or education decisions. Sometimes, parents with joint custody cannot agree on what is best for their children regarding health and education needs.

The Courts are reluctant to be involved in the day-to-day decision-making by parents. However, our Judges will defer to the decision of the custodial parent as long as it is reasonable. When joint custody

parents are in dispute over the health or education of the children, the Judge will more than likely side with the most reasonable parent.

Often, custodial parents attempt to use the pandemic as a reason to obstruct visitation. The Courts will not go along with visitation obstruction based on COVID-19 issues unless the visiting parent is placing or will place the children in jeopardy.

To get any issue before a Judge, a motion must be filed with the Court and an Order

Setting the Motion must be prepared for and signed by the Judge. The first setting in Domestic Court is typically 30 days from the date the Motion is filed. It could be set sooner or later, depending on the Judge and

the Judge's caseload.

Another option is a Motion for an Emergency Order. Rarely will a Judge approve an Emergency Order unless the Judge believes it is best to protect the safety and welfare of a child. If an Emergency Order is granted, a hearing date is set within 10 days. At the hearing the other parent has the opportunity to appear before the Judge to present evidence to show cause why the Emergency Order should be canceled.

Anyone with COVID-19 parenting issues should contact the attorneys at Frasier, Frasier and Hickman, LLP.



## ● CASE FILE

# McGirt Case Has Consequences in OK

In July, the U.S. Supreme Court handed down a far-reaching decision that affects almost all of Eastern Oklahoma.

In the so-called McGirt case, the U.S. Supreme Court in a 5-4 decision determined the historic Creek Nation Reservation still exists and that the State of Oklahoma did not have criminal jurisdiction over crimes committed there by a tribal member.

Since the decision, federal, state and local authorities are attempting to comply with the decision, but limited resources have hindered the development of methods and procedures to carry that out.

What does this mean for an individual who is a member of a federally-recognized tribe

having been previously convicted in a state court where the crime was committed in "Indian country?" Each situation is different, but it may be subject to being vacated, even if the punishment was paid.

We are actively reviewing cases that may be impacted by the McGirt decision. Attorneys at Frasier, Frasier & Hickman, LLP are licensed to practice in tribal courts in eastern Oklahoma and should you have questions about the applicability of Indian law, you may contact the firm.



**“The test of our progress is not whether we add more to the abundance of those who have much; it is whether we provide enough for those who have too little.”**

**–Franklin D. Roosevelt, January 20, 1937**

Despite rumors to the contrary, the wheels of civil justice continue to turn in Oklahoma's courts. Although COVID-19 has complicated and often delayed court procedures – and fully delayed most trials – our attorneys are still busy filing claims and cases, working on litigation and settlements, and handling all sorts of legal matters, such as assisting with Powers of Attorney and other documents.

Quite a bit of court business can be handled virtually and digitally, and we are utilizing email and virtual conferencing via computer or smart phone with our clients.

Even though the pandemic has



complicated the disposition of many cases, it has not affected the statute of limitations. The clock is running if you have been wronged! Cases are still being filed – that part of the courthouse has not been closed.

We do not expect civil trials to

resume until the summer, at least. Settlements still are occurring, but insurance companies are dragging their feet as they are not bashful about using the economic distress of claimants to get them to settle quickly for unreasonably low amounts.

I have found over the years that an ounce of patience is worth a pound of settlement.

At the end of the day, we are here for you. Life's complications have become more complicated but one thing hasn't changed. Frasier, Frasier & Hickman, LLP will fight for the right of its clients.

*–Jim Frasier*

## ● CASE FILE

# Oklahoma SC Upholds the Constitution in Wrongful Death Claims

Recently, the Oklahoma Supreme Court considered a case where an adult, unmarried and childless worker was killed on the job. The Workers' Compensation Act based upon recent changes by the pro-business Oklahoma Legislature only allowed for death benefits for a spouse and children.

In the *Whipple v Phillips & Sons Trucking* case, a 23-year-old unmarried man lost his life in a work-related accident.

The Oklahoma Supreme Court determined that the right of the parent to bring a wrongful death action where the decedent is adult, unmarried and childless is established in the law and by the Oklahoma Constitution. The Supreme Court held that the legislative attempt to limit recovery for wrongful death under the wrongful death statute was a nullity.

If you are aware of a situation where an unmarried and childless worker was killed in a work related accident, relief may be now available under Oklahoma law.

## ● CONSUMER

# Powers of Attorney

In this time of concern over health issues, one may want to consider having a power of attorney in effect for business or health care purposes.

State law allows you to appoint a person to manage your business, property and/or make health care decisions for you in the event you become disabled or incapacitated. A power of attorney generally avoids the expensive and time consuming process of a guardianship and a smooths medical decision-making if you are in the hospital.

Typically, a person executes a Durable Power of Attorney for business and financial decisions and an Advance Directive for health care.

These are relatively inexpensive and allows for a spouse or another loved one to make important decisions for you in the event of a disability or incapacity.

Should you have an interest in learning more about this, please contact our office.

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## ● WINTER 2020

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certiorari, (ser-she-eh-ra-re) noun [Latin, to be informed]; to be informed as a means of gaining appellate review; a common writ. When at least four of the nine U.S. Supreme Court justices vote to hear a case, the court issues a writ of certiorari.

