



February 2, 2017

Representative Maxine Grad  
Vermont State House  
115 State Street  
Montpelier, VT 05633-5301

Dear Representative Grad:

We very much appreciated the opportunity for the Supreme Court to appear before the House Judiciary Committee to discuss our concerns and priorities for the coming year. During that session, we expressed the hope that there was some vehicle for members of the Court and Legislature to discuss on a regular basis not only our concerns in administering the Judiciary but also the issues and needs we see in deciding cases that come before the Court. This letter is to follow up on that discussion with respect to our adjudicatory decisions.

In our adjudicatory role, we often encounter situations where we find it difficult to apply the language of a statute to the facts and circumstances of a case for a variety of reasons. In those decisions, we often comment of the need for the Legislature to reexamine the statute and its language. We also encounter situations where there is no statutory coverage of circumstances that clearly need such coverage. Those situations are particularly challenging where the common law is archaic or we are limited in our ability to respond because there is some statutory coverage but it is inadequate.

In preparation for this letter, we asked our law clerks to go through the cases decided in the last year and identify the cases where we have urged legislative action in the course of our analysis. The list is attached. By way of emphasis and example, we highlight two of these decisions.

The first, McGee v. Gonyo, 2016 VT 8, involves the Vermont Parentage Act. We have attached the decision and an earlier one in which Justice Dooley concurred. These are the cases Justice Dooley identified in the discussion after the committee meeting. Title 15 contains detailed statutes on the rights and responsibilities of parents with respect to their biological children or step-children if they marry and separate or divorce. With respect to unmarried parents or persons who have acted as parents, and particularly with respect to children who have been conceived in ways that technology has enhanced, there is either no statutory coverage or coverage in one sentence of the Vermont Parentage Act. It is fair to say that the Vermont

Parentage Act is the sparsest and weakest such act in the country. Where other state legislatures have struggled with, but addressed, the challenges presented by modern families with children, we have not acted and continued with a parentage act that covers, almost exclusively, collection of child support.

The result for us has been a steady stream of cases in which a person claims to be a de facto or equitable parent or a person who has at least some of the rights of a biological parent and seeks a custody or visitation order against a biological or adoptive parent. The Court has divided in these cases with one side taking the position that policy in this area must come from the Legislature and the other taking the position that we must provide justice in the individual cases in the absence of a specific statute.

This is the subject about which Amy Davenport provided you with models for legislation - the Uniform Parentage Act and relatively new statutes from Maine and New Hampshire. We urge you to consider these models and move forward with some solution this session.

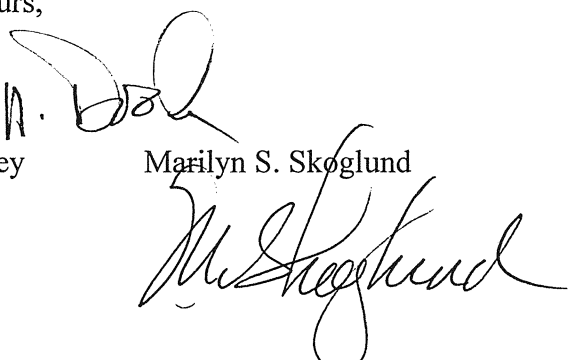
The second example is In re K.A., 2016 VT 52, which we have also attached. It is an example of a case in which we have difficulty applying statutes that are very old but are being applied to modern, and very different, circumstances. In In re K.A., we addressed the misuse of a statute governing prostitution in a juvenile delinquency case. The State's Attorney charged a twelve-year-old boy with committing a "prohibited act" on the school playground pursuant to 13 V.S.A. 2632(a)(8). That statute was enacted in 1919. The Court held that the acts charged did not constitute a crime under section 2632(a)(8) because that section should be understood to only apply to acts relating to prostitution. We wrote "over years of legislative enactments, some statute cease to coexist peacefully with changes in society's mores and may be misused."

We hope we can continue our conversation on how we can increase communication on the kinds of issues these cases raise. We would be happy to meet with you and other members of the committee at your convenience for that purpose.

Very truly yours,



John A. Dooley



Marilyn S. Skoglund