

Winter 2022

Moss & Barnett Advocate

Trouble at Home

By Brittney M. Miller and James J. Vedder

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Trouble at Home



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Brittney M. Miller is a member in our Family Law group. She assists clients in all family-related matters, including parenting, support, division of assets, stepparent and same-sex adoptions, antenuptial agreements, and many other issues confronting modern families.



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Jim Vedder is a member of our Family Law group. He has significant trial and settlement experience in complex marital dissolution matters, including the division of marital and nonmarital assets, the division of closely held businesses, spousal maintenance, child support, and custody issues.

Decisions about custody and parenting time after a separation or divorce are never simple. Family violence of any kind makes the process all the more complex — and the victim is not always protected.

Nearly 30 million children in the United States will be exposed to family violence by the time they turn 17. Exposure includes a child witnessing a parent physically harm the other parent, observing a parent's injuries after the fact or overhearing verbal abuse directed at a parent.

The Enduring Impact on Children

Numerous studies have found that domestic abuse can have far-reaching physical and psychological consequences for children. The CDC recognizes that experiencing abuse and witnessing family violence are “adverse childhood experiences,” or ACEs. Traumatic events that occur during adolescence, ACEs are associated with chronic health problems in adulthood, including mental-health troubles and chemical dependency. ACEs can also hinder children from reaching their full adult potential by limiting academic and employment opportunities.

Family courts are uniquely situated to screen cases for domestic abuse and, when necessary, impose safeguards to protect children, including restricting a perpetrator's parenting time or requiring that it occur in a supervised setting. But when courts fall short and fail to intervene or adequately respond to domestic-abuse concerns, the consequences for children can be dire.

The Center for Judicial Excellence tracks family-law matters that end in the homicide of a child. From 2008 to 2021, the group reports, 819 children in the United States were murdered by a parent, stepparent, or other caregiver. Of these tracked cases, 72% involved a father and child; 16% involved a mother and child.

Defining Domestic Abuse

Also referred to as “intimate partner violence” or “domestic violence,” domestic abuse is violence that occurs between partners or household members. It can take many forms, and it's often nuanced. Some examples:

- **Sexual abuse and coercion:** Physically forcing, threatening, or manipulating the victim to engage in sexual contact or activity without his or her consent.



- **Verbal and emotional abuse:** Name-calling, belittling, degrading, or undermining the victim's self-worth.
- **Financial or economic abuse:** Restricting the victim's access to financial resources, rendering the victim financially dependent on the perpetrator.
- **Coercive control:** Engaging in a pattern of oppressive behavior to control the victim, including stalking, monitoring, or isolating him or her.

Most states limit the legal definition of domestic abuse to acts that cause physical injury or imminent fear of physical harm. More subtle forms of domestic abuse are often omitted from these statutory definitions.

One exception is Colorado, which has broadened its definition of domestic abuse to include forms of coercive control as part of its civil protection order statute. Expanding the term's definition to include less overt forms of abuse presents opportunities for legal protections to reach a greater number of families in need of intervention and protection.

Domestic Abuse and Custody Determinations

When custody and parenting time are in dispute, family courts are generally required to make decisions consistent with the child's best interests. As part of its analysis, the court must address a variety of "best interest" factors and determine what custodial and parental-access arrangement is optimal.

Many states, including Michigan and New Mexico, include domestic abuse as one of many best interest factors that must be considered when awarding custody and parenting time, but it is not the deciding factor — and in Montana, domestic abuse is a discretionary factor. Other states, such as California and

Minnesota, have enacted a rebuttable presumption that a shared custody arrangement is not in a child's best interest if domestic abuse has occurred. The court must then determine if sole custody is appropriate and to which parent it should be awarded. One might reasonably assume the rebuttable presumption against joint custody in cases involving domestic abuse always results in the victim being awarded sole custody, but that is not always so.

In *Thornton v. Bosquez* (2019), the Minnesota Supreme Court held that the rebuttable presumption against joint custody in domestic violence cases does not apply against a particular party, only against a shared custody arrangement. The trial court had found that the mother committed acts of physical abuse against the father, which met the statutory definition of domestic abuse. However, it also found that the father had substantial power over the mother and engaged in insidious forms of coercive control, but his actions did not meet the statutory definition of domestic abuse. The trial court applied the rebuttable presumption against joint custody and awarded the mother sole custody of the minor child after evaluating all best interest factors. It reached this conclusion even though the mother was, technically, the perpetrator of the abuse. The Minnesota Supreme Court affirmed the decision. This case illustrates the importance of family courts having a nuanced view of domestic abuse and considering the circumstances unique to each family's situation when awarding custody.

The Co-Parenting Trap

Judicial officers and other professionals working in the family court system have expectations about how divorcing or separating parents should act. They are expected to communicate and work together after their separation, and to support and encourage the other's relationship and parenting time with the child.

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Team News

Aaron A. Dean Named to *Minnesota Lawyer's* "The Power 30: Real Estate and Construction Law"

Moss & Barnett is pleased to congratulate **Aaron A. Dean**, who was included in *Minnesota Lawyer's* inaugural "The POWER 30: Real Estate and Construction Law" (June 28, 2021). *Minnesota Lawyer* interviewed respected attorneys and other leaders around the state, reviewed outcomes of significant cases, and consulted the archives of *Minnesota Lawyer* to select talented and influential honorees deserving of this recognition.

Congratulations to Aaron and our Construction Law team on this achievement!



Aaron A. Dean

Midwest Real Estate News Lists Moss & Barnett Among Top Law Firms for Real Estate in 2021

We are pleased to announce that *Midwest Real Estate News* named Moss & Barnett among the top regional law firms for real estate in 2021. Each year, *Midwest Real Estate News* issues its "Best of the Best" edition, which ranks the industry's top law firms

from 14 Midwestern states. Selection is based on the number of real estate transactions that occurred in the previous year within those states.



"We are honored to be recognized by *Midwest Real Estate News* as one of the leading real estate law firms in the Midwest. We are grateful for the many relationships that provide us with the opportunity to work on challenging and exciting transactions throughout the region."

- Tim Gustin, Chair, Moss & Barnett Real Estate Group

Moss & Barnett Congratulates Our 2021 *Super Lawyers* and *Rising Stars**

With special congratulations to **Susan Rhode** and **Jana Aune Deach**, included in the Top 50 Women and Top 100 Minnesota *Super Lawyers* lists for 2021; and **Jim Vedder**, included in the Top 100 Minnesota *Super Lawyers* list for 2021.



Cindy J. Ackerman



Bradley R. Armstrong*



Kevin M. Busch



Jana Aune Deach



Aaron A. Dean



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Seven New Lawyers Join our Team

Justin is a member of Moss & Barnett's Litigation team assisting businesses and individuals at all points of the litigation process. He has experience in many areas of litigation, including shareholder disputes, employment, intellectual property, and property tax. Justin received his J.D. from Mitchell Hamline School of Law and his B.A. from the University of Minnesota-Twin Cities.

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Accountant Law



Nate represents closely held businesses and financial institutions focusing on commercial real estate, secured and real estate-based lending, automobile and marine dealerships, construction trades, health care, and professional services. He represents commercial real estate owners and developers in acquisitions, sales, 1031 transactions, development, leasing, and financing. Nate also represents numerous non-real estate businesses in mergers and acquisitions, financing, succession planning, risk management, and general operational and contract issues. Nate has represented financial institutions in loan and participation transactions, loan restructuring and work out matters, mergers and acquisitions of financial institutions, and corporate governance. Nate received his J.D. from the University of Iowa College of Law and his B.A., *cum laude*, from Washington University in St. Louis.

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Rebekah advises both individuals and businesses in commercial real estate, real estate financing, and business law matters. She focuses on providing her clients with a full-service legal experience, from entity formation to purchases and sales, organizational changes and succession planning, and mergers and acquisitions. Her unique professional experience coupled with her business and legal education give her insight into the specific challenges clients face through real estate and business transactions. Rebekah received her J.D. from Mitchell Hamline School of Law where she served as editor-in-chief of *Mitchell Hamline Law Review*; her M.B.A. from the University of St. Mary; and her B.S. from North Dakota State University.

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Mary Frances is a member of Moss & Barnett's Wealth Preservation and Estate Planning team. She focuses her practice on serving individuals and families who are establishing an estate plan, revising an existing estate plan, or dealing with the legal, medical, and financial impacts of aging, chronic illness, and disability. Mary Frances is accredited to practice before the Department of Veterans Affairs and counsels and advises veterans and their families on accessing state and federal VA benefits. She is a frequent speaker and community educator on a range of estate and elder law issues, including estate planning, asset protection, medical assistance planning, vulnerable adult issues, and veteran's benefits. She received her J.D. from William Mitchell College of Law and her B.S. from Purdue University.

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Sicheng is a member of Moss & Barnett's Business Law team assisting clients on a broad range of corporate and financial transactions. Prior to practicing law, she honed her skills in financial analysis working for an accounting firm and a venture capital firm. Sicheng also worked as a judicial extern to the Honorable William J. Fisher in U.S. Bankruptcy Court for the District of Minnesota. She received her J.D., *cum laude*, from the University of Minnesota Law School; her M.S., *with honors*, from Simon Business School, University of Rochester; and her B.S., *with honors*, from Central University of Finance and Economics, Beijing, China.

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Erinn is a member of Moss & Barnett's Multifamily and Commercial Real Estate Finance team, focusing her practice on closing and delivering loans secured by multifamily projects to secondary market investors such as Freddie Mac and Fannie Mae. As part of this practice, she prepares and negotiates loan documents; reviews legal opinions; examines title, survey, and other due diligence; and works with all transaction parties to ensure a smooth closing. Erinn maintains a database of analysis and documentation and has developed efficiencies to close a large volume of transactions. She received her J.D., *magna cum laude*, from Mitchell Hamline School of Law where she served as managing editor of *Mitchell Hamline Law Review*, and her B.A. from the University of Minnesota-Twin Cities.

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Jeremy is a member of Moss & Barnett's Business Law team. He uses his legal and business skills to advise clients of all sizes on a broad range of business and financial transactions, including mergers and acquisitions, contract law, corporate governance, entity formation, commercial transactions, and general business practice. Jeremy received his J.D. from the University of Minnesota Law School where he served as lead editor of the *Minnesota Journal of Law & Inequality* and President of the Business Law Association, and his B.A., *summa cum laude*, from the University of Denver.

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Business Law



M&B Cares – A Year in Review

While in-person volunteer opportunities were limited due to COVID-19 considerations, our team at Moss & Barnett found other ways to give back to our communities and engage in acts of service. Our M&B Cares initiative led the following service projects in 2021:



Valentines for Seniors

preshomes.org/our-communities/johanna-shores

M&B Cares created and designed over 500 Valentine's Day cards for senior residents at the Presbyterian Homes-Johanna Shores facility in Arden Hills, Minnesota.



FamilyWise

familywiseservices.org

M&B Cares collected healthy snacks and toys for FamilyWise, a nonprofit organization that offers supervised parenting and safe exchanges between non-custodial parents and their children.

Nurture Newborns

emergetwincities.org

The M&B Cares Committee made a cash donation to Nurture Newborns, an affiliate of Emerge Mothers Academy, a nonprofit organization. Nurture Newborns is an annual student-led fundraiser dedicated to providing free newborn and infant supplies to parents in need.



Hennepin Healthcare Inpatient Psychiatry

hennepinhealthcare.org

M&B Cares learned that, for various reasons, many patients admitted to Hennepin Healthcare Inpatient Psychiatry arrive without footwear. To address this need, we ran a shoe drive for the month of September 2021 and collected over 150 pairs of shoes to ensure patients who need shoes have them at discharge.



Hope Academy Christmas Book Giveaway

hopeschool.org/Christmasbooks

M&B Cares purchased and gift wrapped copies of two books, *A Wrinkle in Time* and *One Crazy Summer*, for students at Hope Academy. Hope Academy is a private inner-city school serving over 700 K-12 students in the Minneapolis area.



Making the Season Bright for Families of the Nonprofit "Breaking Free"

This holiday season – and for the past nine years – the women lawyers of Moss & Barnett “adopted” families who are in the Women’s Program at the nonprofit Breaking Free. Breaking Free helps hundreds of women escape systems of prostitution and sexual exploitation through advocacy, direct services, housing, and education. Our lawyers purchase and wrap gifts and gift cards to fulfill each family’s wish list, ensuring these families have a joyful holiday season. In addition to this holiday tradition, Moss & Barnett employees donate their time and various personal care and household items to Breaking Free throughout the year. To learn more about Breaking Free, visit breakingfree.net.



“Breaking Free provides a comprehensive response to the complex problem of sex trafficking by providing services and housing to the victims, educating law enforcement and the judicial system, and raising public awareness. Supporting Breaking Free aids in the prevention of trafficking and implementing long-term social change.”

- Jana Aune Deach, Moss & Barnett Attorney

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When domestic abuse is involved, these expectations are often unrealistic, creating opportunities for the perpetrator to revictimize the other parent under the guise of co-parenting.

Many states have custody laws that emphasize the importance of cooperation and support between divorced or separated parents. Such laws are commonly referred to as “friendly parent provisions.” They favor parents in custody disputes who support the child’s relationship with the other parent.

Friendly-parent provisions create a double bind for victims of domestic abuse. If victims try to protect their child by limiting time with the abusive parent, the court could look upon them negatively or even award the other party custody. For that reason, states such as Montana and Ohio include an exception in their

versions of this law for cases involving domestic abuse. Other state laws — such as those of North Dakota and Nevada — contain no such exception.

In sum, navigating a custody case involving domestic abuse can be complex and difficult. The stakes are high. Prudent family law practitioners will work to understand how domestic abuse affects nearly every facet of a custody case. They will learn when to deviate from accepted practices and expectations in the interest of safety and to prevent a person, once victimized, from becoming a victim again.

* This article originally appeared in *Best Lawyers: The Family Law Issue 2022*. Republished with permission of the publisher.

*As we begin a New Year, all of us at
Moss & Barnett
gratefully pause and join together to say*

Thank You

and to wish you a happy and healthy New Year. May 2022 be an extraordinary one.

This past holiday season, in lieu of traditional cards and gifts, we made donations to the following organizations:

Pathways 4 Youth (St. Cloud)

To create a world in which all youth will feel safe, valued, and supported while reaching their full potential (pathways4youthmn.org)

United Way Local Resource Centers (St. Cloud)

Fighting for the health, education, and financial stability of every person in every community (unitedwayhelps.org)

Feeding Area Children Together (FACT)-St. Cloud/Sartell School Food Program

Providing meals free of charge to K-8 students who are in need of food on weekends and over school breaks (Sartell.k12.mn.us/SMSsupport)

Community Emergency Services

Transforming lives by serving neighbors, sharing resources, and becoming community (cesmn.org)

St. Olaf Catholic Church Samaritan Ministry Food Shelf

To serve as a living sign in the heart of the city (saintolaf.org)

Faith City Church-Storehouse Grocers

"Changing destinies by ending everyday hunger" by offering an affordable option in the community (storehousegrocers.com)

Good in the 'Hood

To influence, inspire, and impact individuals, families, and entire communities for good (goodinthehood.org)

Al-Maa'uun Food Shelf at Masjid An-Nur Mosque

To provide food to families and individuals in need (masjidannur.org/partners-affiliation/al-maaun/food-program)

Shiloh Cares Food Shelf

To eliminate food hunger among children and adults in North Minneapolis and Hennepin County (givemn.org/story/shilohcares)

Waite House Food Shelf

Nurturing the health, prosperity, and social capital of over 4,500 community members each year (pillsburyunited.org/site/waite-house)



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