

[Lawyers Weekly USA](#)[Sign up for our practice area alerts!](#)

☐ Thursday, December 15, 2005

Lawyers Weekly, Inc.

[Try 3 Free](#) ☐ [Subscriber Services](#) ☐ [Our Newspapers](#) ☐ [Other Products](#) ☐ [Advertise](#) ☐ [Help](#)[Click here for
subscription info](#)
[Click here to register](#)

From the December 05, 2005 Lawyers Weekly USA.

[Order Reprints](#)

Feature Story

Subscribers Only
Resources

- [Archives](#)
- [Verdicts
Collection](#)
- [Daily Alert](#)
- [Practice-Area
Alert](#)
- [Specialty
Pages](#)
- [Brief Bank](#)
- [Sup. Ct.
Decisions](#)
- [Certiorari
Granted](#)
- [Important
Docs](#)
- [Technology](#)

About Lawyers
Weekly USA

- [Editorial Staff](#)
- [Press Room](#)
- [Contact Us](#)
- [Submit Letters](#)
- [Submit
Verdicts](#)

Divorced Dad Leads Drive For 'Virtual Visitation'

By [Nora Lockwood Tooher](#)

A divorced father's desire to stay in touch with his daughter has grown into a nationwide effort to encourage family courts to consider "virtual visitation" to supplement in-person time in custody agreements.

Michael Gough, a Utah computer security professional, proposed regular computer webcam visits with his daughter when he and his wife divorced in 2002 and she moved to Wisconsin.

Gough's ex-wife opposed the idea, so Gough and his attorney, Joyce Maughan, used video conferencing as demonstrative evidence in their effort to convince a judge in Utah to order Gough's ex-wife to cooperate with video visits between Gough and his daughter.

One laptop with a camera was set on the bench for the judge; the other laptop was set on one of the counsel's tables, with Gough's mother at that end.

The judge and Gough's mother chatted and saw each other by videoconferencing in the courtroom during the trial. As a result, Gough won his request to have regular virtual visitations added to his in-person visits.

"By first-hand experience with the webcam equipment, the judge could visualize the effects when a child has the opportunity to see the smiling face of her non-custodial parent on the other end of the video camera," Maughan explained. "The demonstration was necessary in this case because the custodial parent argued that the video conferencing was too complicated."

The goal, she said, was to show how simple and effective it is to use video conferencing. Maughan, who has her own practice in Salt Lake City, has negotiated virtual visitation schedules for several other clients.

"It's a vast improvement over the telephone for the child to see their divorced parent's smiling face looking at them with love," Maughan commented.

For non-custodial parents, virtual visitation is becoming an increasingly

accepted way to stay in regular contact with their children, according to several family law experts.

"It's usually used when the visitation is restricted because of distance and financial constraints," said Rhode Island Family Court Judge Howard Lipsey, who chairs the American Bar Association's family law section.

"Science has caught up with the law," he said. "By having the ability to do these video conferences it allows the parent who's not there for everyday things to maintain continuity."

After Gough won his request, he and Maughan gave a presentation about virtual visitation to the Utah Bar Association's family law section. One of the attorneys present, Nathan Pace, was so impressed that he proposed legislation providing that video conferencing and other technologies such as e-mail and instant messaging be included in statutory provisions for visitation.

In May 2004, the Utah legislature passed House Bill 82 after Gough's daughter. The measure provides that, "If available, reasonable virtual access [should] be permitted and encouraged between children and a non-custodial parent."

The law made Utah the first state to require judges to consider virtual visitation in custody situations.

Similar legislation is expected to pass Wisconsin's legislature this month.

Gough has since moved to Wisconsin and currently lives only a few miles from his daughter, who is now 6 years old. But they still visit via computer on the Sundays he does not have custody. And when he has to travel for his job and misses his scheduled in-person visits, a virtual visit helps him stay in touch with his daughter.

"If she is sick I can see that; when she lost her first tooth I was able to see that as well," he said. "Some calls last 15 minutes, many over an hour."

Gough has launched a website - www.internetvisitation.org - to encourage other divorced parents around the country to press for virtual visitation legislation. Bills have been proposed in California, Illinois and Maryland.

Lipsey said legislation is unnecessary, since judges already have the discretion to consider virtual visitation.

But Maughan said the legislation is helpful in contentious divorces, such as Gough's, in which the custodial parent opposes virtual visitation.

"The court may be more likely to enter an order for virtual visitation under circumstances in which the statutes of a particular state include provisions for virtual visitation," she said. "Likewise, an objecting parent may be less likely to litigate against virtual visitation, if the applicable statutes include virtual visitation for divorcing families."

How It Works

While older attorneys and judges may think of virtual visitation as

expensive, high-tech gimmickry, several divorce lawyers said the technology is simple and relatively inexpensive.

"The technology has gotten so much better and so significantly less expensive that with a little bit of cooperation it's quite easy to visit with a child on a regular basis," said Cheryl Lynn Hepfer, a divorce lawyer in Rockville, Md. and president of the American Academy of Matrimonial Lawyers.

Each party needs a computer with Internet access and a digital camera connected to their computers to send live video images over the Internet. Webcams range in price from \$25 to \$400.

If young children are involved, a parent has to set up and operate the system.

Maughan said virtual visitation encourages cooperation between the custodial and non-custodial parent.

"The non-custodial parent can read bedtime stories to the child, taking a load off the custodial parent," she said. "Because virtual visitation tends to eliminate bickering and pettiness when people are on the screen, it's a good tool for cooperation between the divorced parents."

But as in any custody issue, virtual visitation can trigger conflict - often about the time and expense involved.

Lipsey sometimes uses a mediator or guardian to work out scheduling and to be sure that the parent who has custody is committed to making it work.

"There's nothing worse than the frustration of a parent who is scheduled to have video visitation for the parent who [has custody] to say they have something to do at that time," he said.

'Not A Substitute'

Proponents stress that virtual visitation shouldn't be used to replace in-person visits or to determine the outcome of custody battles.

The Utah measure states: "Virtual parent time is designed to supplement, not replace, in-person parent time."

But in several of the more than dozen court cases in 11 states since 2001, video conferencing has played a decisive role. For example:

- In Massachusetts, a trial court in 2002 approved "internet visitation" when the mother wished to relocate, despite the father's objections. (*Cleri v. Cleri*, *Massachusetts Probate & Family Court*, No. 01D-0009-D1.)
- In Florida in 2001 a judge took custody of a 10-year-old girl from her mother, who was moving to Ohio, and gave it to her father. The court ordered both parents to purchase a computer system for the child's bedroom in each parent's home, equipped with a video camera with audio for the child to connect to the other parent (*Kaleita v. Sniderman*).

Laura Poblocki, a Quincy, Mass., attorney who represented the father in the Massachusetts case, had several objections to the video visitation. One was that the technology was fairly new at the time and still had

quirks, which meant it didn't always work.

"There were ways that a party could obviously obstruct [the schedule of virtual visits] by saying the technology wasn't working," she said. But most importantly, "our argument was it's not the same as physical contact."

Lipsey agreed that virtual visits are no replacement for in-person parental visits.

"It's a supplement," he said. "It's certainly not a substitute."

Easing The Pain Of Relocation

According to Hepfer, judges generally view virtual visitation as a way to help ease the pain of the move for the non-custodial parent in relocation cases.

"Relocation decisions are among the hardest decisions judges have to make," she said. "Unfortunately, what happens is the parent who is left behind is at a terrible loss. I think what the courts do is utilize [video visitation] as a mechanism to lessen that distance, but not as an excuse for permitting the parent to move away."

In *McCoy v. McCoy* (764 A.2d 449 (2001)), the New Jersey Appellate Division noted that whenever a custodial parent moves to a distant location, the ability of the non-custodial parent to exercise visitation rights is affected.

But the court ruled that Internet visits - along with regular in-person visits - would be a "creative and innovative" way for the father to stay in touch with his daughter.

Questions or comments can be directed to the writer at:
nora.tooher@lawyersweekly.com

© 2005 Lawyers Weekly Inc., All Rights Reserved.

[Order Reprints](#)

 [Get 3 Free Issues](#)

[User Agreement For Subscriber-Only Online Benefits](#) | [Help](#) | [Our Privacy Policy](#)
Send any questions or comments to comments@lawyersweekly.com

Customer Service: 1-800-451-9998 **Technical Support:** 1-800-444-5297 ext. 8156
© Copyright 2005 Lawyers Weekly, Inc. All Rights Reserved

[Dolan Media](#)

Lawyers Weekly does not use spyware; however, we link to a number of other sites and do not take responsibility for any spyware they may use.

This site is best viewed with Internet Explorer 6 ([click here to download](#)) or Netscape 7 ([click here to download](#))