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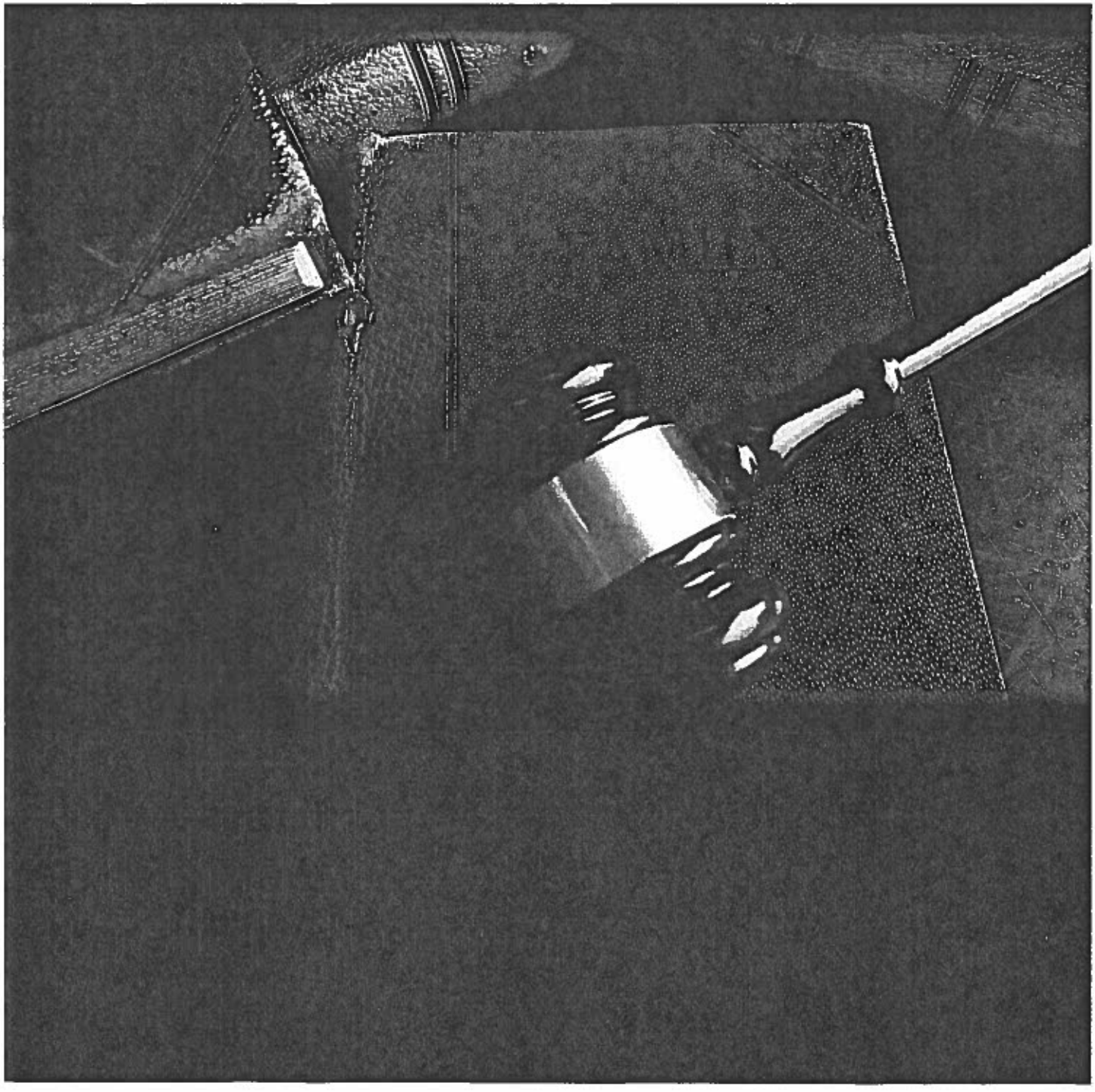

Table of Contents

Winter 2016 • Vol. 48, No. 3

Recent Legislation, Decisions and Trends in Matrimonial Law

By Wendy B. Samuelson, Esq.

RECENT LEGISLATION

Domestic Relations Law § 245 amended, effective September 29, 2016: Elimination of requirement to exhaust other remedies before contempt can be sought for failure to pay child or spousal support

Domestic Relations Law § 245(1) was amended to permit a person who is owed one payment of child or spousal support to bring a contempt proceeding against a recalcitrant payor in state Supreme Court without having to first exhaust other remedies such as income execution, money judgment, sequestration, etc. Punishment may be by fine or imprisonment. There is no need to demand payment first prior to making a contempt application; rather, all that is required is that an uncertified copy of the judgment or order of support is served on the income payor. The amendment mirrors the less stringent Family Court Act § 454, which does not require the exhaustion of remedies prior to making a contempt application. The purpose of the amendment is to protect spouses and children and allow the expeditious collection of support and to permit support recipients to use either the Family Court or the Supreme Court to enforce their support awards.

Incarceration continues to be a remedy of last resort. Spouses who are unable to pay support may raise that as a defense to a finding of contempt. Also, the court's current capacity to exercise all other remedies of enforcement continues.

Domestic Relations Law § 248 amended, effective January 23, 2016: Modification of support provisions upon cohabitation or remarriage, gender-neutral language

In recognition of the recent passage of same-sex marriage, Domestic Relations Law § 248 was amended to provide gender neutrality within the statute. DRL § 248 previously provided that a "husband" could seek modification in support orders with proof that his "wife" was holding herself out as the spouse of another man and living with him. To ensure gender neutrality, the language of the statute has changed from references of "husband" to "payor" and from references of "wife" to "spouses and "payee" and the third person is now recognized as "other person."

Family Court Act §§ 1027-a, 1055, 1081, and 1089(F) amended, effective November 16, 2016: Contact with siblings in child protective, permanency and termination of parental rights proceedings

Family Court Act § 1027-a was amended to include 1027-a(b) and (c), which provide that in the event that a child is not placed with his/her sibling or half-sibling, because it was not in the child's best interest to do so, the social services official is then required to facilitate contact between the siblings on a regular basis to ensure that their relationship is maintained. Moreover, if the child is not provided with regular contact with his/her sibling or half-sibling, a motion for placement or contact may be made by the child through his/her attorney or parent. Family Court Act § 1055(c), which addresses motions to strengthen parental relationships, was amended to include the motion provided in § 1027-a.

Family Court Act § 1081 was amended to include 1081(2)(b), which provides that a child who has been placed in the care of social services has the right to make a motion in order to obtain visitation and contact with his/her siblings and the siblings have the right to petition the court for contact as well. Family Court Act § 1089(F), permanency hearings, was amended to include the motion provided in § 1027-a and § 1081(2)(b).

Additional language added to proposed Findings of Fact and Conclusions of Law and Judgments of Divorce where the action was commenced on or after January 25, 2016

All cases commenced on or after January 25, 2016 require the following additional language in order to be in compliance with the new maintenance guidelines.

I. Findings of Fact and Conclusions of Law

See under "Tenth" section:

☐ D) Court Determination Where the Action for Divorce was Commenced on or after January 25, 2016

1. Fill in the following information:

(I) The adjusted gross income of the Plaintiff is $_____ and the adjusted gross income of the Defendant is _____ per year (copy your answers from Form UD-8(1) Annual Income Worksheet Lines 1A and 1B)

(ii) The date of your marriage_____; The date your divorce action was commenced_____; The number

of years you were married to the date your divorce action was commenced : _____

(iii) The range that maintenance would be payable according to the Advisory Schedule for Duration of Award in Appendix E _____ (copy your answers from Line 4a of Maintenance Guidelines Worksheet (form UD-8(2)).

2. Check which boxes below apply:

❑ Child Support will not be paid for children of the marriage; **OR** ❑ Child Support will be paid for children of the marriage **(Note: see page 7 of the Instructions for the definition of "children of the Marriage.")**

❑ Maintenance Payor is the custodial parent; **OR** ❑ Maintenance Payee is the custodial parent (copy your answers from Lines 2A and 2B of the Maintenance Guidelines Worksheet.

3. Based on the foregoing, the court has determined that:

(I) ❑ Plaintiff ❑ Defendant

is the Maintenance Payor ("Maintenance Payor") under the "Maintenance Guidelines Law" pursuant to DRL § 236(B)(6) who will pay maintenance to ❑ *Plaintiff* ❑ *Defendant* (The "Maintenance Payee") in the sum of $_____ ❑ *per week* ❑ *bi-weekly* ❑ *per month* ❑ *semi*-monthly (the "Award") for a period of_____; commencing on _____, and expiring on _____.

(ii) The guideline amount of maintenance that would be payable under the Maintenance Guidelines on income of Maintenance Payor up to $178,000 is $_____per year (from Paragraph 3B of Maintenance Guidelines Worksheet). ❑ The Award includes an annual award of $_____ on income of Maintenance Payor up to $178,000 per year. In computing said Award, the court ❑ *applied the Maintenance Guidelines Law;* OR ❑ *adjusted the guideline award of maintenance due under the Maintenance Guidelines Law because it is unjust and inappropriate based on one or more of the factors in DRL 236B(6)(e)(1), as follows, including the effect of a barrier to remarriage on said factors where appropriate:*

(iii) If Income of Maintenance Payor exceeds $178,000 per year:

❑ The Award includes an award of maintenance on $_____ of Maintenance Payor's income in excess of $178,000 per year based on one or more of the factors in DRL 236B(6)(e)(1), as follows, including the effect of a barrier to remarriage on said factors where appropriate:

OR

❑ The Award did not include any maintenance on income of Maintenance Payor in excess of $178,000 per year based on one or more of the factors in DRL 236B(6)(e)(1), as follows, including the effect of a barrier to remarriage on said factors where appropriate:

(iv) ❑ Since the Maintenance Payor has defaulted, and/or the court was provided with insufficient evidence, the award of maintenance was based on the needs of the Maintenance Payee or the standard of living of the parties prior to the marriage, whichever is greater.

(v) The court determined that the Award should be paid until _____. In determining how long the Award should be paid, the court considered the factors in DRL § 236(B)(6)(e)(1), and based its decision on one or more of said factors as stated below, including the effect of a barrier to remarriage on said factors where appropriate,

_____

_____

_____

_____

In determining how long the Award should be paid, the court also ❑ *considered* ❑ *did not consider* the Advisory Schedule in DRL § 236(B)(6)(f)(1) pursuant to which the award would have been paid for _____years.

In determining how long the Award should last, the court

❑ considered anticipated retirement assets, benefits, and retirement eligibility age of both parties **OR**

❑ anticipated retirement assets, benefits, and retirement eligibility age of both parties was not ascertainable;

II. Judgment of Divorce

See under section 23:

ORDERED AND ADJUDGED that:

A) ❑ Pursuant to the

❑ *agreement of the parties*

❑ *Court's decision*

the	shall pay to
❑ *Plaintiff*	❑ *Plaintiff*
❑ *Defendant*	❑ *Defendant*

the sum of $_____ as

❑ *per week*	❑ *bi-weekly*
❑ *semi-monthly*	❑ *monthly*

and for maintenance:

❑ *payments to be made as set forth in the agreement;*

❑ *commencing on the __ day of _____,____, and continuing until the ____ day of _____,____; month year*

month year

Payment shall be

❑ *a direct payment,*

❑ *by an Income Deduction Order issued simultaneously herewith;*

==========OR==========

B) ❑ *that there is no award of maintenance per the court's decision;*

❑ *that there is no request for maintenance;*

❑ *that the guideline award of maintenance under the Maintenance Guidelines Law (L.2015 c. 269), if applicable, was zero.*

and it is further;

==========OR==========

C) Pursuant to the court's decision for cases commenced before 1/25/16

the ❑ *Plaintiff* ❑ *Defendant* shall pay to ❑ *Plaintiff* ❑ *Defendant*

the sum of ❑ *$ _____ per week;* ❑ *$ _____bi-weekly;*

❑ *$_____semi-monthly* ❑ *$_____per month*

as and for maintenance

commencing on the ____ day of _____,____, and continuing until the ____ day of _____,____; month year

Payment shall be ❑ *a direct payment,* ❑ *by an Income Deduction Order issued simultaneously herewith;*

==========OR==========

D) Pursuant to the court's decision for cases commenced on or after 1/25/16

the ❑ *Plaintiff* ❑ *Defendant* shall pay to ❑ *Plaintiff* ❑ *Defendant*

the sum of ❑ *$ _____ per week;* ❑ *$ _____bi-weekly;*

❑ *$_____semi-monthly* ❑ *$_____per month*

as and for maintenance (the "Award") *commencing on the ____ day of _____,____, and continuing until the ____ day of*

_____,____; month year

Payment shall be ❑ a direct payment, ❑ by an Income Deduction Order issued simultaneously herewith;

The guideline award of maintenance under the Maintenance Guidelines Law is $_____

For the reasons stated in the Findings of Fact and Conclusions of Law, which are incorporated here in by reference:

(Check the applicable boxes:)

❑ *The Award includes an award on income of maintenance payor up to $178,000 per year. In computing said award, the Court applied the Maintenance Guidelines Law (L.2015, c.269);* OR ❑ *the court adjusted the guideline award of maintenance due under the Maintenance Guidelines Law because it is unjust and inappropriate.*

❑ *The Award includes maintenance on income of maintenance payor in excess of $178,000 per year* OR ❑ *The Award does not include maintenance on income of maintenance payor in excess of $178,000 per year.*

New Statement of Net Worth and Preliminary Conference Order forms, effective August 1, 2016

New Statement of Net Worth forms and new Preliminary Conference Order forms have been approved by the Administrative Board of the Courts. The forms can be accessed on the New York Courts website. The Statement of Net Worth form now includes the value of the asset or liability as of the date of the commencement of the action and the current value.

COURT OF APPEALS ROUND-UP

Time to file objections to support magistrate's support order runs from the date the attorney for the party is served, not when the party receives notice

In the Matter of Odunbaku v. Odunbaku, 2016 N.Y. Slip Op. 07705 (2016)

The father moved for a downward modification of his child support obligations, which was granted by the support magistrate. The support magistrate's support order was mailed to the parties directly and not to their respective retained counsel. The mother did not notify her attorney about the papers until a month later, and objections were filed 41 days after the papers were received. The Family Court denied the objections because they were submitted past the 35-day, statutory due date with service by mail. The Family Court held that neither the Family Court Act § 439(e) nor 22 NYCRR 205.36(b) requires the orders to be specifically mailed to parties' counsel. The Appellate Division affirmed.

The Court of Appeals reversed, relying on the case *Bianca v. Frank*, 43 N.Y.2d 168 (1977), which holds that once a party retains counsel who appears on behalf of a party, the statutory time requirements of judicial decisions do not commence until counsel is served with the order or judgment. The high court reasoned that failure to notify counsel diminishes the parties' ability to be adequately represented.

Since the mother was served with the order, and not the attorney, the 35-day time limitation to file an objection to the support order had not yet commenced. The matter was remitted to the Family Court for a determination on the objections.

OTHER CASES OF INTEREST

Stipulations

Ambiguity of duration of life insurance policy requires a hearing

***Leibowitz v. Leibowitz*, 143 A.D.3d 675 (2d Dept 2016)**

The parties settled their divorce action by stipulation of settlement on the record. The wife waived her share of the cash surrender value of the husband's whole life insurance policy "in consideration of the husband maintaining life insurance for the duration of his obligations under this agreement." The wife agreed to maintain a term life insurance policy of $400,000, naming the parties' children as irrevocable beneficiaries, "until the 20–year term expires." The husband agreed to maintain a $1.2 million term life insurance policy for the benefit of the children as irrevocable beneficiaries, but the provision did not include the language "until the 20-year term expires." The husband's 20 year term policy was due to expire prior to the child's emancipation.

The parties submitted competing proposed judgments of divorce to the court, each defining the length of time the husband was required to maintain the life insurance policy. The husband's proposed judgment stated "until the 20 year term expires," whereas the wife's judgment stated until the husband's obligations under the agreement have terminated.

The Supreme Court entered the husband's judgment. The wife appealed, claiming that the court impermissibly modified the terms of their agreement. The Second Department held that the lower court improvidently exercised its discretion because the terms of the parties' agreement are ambiguous, and a hearing is required to determine the parties' intent. The matter was remitted to the court below for a hearing on the parties' intent.

Child Custody and Visitation

Relocation from New York to Tennessee granted

***Nairen McI. v. Cindy J.*, 137 A.D.3d 694 (1st Dept 2016)**

The mother, who had custody of the child, relocated from New York to Tennessee. The father brought a motion to modify the court order to require the child to live in New York State, and the mother cross-moved for relocation. The court below found that the mother proved, by a preponderance of the evidence, that relocation was in the child's best interests, including the following factors: the child would have a better quality of life in Tennessee because of decreased living and health care costs; the mother secured employment in Tennessee; the child displayed better academic performance compared to when she was in school in the Bronx; the child preferred to live with her mother in Tennessee; and the father failed to pay child support. The First Department affirmed, but modified the Family Court order to increase the father's parenting time when the child had extended breaks from school.

History of mental illness does not preclude an award of custody

***In re Michael B.*, 2016 N.Y. Slip Op. 08101 (1st Dept 2016)**

The parties had a child out-of-wedlock, who, at the time of the appeal, was 9 years old. For the first three years of the child's life, the child lived with her mother. The father was absent for the first six months of the child's life, and thereafter had limited contact. When the child was 3, the mother stopped taking her psychiatric medication due to pregnancy and was hospitalized for a few weeks. During her hospitalization, the father received a temporary order of custody, with supervised visitation to the mother, which remained in place for five years. During this time, the paternal grandmother acted as the child's primary caretaker, and the father provided for her financially but did not maintain a warm and loving relationship with the child or spend much quality time with her. During the five years, the mother remained very active in the child's life, visiting her every weekend and the entire summer, and attending school events and meeting with the child's teachers. The mother did not work, was living on Social Security benefits, and had three other children in her custody.

During an 18-day custody hearing, the forensic psychologist testified that it would be in the child's best emotional interest to be in the custody of her mother. The court below awarded custody to the father.

The Appellate Division reversed, holding that the court below improperly gave too much weight to the fact that the father had temporary custody for almost five years. The temporary award was made *ex parte*, and no evidence was adduced as to the child's best interests. Moreover, the child spent more time with her mother than her father, and was more emotionally bonded with her mother. The court below gave too much weight to the father's ability to provide for the child financially, rather than focusing on the parent who can provide the child with emotional and intellectual support. The court below was too dismissive of the forensic psychologist's report, which the Appellate Division determined to be well-investigated. The psychologist determined that the mother's psychological history does not pose a risk to the child. Having concern about the mother's past mental health should be recognized, but evidence weighing in the child's best interest should not be overlooked. Here, the mother was in remission for five years, had not been hospitalized since, and was compliant with her psychological treatment. It's inappropriate to focus on speculation that the mother may have a relapse. Finally, the court below improperly treated this case as a relocation case and applied the *Tropea* factors, when this is an initial custody determination, and the mother's residence in Connecticut is only one factor to be considered.

Domestic partner who is not the biological or adoptive parent has standing to seek custody or visitation where there is a pre-conception agreement

***Frank G. v. Renee P.F.*, 142 A.D.3d 928 (2d Dept 2016)**

Domestic partners Frank and Joseph lived together for 5 years and wanted to raise a child together. Joseph's sister, Renee, agreed to be the surrogate of their child, and she was impregnated with Frank's sperm. Renee also entered into a surrogacy contract relinquishing her parental rights to Joseph so that he would be able to adopt the child. Thereafter, Renee gave birth to twins. For the first four years of the children's lives, even though Joseph did not adopt the twins, Joseph and Frank both cared for their children and shared all major responsibilities together. The children referred to both men as their father. Later, Frank and Joseph separated. The kids continued to live with Frank, and Joseph regularly cared for and visited the children every day. A few months later, Frank cut off all contact with Joseph and moved to Florida with the children without Joseph's knowledge or consent. Joseph sought custody. Frank moved to dismiss, claiming that Joseph lacks standing under DRL § 70 because he was not the biological or adoptive parent of the children. The Family Court denied Frank's motion, and Frank appealed.

The Second Department affirmed, and so did the Court of Appeals. The former meaning of "parent" under DRL § 70 writ of habeas corpus proceedings applied only to biological or adoptive parents pursuant to the Court of Appeals' case, *Alison D. v. Virginia M*, 77 N.Y.2d 651 (1991). However, as the appeal was pending, another Court of Appeals case overruled that meaning, *Brooke S.B. v. Elizabeth A.C.C.*, 28 N.Y.3d 1 (2016), holding that a non-biological non-adoptive partner may seek standing where s/he shows "by clear and convincing evidence" that the parties agreed to conceive a child and to raise the child together.

In this case, Joseph, the non-biological, non-adoptive partner, raised the children with Frank and cared for them as a parent for four years, there was a pre-conception agreement between the parties, and the surrogacy contract displayed even more intention for the parties to raise the children together as parents. Therefore, Joseph had standing to seek custody and visitation of the children.

Equitable Distribution

Pre-judgment interest awards under CPLR 5001 are discretionary

***Fori v. Fori*, 2016 N.Y. Slip Op. 08135 (3d Dept 2016)**

The parties entered into a separation agreement, which obligated the wife to pay the husband a distributive award of more than $216,000. When the wife failed to pay the amount, the husband moved to enforce the agreement plus statutory interest from the date due. The court below awarded the husband a money judgment in the amount due, plus interest actually earned on the amount, but not pre-judgment interest pursuant to CPLR 5001.

The Appellate Division affirmed, holding that in matrimonial proceedings, pre-judgment interest is not an automatic entitlement but rather in the court's discretion, as well as the rate and date from which interest shall be computed.

Here, the wife claimed that the husband had failed to transfer certain real property to her pursuant to the agreement. The wife's obligation to pay the equitable distribution award to the husband was not contingent upon the husband transferring the deeds. However, the wife's counsel advised her to withhold payment and instead put the sum due in a separate interest-bearing account until such time as the deeds were transferred to her. Therefore, the court below did not abuse its discretion in awarding only the interest earned on the distributive award.

Date of commencement of foreign action to obtain a divorce is not proper valuation date in later action to obtain a distribution of marital property

***Drake v. Mundrick*, 144 A.D.3d 1661 (4th Dept 2016)**

The parties obtained a valid foreign divorce judgment three years prior to the wife commencing an action for equitable distribution. The court below used the date of the commencement of the foreign divorce action as the valuation date of the parties' marital assets. The Appellate Division reversed.

DRL § 236(B)(4)(b) provides that a valuation date may be set at any time from the commencement of the divorce action until the date of the trial. Both the action for dissolution of the marriage and this action to obtain a distribution of marital property following a foreign judgment of divorce are included in the statutory section entitled "Matrimonial actions" under DRL § 236[B][2][a]). However, since equitable distribution was not available in the foreign divorce action and the foreign court did not have jurisdiction over the marital assets, the date of the commencement of the foreign action could not serve as the valuation date for equitable distribution of the marital property.

Recusal

Court abused its discretion in failing to recuse itself after it obtained an order of protection against the party to the proceeding

***Matter of Trinity E. (Robert E.)*, 144 A.D.3d 1680 (4th Dept 2016)**

A day after the Family Court made a finding of permanent neglect against the father and scheduled a dispositional hearing, he made a death threat toward the court, the attorney for the child, the caseworker, and the police. The court secured an order of protection against the fa-

ther. Before the dispositional hearing commenced, the father moved for the judge to recuse himself. The court denied the motion, and proceeded with the hearing. The father appealed.

The court below abused its discretion by failing to recuse itself where it had an order of protection against the father. The dispositional order was vacated and remitted for a new determination before a different judge.

ADDITIONAL CASES

Maddaloni v. Maddaloni, 142 A.D.3d 646 (2nd Dept 2016)

Based on Domestic Relations Law § 236(B)(3), the couple's maintenance provision in a postnuptial agreement was found to be unconscionable and unenforceable. The agreement gave the wife $50,000 in full satisfaction of claims, while the husband owned a business worth $3 million, a business which grew while the husband worked there throughout their 25-year marriage. Further, the modification agreement entered into during the divorce action was set aside as manifestly unfair to the plaintiff due to the nature and magnitude of the rights that she waived and the vast disparity in the parties' income and net worth. Further, the husband had her sign the agreement by providing it directly to her instead of through counsel, which was deemed to be overreaching. The court awarded 10 years of maintenance as well as 25% of the appreciation of the husband's jewelry business and reversed the lower court finding of the husband's contempt of the trial decision, as it did not constitute an "order" upon which contempt may lie.

Van Dood v. Van Dood, 142 A.D.3d 661 (2nd Dept 2016)

This case involves an issue of equitable distribution with marital property. The Supreme Court was required to determine the value of the property before awarding it solely to the plaintiff. Where the proof of value is insufficient to make a determination, the court can, among other things, appoint a neutral appraiser. In this case, the court erred in failing to value and equitably distribute the defendant's investment in a rental property and the parties' remaining interest in property in a separate location and failed to support a finding that the husband dissipated all of the $400,000 in loan proceeds. The matter was remitted for a new trial on the issue of equitable distribution of marital property.

Young v. Young, 142 A.D.3d 612 (2nd Dept 2016)

It was found that the court should have vacated the child support provision because it did not contain a calculation of basic child support or a recital that such a calculation would result in the presumptively correct amount. The Court also found that the father's obligation to pay basic child support and his obligation to pay the child's college tuition, not required by statute, were "inextricably intertwined," and no distinction was made in the provision between the two so that the entirety of the support obligation, including the college and other child-related expense provisions, had to be vacated. Notably, the determination was made on motion and not by plenary action, as the application to set aside the child support provisions was made before the judgment of divorce was entered.

Shkreli v. Shkreli, 142 A.D.3d 546 (2nd Dept 2016)

Since the husband did not establish the actual value of the wife's enhanced earning capacity or establish that he substantially contributed to her degree, he was not entitled to any credit for the enhanced earning capacity resulting from her bachelor's degree. Further, the court properly decided that the marital house was marital property because the husband did not establish the value of a claimed separate contribution to the property which was purchased during the marriage. However, the court took into account that there was evidence that some unknown amount of the plaintiff's separate property was used to purchase and construct the marital residence by awarding him a greater percentage share (60%) of the proceeds of the sale of the marital residence.

Lieberman v. Lieberman, 142 A.D.3d 1144 (2nd Dept 2016)

The Supreme Court in this case evaluated the testimony, considered the recommendations of a forensic expert, interviewed the subject children in camera, and considered the attorney for the children's opinions, and determined that that best interest of the children would be to award sole legal and physical custody to the defendant. The Appellate Court noted that the lower court improperly exercised discretion in admitting into evidence the defendant's diary of events that occurred in the marriage, and that the forensic expert relied on inadmissible hearsay in reaching his opinion. Yet, the Appellate Court concluded that these errors were not prejudicial, as there is sound and substantial basis in the record for the court's determination. Further, considering the parties' disparity in incomes and the value of the marital estate, the court properly exercised discretion in directing the defendant to pay for the marital credit card debt, the children's private school tuition, etc. The lower court improperly made the defendant solely responsible for paying unreimbursed medical expenses and summer camp. Since the plaintiff earned 20% of the combined parental income, the Appellate Court concluded that she should pay 20% of the above expenses.

Osorio v. Osorio, 142 A.D.3d 1177 (2nd Dept 2016)

The court reversed two orders of protection where the appellant was not advised of her right to counsel nor did the record show she was validly waiving the statutory right to counsel. The court must inquire whether any such waiver was made knowledgeably, intelligently, and voluntarily. The record supported the contention that the appellant was deprived of her statutory right to counsel and

the matter was remitted for a new hearing at which the appellant shall either appear with counsel or knowingly, voluntarily, and intelligently waive her right to counsel, and new determinations on the petitions thereafter.

***Matter of Fedeline A. (Verdul S.)*, 143 A.D.3d 977 (2nd Dept 2016)**

The family court properly found that the boyfriend sexually abused the girlfriend's child, yet the evidence did not support a finding of "derivative abuse" in regards to the boyfriend's biological son because the son did not move to the country until months after the abuse had ended.

***DeVita v. DeVita*, 143 A.D.3d 981 (2nd Dept 2016)**

In a case regarding a modification of custody, the Appellate Court agreed that there was a change in circumstance that was necessary to modify custody for the best interest of the child from joint custody to sole custody for the father. Without specifying the underlying facts that served as the basis of the decision, the court, looking at the totality of the circumstances, noted relative credibility, the child's relationship with each parent, and stated, "(p)articularly relevant in this case is the clearly stated preference of the child, a mature 13 year old at the time of the hearing."

***Montoya v. Montoya*, 143 A.D.3d 865 (2nd Dept 2016)**

This case involves attorneys' fees as asserted against the adverse spouse. The Court stated that the evidence produced by the plaintiff demonstrates that the attorney failed to prove substantial compliance with the rules requiring periodic billing statements at least every 60 days. Accordingly, the application for fees, which did not contain proper itemized billing statements, was denied without prejudice. The court noted that "(a) showing of substantial compliance must be made on a prima facie basis as part of the moving party's papers."

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