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Updates in Matrimonial and Family Law

New York State has recently adopted several new laws that have a significant impact on divorce and child support, which will be outlined below. Meanwhile, a bill proposing No-Fault divorce remains before the Legislature but as always, passage remains uncertain.

Medical Insurance Considerations:

Section 255 (1) of the Domestic Relations Law now requires that the Courts take into consideration when deciding both maintenance awards and equitable distribution of marital assets, the impact of the loss of medical insurance to either party. This is important because it is not uncommon that only one spouse carries medical insurance through their employer, for the entire family. While coverage for children may continue, a divorce severs the employer's ability to continue coverage to an ex-spouse under the employee's policy. As such, the now uninsured spouse must secure their own policy through their own employment, if available, or apply for COBRA coverage under the ex-spouses plan.

With the average cost of COBRA coverage for an individual running anywhere from $350-$600 per month, and sometimes more, this is not a small financial concern. It is now one the Courts must formally take into consideration when awarding support or a division of the marital assets.

Automatic Restraining Orders:

Section 236 B of the Domestic Relations Law now contains an automatic restraining order that went into effect September 1, 2009. Now, upon the simple act of filing of a Summons for Divorce certain restraints on the finances and assets of the parties go immediately into effect and places a party in violation if they do not comply. The following is an outline of the general terms, which become binding on the Plaintiff immediately upon filing the Summons with Notice or Summons and Complaint, and binding upon the Defendant once he or she is served. Neither party shall, without written consent of their spouse or Order of the Court:

Neither party shall sell, transfer, encumber, conceal, assign, remove or in any way dispose of, without the consent of the other partying writing, or by order of the Court, any property (including, but not limited to, real estate, personal property, cash accounts, stocks, mutual funds, bank accounts, cars and boats) individually or jointly held by the parties, except in the usual course of business, for customary and usual household expenses or for reasonable attorney's fees in connection with this action.

Neither party shall transfer, encumber, assign, remove, withdraw or in any way dispose of any tax deferred funds, stocks or other assets held in any individual retirement accounts, 401(k) accounts, profit sharing plans, Keough accounts, or any other pension or retirement account, and the parties shall further refrain from applying for or requesting the payment of retirement benefits or annuity payments of any kind, without the consent of the other party in writing, or upon further order of the Court.

Neither party shall incur unreasonable debts hereafter, including, but not limited to, further

borrowing against any credit lines secured by the family residence, further encumbering any assets or unreasonably using credit cards or cash advances against credit cards, except in the usual course of business or for customary or usual household expenses, or for reasonable attorney's fees in connection with this action.

Neither party shall cause the other party or the children of the marriage to be removed from any existing medical, hospital and dental insurance coverage, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.

Neither party shall change the beneficiaries on any existing life insurance policies, and each party shall maintain the existing life insurance, automobile insurance, home owners and renters insurance policies in full force and effect.

Increase in Child Support Cap:

As many practitioners are aware, the Child Support Standards Act (CSSA) was passed in July 1989, and it is hard to believe, but that was 20 years ago.

The statute governs the amount of support one parent pay to the other parent for support of a child or children in the other parent's custody. Depending on the number of children, a certain percentage of the non-custodial parent's income is required for child support (eg. 17% for one child; 25% for two; 29% for three etc…).

Twenty years ago an $80,000 family income was quite respectable. Thus, in 1989, the statute put a cap on how much income could be tapped for child support. The cap was $80,000. If a party earned over $80,000 the statute gave the Support Magistrates flexibility to decide the needs of the child(ren) and by applying enumerated statutory factors, award support based on income over $80,000 if found warranted. What percentage of income over that limit would go to support was again, at the discretion of the Court. Well obviously $80,000 doesn't buy what it used to. And for many years now, litigants and the Courts have struggled with what to do with an outdated statute and higher family incomes. The obvious answer was to raise the cap from $80,000 to something that is more reflective of the current economy. That has finally been done and starting January 2010, the cap will be raised to $130,000. Clearly incomes over that amount will still be subject to the proof of need by the parties and discretion of the Court. However, this time, someone had the foresight to build in a formula for biannual adjustment of the cap. Now rather than waiting 20 years for the legislature to birth and pass a bill, the cap will be adjusted automatically to reflect changes in the Consumer Price Index.

Now if the Legislature could only offer some better guidance on how to determine support in shared custody cases, we'd have something to really celebrate.