

page 2
Divorcing wife can't be ordered to
take higher paying job

page 3
Passage of time not 'changed
circumstance' for support

Spouse loses rights under divorce
order

page 4
'Deathbed marriages' vulnerable
to challenges

Legal Matters[®]

How is COVID impacting parenting plans?

The COVID-19 pandemic has lasted a year so far and as of the start of 2021 cost nearly a half-million lives. Even those lucky enough not to have contracted the virus or lost a loved one have experienced havoc in the form of lockdowns, shortages, job loss and school closings.

If you are a parent bound by a pre-pandemic parenting plan, you may be finding that the pandemic is making it tough to follow for safety or logistical reasons or due to disagreements over decisions like whether your kids can have sleepovers, playdates at friends' houses or participate in sports.

Take, for example, the school situation. Your parenting plan was

A family law attorney can help you negotiate an agreement to address these issues.

likely crafted in large part with school in mind. But now, during the pandemic, you've been dealing with massive disruption to your kids' schedules. Perhaps they're remote full time, or they're in school under a hybrid model where their "cohort" attends in-person classes twice a week and learns remotely the other days.

Imagine you and your ex work full-time, but the kids' remote days are the same days they're with you. Even if you're working at home, you're shouldering a disproportionate burden of childcare, supervising their remote learning during the day while trying to do your own job.



©halfpoint

Meanwhile the other parent works without disruption.

One of you may also be better equipped to provide the high-speed Internet and work space necessary to support home schooling than the other parent, which is an issue you didn't contemplate when your original plan was implemented.

In such situations, it may be worth discussing a temporary, written modified plan designed to divide parenting time to equalize in-school and remote learning days between parents while maximizing the kids' ability to learn. Such agreements can also account for sharing of costs for computers and better WiFi.

A parenting plan drafted in normal times may also need revisiting if

continued on page 2



Divorcing wife can't be ordered to take higher paying job

Few things cause more resentment after a marriage than paying alimony to an ex-spouse who is under-employed and could be making significantly more money if he or she wanted to. This is why it's common for courts to attribute income to a spouse that he or she potentially could be earning while reducing the payor spouse's obligation accordingly.

But can a judge order an alimony recipient working in a lower-paying field to take a higher-paying job in another field that he or she is qualified for? A Massachusetts case indicates that the answer is "No."

In that case, Vasiliki Pavlo filed for divorce from her husband, John Pavlo, a successful orthodontist, after 11 years of marriage. Vasiliki had an accounting degree and had worked part-time as a bookkeeper for John's practice.

While the divorce was pending, a family court judge entered a temporary order requiring Vasiliki to seek part-time employment. In the final divorce judgment, John was ordered to pay alimony.

The judge also ordered Vasiliki to seek full-time employment as a bookkeeper and to document her efforts to do so. Meanwhile, the judge attributed \$32,000 in income to Vasiliki.

In a motion for reconsideration, Vasiliki protested that she had undergone training in early childhood education and wanted to complete her training and become a full-time Montessori preschool teacher.



©belchonock

The judge denied her motion, explaining that Vasiliki was obligated to maximize her earning potential to allow a determination of the appropriate amount of alimony for John to pay. The judge also amended the divorce judgment to require Vasiliki to accept "any offer of employment as a bookkeeper" commensurate with her experience.

But the Massachusetts Appeals Court reversed the ruling.

In doing so, the court emphasized that the state alimony statute has no provision allowing a judge to require a spouse, whether payor or recipient, to work at a specific job in a specific field.

Instead, said the panel, attribution of income is the proper remedy only when an unemployed or underemployed recipient does not make reasonable efforts to maximize his or her earning potential.

Keep in mind, however, that this is a Massachusetts case decided under state law. A family law attorney can tell you how it works where you live.

How is COVID impacting parenting plans?

continued from page 1

one parent has a job involving significant contact with the public, creating a higher risk of infection for those in his or her household. Or one household may include a relative in a high-risk category, such as an elderly grandparent.

In such cases, the existing parenting plan may create conflict. For example, the parent living with the vulnerable relative may be concerned about asymptomatic children bringing the virus into the home but also fear that giving up physical parenting time, even as a temporary

measure, will impact his or relationship with the children.

Dealing with situations like this calls for cooperation between the parents. If a parent needs to forego parenting time, the other parent needs to be conscientious about maintaining that parent's connection with the kids over Zoom, FaceTime or other videoconferencing.

A family law attorney can help you negotiate an agreement to address these issues and help you seek approval from a judge if necessary. The necessity for the latter may vary from state to state. A judge's willingness to approve a modification may vary as well. Talk to a lawyer to discuss the lay of the land where you live.



©halfpoint

Passage of time not ‘changed circumstance’ for support

Divorce agreements between couples with young children often include language that “extraordinary expenses” will be shared at the relevant time based on the parties’ relative financial circumstances.

A recent New Jersey case, however, underscores how important it is to incorporate periodic review of the parents’ respective financial circumstances and full financial disclosures into the agreement. This is because the simple passage of time does not constitute the type of “changed circumstance” that will convince a court to reexamine the couple’s finances and/or modify a support obligation. That means that when extraordinary expenses arise in later years, the court won’t have the data to make a fully informed determination of how much each parent should kick in.

In the New Jersey case, a couple had a child and got divorced a year later. The father was ordered to pay child support.

Thirteen years later, disagreements over custody and parenting time caused the couple to retain a parenting coordinator, but the father refused to sign onto the PC’s recommendations.

The mother filed a motion in family court requesting that the PC’s recommendations be adopted.

She also moved to compel the father to file an updated financial statement for the purpose of recalculating child support, arguing that the passage of time constituted a change in circumstances warranting a modification.

Additionally, the mother sought to compel the father to contribute to “extraordinary expenses” for their now-teenaged daughter, like SAT costs, driving lessons, college visits, prom expenses and her senior class trip.

The court denied the mother’s request, ruling that the mere passage of time did not justify forcing the husband to open up his finances for purpose of a support modification. The court ordered the parties to share the daughter’s extraordinary expenses equally. This was despite the fact that the father had accumulated a number of luxury assets since the divorce and drove a Maserati.

The New Jersey Appellate Division upheld the decision, saying the lower court’s equal allocation of the extraordinary expenses was reasonable in the absence of accurate financial statements for either party.

If the original divorce agreement contained language calling for periodic review of the parties’ financial circumstances, including financial disclosures, and provided that extraordinary expenses should be allocated based on such disclosures, the mother likely would have found herself in a better position.



©wollertz

Spouse loses rights under divorce order

A recent case from Tennessee sends a strong message that if your ex doesn’t live up to the terms of your divorce decree, you should contact a family lawyer right away. That’s because if you wait too long to hold him or her accountable, you may lose your rights altogether.

The Tennessee case involved a situation where a husband was ordered to pay his ex-wife \$50,000. The marital dissolution agreement called for an initial \$25,000 payment followed by five annual payments of \$5,000 each.

The couple reconciled after the divorce and lived together for five years, although they did not re-marry. During this time, the husband apparently did not pay what he owed according to the divorce agreement. When they broke up for a second time the wife took him to court to enforce the \$50,000 award.

A family court judge ordered the husband to pay, but the Tennessee Court of Appeals overturned the judgment, citing a 10-year statute of limitations under state law.

The wife had argued that the clock had not run out under the statute of limitations because she brought her action within 10 years of when her ex-husband violated the divorce order.

But the court said it was too late because she filed more than 10 years after the order was entered.

The wife clearly understood what her rights were under the divorce, but she did not understand how long she had to exercise them. A good family lawyer will make these issues very clear and ensure his or her clients don’t make a similar mistake.

We welcome your referrals.

We value all of our clients. While we are a busy firm, we welcome your referrals. We promise to provide first-class service to anyone that you refer to our firm. If you have already referred clients to our firm, thank you!



The Historic John Price Carr House
200 North McDowell Street
Charlotte, North Carolina 28204
(704) 370-2828
www.CharlotteDivorceLawyerBlog.com

LegalMatters | spring 2021

‘Deathbed marriages’ vulnerable to challenges

“Deathbed marriages” between couples where a suitor (often a much younger one) marries someone with a short life expectancy due to age or terminal illness are usually looked upon with suspicion.

However, not every deathbed marriage is an insidious case of an opportunistic con artist trying to get his or her clutches into an elderly or vulnerable person’s estate. Deathbed marriages can also be a way to secure a partner’s legal and financial rights,

particularly among same-sex couples who couldn’t legally marry for years.

However, even deathbed marriages that are entered into for honorable purposes can bring legal complications, particularly where there’s no will. For example, if the dying partner has children from a prior marriage, they may resent the sudden intru-

sion of a new spouse claiming a right to whatever the spouse’s share of the estate may be under state inheritance laws. They may then seek to get the marriage nullified on grounds that the dying partner was not mentally or physically competent to enter the marriage.

In some states, like Florida, it’s fairly easy to challenge such marriages, since you only need to prove fraud, duress or undue influence by a preponderance of the evidence, which is a low standard of proof. Even where there is a will, aggrieved relatives could potentially challenge that too on grounds of incapacity or undue influence.

That’s why it’s a good idea for a couple where either partner is elderly or terminally ill to consult with a good family law attorney who can help create an estate plan that will survive such challenges.

Of course, if you suspect a loved one is being lured into a deathbed marriage for fraudulent reasons, you should talk to a family lawyer about your rights.



©Vikkin