Yet Another Excuse for Supported Spouses

It seems that our representatives in Sacramento are continuing in their quest to shore up the system of private welfare known as spousal support. It should be no surprise to anyone that our Legislature, which is incapable of dealing with its own budgetary issues, does not want to make people responsible for themselves. California's laws on spousal support are onerous enough in their ability to allow people to live off another party's earnings long after they have separated. If this is not enough, the Legislature has struck again, attempting to change a long-standing principle of California law that child and spousal support are separate items with distinct purposes.

The Family Code provides for the payment of spousal support and child support in the case of a divorce where there are minor children involved. The Code, and cases, tell us that the purpose of child support is to provide for the support of children. The purpose of spousal support, allegedly, is to provide supplemental income to the spouse who has a lesser earning capacity to assist that individual in becoming self-supporting. In fact, Family Code Section 4320 provides that in fashioning a spousal support order the court is to consider the "goal that the supported party shall be self-supporting within a reasonable period of time."

Child support, on the other hand, is intended to provide for the needs of the children. The statewide child support guideline in California considers the income of both parties as a basis for determining the amount of child support. Cases addressing the issue speak to the amount of expenses incurred by the children in determining their needs (for example, *In re Marriage of Cheriton*, 92 Cal. App. 4th, 269). Clearly the two types of support in question have separate goals; child support being intended to provide for the support of the children and spousal support intended to assist the lower-earning spouse to maintain a certain standard of living until he or she becomes self-supporting.

In fact, for years case law has recognized the difference between these two types of support. The emancipation of a child, according to case law, is not a basis to increase spousal support. In re Marriage of Lautsbaugh 72 Cal.App.4th 1131. However, our Legislature has once again decided that supported spouses should have yet another excuse to avoid taking financial responsibility for themselves by enacting temporary legislation, which holds that the emancipation of a minor child is a basis to modify spousal support. Family Code Section 4326(a), in effect only until Jan. 1, 2011 unless further legislation is enacted, states that the emancipation of a child for whom support is paid is a change in circumstances, which enables the supported spouse to seek a modification of spousal support.

Apparently then, according to our Legislature, child support is not really child support, but is disguised spousal support for which the paying party gets no tax benefit whatsoever.

If child support is intended to cover the expenses of children, then it makes no sense that if a child is emancipated, the former spouse should now pay additional moneys to the supported spouse who no longer has the obligation to provide support for the minor child. While the child support statute itself does not provide for any requirement that a party receiving child support account for how he or she spends the money received on the children, that is what the money is intended to be used for. In a proceeding where parties have not been married but have had minor children, the court has the authority to award support for the children, but not for the parent. In a situation where parties divorce without children, the court can order support for the lower-earning spouse, but clearly cannot award child support. This modification to the statute provides yet another loophole whereby a party who is receiving support can continue to require the former spouse to receive the benefit of their earnings after separation. By authorizing the court to essentially replace the child support with spousal support, these spouses are essentially receiving a windfall that they would not otherwise have had, and that certainly is not available to someone who received child support in a nonmarital situation.

If the Legislature does not extend the law, or replace it with another statutory provision, it will expire on Jan. 1, 2011. The time is now to send a message to the Legislature that people need to be responsible for themselves and that this statute should not be extended. Divorce is a permanent situation. No one is obligated to stay married. The law in California clearly provides that income earned after separation is the separate property of the person who received it. Support should be transitory with a specific time limitation. Allowing another mechanism to open the door for more support results in an unfair burden on the party who is working to support himself or herself long after divorce, and has to work even harder to support the spouse who they may have divorced long ago. Enough is enough.

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