

FAMILY LAW UPDATE

“HOW MUCH WILL IT COST AND HOW LONG WILL IT TAKE?”

Fair questions. Family law cases are charged with emotion. They involve matters relating to minor children (custody, parenting time, child support and medical expenses), spousal support (amount and duration) and property settlement. These proceedings deal with matters of an intimate nature and they often become a forum for personal venting of past grievances, real and imagined, and apprehensions about the future. Because of the emotional intensity and number of variables involved, no one can accurately predict how much a particular family law proceeding will cost or how long it will take to reach a resolution.

Emotions in these cases cloud judgment. Errors in judgment frequently lead to inappropriate conduct and inappropriate conduct often proves costly. A client's

behavior in and out of the courtroom will either advance or injure the client's cause. Each act or failure to act has a consequence and each consequence may have a direct bearing on the cost and duration of the case. A client's ability to compartmentalize their emotions, focus on an equitable resolution of the issues and work with their counsel to achieve those goals are critical.

An appreciation of the variety of factors involved in these cases will help explain why the cost and duration of these cases are unpredictable. These factors include: (1) the number and complexity of the issues involved, (2) the reasonableness of the client's expectations and goals, (3) the reasonableness of the other party's expecta-

tions and goals, (4) the degree of self-control that the client exercises during the proceedings, (5) the degree of self-control that the other party exercises during the proceedings, (6) the knowledge, skill and integrity of the attorney whom the client has engaged, (7) the knowledge, skill and integrity of the attorney that the other party has engaged, (8) the judge who is assigned to the case, and (9) the Friend of the Court staff (referees and investigators) who are assigned to the case. No single individual involved in the process has control over more than one or two of these factors. No single individual involved can predict with any degree of certainty the impact that any of the other individuals involved will have.



INSIDE THIS ISSUE:

<i>Repayment of Loans from Marital Estate</i>	2
<i>Alimony</i>	2
<i>Child Custody Issues</i>	3
<i>Inheritance</i>	4
<i>Invasion of Separate Assets</i>	4
<i>Family Law Filings — 2005</i>	4

“HOW MUCH WILL IT COST AND HOW LONG WILL IT TAKE?” (CONTINUED)

Avoiding senseless confrontations with spouses which eventually involve their respective attorneys or the court saves money. Minimizing animosity encourages the other party to reciprocate and participate in productive negotiations to resolve the issues. While intemperate conduct or language may provide instant gratification, it only antagonizes the other party and invites them to respond in kind.

Client focus on realistic goals and a commitment to achieving those goals is essential. The more focused the client's energy and resources are on the equitable resolution of the issues, the less likely the client will be inclined to entertain and/or indulge in those destructive (and sometimes attractive) diversions that invariably present themselves in these cases. Arguing over who gets the family pet, who gets

the “art work” whose frames cost more than the pieces themselves, and who gets Aunt Tilly's Christmas gift of the JC Penney faux Ming Dynasty vase are counterproductive, waste time, waste energy and increase cost. Every client decision should be cost-effective and designed to bring the proceeding to a prompt and fair conclusion.

Because these loans benefited both husband and wife, they were, therefore, properly repaid from the marital estate before the marital estate was divided between husband and wife.

REPAYMENT OF LOANS FROM MARITAL ESTATE

Husband had, in fact, signed promissory notes for each of these three loans. The promissory notes recited that the loans were payable “on demand.” Shortly after the parties separated in anticipation of divorce, his mother “demanded” repayment. Husband repaid his mother \$200,000 from marital funds.

Wife claimed that because husband had unilaterally borrowed the

money from his mother, husband should be solely responsible for the repayment of those debts and that husband should not have depleted the marital estate by repayment of the loans from the marital estate.

The court ruled that even though wife had not signed all of the notes, they were in fact “loans,” that these loans were used for marital investments and to improve real estate

held by both husband and wife or to benefit husband's business which was the sole source of marital income during the marriage. Because these loans benefited both husband and wife, they were, therefore, properly repaid from the marital estate before the marital estate was divided between husband and wife. *Tuinstra v. Tuinstra*, Mich App No. 258091 (March 14, 2006).

ALIMONY

The trial court's award of alimony to the defendant wife was affirmed by the Court of Appeals. The Court of Appeals noted that the husband earned significantly more money

than the wife, that the wife worked two jobs and took care of the children while the husband was in college earning a degree, that the wife contributed to the marital estate by working “very hard” and

despite the fact that both parties had affairs and were unfaithful during the marriage, the Court of Appeals affirmed. *Thomas v. Thomas*, Mich App No. 253023 (May 24, 2005).

CHILD CUSTODY ISSUES

Change of Custody

Where the children's mother had made false allegations of sexual abuse against their father on several prior occasions, had left the state with the children in 2002 for a substantial period of time and did not inform anyone of her whereabouts or the whereabouts of the children, had made her past allegations of sexual abuse against the father designed to destroy his relationship with the minor children and her overall conduct was not conducive to building a strong relationship between the children and the father, the trial court properly denied the mother's motion to change custody of the parties' two minor children from the father to her. **Robertson v. Robertson**, Mich App No. 264321 (April 13, 2006).

Stability of Proposed Custodial Home

Where the ex-husband's new wife had established a relationship with the children, providing a stabilizing influence, the children had grown accustomed to their new schools and appeared to be doing well, the children had a "loving" relationship with their father's new wife, the children's mother made snide comments and "bad mouthed" the father in front of the children during parenting time exchanges, the children's mother was arrested at the ex-husband's home for domestic assault, and allowed her emotions to control her reason and logic, the trial court ordered that the children live primarily with the father during the school year. **Bates-Rutledge v. Rutledge**, Mich App No. 265263 (April 6, 2006).



There was clear and convincing evidence to support the change in custody from the father to the mother.

Change of Custody

When a child was receiving failing grades in school and had excessive school absences, the custodial father demonstrated a lack of cooperation in providing school-related information to the mother and could not show a plan to address the son's poor academic performance, there was clear and convincing evidence to support the change in custody from the father to the mother. **McCoy v. McCoy**, Mich App No. 255951 (December 9, 2004).

Change of Domicile — New Parenting Time Plan

A mother remarried. Her new husband was stationed in Florida. The Michigan court granted mother's request to move with the minor child from Michigan to Florida. The court also approved a new parenting time plan for the child's father who remained in Michigan. The new parenting time plan was not equal to the prior parenting time plan in all respects. The court noted that the new parenting time plan need only provide a "realistic opportunity" to preserve and foster the parental relationship between the father and child. **Williams v. Hubbard**, Mich App No. 262865 (March 21, 2006).



Dean & Fulkerson

801 W. Big Beaver Road
Suite 500
Troy, Michigan 48084

Phone: 248-362-1300
Fax: 248-362-1358
Email: pmastrangel@dflaw.com
Web: www.dflaw.com

***A special thanks to
our clients and
friends for their
referrals.***

Please note that the information contained in this newsletter is not intended to be legal advice because space does not permit comprehensive treatment of all factual and legal issues involved. Consult with your attorney for specific legal advice.

INHERITANCE

If a married party receives an inheritance but keeps the inheritance separate during the marriage, the court must exclude that inheritance from the marital estate unless the court specifically determines that the other party contributed to the acquisition, improvement or accumulation of the inherited property, or that an award is “insufficient for the suitable support and maintenance” of the other party. Because the husband failed to keep his inheritance separate during the marriage, the trial court found that his inheritance was a marital asset subject to distribution between the spouses. *Crawford v. Crawford*, Mich App No. 259108 (May 16, 2006).

INVASION OF SEPARATE ASSETS

As a general rule in divorce cases, each party takes away from the marriage that party’s own separate estate. An exception arises when one party has significantly contributed in the acquisition or growth of the spouse’s separate asset. In those cases, the court may consider the “contribution” as having a distinct value which deserves compensation. The value of the “contribution” can be awarded to one who significantly assists in the acquisition or growth of a spouse’s separate asset. *Ellis v. Ellis*, Mich App No. 258578 (March 30, 2006).

FAMILY LAW FILINGS — 2005

In 2005, there were an average of 2,648 new filings per judge in the family law division in the Oakland County Circuit Court. With post-judgment work on the other cases, it is estimated that each full-time Oakland County family law judge currently has a docket of approximately 8,000 “open” cases.



Paul J. Mastrangel is a family law specialist and the author of numerous articles in professional publications on topics including alimony, child support and the treatment of inherited property in domestic relations cases. He has represented clients in family law matters for the past 27 years in Oakland, Macomb, Wayne, Livingston, St. Clair, Genesee and Monroe County Circuit Courts.