
LAW AND THE FAMILY

"MCSPARRON' AND MAINTENANCE AWARDS"

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WHAT A DIFFERENCE a year makes. The Court of Appeals, in McSparron v. McSparron, [FN1] re-engineered all we knew (or thought we knew) about the valuation of a professional license. With it came an avalanche of questions about maintenance awards. It was inevitable that McSparron would be a work in progress raising as many questions as it answered, while it was studied, analyzed and dissected.

Going back to basics is how best to understand "McSparronizing" maintenance awards. Domestic Relations Law s236 originally defined "maintenance" as "payments ... for a definite or indefinite period of time, to meet the reasonable needs of a party to the matrimonial action" The objective of the maintenance provision was to award the recipient spouse an opportunity to achieve independence. It recognized that in marriages of long duration, or where the former spouse is, and has been, out of the labor market and lacks sufficient resources, or has sacrificed a business or professional career to serve as a parent and homemaker, maintenance on a permanent basis would be necessary. [FN2]

Originally, 10 factors were set forth as criteria to be weighed by the court in awarding maintenance, including marital property distributed to the parties. Naturally, where the distribution of property produces (or should produce) income, maintenance awards are reduced.

Standard of Living

The maintenance provisions were amended in 1986 [FN3] to alleviate the adverse economic consequences that had befallen women because courts interpreted the statute as limiting the authority to award permanent maintenance. [FN4]

The amendment removed the "standard of living" where "practical and relevant" from the list of 10 factors and substituted "standard of living of the parties established during the marriage" for "reasonable needs," creating a new basis for the award of maintenance. The standard of living established during the marriage became the objective the court would seek to reach in determining "whether the party in whose favor maintenance is granted lacks sufficient property and income to provide for his or her reasonable needs" and whether the other party has sufficient property or income to provide for the reasonable needs of the other.

In *Hartog v. Hartog* [FN5] the Court of Appeals guides us gently through the legislative intent. Notably the Legislature intended the pre-divorce standard of living to be a mandatory factor for the courts' consideration in determining the amount and duration of the maintenance award. Simply because a spouse has the ability to become self-supporting, frequently in a meager or lesser lifestyle, does not obviate the need for the court to consider the pre-divorce standard of living nor does it create a per se bar to lifetime maintenance. "The lower courts must consider the payee spouse's reasonable needs and pre-divorce standard of living in the context of the other enumerated statutory factors"

McSparron raised issues about a change in the formula for maintenance awards. In *McSparron*, the Court of Appeals held that even after a professional degree or license has been used by the licensee to establish and maintain a career, it does not "merge" with the career or ever lose its character as a separate, distributable asset. This result was appropriate to assure the non-titled spouse an equitable share of the license to which that spouse's efforts contributed.

In eliminating the concept of "merger" the court adopted "a common-sense approach that recognizes the ongoing independent vitality that a professional license may have and focuses solely on the problem of valuing that asset in a way that avoids duplicative awards." It cautioned that care must be taken to ensure that the monetary value assigned to the license does not overlap with the value assigned to other marital assets that are derived from the license such as the licensed spouse's professional practice.

Significantly, it appeared to place new limitations on the courts' authority to award maintenance in such cases when it emphasized that "courts must be meticulous in guarding against duplication in the form of maintenance awards that are premised on earnings derived from professional licenses."

The Facts of 'Wadsworth'

The Fourth Department rejected this approach in *Wadsworth v. Wadsworth*, [FN6] where, rather than limit the maintenance award, the court "McSparronized" the property distribution by holding that the court must reduce the enhanced earnings value by the amount awarded in maintenance. The facts of the case played well into the decision.

Following the parties' marriage in 1961, defendant attended law school and was admitted to the New York bar. Defendant was hired as an associate at a Buffalo law firm. He earned \$228,000 in 1992. That same year his assets were sizeable and included a stock portfolio worth \$13,336; an interest in a hockey team worth \$85,000; a law firm pension worth \$180,993; an IRA account of \$61,654.73; and a 401(k) plan valued at \$134,802.

Plaintiff received her master's degree in social work in 1981 and was employed full time from 1981 until January 1990, when she chose to stop working. Her stock portfolio was valued at about \$449,000 as of 1992, producing an annual income of about \$21,000. In 1992 plaintiff received additional income of about \$15,000 as the beneficiary of a trust and a \$20,000 gift from her father. Plaintiff was the beneficiary of two irrevocable trusts and stood to inherit about \$1.2 million upon her father's death.

The parties had a lavish standard of living throughout their 30-year marriage. They schooled their four children in high-calibre private schools through college. The family enjoyed many expensive vacations and had memberships in several social clubs. They owned three homes. The trial court concluded that the value of defendant's interest in the law practice as of the date of the commencement of the action was \$621,663 and made a distributive award to plaintiff of 50 percent of that amount. In determining the value of defendant's law practice, the court used the death benefit provision of the law firm's partnership agreement.

In a misguided decision, the trial court declined to value separately defendant's law license. It awarded plaintiff 50 percent of a \$46,596 receivable (before payment of income taxes); 50 percent of defendant's interest in the hockey team; and 50 percent of defendant's law firm pension. The plaintiff was denied any portion of either the IRA account or the 401(k) plan. It awarded plaintiff maintenance of \$30,000 per year for a term of 10 years or upon the happening of any of the following contingencies: (1) the death of either party, (2) plaintiff's remarriage or (3) plaintiff's receipt of the anticipated inheritance from plaintiff's father.

The Appellate Division reversed the lower court's determination. It concluded that the trial court erred in determining the value of defendant's law practice and in failing to value separately defendant's law license. Although the trial court did not err in using the death benefit provision of the law firm partnership agreement to reach a value for defendant's law practice perhaps, it suggested, that in light of its determination that the Supreme Court must assign an independent valuation to defendant's law license, it may wish to value the law practice by some other method.

Avoiding Double Count

The Appellate Division observed McSparron's admonition that "care must be taken to ensure that the monetary value assigned to the license does not overlap with the value assigned to other marital assets that are derived from the license such as the licensed spouse's professional practice." It held that, "to avoid a double count, the income used in determining the present value of the practice must be deducted from the calculation of future enhanced earning capacity."

Noting that the Court of Appeals stated in McSparron that "courts must also be meticulous in guarding against duplication in the form of maintenance awards that are premised on earnings derived from professional licenses" it held that where there is a maintenance award, "the court [is] obliged to reduce the value of the enhanced earnings by the amount awarded in maintenance. Not to do so would involve a double counting of the same income."

The court vacated the equitable distribution award and remitted the matter to the Supreme Court to make a redistribution of the marital property that considered the value of defendant's law license and law practice. While holding there was no merit to the plaintiff's contention that the amount and duration of the maintenance award were inadequate, the provision of the judgment that terminated maintenance upon the happening of a particular future event was entirely unauthorized.

As the distribution of marital property is an essential factor in formulating the amount and duration of maintenance, the judgment was modified to vacate an otherwise proper maintenance award.

The Supreme Court, New York County, viewed this issue from the same perspective in *Rochelle G. v. Harold M. G.*, [FN7] holding that the effect of McSparron was to reduce the value of the license by the amount of the maintenance award, rather than reduce the maintenance award. At the time of the marriage the husband had completed nearly a year and a half of his law school education. His income from the practice of law exceeded \$1 million annually since the late '80s. The wife, a former school teacher with a master's degree, had not worked outside the home since 1976, but for some minor part-time employment in 1994 for which she received \$10,000.

The court noted that in McSparron the Court of Appeals stated that methods must be adopted to ensure that there is no duplication between the award for the value of the license and other distributive and maintenance awards in the same case. The court accepted the wife's expert's value of \$330,239, subject to a 50 percent reduction for coverture, and \$1.5 million for the "enhanced earnings potential" created by the license. It reduced that figure by 7 percent, or \$104,030, to reflect the pre-marital, separate property component of that figure. It found that the "license" referred to in McSparron as available for distribution as a marital asset, was \$1.5 million.

The Supreme Court held that to the extent the wife will receive maintenance from the husband's "license" and "enhanced earnings" potential and also receive maintenance paid from the same source there would be a duplication of values prohibited by McSparron. It concluded that the proper maintenance would be \$180,000 per year until the house was sold and \$102,000 annually thereafter.

The court found that McSparron's anti-duplication rule required that the value of the maintenance award be compared with the earning differential used in the license calculation. It said that since the wife was to receive 50 percent of the license value, an award to the extent of half the earnings differential would surely be duplicative. The maintenance award including the reduced amount after the sale of the house, exceeded that figure.

Alternatively, the court could reduce the maintenance award to present value and compare that figure to 50 percent of the "license" value. The numbers reflected that the maintenance award would exceed the distribution of the "license." It observed that the effect of reducing "license" awards by the amount of maintenance will nearly always produce a net figure for the license that is very small. It held that this was consistent with the suggestion in McSparron that the "license itself retains some residual economic value, although in particular cases it may be nominal."

FN1. 87 NY2d 275 (1996).

FN2. New York State Assembly, Memorandum in Support of Legislation, Amended 7- 1-80.

FN3. Laws of 1986, ch. 884, effective Aug. 2, 1986.

FN4. See Memorandum in Support of Legislation, Assembly 10567-A.

FN5. 85 NY2d 36 (1995).

FN6. 219 AD2d 610 (4th Dept., 1996). In *Reczek v. Reczek*, 659 NYS2d 641 (4th Dept., 1997) the court held that where there is an award of maintenance, the court is obliged to reduce the value of the enhanced earnings attributable to the doctoral degree obtained during the marriage by the amount awarded in maintenance. Thus, the trial court was required to reduce the value of plaintiff's enhanced earnings, i.e., \$242,587, by defendant's maintenance award of \$100,800 in computing defendant's interest in plaintiff's degree and enhanced earning capacity.

FN7. 170 Misc2d 808 (Sup.Ct., N.Y. Co., 1996).

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