



MATRIMONIAL CASES OF INTEREST

D'ALAURO v. D'ALAURO (App Div., 2nd Dep't)

The plaintiff-wife appealed a decision of the Supreme Court which failed to award the plaintiff any retroactive child support or a portion of the defendant-husband's 401K, failed to require the defendant to pay any of the parties' pre-commencement credit card debt, unreimbursed medical expenses and college costs, and directed defendant to receive a 4% fee from the sale of the marital residence as a fee for acting as receiver on the sale. Pursuant to the Appellate Court, the judgment was modified to include a provision directing defendant to pay \$25,000 of the pre-commencement credit card debt and deleted the provision which directed defendant to receive a 4% fee for the sale of the marital residence.

The plaintiff also appealed the Supreme Court's decision to award maintenance for a limited duration, rather than lifetime maintenance. After consideration of factors specific to the case (i.e. the standard of living of the parties during the marriage, duration of the marriage, present and future earning capacities of the parties, etc.), the Court did not award the plaintiff lifetime maintenance. The Court did, however, extend the duration of the maintenance from 5 years to 10 years.

[LINK TO DECISION](#)

BALL v. BALL (App Div., 3rd Dep't)

The plaintiff-wife and the defendant-husband each claimed a distributive share of the other's enhanced earnings capacity obtained during the marriage.

Defendant earned his law license prior to the marriage and worked as a lawyer from 1989 to 2007. In 2007, defendant began working as a part-time City Court Judge and in 2010 started a 10-year term as a full-time City Court Judge. The Court ruled that the election to a judicial position is not equivalent to obtaining a license or degree that enables a person to engage in a more lucrative career. Although the defendant earned more money as a full-time judge than as a lawyer, it is actually the law degree and license that enhanced his earning capacity, both of which were obtained prior to the marriage. Therefore, the Court determined the defendant did not have any enhanced earnings to distribute.

Plaintiff earned her Master's degree during the marriage by completing her degree

part time over a number of years during the evening and on weekends. Additionally, plaintiff's father paid for her tuition. In order to have succeeded in his claim, the husband was required to "establish that a substantial contribution was made to the acquisition of the [plaintiff-wife's] degree or license." Such factors include whether the spouse altered his schedule and/or took on additional household duties that he would not have otherwise performed in order to enable the titled spouse to obtain the license/degree. Although the defendant claimed he cared for the children while the plaintiff was at class, the Court determined that this was a duty he would have had to perform regardless. Accordingly, the Court determined the defendant was not entitled to a distributive share of the plaintiff's enhanced earning capacity.

[LINK TO DECISION](#)

BURNS v. BURNS (Supreme Court, Monroe County)

The parties negotiated a separation agreement which provided for payment of maintenance by the defendant-husband to the plaintiff-wife until November 2020. The agreement did not contain a provision for the usual termination events (i.e. death of either spouse or remarriage of recipient). The plaintiff remarried in December 2015 and in April 2016, the defendant ceased paying maintenance. The plaintiff filed an order to show cause seeking a money judgment for the unpaid maintenance. Defendant contested that when a separation agreement is silent on termination events, ordered maintenance terminates upon the remarriage of the recipient, in this case the plaintiff. Plaintiff argues that in this situation, the court must look to the parties' intentions to determine if there is an implicit promise to pay maintenance through the end of the term of the agreement.

After review of extensive case law which states that maintenance ends when the recipient remarries, the Court felt that it must terminate any requirement of defendant to pay plaintiff maintenance, thereby denying plaintiff's application for an order enforcing the maintenance requirements beyond the date of her remarriage.

[LINK TO DECISION](#)

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