

Perspective

Three Ways Courts Can Support Financial Self-Sufficiency In the Case of Mid-Life Divorce

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With the rise of “gray divorce” comes an increasing number of cases in which women aged 50 and above, who have not worked outside the home while raising their children, are finding it difficult to return to work following divorce, despite being highly educated and qualified. Married for 20-plus years, they learn their alimony will only last a short term, barely long enough for them to retrain, re-educate and ready themselves for the next chapter of their lives. While some are fortunate to have enough assets and investments on which they can live, the vast majority must rediscover the talents they packaged and put away to become the face of the family while emotionally supporting their spouse and raising their children. Having survived the trauma of divorce, they are thrust into a challenging and unfamiliar situation with little direction and support from a court system that doesn’t adequately account for this scenario.

In New York, spousal maintenance is awarded to the less monied spouse

according to a formula, which presently arbitrarily caps the income on which it is calculated at \$192,000. For those families who have lived on annual income in excess of \$192,000, the court examines a series of factors and has the discretion to award maintenance based on some portion of the excess. New York courts, however, have yet to match a spouse’s actual income dollar-for-dollar in assessing maintenance. For example, a spouse earning income in excess of \$1 million will not pay maintenance based on that income, but rather, will likely pay maintenance on income totaling approximately \$500,000-600,000, depending on the applicable series of factors. Importantly, the guidelines for payment of maintenance were established when maintenance payments were taxable to the recipient. Beginning in 2019, maintenance payable to a spouse is no longer deductible from the payor’s income for tax purposes, nor taxable



by the recipient. Some courts, therefore, are reducing the amount mandated by statute to account for the fact that the payments are no longer deductible.

In addition to the monetary payment of support, New York provides statutory guidelines for the duration of the support. The expectation of an award of lifetime maintenance is nearly extinct. Presently in New York, the longest statutory duration is fifty percent of the marriage based on a marriage lasting in excess of 20 years. For example, a woman married at age 25, who stopped working at age 28 to raise her children and who divorces at age 46, when her oldest child goes to college, will likely

only receive maintenance under the current guidelines until at most age 56. She is then faced with the task of finding a source of income to bridge the gap until retirement or social security benefits are payable.

Husbands, meanwhile, strive to lower the monthly maintenance they pay to their former wives who have not worked outside the home for several years. They often seek to impute income to them by hiring vocational experts to interview them and assess their employability. Vocational experts ask background questions concerning education, prior jobs and work skills, which they then “plug in” to an unrelatable formula to determine the amount of income the wife can make. No allowances are made for the length of time the women have been out of the work force. No allowances are made for the management skills they have developed from running the household, chairing school committees, overseeing the family finances, or organizing children’s activities. Sometimes, no allowances are made for evolving technology that has in part made some of their skills obsolete. These women are simply tasked with the purpose of finding employment at the designated income within the arbitrary time the legislature claims will take them to become employable.

While courts consider the length of time a person has been out of the workforce, the amount of training a person will need to re-enter the workforce, and other such factors in determining the length of maintenance it will award, no practical help is given to aid the dependent spouse, often a woman. Time and money needed for retraining are usually major inhibitors to them finding work. Their support only pays their ongoing expenses. If the purpose

of maintenance is truly to tide the dependent spouse over until he/she can achieve self-sufficiency, then courts should consider practical issues that arise for the dependent spouse needing to be retrained and address at least the following when it is making financial awards:

- The paying spouse pays for the dependent spouse to take courses necessary to update training in the desired occupation, so long as it is related to the dependent spouse’s former occupation.
- The paying spouse pays for a certain number of sessions with a vocational expert, who can help coach/guide the dependent spouse to find employment, similar to an “outplacement service” with a professional firm.

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- When setting the duration that maintenance will be paid, the court takes into account other factors such as the presence of young or disabled children in the household, or the responsibility of caring for aged parents, which may delay re-entry to the work force or obtaining the skills necessary to do so.

This practical and specific monetary help, which would be in addition to maintenance and child support, would provide more than “lip-service”



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recognition of the hardship faced by women who have been out of the workforce, and could better support them in finding the footing needed to embark on a renewed career in their journey to financial self-sufficiency. Until the system starts to make rational and necessary changes, if a spouse is fortunate enough to be awarded support for 10 years, she should use that time wisely to obtain the education and/or experience necessary to provide for a future without support.

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