Legal Matters®

Family Law
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Jurisdiction in divorce: Why it matters

There are countless issues that can impact your post-divorce life. One issue that a lot of people don't think about, but which can have an especially significant impact, is which state has the power to oversee your divorce.

This is because different states can take very different approaches to how they value and divide up marital property, how they determine whether one of the spouses should pay alimony and how much, how they interpret and enforce prenuptial and postnuptial agreements, and how they determine custody and visitation issues.

For example, some states are "community property" states, where any property acquired during marriage, except for gifts and inheritances, is considered to be owned jointly by both partners, while any property brought into the marriage is separate property of the individual spouse. Upon divorce, all marital property is divided up equally while each spouse keeps their separate property.

Meanwhile, other states follow "equitable distribution" rules, which means any property acquired during marriage is divided up equitably — in other words, fairly under the circumstances — but not necessary equally. One spouse can be ordered to give up some of their separate property to make things fair to the other spouse.

As for custody, different states may emphasize different factors in determining what's in a child's best interest, and regarding alimony, states may have different ways of calculating obligations and determining when the obligation to pay terminates.

Whatever the issue, determining proper jurisdiction can be complicated and may not always go the way you anticipated.

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Take, for example, a recent case in Tennessee. A couple got married there in 2014 but soon moved to Missouri, where they had two kids together. Four years later, the husband lost his job and they moved back to Tennessee to live with the wife's parents. The marriage was shaky, however, and that same year the wife filed for divorce in the county where they married, claiming "irreconcilable differences."

The husband then challenged Tennessee jurisdiction. He argued that Missouri should have jurisdiction because they had not lived in Tennessee long enough to establish residency and because the acts the wife cited as demonstrating irreconcilable differences occurred in Missouri. He also argued that it was inappropriate for a Tennessee court to consider custody issues because it was not the children's home state.

A family court judge ruled that Tennessee had jurisdiction, finding that

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Buy-sell agreements can minimize business disruption due to divorce

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If you operate a business with one or more other partners, and one of you goes through a divorce, there's a real risk this could impact how the business operates going forward. That's because your share in the business, which presumably became valuable through your hard work, could be divided in a divorce

In "community property" states, where assets acquired during marriage are split down the middle, this means the spouse of a divorcing co-owner could walk away with a substantial interest in the business and a substantial say in running its affairs. In "equitable distribution" states, where a divorcing couple's assets and liabilities are divided up based on what the court deems fair under the circumstances, a co-owner's spouse could conceivably walk away with an even bigger share. That's why it's a good idea for any small business to have a "buy-sell" agreement: a binding contract between co-owners of a business that sets rules about when an owner can sell their interest, who can buy an owner's interest, and the price that should be paid.

In terms of divorce, a buy-sell agreement could require the ex-spouse of a newly divorced co-owner to sell any interest he or she received in the divorce back to the company or to its other owners.

Alternatively, if the spouse of an owner receives an interest in the business during a divorce, a buy-sell agreement can automatically convert that interest to a non-voting interest. Or it can give the other owners the right of first refusal to buy the spouse's newly received interest if he or she decides to sell it.

If you're the one who ends up getting divorced, a buy-sell agreement won't necessarily prevent your soon-to-be ex from taking a good chunk of your own financial stake in the company or taking a bigger portion of other assets instead. But at least your partners would be protected, and your soon-to-be ex wouldn't have a say in management decisions, which could help minimize business disruptions going forward.

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Judge can't require possible siblings to provide DNA samples

A recent Michigan case sheds some light on how far a court may be willing to go in order to accommodate someone who claims they're a long-lost relative entitled to a share of a deceased person's estate.

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In that case, a man named Terry Seybert died in 2019 without a will and his body was cremated. After Seybert's mother died, his adult daughter Shannon Marie Parker was named personal representative of his estate.

Not long afterward, a man named Aaron Wise entered the picture and demanded a halt to Parker's distribution of Seybert's assets, claiming he was Seybert's biological son.

According to Wise, he, along with Seybert's mother and brother, had provided DNA samples that indicated a 99-percent probability that he was related to Seybert.

The probate court told Parker not to make any distributions from the estate until the court could determine whether Wise was an heir. Wise then requested that the court require Parker to submit to genetic testing herself so he could show that Seybert was his father. Wise's reasoning was that Seybert had been cremated, leaving no genetic material behind, and that while genetic testing from Seybert's mother and brother may have shown a biological relationship, it didn't show he was Seybert's son.

The court agreed and issued the order.

But Parker appealed, and the Michigan Court of Appeals reversed.

Specifically, the court pointed out that Michigan's paternity law does not explicitly allow a judge to order anyone other than a mother, child and alleged father to provide genetic samples when determining a person's paternity. While the law doesn't explicitly prohibit a court from ordering a potential father's other children from submitting to genetic testing, the court was unwilling to read such a requirement into the law.

COVID doesn't justify modification to support agreement

When a party who is paying alimony or child support wants to modify their payment obligations, they typically have to prove a change in circumstances justifying such an order. In most states, this requires a showing that whatever change has occurred has made it significantly harder for the paying spouse to support themselves and that this situation is both real and permanent.

COVID-19, however, has proven to be a massive disruption to this typically straightforward calculus, as courts have had to grapple with the reality of the pandemic's impact on people's incomes. For example, what may have seemed like temporary losses of income in the early stages of the pandemic have often continued. So should courts now be viewing COVID-related disruptions as permanent? A recent case from New Jersey may provide some guidance on the issue.

In that case, Jeffrey Gerstel and his wife Mia divorced in 2009 after 12 years of marriage and three children. Jeffrey was ordered to pay $3,600 a month in child support. In 2017, Gerstel's obligation was increased to $4,500 per month because his income as a physician had increased. It was modified back downward soon afterward when he took physical custody of the couple's oldest daughter.

Weeks into the pandemic, Gerstel, who had moved to Florida not long before, sought a further reduction, citing a decreased caseload due to the pandemic, lower medical reimbursement rates in Florida and an inability to find other employment.

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A family court judge denied his request, deciding that several months of pandemic-related reductions didn't constitute permanent changed circumstances. Gerstel appealed, but a New Jersey appellate court upheld the lower court's ruling, finding that the judge exercised "sound discretion" under the circumstances.

Of course this is just one decision from one state based on a situation from early in the pandemic. It's possible that someone still feeling the effects of the pandemic more than two years later could get a different result. If you are dealing with pandemic-related economic challenges that continue to make it difficult to meet your support obligations, talk to a family lawyer to discuss potential options.

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with respect to the divorce judgment, the wife was a Tennessee resident when the divorce broke down, even if the husband wasn't. As for custody, the judge ruled that Missouri didn't qualify as the children's home state since the husband had sold their house in Missouri and the children no longer had a home there. That meant Tennessee could have jurisdiction because it provided a more appropriate forum to resolve disputes.

The Tennessee Court of Appeals upheld the decision, emphasizing that jurisdiction made sense because at least one parent was living there when the divorce began.

Another case, from South Carolina, shows that if you want to be considered a resident of a state for jurisdiction purposes, you need to take steps to establish legitimate residence. There, a husband who filed for divorce expected his parents' South Carolina home to serve as his residence. Prior to the divorce, the husband, a pilot, returned to the marital residence in North Carolina whenever his military service and airline employment permitted, and he was involved in local North Carolina politics and did not cancel his voter registration there until a few weeks before filing for divorce.

He filed for divorce in South Carolina on grounds of adultery. Jurisdiction may, in fact, have been particularly important to him because South Carolina prevents unfaithful spouses from receiving alimony. But a family court dismissed his case, finding that he couldn't show he was a South Carolina resident for a year before filing and rejecting his argument that his military service and work kept him away from the state. The judge also ordered that he pay the attorney fees his wife incurred challenging the filing. The South Carolina Court of Appeals upheld the decision.

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Wife can't share increase in retirement account value

The North Carolina Court of Appeals recently ruled that appreciation in a husband's retirement account that occurred after a couple separated could not be divided at divorce.

The couple in question got married in 1995 and had four children together before the wife filed for divorce in 2016. According to the wife, they separated in August 2015 when the husband "willfully abandoned" her.

When they got married, the husband worked for IBM. Before the marriage, he acquired a retirement plan from IBM which he later rolled into a Vanguard account that, on the date the couple separated, was worth $412,000, of which the court deemed $100,000 to be marital property and $312,000 to be separate property. By the time of distribution, the account had increased to $496,000 ($120,000 in marital property and $376,000 in separate property). Despite that split, the court divided the entire $84,000 in passive gains, deciding that the husband hadn't established any of this increase as separate property.

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But the court of appeals reversed, finding that the trial court should have only included the $20,000 increase in the marital portion as part of the estate and ordering that it to go back and redistribute the assets accordingly.