

page 2
Adult child's 'failure to launch' doesn't justify child support

Husband held in contempt for non-payment despite waiver

page 3
Law revoking beneficiary status didn't apply retroactively

page 4
Spat between parents may constitute 'change in circumstances'

Family Law
fall 2017

Legal Matters®

Will you get credit in property division for footing household bills during divorce?

An issue that frequently arises when a marriage breaks up is who pays the household bills while the divorce is pending. A lot of times the spouse who paid the bills during the marriage will continue to pay utility bills and homeowner's association or condo fees while making mortgage payments on the marital home. If you're the one making those payments, you're probably wondering whether a divorce judge will give you some sort of credit for it when dividing up the marital property. In other words, will you get a bigger share of the remaining property in consideration for the bills you've paid or be saddled with a smaller share of marital debt?

The answer is that it depends on the situation and the laws where you live.

Take, for example, a recent case from North Carolina, where it all came down to the concept of "active" versus "passive" decreases to marital debt.

In that case, Robert and Christine Grennan were getting divorced after 30 years of marriage. After the couple separated, Robert paid the taxes, homeowner's association dues and insurance on a home he and Christine owned. Robert hoped that by paying these bills out of his own



© Mogil

separate earnings he'd get some credit when the judge split up the property, since he was contributing to a reduction of the couple's debt.

However, not only did the judge deny Robert any credit, she ordered him to cut Christine a check so she could walk away with the full amount of property she'd been awarded.

Robert appealed, arguing that the trial judge made a mistake by

continued on page 3

Arnold & Smith
ATTORNEYS AT LAW

The Historic John Price Carr House • 200 North McDowell Street • Charlotte, North Carolina 28204
(704) 370-2828 • www.CharlotteDivorceLawyerBlog.com

Adult child's 'failure to launch' doesn't justify child support



© photography33

In most states, the obligation to pay child support ends when the child turns 18. In some states it may end when the child graduates from high school, if that comes first. Minor children also generally can become “emancipated” through a court proceeding if they can support themselves, if they join

the military, or if they get married. At that point, the obligation to pay child support ends. But the obligation to pay support can continue past age 18 if the money is used to pay for the adult child's education or if the adult child is disabled.

What about an adult child who's still living with one of the parents and just hasn't figured out a way to support himself? Is the other parent required to pay support in that case?

A recent decision from an appeals court in New Jersey indicates that the answer is “No.”

In that case, a divorced woman's 19-year-old son was living with her and taking a course at a community college but not working. There was no evidence that he was either disabled or incapable of supporting himself.

The woman and her ex-husband ended up back in

family court bickering over whether the father still had to pay child support. The judge ruled that young man was emancipated and ordered that the father's support obligations be terminated.

The mother appealed, but an appellate court upheld the lower court's ruling. According to the court, once the son became an adult it was presumed that he was emancipated. The mother could then rebut this presumption with evidence of a disability. In this case, she failed to provide experts to show her son was disabled, and records from his psychologists and social workers in high school, where he battled emotional problems and received special services, weren't enough to do so.

The court said that the son's emotional problems and learning disabilities weren't enough to show he wasn't capable of becoming independent. Additionally, the divorce agreement itself had no language obligating the father to continue to pay child support after the son reached adulthood.

The law can differ from state to state, but if you're divorcing and have a child with challenges that you think may keep him under your roof into adulthood, it's important to discuss this with an attorney. Even though the law doesn't require your ex to pay support at that point, you may be able to negotiate a provision in your divorce agreement that provides for it.

We welcome your referrals.

We value all of our clients. While we are a busy firm, we welcome your referrals. We promise to provide first-class service to anyone that you refer to our firm. If you have already referred clients to our firm, thank you!

Husband held in contempt for non-payment despite waiver

A husband could be cited for contempt of court for failing to make agreed-upon payments to his ex-wife even though she had waived the right to “spousal support” in their divorce decree, the Virginia Court of Appeals recently decided.

In that case, as part of the property settlement the husband agreed to make a \$40,000 lump-sum payment, to be satisfied in 16 equal monthly installments.

The divorce agreement contained a section entitled “alimony” in which both parties stated that they were waiving any right to receive alimony or “spousal support” payments in the future. The husband also agreed to pay for his wife's health insurance for the next year and a half. The final decree created some confusion by stating that the amount of “periodic support” was expressed in fixed sums (presumably meaning the \$40,000 lump sum) and set out a schedule for payment of “periodic spousal support” (presumably meaning the 16 installments).

After 10 months, the husband stopped making the

payments, claiming that his ex-wife's alleged adultery invalidated the property settlement. The wife asked the court to find the husband in contempt for failure to make the “periodic spousal support” payments.

The husband argued in response that the court could only use its contempt power to enforce payment of child or spousal support obligations and that the wife had waived her right to receive spousal support. He also argued that the payments he was supposed to make were the equivalent of a money judgment anyway, which he claimed was unenforceable via contempt.

The trial court disagreed and held the husband in contempt. The Court of Appeals affirmed, ruling that the husband couldn't avoid the contempt citation by characterizing the payment obligation as a money judgment. The court concluded that whatever was in the property settlement agreement was enforceable in the same manner as any other provision that you'd see in a final divorce decree.

Will you get credit for footing household bills during divorce?

continued from page 1

denying him credit for the bills he'd paid. But the North Carolina Court of Appeals disagreed. According to the court, Robert's payments represented an "active decrease" to the marital debt. In other words, he took action by writing checks to reduce the amount of the marital debt. Under a 2013 change in North Carolina law, increases or decreases to marital debt must occur "passively," such as through a change in market conditions that might affect the value of an asset or debt, in order for them to alter the marital property that can be divided.

In a Florida case, the operative factor was the date the court used for valuing an asset.

In that case, a couple was divorcing after almost 40 years of marriage. The husband, who had been the breadwinner, had several bank accounts in his name, two of which had a total of \$8,300 when the divorce petition was filed. But by the time the final hearing rolled around, these accounts only had a balance of \$2,400.

According to the husband, this reduction occurred because he'd been using those accounts to pay expenses related to the marital home. He argued that the court should use the balance as of the date of the final

hearing for the purpose of calculating the marital estate. This would, in essence, give him nearly a \$6,000 credit for the expenses he'd covered.

The trial judge disagreed and used the \$8,300 figure. But a state appeals court reversed the decision, citing a Florida law that courts shouldn't

include assets in an equitable distribution that have been diminished during the divorce proceedings unless the asset has been dissipated through a spouse's misconduct. Here, the court said, the husband was acting in good faith and shouldn't be punished for covering the bills.

Despite this case, in many instances you won't get legal credit for paying the bills without a binding agreement in place. That's the type of thing a family lawyer can help you with. Be sure to bring this up with a divorce lawyer as soon as you think you may be separating.



© Mogil

Law revoking beneficiary status didn't apply retroactively

A new decision from a federal appeals court should give every divorced person incentive to look over his or her insurance policies and other financial documents to make sure beneficiaries have been changed. This holds true even in states with laws that automatically revoke a now-ex-spouse's beneficiary status upon divorce.

The federal appeals court case concerned Mark Sveen and Kay Melin, who got married in 1997. Mark had two children from a prior marriage and these kids were the primary beneficiaries on a life insurance policy that he had in place. But once he got married, Mark made Kay his primary beneficiary, with his kids as beneficiaries of a different policy.

The couple divorced after 10 years. Mark never removed Kay as the beneficiary after the divorce, although Kay claims that Mark agreed to keep her as the beneficiary in exchange for giving him a better property settlement.

Mark died in 2011. After his death, his children

argued that they should receive the proceeds of the policy even though Kay was still the beneficiary. In making their argument, they pointed to a Minnesota state law passed in 2002 that states that once a couple gets divorced, an ex-spouse's status as primary beneficiary of an insurance policy is automatically revoked.

A federal district court judge agreed with them and ordered that they get the proceeds of the \$180,000 policy.

But the appeals court held that the state law didn't apply retroactively. More specifically, the court said that applying the law to insurance contracts that were entered into before the law was passed would be a "substantial impairment of contract" that violates the Contract Clause of the U.S. Constitution.

Now the dad's kids get to watch their ex-stepmother walk away with nearly \$200,000 that arguably should be theirs. This is a situation that might have been avoided if their father had changed his beneficiary designations as soon as he got divorced.



The Historic John Price Carr House
200 North McDowell Street
Charlotte, North Carolina 28204
(704) 370-2828
www.CharlotteDivorceLawyerBlog.com

Spat between parents may constitute ‘change in circumstances’



© bernadg

It’s never easy for a kid to be shuttled back and forth between two divorced parents who cannot communicate constructively. But it can get even worse for a child as he or she gets older and becomes more aware of the hostility between his or her parents. If a recent decision out of North Carolina is any indication, this growing awareness of the parents’ hatred

toward one another may even be grounds for modifying a custody order.

In that case, a couple divorced in 2012 and a judge awarded the father primary physical care and custody of the couple’s young daughter “Reagan.” The judge apparently made this decision based on the couple’s “utter inability” to work together for their daughter’s benefit as well as the mother’s repeated, unsubstantiated allegations that the father was abusing Reagan.

Two years later the mother asked the court to modify the custody order, claiming that the father’s new girlfriend was acting as Reagan’s primary caregiver. A trial judge granted the motion, citing “changed

circumstances” and giving the mother primary custody. Specifically, the judge found that the parents still couldn’t communicate effectively and that Reagan, who was getting older and becoming more aware of the situation, was experiencing increasingly higher anxiety as a result. He also noted that the father and his girlfriend were keeping Reagan away from other family members and that the mother was no longer making false abuse allegations.

The father appealed, arguing that his differences with his ex-wife were not grounds to modify custody based on a change in circumstances, since they hadn’t gotten along from the beginning.

But the North Carolina Court of Appeals disagreed, finding it “entirely foreseeable” that communication problems between parents would affect a child more as she grows older, becomes involved in more activities that require her parents to cooperate, and becomes more aware of and sensitive to conflict between her parents.

The law may differ from state to state, so check with a family lawyer to find out how these situations are handled where you live.