

New York Law Journal

SERVING THE BENCH AND BAR SINCE 1881

Thursday, June 8, 1995

LETTERS

To The Editor

Nexus of Child's Need To Income Seems Lost

Lost in the recent "Family and the Law" column (*NYLJ* May 10) analyzing the Court of Appeals' decision in *Cassano v. Cassano* is the head-shaking astonishment of most matrimonial practitioners. In dicta, the high court has challenged an approach taken by judges and counsel alike, who have demanded a nexus between a non-custodial parent's child support obligation and the child's actual need in applying the Child Support Standard Act. Gone is the *Harmon* court's (1st Dept. 1993) oft-cited and seemingly sound admonition that to blindly apply the CSSA statutory scheme to income over \$80,000 constitutes an abdication of judicial responsibility; in its place is a newfound view that a child is entitled to share in the successes of a non-custodial parent, whose obligation to support may now have been transformed to an obligation to reallocate wealth.

Indeed, from behind its cloak of *parens patriae* and through the employment of strained and disquieting statutory construction techniques, the Court of Appeals has taken a drastic step that few of us find comprehensible. Support has always had a logical connection to a child's actual needs as measured by his or her pre-divorce standard of living. It was never understood to mean a right to share in a parent's estate beyond that which was necessary to meet those needs. To ensure greater uniformity, and reasonableness in child support awards, the CSSA was enacted. Yet, that common sense has now been undermined by how the *Cassano* court discussed changing the focus

from the child's actual needs to a robotic application of percentages to income, no matter how great. unless to do so would be "unjust or inappropriate".

While support has been viewed through the lens of a child's prior standard of living or that status a child might have attained had a divorce not occurred, employing the formula's percentages to whatever income a non-custodial parent may generate constitutes a redistribution of the marital estate that may prove to be a guise for maintenance and not an enhancement of a child's resources. Moreover, a client may not be able to protect himself from such a harsh application of the CSSA. A pre-nuptial agreement which attempts to limit one's support obligation has little chance of enforcement. Public policy has forever been vigilant in setting aside those portions of an agreement that tend to disadvantage children below their statutory entitlement. Hence, in the high-end matrimonial case, the birth of a child may now signal a time for great concern over who has control over one's own property.

If one is to read the *Cassano* case literally, absent exceptional circumstances, the formula should apply to a non-custodial parent's income ad infinitum. How far the Court of Appeals is willing to go with this ideological theme is what has practitioners confounded, wealthy litigants unnerved and law professors invigorated.

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