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LETTERS

To the Editor

Judiciary Is Confused Over Child Support Act

Kudos to Timothy M. Tippins for his cutting edge insights into the inequities endorsed by a confused judiciary over its application of the Child Support Standards Act (NYLJ, Jan. 15 and 16, page 4). Indeed, in those cases involving a license or practice distribution, the judiciary's oppressive disregard of the actual arithmetic that predicates its awards is daunting. For example, if a father of two gets married while in medical school and thereafter establishes a practice that generates $400,000 to him in annual earnings, he is better off living out his life in a horrific marriage rather than pursuing a divorce. By the time his practice is valued and his enhanced earnings are calculated, he will likely be obliged to distribute a 50 percent share of his future earnings to his soon to be ex-wife. Assuming the parties have not yet accumulated any other significant marital assets, the so-called monied spouse will then be forced to pay his wife in excess of $1 million to satisfy her share of the practice and license. After that distribution of his $400,000 in annual income, the licensed spouse will be allocated the average income of a college graduate in his age group plus only one-half of his excess earnings. Again, assuming that the base-line income of a college graduate in the licensed spouse's age group is $80,000 and assuming that $160,000 of his $320,000 in excess earnings have already been awarded to his wife, the licensed spouse will be left with $240,000 of total earnings while his spouse would have been allocated $160,000 of those earnings. And then there is child support.

Too often, courts then find comfort in blindly applying the child Support Standard Act to the first $200,000 or $250,000 of the parties' joint income regardless of the children's needs. Completely forgotten in that equation is the fact that the parties' joint income should include the $160,000 already allocated to the wife. Instead, the court usually applies the formula to the monied spouse's income alone, as if it had not already been compartmentalized. The husband then is ordered to pay an additional $50,000 in after tax dollars in child support (25 percent of $200,000), again typically without any regard to what the children's actual needs are. Assuming that the husband is in a 40 percent combined overall graduated tax rate, (state, federal and local taxes), the net income that he will derive from his share of his earnings would be approximately $94,000 ($240,000 x 60 percent = $144,000-$50,000 in child support). On the other hand, without personally generating any of the excess earnings that she has already been awarded totaling $160,000 and assuming a 30 percent overall tax rate for the wife, the so-called non-money spouse will be left with $152,000, ($160,000 x 70 percent = $102,000 + $50,000 in child support). What a deal for the monied spouse!

While Mr. Tippins refers to the double counting of child support as the "elephant in the living room," we of the matrimonial bar have yet to read a case where any members of the judiciary have seen that elephant. Let's hope they at least read Mr. Tippins article.

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