

THE FAMILY LAW QUARTERLY

April 2005

HELPFUL HINTS:

The key to a successful outcome in any dissolution action, whether it be through a settlement or litigation, is preparation. The more prepared you are, the more likely you are to come away with a favorable outcome. I recommend the following tips to navigate through the chaos of divorce:

1. Protect your children;
2. Organize your financials;
3. Inventory personal property;
4. Educate yourself; and
5. Take care of yourself.

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USING PROFESSIONALS TO EASE THE TRANSITION

A divorce can be a very traumatic event in one's life. Going through this transition alone can make it even more difficult.

There are a number of professionals who can help make the divorce process much less intimidating. These professionals are part of our "team" approach to handling a family law matter. We strongly believe that the job of a family law attorney is not only to provide clients with expert legal advice, but also

to provide them with the tools necessary in order to move onto the next stage of their life.

In this issue of *The Family Law Quarterly*, I will discuss putting your children first and the importance of utilizing the services of a Financial Expert during the divorce process. My goal is to continue to provide useful information on family law matters.

Please let me know if there are any topics

of interest you would like me to discuss in an upcoming newsletter.

Sincerely,

Jonathan J. Fogel



PUT CHILDREN FIRST DURING THE DIVORCE PROCESS

Parents who decide to divorce usually know that their marriage is beyond repair, however the children involved are often confused and disoriented about why their world is being turned upside down. And while the spouses may no longer see eye-to-eye

on most issues, they usually agree – in theory – that they want to spare their children as much of the undue stress as possible.

Parents can make that theory a reality by implementing several simple tactics that will benefit the children

now and into the future.

First, spouses should consider using a parenting notebook to communicate with one another. Divorce is an emotional process and often parents have a hard time verbally discussing details about the chil-

PUTTING CHILDREN FIRST CONT.

dren. The notebook provides a buffer that allows you to communicate with one another without having to directly converse.

Also, remember that the notebook belongs to the parents and therefore should be passed by the parents. Don't ask your children to carry it for you.

Second, find a counselor or therapist for your child if you recognize a prob-

lem; and even if you don't. Parents that are dealing with the divorce process are focused on many things and often fail to see the signs that a child is unhappy. In addition, children often don't verbalize their concerns because they don't want to say anything that will upset the parent.

By providing an environment where the child feels safe to express themselves, you are providing a

much needed emotional outlet.

Third, acknowledge to your child that a divorce is happening but don't fill them in on all the details. While you want to be honest with your child that there will be changes in the family structure, it is not appropriate to go into great detail about the process leading up to those changes.

And always, always rein-

force the fact that the divorce will not impact or diminish your love for the child.

In addition, only discuss the divorce when the children are not around. Consider scheduling a meeting with your spouse outside of the home or when the children are at school. These meetings also can be used to determine holi-

day schedules and plans for summer vacations.

Fourth, encourage your child to spend time with the other parent. While this may be emotionally difficult for a soon-to-be divorced spouse, it will have a positive impact on a child. Remember, while your feelings for the other parent have diminished, it is healthy and necessary

for your child to continue to love and respect that person.

Also, don't withhold the child from visitation to punish the other parent. While your goal may be to penalize the other parent, remember that you are also penalizing the child. Lastly, work hard to say nice things about the other parent. Or at the

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very least, don't disparage the other parent in front of the child. At a very young age, children realize that they are part mom and part dad. When a parent says something negative about the spouse, the child internalizes those negative terms and believes themselves to be bad, as well.

One other thing – do your best to not make empty promises to the child about the outcome of the divorce. Promising the child that you will take them on a special trip or that they will live with you after all is said and done gives false expectations and can be harmful if you are not able to deliver.

While divorce is not an easy process, the impact that it will have on your children can be greatly diminished if you remember to put the kids first – throughout the process as well as after the divorce is finalized. □

USING A FINANCIAL EXPERT DURING THE DIVORCE

By Dax V. Stoner, CPA/ABV, CVA

In almost every divorce, one of the more critical and complex issues to be dealt with are financial matters. Two divorcing individuals with a shared history of disagreement over family finances can exponentially increase their stress and anxiety during the divorce process as it relates to their money. Feelings of security or insecurity and the ultimate personal resolution that one's divorce was fair or unfair may hinge on one's own perception that their personal financial situation was both fairly assessed and resolved. To do this in the context of the divorce process is often not easy.

One of the possible solutions your attorney may suggest is the use of financial experts. Situations vary and there are different types of experts that may be employed to address different types of financial matters needing attention. Some of these matters may include:

- Income Determination
- Tax Analysis
- Maintenance and Child Support
- Non-Marital Asset Tracing
- Business Valuation
- Property Division and Settlement

INCOME DETERMINATION

A salaried person earning a consistent bi-weekly paycheck may be fairly straightforward. However, more and more people nowadays have varying compensation structures that provide for potential bonuses, commissions, variable performance pay, etc. Coupled with more complex stock and option plans, wealth accumulation and personal retirement plans, cafeteria plans, pre-tax flex accounts, etc and the true picture of income available becomes more difficult to assess. Individuals who own and operate their own businesses, whether as a sole-proprietorship or within a corporate structure, have even greater needs in order to determine not only income earned but income available, including wages, draws, K-1 pass-through income and distributions, and possible personal expenses within the business. A financial expert will provide a clearer picture of these issues.

TAX ANALYSIS

There are also tax ramifications relating to a divorce. A financial expert, especially a CPA, can work with you and your attorney to analyze the effect of taxes as they relate to any number of issues in the divorce process including: gross vs. net earnings, net after-tax effects of maintenance, allocation of child exemptions between parties, alternative property settlement and division options and the inherent tax aspects of different marital assets. A CPA can also work with either or both parties to adjust their withholdings or setup tax estimates as appropriate.

MAINTENANCE AND CHILD SUPPORT

Based on a number of different factors including income, needs, custody arrangements, standard of living, etc. the issues of maintenance and child support, if you have children, will almost certainly come up. As Minnesota currently has a statutory formula used to calculate child support, variance of support will typically depend on the basis of net earnings and custody. A financial expert with experience in Minnesota divorce law will be able to prepare appropriate child support calculations. From there, a financial expert can then assist you, your attorney and your mediator or the Court in analyzing the effects of varying maintenance and support alternatives as they relate to both parties' aggregate net cash flow post-divorce and individual budgeted needs going forward.

NON-MARITAL ASSET TRACING

Increasingly, it seems more and more divorcing parties have claims to non-marital assets. Non-marital assets can be derived a number of ways including: assets that existed before marriage such as homes, investments and retirement accounts, or assets received after marriage such as inheritances and gifts from family. Non-marital claims can also be made on assets existing today that were exchanged from the property listed above. A financial expert experienced in asset tracing will work with you to analyze the basis for your claim, help you in gathering the necessary documentation, and prepare a detailed tracing analysis in order to prove the non-marital character of those assets as they exist today.

BUSINESS VALUATION

Oftentimes parties may own and run a business outright or have a partial ownership interest in a closely-held business. In such cases, not only will the issues of income determination arise as discussed previously, but a business appraisal will also likely need to be performed. An expert skilled in business valuation will be employed to prepare a written appraisal of the fair market value of the ownership interest. Because of the added complexity involved, additional financial documents will need to be requested and the expert will typically work with the attorney during the discovery process.

PROPERTY DIVISION AND SETTLEMENT

A financial expert may also be on hand to aid the parties, the attorneys or a mediator in crafting an overall equitable property division. To the extent that cash equalizer payments need to be made, a financial expert will have experience in analyzing alternative scenarios including present value and timed equalizer payments, maintenance buy-outs, QDRO transfers of retirement accounts and related tax implications as part of an overall settlement of the parties' financial affairs.

CONCLUSION

A skilled financial expert can aid in the divorce process by bringing clarity and independent objectivity to a potentially contentious process. It is imperative that you inquire at the outset as to the expert's qualifications and experience. Additionally, it is very helpful if the expert has knowledge of relevant case law as it relates to the financial issues at hand.□

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Mr. Fogel has extensive experience handling complex marital estates, spousal maintenance, custody disputes, post decree matters, paternity, and domestic abuse. Fogel Law Offices, P.A. is committed to the needs of individuals faced with family concerns, whether they are pursuing litigation of their own family law matter, or desire an attorney's counsel through mediation. Mr. Fogel is a frequent speaker at seminars for continuing legal education and has appeared several times on radio and television to discuss issues related to divorce. *Mpls. St. Paul Magazine*, *Twin Cities Business Monthly*, and *Minnesota Law & Politics* have recognized Mr. Fogel as a "Super Lawyer" and a member of the top 6% of attorneys in Minnesota. Please visit us at www.fogellawoffices.com.

This newsletter provides general information on legal matters, and should not be relied upon as legal advice. A qualified attorney must analyze the relevant facts and apply the applicable law to provide specific legal advice. If you require legal advice or want additional information regarding the services we offer, please contact us at 763-746-4045 or familylaw@fogellawoffices.com.

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