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New York Divorce and Family Law Blog

Judge Deviates from Temporary Maintenance Formula

Posted by Daniel Clement on February 03, 2011

One of the major criticisms of the new temporary maintenance law enacted last year was that it would lead to severe results, disproportionately re-distributing income.

As I explained in a [previous post](#), the new law provides for a formula to calculate the presumptive temporary maintenance award. The law also provides a number of factors to be considered when the presumptive award would be unjust or inappropriate.

In a case of first impression, Justice Jeffrey Sunshine granted a \$24,000 deviation from the presumptive award to allow the husband to meet his “pre-divorce household expenses and take into account the parties’ expenses, child care costs and net available resources.

In the case [Scott M. v Ilona M.](#) the Husband had an income of \$156,000 and the Wife had an income of \$34,000. There was one child of the marriage for whom the parties paid \$1,700 a month for child care.

After conducting an exhaustive application of the child support and temporary maintenance guidelines, Justice Sunshine found that if the support and

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maintenance guidelines were rigidly applied, the husband would only be left with \$39,000 in disposable funds, whereas the wife would have \$78,000. Even after the deviation from the guidelines, the Husband still only has \$51,000 in disposable income compared to the Wife's \$67,000.

The Kings County court further noted that the income distribution pursuant to the child support and temporary maintenance guidelines must be taken in account in awarding counsel fees.

The newly enacted DRL 237 provides that "[t]here shall be rebuttable presumption that counsel fees shall be awarded to the less monied spouse."

As Justice Sunshine aptly noted:

The Court cannot decide that just because one party "earns more" than the other that they automatically become the "monied spouse" . . . However, based upon the temporary maintenance and child support award, even with the deviation, you can no longer consider the husband as a "monied spouse".

Notwithstanding this conclusion, the wife was still granted an interim award of \$5,000 for attorneys' fees.