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New York Divorce and Family Law Blog

[Maintenance and Child Support Payments to First Spouse Are Not Recoverable By Second Wife in Divorce](#)

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The Court of Appeals, New York's highest court announced in a pair of cases that marital funds which were used to pay the separate obligations of one of the parties during the marriage could not be recouped in the divorce. This is a far reaching decision because, for instance, a second wife cannot now recover from her husband marital funds used to pay his first wife spousal maintenance or child support.

In short, the divorce court should only consider the assets and liabilities existing at the time of the divorce.

The Court in [Mahoney-Buntzman v. Buntzman](#) declared that:

Courts should not second-guess the economic decisions made during the course of a marriage, but rather should equitably distribute the assets and obligations remaining once the relationship is at an end.

The Court recognized that if a trial court were to scrutinize every transaction during the marriage, the result would be a cumbersome review by a court, forced to review the reasonableness of every expenditure, measuring the benefit to each of the parties. Instead, the Court declared that "*The parties' choice of how to spend funds during the course of the marriage should ordinarily be respected.*"

This same conclusion was reached in [Johnson v. Chapin](#), decided the same day.

In reaching this conclusion, the Court noted that:

There may be circumstances where equity requires a credit to one spouse for marital property used to pay off the separate debt of one spouse or add to the value of one spouse's separate

property . . . Further, to the extent that expenditures are truly excessive, the ability of one party to claim that the other has accomplished a "wasteful dissipation of assets" (DRL 236 [B][5][d][11]) by his or her expenditures provides protection.

In other words, questionable or wasteful expenditures may be examined, child support and maintenance payments may not.