



Family Law Facts: The Myths vs. The Truths



By MARLA MARINUCCI, ESQ.

I authored a previous article for this publication wherein I discussed the concept that no two divorces are ever the same. That is, without a doubt, the biggest truth I can offer in an article such as this. I thought it would be helpful in this article to address some frequently asked “true or false” questions that are raised on a regular basis.

Does It Matter Who Files For Divorce First?

No. New clients often feel like they are up against some phantom deadline to get the divorce complaint filed because they want to beat their spouse to the proverbial finish line in the world of divorce complaint filing. However, it really doesn't matter who files first in the grand scheme of things. There are exceptions to every rule, of course, however, suffice it to say that 99 percent of the time, it just doesn't matter.

My Spouse Cheated. Does That Mean I Get More Money In The Divorce?

Probably not. The only time this would have any real bearing on the divorce is if it can be demonstrated that the cheating spouse expended exorbitant amounts of money on their paramour, *i.e.*, jewelry, expensive gifts, extravagant dinners; etc., thereby dissipating marital assets.

In such a case, the non-cheating spouse may be entitled to a credit for the monies exhausted by the cheating spouse. In most cases, this is not an issue and the divorce proceeds in due course without any financial scales tipping in favor of the non-cheating spouse.

My Child Just Turned 18, Does That Mean I Can Automatically Stop Paying Child Support?

No! This is probably one of the biggest misperceptions about child support in New Jersey. In many other states, child support automatically terminates when the child turns 18 or when the child graduates high school. In New Jersey, a child support obligation can last until the child graduates college, sometimes longer. There are various factors to be considered in that regard, however, for purposes of this article, the myth that child support automatically terminates at 18 is just that: a myth.

If My Spouse Is In Serious Arrears With Child Support Can I Withhold Parenting Time?

No. Parenting time and financial issues are two entirely separate issues. The parent who receives child support is not per-

mitted to refuse the parent who has the child support obligation parenting time simply because that party is not paying or is behind on their child support. Let's not forget what I view to be the absolute, hands-down, most important “assets” in every single divorce case: the children. To deprive the children of parenting time with one parent because the other party is behind in their child support is only hurting the children. I cannot emphasize how important it is not to engage in this type of behavior because it only results in detrimental consequences to your children.

I Purchased Our House Before We Got Married, Isn't It Automatically Mine If I Get Divorced?

Not necessarily. Generally speaking, assets acquired prior to the marriage are premarital and thus not subject to equitable distribution. If the house was purchased in contemplation of marriage then it could be deemed a marital asset in the event of divorce, even if title remains in only one name. The concept of “in contemplation of marriage” can be six months, a year, or even more before the actual marriage even takes place. Every case is dependent upon its own specific facts. The lesson to be learned here is that if you are the spouse

who purchased the house prior to marriage, it cannot be assumed that the non-titled spouse will not have an interest in it come divorce time. This is a very, very common misperception and clients are baffled when they learn that the house they purchased months, maybe even years, before the nuptials took place that is titled in their name only, has to be shared with their soon-to-be Ex.

Can Same Sex Couples Get “Married” In New Jersey?

No. While the law in New Jersey limits the concept of marriage to two persons of the opposite sex, since February 19, 2007, same sex couples in New Jersey are permitted to enter into Civil Unions. A Civil Union is supposed to afford same sex couples the same benefits as married heterosexual couples without actually using the term “marriage.” However, since the federal government does not



recognize Civil Unions or marriage between two persons of the same sex, Civil Union couples in New Jersey, while they can file joint state tax returns, they still must file separate federal tax returns. While great leaps have been made in this area of law, there are many more obstacles to overcome to truly afford same sex couples the same benefits as heterosexual couples.

Where Can I Find A Competent Matrimonial Attorney In The Area?

You just did.

Call my office to set up a consultation. I look forward to meeting you.



Marla Marinucci is a member of the law firm of April & Maudsley, P.A., Marmora, NJ, which just celebrated its 26th year anniversary. Her sole area of practice is family law. She received a B.A. in French from Rutgers Camden, and received her law degree from Rutgers Camden School of Law. Her professional associations include Cape May County Bar Association;

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If you are looking for a team of experienced attorneys who will take the time to get to know you, and help you with effective, passionate representation in court or at the negotiating table, we can help.

Contact the New Jersey offices of April & Maudsley, P.A., to schedule a consultation about your legal needs.

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