



Family Law News

A newsletter published by the Section Council of the Section of Family & Juvenile Law

Maryland State Bar Association, Inc.

December 2006



Table Of Contents



CHAIR'S MESSAGE	2
A MESSAGE FROM THE EDITOR	2
LEGISLATIVE COMMITTEE UPDATE	3
BLENDED FAMILIES/STEFFAMILIES: A THOUGHTFUL LOOK	4
MARK YOUR CALENDARS	6
EXPENDITURES ON THE PARAMOUR: MARYLAND'S WOOLY DOCTRINE OF DISSIPATION	7
CASE STUDIES ON INTERNATIONAL FAMILY ABDUCTION	8
THE BIRTHDAY LIST	11
MYTHS ABOUT COLLABORATIVE LAW	12
HIDDEN GEMS IN S CORPORATION RETURNS	13
GOT DIVORCE? LOOK AT THAT INDIVIDUAL TAX RETURN	14
CASE NOTES- KRISTEN LIPUIMA	17
WEBSITE OF THE MONTH	18
CASE NOTES- JUSTIN SASSER	19
LEGAL QUOTATION OF THE MONTH	23



EDITOR: WALTER A. HERBERT, JR.



Expenditures on the Paramour: Maryland's Woolly Doctrine of Dissipation

By: Eric Singer

You represent Wilma in upcoming divorce proceedings in Anne Arundel County Circuit Court. Wilma's husband of 25 years, Henry, met his lover, Penelope, a few months before he decided to leave Wilma. In Henry's eyes, those 25 years with Wilma were ones of unyielding misery for him, which have made his new love for Penelope all the more liberating. Henry's a very successful businessman in his early 60's, and he feels very generous toward her; Penelope's in her early 50's and a retired blue-collar worker whose own husband died just a few months before Henry and she met. She's also a traditional woman who enjoys being treated. In the more than two years since he separated from Wilma and moved in with Penelope, Henry has spent some \$12,000 on necklaces and bracelets for Penelope during the holidays. Further, he has paid for every meal out — they eat out about four times a week — and for ever vacation the two have taken — about three getaways to Arizona, Colorado, and the Inn at Perry Cabin at St. Michael's a year. And the sum for those items over the past two years has not been small: \$36,000 — about \$20,000 in meals out and \$16,000 for vacations. Henry has never thought twice about paying. That's how he was raised, and it was also his role and pleasure as a gentleman. That will be his sincere and unimpeachable testimony.

If you confidently plan that the Court will charge Henry with dissipating marital assets in at least the amount of \$30,000 — one half the \$36,000 (\$18,000) that Henry has spent on meals and trips with Penelope, plus the \$12,000 in jewelry — you would be mistaken. As one leading practitioner and student of Maryland family law has stated, "We still do not know whether paying for a girlfriend's recreational activities and buying her jewelry is dissipation." Jeffrey N. Greenblatt, *Family Law Update: Case Law Developments for Calendar Year 2005*, at p. 50 (Mont. County Bar Assoc., April 2006). Indeed, under the current catechism, the logical result under the not atypical scenario, above, is worse: no dissipation will be found. How did absurdly inequitable result become apparently allowable?

Under Fam. L. § 8-204, Maryland courts may not value marital property that is no longer in existence at the time of trial. See *Turner v. Turner*, 147 Md. App. 350, 409 (2002). The one exception rests upon a finding that no longer extant property has been "dissipated" by a spouse. Maryland courts have defined "dissipation" as one spouse's expenditure of marital funds for 1) his or her own benefit for a purpose unrelated to the marriage at a time when the marriage is undergoing an irreconcilable breakdown and 2)

"for the principal purpose of reducing the funds available for equitable distribution." *Jeffcoat v. Jeffcoat*, 102 Md. App. 301, 311 (1994) (emphasis added); *McCleary v. McCleary*, 150 Md. App. 448, 462-63 (2002) (reaffirming *Jeffcoat's* definition). This second mens rea requirement is not window dressing. See *Simmonds v. Simmonds*, 165 Md. App. 591, 615 (2005) (Murphy, C.J.) (remanding so the court could clarify its apparent determination that the husband's admitted expenditures on jewelry, airfare, and other recreational activities for his girlfriend did not constitute dissipation because they were not "expended for the principal purpose of reducing the funds available for equitable distribution"). Indeed, to doubt this specific intent requirement might be deemed untoward audacity. See *Moustafa v. Moustafa*, 166 Md. App. 391, 400 (2005) (Murphy, C.J.) (stating that the answer to the question of whether dissipation may be found without evidence of intent "is, obviously, no.")

Per Maryland procedure, the party alleging dissipation, in this case Wilma, bears the initial burden of producing evidence that her spouse, Henry, expended marital funds for a purpose unrelated to the marriage during a time of irreconcilable breakdown and that his principal purpose was to reduce funds available for equitable distribution. If Wilma makes out a prima facie case, the burden then shifts to Henry to produce evidence that his or her expenditures were either for a legitimate marital purpose or, if not, then not for the principal purpose of reducing funds available for equitable distribution. However, regardless of the potential to shift the burden of production onto Henry, Wilma bears the burden of persuading the court by a preponderance of the evidence throughout that Henry's expenditures on Penelope constitute dissipation as defined, see *Jeffcoat*, 102 Md. App. at 311, just as a plaintiff in a Title VII employment discrimination case bears the burden of persuasion throughout. See *Beall v. Abbot Labs.*, 130 F.3d 614, 619 (4th Cir. 1997).

Under this framework, the court's hands may be tied, and Wilma cannot win. For although it is undisputed that Henry's expenditures on Penelope are clearly for a purpose "unrelated to his marriage" with Wilma at a time when that marriage has undergone a fatal breakdown, Wilma cannot further show, as the law requires her to, that it is more likely than not that Henry's principal purpose in treating Penelope has been to reduce marital funds available for equitable distribution (even though that is the effect). Henry will not

(continued on page 16)

Expenditures...

(Continued from page 7)

admit to that purpose to any extent at all, of course; and from his testimony, which has been subject to pressing cross-examination, such a motive cannot be fairly imputed. Indeed, even if you, as Wilma's counsel, succeeded in mustering circumstantial evidence suggesting that one of Henry's multiple motives may have to limit marital funds available, such "mixed-motive" evidence would still seem to fall short of showing that it is more likely than not that Henry's principal purpose was to deplete marital funds subject to a marital award.

How did the Maryland courts arrive at requiring that a spouse's expenditure on a non-marital item incurred during inexorable marital breakdown — such as vacation airfare for a paramour — be for the "principal" purpose of reducing marital funds available for equitable distribution? The word "principal" derives from the Court of Special Appeals decision in *Jeffcoat* and has, of course, been repeated as part of the post-*Jeffcoat* mantra since. However, neither the Illinois, New Jersey, Virginia, nor Connecticut cases drawn upon and discussed in *Jeffcoat* use that word at all or provide any rationale for such an elevated standard (or for showing any motive for that matter). Maryland's "principal purpose" test apparently emerged *ex nihilo* and does not seem well-founded: Why is it not sufficient that frustration of equitable distribution be simply "a motivating factor," among others, such as consideration of race or nationality is in a Title VII employment discrimination case? See *Hill v. Lockheed Martin Logistic Mgm't, Inc.*, 354 F.3d 277, 284 (4th Cir. 2004). No Maryland court decision offers a clue.

More important in the first instance, however: Why should specific intent (whether elevated to showing a spouse's "principal" purpose was to reduce assets subject to a marital award, or not) be a necessary element of dissipation at all when expenditures on a paramour are at issue? Such expenditures are *per se* unrelated to the marriage. Demanding an additional showing that the spouse, via such expenditures, intentionally and principally sought to frustrate equitable distribution slaps equity in the face, for in any event, funds which have not reasonably been spent and which otherwise would have remained as part of the partnership, are gone. They are just as gone as if Henry had compulsively gambled them away in Atlantic City, even if, in that case, too, you could not prove by preponderance that Henry's principal or even secondary purpose was to reduce the money available for a marital award.

As practitioners come to address the issue head-on, they should consider pressing for a "paramour expenditure" exception to the pending dissipation regime so that even consummate gentlemen such as Henry will be held to account for such expenditures.

Eric Singer is a former senior associate with Feldesman Tucker Leifer Fidell LLP, practicing in the field of Family Law. His last article, with Mary Pence — "Undermining the Intent of Maryland Family Law Provisions for Pendente Lite Counsel Fees And Suit Money" — appeared in the February 2006 Newsletter.

Case Studies on International...

(Continued from page 9)

declined to make undertakings requiring the mother to book a direct international flight to Budapest. Based on the mother's promise, under oath, that she would not re-abduct the girls, the Judge allowed her to purchase a lower-priced fare with a connecting flight in Frankfurt.

On the day of the children's scheduled return to Hungary, Carl received an early morning call from the abductor, taunting him that he would never see Stephanie or Fariza again. The mother thumbed her nose at Frankfurt airport authorities, who were powerless to enforce the U.S. Hague return order. Her brother collected her and the girls at the airport, and they headed out of Germany. The humbled Hague judge was roused from her bed at 2:00 a.m. and advised of what was transpiring. She promptly issued, *sua sponte*, a bench warrant for the mother, and emailed it to the FBI. Despite the FBI's obvious lack of jurisdiction in Germany, when the abductor's brother learned that his sister was the subject of an outstanding arrest warrant and wanted by the FBI, he

promptly turned the car around and headed directly for Hungary, where he turned Stephanie and Fariza over to their father's care.²²

Thwarting International Abductions-in-Progress

On July 5th, 2007 a distraught father, Jamal, placed a frantic call to Pennsylvania state police to report that he suspected his Tunisian wife was en route to the Philadelphia International Airport with their son, Rami. Police immediately entered Rami's information into the National Crime Information Center (NCIC) database and notified The National Center for Missing and Exploited Children of the international parental abduction in progress.²³

Jamal's attorney appeared in family court on an *ex parte* basis and secured emergency temporary custody orders and a "pick-up order"²⁴ directing any and all law enforce-
(continued on page 20)