

Legal Lines

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PRESIDENT'S MESSAGE

By Robert S. White

As I compose this month's President's Message, I note that February is racing by and soon Spring will arrive. Annually, the time treadmill accelerates and it gets harder to keep all of the proverbial balls in the air. Focus becomes a challenge because the mind is going in so many directions at once. There has to be a better way, and there is.

As part of our wellness initiative this year, the term "Mindfulness" comes up a lot. What is mindfulness? According to the Greater Good Science Center at UC Berkeley, Mindfulness means "maintaining a moment-by-moment awareness of our thoughts, feelings, bodily sensations, and surrounding environment, through a gentle, nurturing lens. ... When we practice mindfulness, our thoughts tune into what we're sensing in the present moment rather than rehashing the past or imagining the future."

Does mindfulness help? According to the experts, mindfulness induces a relaxation response, calming the body down by lowering the heart and respiratory rate, blood pressure, and muscle tension. The result is reduced stress and anxiety, improved performance, better focus, and an increased sense of well-being. In the second installment of our Attorney Wellness Series, speakers will discuss and demonstrate mindfulness technique and practice. Hopefully, this will be a first step toward a healthier practice and lifestyle.

And speaking of time getting away from us, I don't know a successful attorney that isn't dedicated to the calendar. I know that I absolutely live by my calendar and if an event isn't on my calendar, it simply doesn't exist. Like yours, my calendar fills up very quickly. So I want to take a moment to let you know what is scheduled here at the Worcester County Bar Association so that you can mark your calendar.

Thanks to our outstanding WCBA staff, and to our active committees and sections, the number of events planned for the Spring is impressive. We have already held eight or nine CLE seminars since September and seven of them are on videotape, available for you to view on the WCBA Website. There are currently four seminars on the calendar and there are at least an equal number in the works that will be announced soon, including a practical trial skills series and the second installment of the Attorney Wellness Series.

This is also the time of year when the WCBA's major events start to happen. On March 5, 2020 we will hold our annual New Lawyer/Member Reception at the Tavern in the Square in Shrewsbury. Last year, that event was very well attended and attendees included many of the judges whom young lawyers will soon be practicing before. I am very thankful to the members of our judiciary who are so willing to

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PUBLIC OFFICIAL RECOGNITION BREAKFAST

The Public Official Recognition Breakfast sponsored by the Worcester County Bar Association's Government Relations Committee is scheduled for April 2, 2020 at 7:30 a.m., at AC Marriott, 125 Front Street, Worcester.

This year we will honor Senator Anne M. Gobi and Worcester City Manager, Edward M. Augustus, Jr., with the WCBA 2020 Public Officials of the Year Award.

For your convenience, a registration form is included in this issue of Legal Lines. You may also visit our website at worcestercountybar.org to register online. Please go to the "Events" tab at the top of the page and follow the link. Please note that the deadline for the office to accept reservations is no later than, March 23, 2020. Please plan accordingly.

We strongly encourage you to attend this important WCBA breakfast as a demonstration not only of our appreciation for our legislators and public officials but also of the Bar's interest in legislative affairs.

This is an important event for our Association and we hope that you will make every effort to attend.

MARK YOUR CALENDARS!!!

LAW DAY 2020

Theme:

**Your Vote, Your Voice, Our Democracy:
The 19th Amendment at 100**

May 1, 2020

Law Day Breakfast

7:30 a.m. – 9:00 a.m.

Guest Speaker:

Honorable Judith Fabricant,
Chief Justice of the Superior Court

Beechwood Hotel
363 Plantation Street
Worcester, MA

Case Summary: Macri v. Macri, 96 Mass. App. Ct. 362 (2019)

By Kevin J. Powers¹

Submitted on behalf of the Family Law/Domestic Relations Section of the WCBA

I. Issue

Under G.L. c. 208, § 53(f) and the Massachusetts Child Support Guidelines (Guidelines) § 1(E), does the Probate and Family Court abuse its discretion by attributing income (a) without hearing evidence of a specific position with a salary equal to or in excess of the attributed income, or (b) without crediting the payor spouse's evidence barriers to employment?

Under G.L. c. 208, § 53(b) and the Guidelines Principles, does the Probate and Family Court abuse its discretion by awarding an unallocated support award approximately equal to the net deficit set forth in the payee spouse's financial statement?

Under G.L. c. 208, § 28, does the Probate and Family Court abuse its discretion in finding a material change in circumstances on the basis of parental communication issues that already existed at the time of the prior custody judgment?

II. Procedural History

In an underlying divorce proceeding, the Probate and Family Court awarded the parties joint legal custody of their child, attributed income to the husband, and ordered the husband to pay unallocated support. The Appeals Court vacated and remanded for a redetermination of income attribution. Macri v. Macri, 89 Mass. App. Ct. 1115 (2016) (Rule 1:28 disposition). The wife filed a counterclaim to modify legal custody.

On remand, a vocational consultant retained by the wife testified to the husband's earning capacity. The Probate and Family Court attributed income to the husband and granted sole legal custody of the child to the wife. The husband appealed.

III. Rule of Law

As to income attribution, the voluntariness of a career change is not dispositive. The judge is not required to point to a specific position or job opening when attributing income to the payor spouse. The weight afforded to each factor under Guidelines § 1(E)(3) (2017) is within the judge's discretion.

As to support awards, an alimony award is generally limited to the recipient's need for support. If the supporting spouse has the ability to pay, then the recipient's "need" is typically the amount required "to maintain the lifestyle he or she enjoyed prior to termination of the marriage." Young v. Young, 478 Mass. 1, 6 (2017). Child support should "meet[] the child's survival needs in the first instance, but, to the extent either parent enjoys a higher standard of living, allow[] the child to enjoy that higher standard." Guidelines, Principles (2017). Support is within the judge's discretion.

As to custody, joint legal custody is not appropriate where "the relationship of the parties has been dysfunctional, virtually nonexistent, and one of continuous conflict." Carr v. Carr, 44 Mass. App. Ct. 924, 925 (1998). Custody is within the judge's discretion.

IV. Policy

As to custody, "[f]or joint custody or shared responsibility to work, both parents must be able mutually to agree on the basic issues in child rearing and want to cooperate in making decisions for [their] children." Rolde v. Rolde, 12 Mass. App. Ct. 398, 404 (1981).

V. Reasoning

As to income attribution, Justice Desmond, writing for the Appeals Court and reviewing the decision of the remand judge for abuse of discretion, observed that the vocational consultant "researched wage data for long-range planning executives in the Boston area for 2014 and 2017," and that the judge "declin[ed] to credit the husband's assertion that his job prospects were limited by his age, background [subject matter], and lack of an established Boston network." "The judge therefore concluded that the husband had been 'underemployed'... and had remained 'unreasonably unemployed[.]'"

As to unallocated support, "the wife's financial statement reveals a net deficit of approximately \$2,240 per week" and the Appeals Court therefore "cannot reasonably say the unallocated support award of approximately \$2,308 per week... is 'excessive' or 'not rationally related to the reasonable needs' of the wife and the child."

As to custody, "[t]he husband claims there was no material change in circumstances because the parties' communication issues already existed at the time of the 2013 judgment. The judge, however, permissibly found that the parties' ongoing conflict had become contrary to the child's best interest as of 2017, thus warranting a modification of legal custody."

VI. Holding

As to each of the claims of error, the Appeals Court held that the Probate and Family Court had committed no abuse of discretion.

VII. Disposition

The Appeals Court therefore affirmed the remand judgment.

¹ The author, who has spent years developing a hair-trigger instinct for whether traffic from Foxborough to Worcester is heavier on Route 146 or on Interstate 495, handles appeals and complex trial motions for busy trial lawyers who love going into court but who lack the time to decamp to a law library. His practice, both as counsel of record and as consulting counsel working with trial counsel, encompasses a broad range of legal areas within both civil and criminal litigation.