

page 3

Wife collects support for helping husband launch career

Same-sex partners entitled to custody rights

Divorce settlement reopened because of mistake

page 4

Jilted woman gets compensation from ex-fiance

Family Law
spring 2011

Legal Matters®

You be the divorce judge

A lot of difficult questions can come up in a divorce case. Check out the following situations and see if you can figure out what the court decided. You be the judge! But remember – the actual outcome can vary from state to state, and depends on the exact facts of each case.

Q A wife's 401(k) plan was worth \$164,000 when she filed for divorce. By the time of the divorce trial, however, it was worth \$235,000. The husband was awarded half the value of the plan. Should he get half of \$164,000, or half of \$235,000?

He should get half of \$235,000, said the Iowa Court of Appeals.

The wife argued that her husband should not benefit from her continuing contributions to the account, but the court disagreed, because the couple was still married during that time.

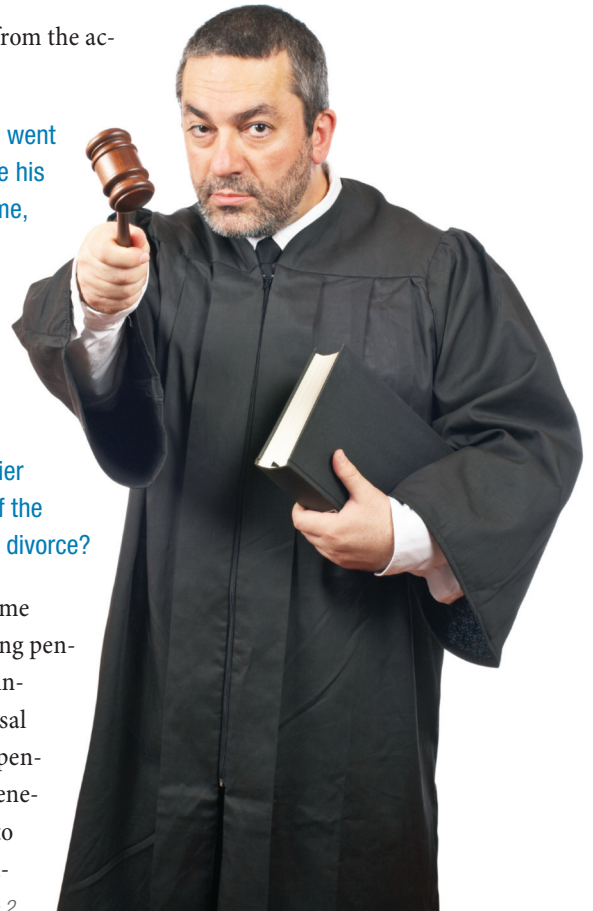
The court also said the husband should share in the full value of the plan even though

the wife had taken out a loan from the account.

Q A man lost his job, and went to court to try to reduce his support payments. At the time, he was receiving a monthly pension. Should his pension benefits be taken into account in deciding how much support he can give his ex-wife... even though the ex-wife had earlier been awarded 50 percent of the value of the pension in their divorce?

Yes, said the Vermont Supreme Court. The husband's continuing pension benefits still counted as "income" for the purpose of spousal support. Further, between his pension and his unemployment benefits, he had sufficient income to continue paying his full obliga-

continued on page 2



©istockphoto.com/Rafa Irusta

Arnold & Smith^{PLC}
ATTORNEYS AT LAW

The Historic John Price Carr House • 200 North McDowell Street • Charlotte, North Carolina 28204
(704) 370-2828 • www.CharlotteDivorceLawyerBlog.com

You be the divorce judge

continued from page 1

tions, the court decided.

However, the court warned that once his unemployment benefits expired, his obligations might be reduced.

We welcome your referrals.

We value all our clients. And while we're a busy firm, we welcome all referrals. If you refer someone to us, we promise to answer their questions and provide them with first-rate, attentive service. And if you've already referred someone to our firm, thank you!

Q A divorce judge ordered a man to take out a \$100,000 life insurance policy for the benefit of his ex-wife and child. However, he ignored this order and instead took out a \$600,000 policy with his new girlfriend as the sole beneficiary. Some time later, he died. Can the ex-wife collect anything?

Yes, said the Oregon Supreme Court. The ex-wife can force the girlfriend to turn over \$100,000 of the proceeds.

The girlfriend argued that she did nothing wrong and the policy that named her as a beneficiary did not even exist at the time of the divorce. But the court said this didn't matter, because the divorce agreement gave the wife the right to collect under "any" policy owned by the husband at the time of his death. Therefore, the girlfriend had to turn over some of the money.

Q In California, a spouse generally doesn't have a right to property that the other spouse acquires after a separation. In one California case, a lawyer separated from his wife, and two months later, his law firm gave him his share of the firm's profits from the previous year. Can the wife share in the money?

Yes, said the California Court of Appeal.

The husband claimed that the profits were his sole property because he didn't have a legal right to them until the law firm had approved his share, which happened after he and his wife separated.

But the court said that his right to receive a cut of the profits was based on his work for the firm during the previous year, before the separation. As a result, the profits were marital property.

Q A woman divorced her second husband and sought child support for their daughter. She also had a son from her deceased first husband, and received Social Security survivor benefits on his behalf. Do these benefits count in determining how much child support she needs?

No, said the Colorado Court of Appeals.

The Social Security benefits are the son's resource, not the mother's. The mother was simply receiving them as his representative while he was still too young to manage them on his own. So they don't affect how much her second husband must pay to support his own daughter.

Q The wife of a retired serviceman was awarded half his military pension payments in their divorce. Later, the man elected to take combat disability pay instead of his pension. What happens to the ex-wife?

She can still collect, said the Michigan Court of Appeals.

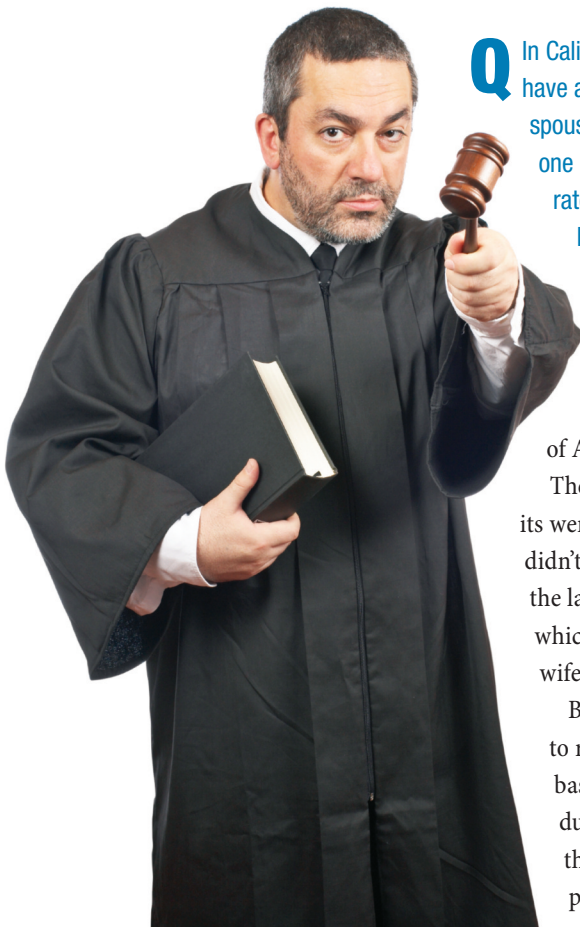
The man waived his retirement pay to receive the disability benefits, which violated the terms of the divorce. He must now compensate his ex-wife from other sources in an amount equal to what she would have received in pension benefits.

Q A husband had accumulated \$23,200 worth of unused vacation and sick time at work at the time of his divorce. Can his wife share in this?

No, said the Colorado Court of Appeals. The husband can only be paid for the unused time if and when he leaves his job, so the value of the time is uncertain and it could disappear completely if he became seriously ill and had to use up all his time.

Q A soldier who was killed in Iraq had named his mother as the beneficiary under his government life insurance plan. Later, his mother and father divorced. Can the father receive a share of the death benefits?

No, said the Minnesota Supreme Court. Under federal law, federal death benefits belong only to the beneficiary and aren't subject to any legal proceeding by someone else seeking to claim a portion of them. This includes divorce proceedings.



Wife collects support for helping husband launch his career

A woman who worked full-time while her husband was in dental school is entitled to “compensatory” support for her role in launching his \$350,000-a-year dental career, the Oregon Supreme Court recently ruled.

Once her husband had established his practice, the wife focused on homemaking and childcare responsibilities, though she also worked part-time in the dental office for several years.

The court said the wife’s contribution to her husband’s education, training and vocational skills was a significant factor behind his earning capacity.

Accordingly, she was awarded \$2,000 a month for 10 years, in addition to \$3,000 a month in “transitional” spousal support and \$4,000 a month in maintenance.

In a similar case, the Utah Supreme Court recently held that a wife who worked to put her husband through medical school could sue him for “breach of contract” when he later asked for a divorce.

The wife – who said she gave up a lucrative job offer in another state to help her husband – claimed that the couple had a binding contract under which the husband had agreed to support her at a certain level with his income as a doctor.

The husband argued that the wife was entitled to alimony and nothing more. But the court decided that she could sue for breach of contract as well. It said that the amount of alimony she was entitled to might not be enough to support her at the level that the husband had arguably promised her.

Same-sex partners are entitled to custody rights

The issue of whether same-sex partners are entitled to custody rights continues to produce different court decisions around the country.

In one recent case, a North Carolina woman conceived a child through artificial insemination, and her partner sought to adopt the child.

A judge allowed the adoption. When the couple later split up, the partner sought parental rights.

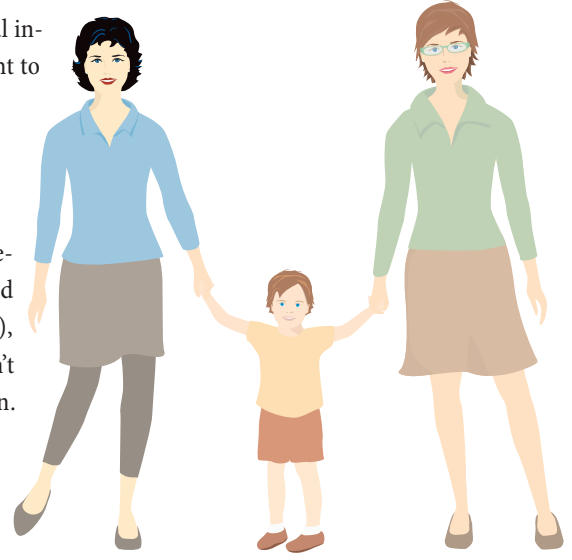
The state supreme court first decided that the adoption was invalid (despite what the judge had ruled), because North Carolina law doesn’t allow for adoption in this situation.

However, the court went on to say that joint custody was nevertheless appropriate in this case, because it was in the best interests of the child.

A similar case happened in Wisconsin. A mother gave birth to a child via artificial insemination, and a judge – with the mother’s consent – granted parental rights to her partner. The couple later split up.

The Wisconsin Court of Appeals decided that the state’s artificial insemination law didn’t allow the partner to have parental rights, because it only applies to a mother’s husband, not to a same-sex partner.

However, the court said that the partner in this case could be treated as a parent anyway, because the mother had consented to the arrangement for a long time without complaining and it wouldn’t be fair to allow her to change her mind now.



©istockphoto.com/Dawn Johnston

A judge might allow a couple to reopen their divorce agreement if they made an honest mistake about the value of their assets.

Divorce settlement reopened because of mistake

When a couple agrees to a divorce settlement, it’s generally final. But in some instances, a judge might allow a couple to reopen it and change the terms if they later realize they made an honest mistake – such as that their property wasn’t worth as much as they thought.

For example, when a wealthy New York lawyer and his wife divorced, they agreed to split their property, which included a \$5.4 million investment account, right down the middle.

Unfortunately, the account was invested with the notorious fraudster Bernard Madoff.

Madoff’s ponzi scheme wasn’t revealed until after the husband had already paid the wife \$6.6 million, including her share of the investment account, which was actually worthless.

The wife argued that she was still entitled to the full amount of the settlement. But a New York appeals court agreed with the husband that the settlement should be set aside due to a “mutual mistake.”

This newsletter is designed to keep you up-to-date with changes in the law. For help with these or any other legal issues, please call our firm today. The information in this newsletter is intended solely for your information. It does not constitute legal advice, and it should not be relied on without a discussion of your specific situation with an attorney.

It helps if you can show that you actually lost money as a result of a runaway bride or groom.

Jilted woman gets compensation from ex-fiancé

Being dumped by the person you were planning to marry is an emotionally wrenching, if not humiliating, experience. But can you sue over it?

It's highly unusual, but a few states allow this type of lawsuit. It helps if you can show that you actually lost money as a result of the runaway bride or groom, as opposed to simply being embarrassed.

In a North Carolina case, Crystal Dellinger began dating her boyfriend, Cliff Barnes, while she was still in high school. After graduation, she helped Barnes run a convenience store he had purchased.

Later, she agreed to help Barnes open a second store instead of looking for a job. Ultimately she helped him establish four stores, working without



©istockphoto.com/John Rodriguez

pay for a year so he could put the profits back into the business.

When Barnes asked her to marry him, he promised he'd sell all the stores once day and she'd never have to worry about money. She accepted.

Meanwhile, he bought an old grocery store, which she spent months helping him fix up. All this time he kept putting off the wedding, saying they couldn't afford to take time off from the business.

Several years later, Barnes began seeing another store employee and broke off the engagement.

Dellinger took Barnes to court with an unusual lawsuit for "breach of contract to marry," and a jury awarded her a substantial sum based on the work she had put in under false pretenses.



The Historic John Price Carr House
200 North McDowell Street
Charlotte, North Carolina 28204
(704) 370-2828
www.CharlotteDivorceLawyerBlog.com