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Don't get tripped up by forgetting 'little' things after a divorce

We all forget to do things. But sometimes forgetting to do a "little" thing can turn into a big, expensive problem. Here are two examples of divorced people who overlooked "little" things that became a big deal.

► *Not verifying automatic deductions*

When an Arkansas couple filed for divorce, the court issued a temporary order that required the husband to pay his wife \$4,300 per month in alimony and child support. The husband's payments were automatically deducted from his paychecks by his employer.

Later, when the divorce was finalized, the amount of monthly support decreased to \$3,660.

But the husband's employer continued to use the amount in the temporary support order to calculate deductions. And the husband didn't immediately notice that he was still paying the higher figure – a difference of \$640 each month before taxes.

When the husband finally discovered the

error, he tried to get a credit toward his future support payments for the amount he had overpaid his ex-wife. He argued that he wasn't aware he was paying too much, and he should not be penalized for an innocent mistake.

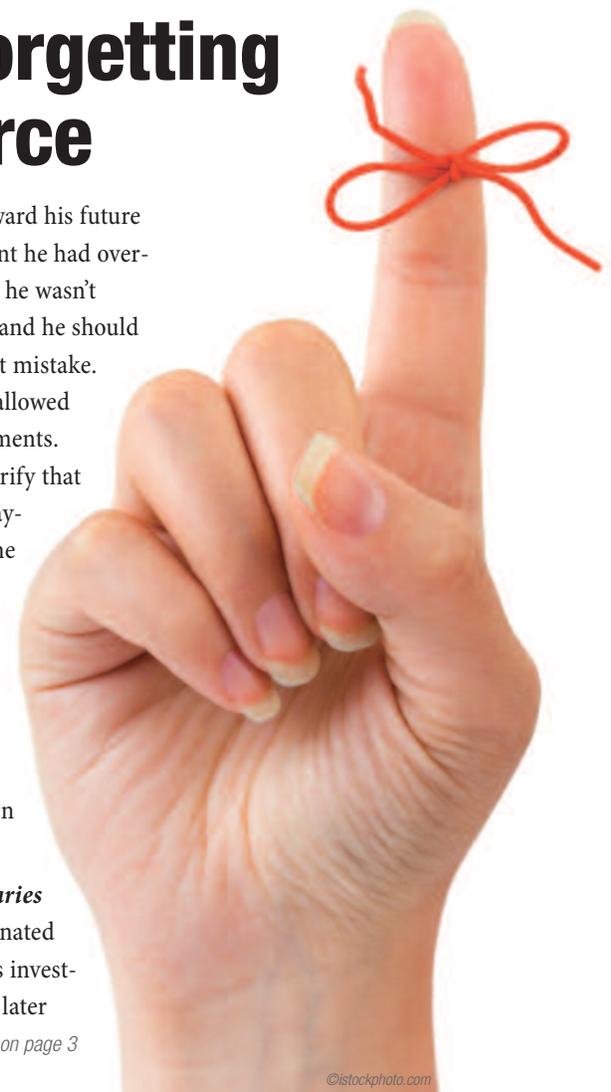
But the court disagreed, and allowed his ex-wife to keep the overpayments. "[I]t was his responsibility to verify that he was making child-support payments in the correct amount," the court said.

The court noted that the husband was in the best position to know how much child support was being withheld from his check, and the amount of the employer's deductions was within his control – not his ex-wife's.

► *Not changing your beneficiaries*

A husband in Wyoming designated his wife as the beneficiary of his investment account. When the couple later

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Taking a lower-paying job might not reduce your divorce payments

You might end up making less but paying the exact same amount.

Think twice before you take a job with lower pay: Just because you make less money doesn't mean that you will necessarily have to pay less child support or alimony.

Recently, an Arizona court ruled that an ex-husband who relocated to be closer to his girlfriend and found a lower-paying job still had to pay support to his ex-wife based on his "earning capacity," not his actual income.

While divorcing his wife, the man left his job as a FedEx driver,



where he made \$65,000 a year. He moved out-of-state to be closer to his girlfriend and took a job as a truck driver making \$15 per hour.

The court calculated his spousal support payments based on his previous income. It said the man voluntarily reduced his earnings because he left his employment at FedEx for personal reasons, and that awarding support based on his reduced actual income would be unfair to his ex-wife.

The court was also suspicious of the timing of the husband's move, because it could have been an attempt to lower his income in order to try to decrease his support payments.

Of course, the same principle works in reverse: Spouses who are *receiving* support payments aren't necessarily entitled to an increase if they voluntarily lower their income.

Military deployment didn't require a custody change

A mother is not entitled to a custody change just because the father was deployed overseas with the military, a New Jersey court has ruled.

The mother tried to get a transfer of custody when the father was about to deploy overseas as a military reservist. She claimed that the couple's son should live with her during his father's absence, and asked for full custody and child support.

But the father disagreed. He argued he would be deployed for a year or less and that the first three months of his active duty would be spent in the U.S. He also noted that his son was "extremely close" to his step-siblings and that he was given one extended leave when he could come home and see his son.

The court agreed with the father that there was no need for a change of custody just because of the deployment order. Instead, the court suggested that the custody issue should wait until the father returned from active duty.

If you're concerned about how military service could affect your custody arrangement, we'd be happy to help.



Wife couldn't get share of husband's bonus

Here's an interesting case: A Michigan husband's employer paid him a "retention bonus" that was designed to encourage him to remain with the company. The bonus was paid in three installments. If he stayed with the company until a specific future date, he could keep all three installments, but if he left the company before that date, he had to pay back all the money.

His wife divorced him after he had received two of the installments, but before he had reached the "target" date set by the employer.

She argued that she should receive a portion of the first two bonus installments, because they had already been paid and the husband already had the money.

But the Michigan Court of Appeals said that the bonus had not been "earned" during the marriage – since it could still be revoked if the husband left the company – and therefore, the wife was not entitled to any part of it.

If the wife had known about this before she left the husband, perhaps the "retention" bonus would have encouraged her to stick around until the "target" date as well!

Parents can't have 'automatic' future custody change

Planning ahead is important, but even the courts recognize that you can't plan everything.

A Vermont couple lived together and had a child. When they separated, a judge ordered that the mother would have primary custody until the child was ready to start kindergarten, at which point custody would automatically transfer to the father, who would then have primary custody until the child turned 18.

The mother objected, and appealed to the Vermont Supreme Court.

Under state law, a decision about custody has to be based on the child's best interests. The mother argued that the judge's order was too speculative – that there was no way to know what the child's best interests would be years from now at the point where the child was ready to start school.

The court agreed. "In this case," it said, "there is no way of knowing who these parties will be in a few years – particularly the child – or what the nature of their relationships with each other will be at the time the child enters kindergarten. Mother and father could choose to relocate, change careers, enter into romantic relationships, or even have more children."

Because of this, a judge shouldn't decide years in advance what custody arrangement will be best for the child.

Child custody order could prohibit smoking

A family court judge can prohibit parents from smoking in their daughter's presence, an Ohio appeals court has ruled.

In this case, the couple's daughter was placed in the custody of her paternal great-grandmother. Both the mother and the father received weekend visitation on a rotating basis.

The great-grandmother was concerned that the girl was being exposed to secondhand cigarette smoke when she was with her mother, and she asked the court to prohibit smoking around the girl.

The mother objected, arguing that a smoking ban couldn't be ordered unless there was actual evidence that the girl was suffering health problems because of secondhand smoke.

But the court disagreed. It said there was an "avalanche" of scientific studies "which indicate that secondhand smoke constitutes a real and substantial danger to children because it causes and aggravates serious disease."

The danger to the girl's health was an important consideration when deciding what was in her best interests, the court said.



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divorced, their agreement gave the husband the account as his "sole and separate property."

However, after the divorce the husband neglected to change the beneficiary designation.

When he died, the investment firm paid the balance of the account to his ex-wife. The husband's estate tried to recover the money, arguing that the divorce agreement was supposed to be a final separation of all the couple's property.

But the Wyoming Supreme Court disagreed, and sided with the ex-wife. It said that since her name was still listed as the beneficiary, the money was rightfully hers.

Divorce is a stressful time, and it's easy to forget things. But these cases are important reminders of the need to dot all the I's and cross the T's after a separation. If you have any questions about beneficiary designations and other details to take care of after a divorce, please don't hesitate to call.

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!



Which spouse gets the tax exemption for a child?

Whether you do your own taxes or hire someone to do them for you, you'll want to know in advance which parent is entitled to claim your children as dependents and receive child-related tax credits.

One couple who argued about this recently ended up in the U.S. Tax Court.

The parents, who were never married, shared joint physical custody of their son. Out of every two-week period, the mother had custody for eight nights and 173 hours, and the father had custody for six nights and 163 hours.

The usual rule is that the parent who has custody

for the majority of the time gets the tax exemption. But the father argued that he should get the exemption because he had the child for more *waking* hours, and waking hours are more expensive than sleeping hours.

However, the court refused to buy this novel argument.

The father's idea would be impossible to make work in real life, the court said – how could it allocate costs to a particular hour? And it noted that many costs – such as rent and utilities – don't stop just because a child is asleep.



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