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Standard of living: A limitation or a factor?

In dissolution of marriage proceedings, when dealing with spousal maintenance or child support, the courts can consider many factors, including the standard of living.

In spousal maintenance cases, “the standard of living established during the marriage” is considered in determining whether a spouse is entitled to maintenance or, if the maintenance guidelines do not apply, in the entitlement to and amount of maintenance.

It is important to note the statutory language “during the marriage.” The significance is that a spouse is entitled to only the standard of living enjoyed during the marriage, not any enhanced post-judgment standard of living (such as if the payor of support becomes more successful post-judgment).

An open question remains as to a court’s view of whether any separation period or the period that a case remains pending will be counted as “during the marriage.”

In cases where there is going to be a deviation from the child support guidelines or where for any reason the payor’s income cannot be determined, the court is to consider “the standard of living the child would have enjoyed had the marriage not been dissolved.”

Unlike spousal maintenance, there is no marital standard of living limit for child support — children can enjoy post-divorce increases in a parent’s standard of living.

The standard of living limitation to maintenance has been embraced in recent decisions from the 2nd District Appellate

Court and ignored in a recent 1st District decision.

The 2nd District, in *In re Marriage of Micheli*, was faced with a percentage award of spousal maintenance without any limit on the amount that could be received. In reversing the trial court’s award, the appellate court ruled that awarding support that could exceed the standard of living established during the marriage was error. (“John accurately points out that maintenance is designed to allow the recipient spouse to maintain the standard of living enjoyed during the marriage ... an uncapped amount as a percentage of John’s bonuses is an abuse of discretion because it has no evidentiary relation to her present needs or the parties’ standard of living.”)

The Micheli reasoning followed an earlier unpublished decision from the 2nd District, *In re Marriage of Schinelli* (“the amount of maintenance must correlate to the standard of living established during the marriage”).

An interesting side note in Schinelli is that during the parties’ separation and while the case was pending, the husband’s income significantly increased. The appellate court highlighted the family’s pre-separation income as being a measure of the standard of living.

In the 1st District case of *In re Marriage of Foster*, the trial court awarded the wife maintenance based on a percentage of the husband’s income without any limit on what the wife might receive. On appeal, the husband claimed the trial court committed error in part because

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“the award fails to consider the parties’ standard of living established during the marriage.”

The 1st District affirmed the award. In terms of the propriety of a percentage award, the appellate court noted that the husband had failed to submit tax returns, thereby justifying the percentage approach.

Nowhere in the appellate opinion was the husband’s argument on the standard of living limitation addressed; instead, the focus is on the rejections of husband’s claim that the trial court committed additional error by basing the maintenance award on his nonmarital income.

The strength of the *Micheli-Schinelli* analysis is the actual language of the statutes. The language qualifying the standard of living to be “during the marriage” for spousal maintenance recipients and “would have enjoyed had the marriage not been dissolved” for child support recipients is compelling.

The language of these statutes is unambiguous, and under the rules of statutory construction, the court must give the language its plain meaning. A potential weakness in the analysis is that the “standard of living” is only one of 11 statutory factors. The state appellate courts, including the

Micheli and *Foster* courts, have recognized that no one maintenance factor is determinative.

It is incumbent on the proponent of a maintenance award that could be considered to be or claimed to be in excess of the “standard of living” to justify the award using multiple factors (such as the needs, the earning capacities, the contributions toward the other spouse’s career and so forth).

The strength and weakness of the *Foster* analysis is the lack of any focus on the standard of living factor. This can be a strength because other factors can justify the award. The weakness is that the appellate court never addressed the husband’s claim that the maintenance award exceeded the standard of living enjoyed during the marriage. A careful reading of the decision raises questions as to what maintenance factors the appellate court relied upon. It can be easily argued the appellate court simply missed or ignored the issue.

The lessons to be taken from these decisions are that the standard of living factor can be a potent defense to a maintenance claim and, in particular, a request for an uncapped percentage award; the party seeking the maintenance should use as many of the maintenance factors to justify an award; and there should be an effort to quantify what the standard of living was.

Knowing and understanding the relationships between the factors and applying these factors to the facts of a case can make a significant difference in the lives of your client.