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Attorneys need to be on their toes with changing IMDMA calculations

With the whirlwind of recent amendments to the Illinois Marriage and Dissolution of Marriage Act, which have been rolling out on an almost semiannual basis since Jan. 1, 2016, and the upcoming changes to the Internal Revenue Code, which will eliminate the income tax deduction for maintenance beginning on Jan. 1, divorce practitioners are currently in the midst of having to constantly readjust maintenance and child support calculations to keep pace with the various amendments.

But in the recent case of *In re Marriage of Benink*, 2018 IL App (2d) 170175, the 2nd District Appellate Court has noted that there is still a small subset of cases that are required to be adjudicated under the pre-2016 amendments.

In the *Benink* matter, pursuant to the parties' 2010 judgment for dissolution of marriage, the husband paid the wife $72,000 per year in maintenance, $2,431 in biweekly child support and 40 percent of any additional income earned as child support and as calculated by the minimum guidelines set forth in Section 505 of the marriage act.

In 2013, both parties filed competing motions to modify child support. The wife sought to increase support on the basis that the husband was earning substantially more than at the time of the divorce, and the husband sought to decrease support on the basis that some of the children were no longer minors.

The trial on this matter did not occur until 2016, after the sweeping amendments to the marriage act were in place.

In its ruling, the trial court performed a number of calculations which resulted in an order requiring the husband to pay the wife an arrearage of $150,000. Both parties appealed various parts of the trial court's ruling, but the husband specifically appealed the court's child support arrearage calculation on the ground that it improperly failed to apply the 2016 amended statute.

The 2016 amendments required that maintenance paid from one party to the other be deducted from the payor's gross income before calculating child support.

The appellate court cited Section 801 of the amended marriage act in its ruling:

"The new act is a comprehensive reworking of the act and contains, among other things, a provision adopting and amending [S]ection 801 of the act. That section provides as follows regarding the new act's applicability:

"(a) This act applies to all proceedings commenced on or after its effective date.

"(b) This act applies to all pending actions and proceedings commenced prior to its effective date with respect to issues on which a judgment has not been entered.

"(c) This act applies to all proceedings commenced after its effective date for the modification of a judgment or order entered prior to the effective date of this act." 750 ILCS 5/801.

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The trial court applied Subsection (b) of the statute because the parties' petitions seeking a modification of the child support set forth in their 2010 judgment for dissolution of marriage were pending on the effective date of the new statute.

However, the appellate court held that this reading is contrary to the plain language of the statute because the husband's child support obligation was not an "issue on which judgment had not been entered."

The court held that the 2010 judgment of dissolution incorporated the parties' marital settlement agreement which contained provisions establishing husband's child support obligation and, therefore, a judgment had been entered on the issue of child support.

However, because the parties' post-judgment motions sought a modification of the prior judgment, they plainly fell within Subsection (c) of the statute. Subsection (c) only applies to modification proceedings commenced after Jan. 1, 2016, and since the parties had filed their modification petitions in 2013, the amended statute (as of 2016) did not apply.

The *Benink* case underscores the challenges divorce practitioners have been and will continue to encounter with the continuing evolution of the support laws.

Prior to 2016, child support was calculated using a percentage guideline approach on the support obligor's net income. The obligor would pay 20 percent of his or her net income for one child; 28 percent for two children; 32 percent for three children; and 40 percent for four children.

Then, beginning Jan. 1, 2016, while the guideline percentages remained intact under the overhaul to the divorce statute, Section (g-5) was added to Section 505 which required the deduction of maintenance when calculating the support payor's net income.

This resulted in a significant change in the calculation as maintenance was now required to be calculated first under Section 504 of the marriage act so that the deduction would be included when applying the guideline percentage to calculate child support.

Thereafter, 18 months later, on July 1, 2017, the child support statute received the most significant overhaul to date when it completely eliminated the guideline percentage approach and moved to an income-shares model that takes into account both parents' incomes and the allocation of parenting time between the parties, among several other factors, including maintenance paid from one party to the other.

The *Benink* case, which does not even address the income shares model because that version of the statute was not in effect when the case was tried, underscores the importance of understanding the specific amendments to the statute.

Divorce practitioners should closely evaluate which statute will apply to their clients' matters in a post-judgment modification proceeding given that several versions of the child support and maintenance statute have been in effect since 2016.