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In setting budgets, consider spending patterns

What parties have spent in past, and recently are key

by Melissa J. Nilsson and William F. Forsyth

Melissa J. Nilsson

William F. Forsyth

Last month's article provided a "how to" guide on creating our clients' monthly budgets for purposes of determining the need for spousal maintenance.

Once our clients complete this task, however, there is additional analysis that must be done in order to determine whether that budget should be submitted to the trial court as is, or whether additional factors support a reduction of, or an increase to, specific budget line items.

The purpose of a maintenance award is to allow the recipient and the obligor to have a standard of living that approximates the marital standard of living, as closely as is equitable under the circumstances. Peterka v. Peterka 675 N.W.2d 353, 358 (Minn. Ct. App. 2004). But what is the marital standard? Is it the standard that the parties enjoyed throughout their entire marriage? Or is it the standard that the parties experienced at the end of their marriage? What if the marital standard is no longer maintainable due to the fact that the parties will be living separately? What if that marital standard was sustained, at least partially, by accumulation of debt? These are some considerations to take into account when finalizing our clients' budgets (or in analyzing budgets submitted by an opposing party).

In Robert v. Zygmunt, 652 N.W.2d 537, 544-45 (Minn. Ct. App. 2002), the trial court denied the husband's request for spousal maintenance because he was able to maintain the marital standard of living (the standard that was enjoyed during the vast majority of the parties' marriage) on his own employment and investment income. The parties had lived a modest lifestyle for the first 18 years of the parties' 21-year marriage. Three years prior to the dissolution, the wife's father died and she received an inheritance (which resulted in an increased income). Thereafter, the parties lived a more extravagant lifestyle. The trial court, however, refused to give greater weight to the parties' lifestyle in the final 3 years of the marriage. This decision was affirmed.

There have been several unpublished decisions with similar outcomes. See Zhang v. Fu, 2014 WL 4175864 (Minn. Ct. App. Aug. 25, 2014); Densmore v. Densmore, 2010 WL 5153872 (Minn. Ct. App. Dec. 14, 2010). For example, when analyzing the wife's claimed budget in Zhang, the trial court considered whether the continued standard of living that the wife sought was long-term or relatively short-lived. The parties lived a modest lifestyle for the first 9 years of the marriage, with a higher standard enjoyed during the last 2 years of the marriage due to the fact that the husband's salary quadrupled. The trial court found that the parties' marital standard of living was the modest lifestyle that they had experienced during the first 9 years of marriage, not the extravagant lifestyle in the final 2 years. In Densmore, the wife submitted a budget in line with the parties' spending at the end of their marriage. During the parties' 17 year marriage, their spending increased over time from modest to lavish, as the husband's income increased. At all times, the parties essentially spent everything they earned. The trial court, however, found that this "ramped up spending" during the last few years of the marriage was unreasonable and it reduced the wife's budget accordingly. The Court of Appeals agreed.

The opposite conclusion was reached in the unpublished decision of Meether v. Meether, 2011 WL 781252 (Minn. Ct. App. Mar. 8, 2011), where the Court of Appeals found that the trial court abused its discretion when it determined the marital standard of living based on the standard established throughout the marriage (versus at the time of divorce). In Meether, the parties financially

struggled in the early years of the marriage, followed by many years of a solid middle-class standard, with the final 3 years consisting of extravagant spending. Because of the early struggles and majority of years at a solid middle-class standard, the trial court rejected the wife's claim that the parties had an extravagant standard of living. This decision was reversed and remanded, as it did not allow the wife to maintain the lifestyle that the parties enjoyed at the time of the dissolution. In reaching its decision, the Court of Appeals relied on language contained in Lee v. Lee, 775 N.W.2d 631, 642 (Minn. 2009), where the Supreme Court stated that a divorced spouse is entitled to a sum that is consistent with "the circumstances and living standards of the parties **at the time of the divorce**." (emphasis added). However, this statement is dicta, as pointed out by the Court of Appeals in Ross v. Ross, 2014 WL 2681402 (Minn. Ct. App. June 16, 2014). In Ross, the Court of Appeals disagreed with Meether and stated that Lee did not stand for the proposition that standard of living is to be determined based on spending at dissolution. Rather, the trial court is bound to consider the standard of living "during the marriage." See also Minn. Stat. § 518.552, subds. 1, 2.

A reality of dissolution is that parties often face a reduction in their standard of living. Maiers v. Maiers, 775 N.W.2d 666, 670 (Minn. Ct. App. 2009). This reduced standard is generally a direct result of each party having separate housing costs, but the same amount of family income. Gagne v. Gagne, 2010 WL 3396900 (Minn. Ct. App. Aug. 31, 2010). Minnesota courts have also cut parties' budgets below the marital standard, when that standard is no longer sustainable because the parties spent significant sums on the dissolution litigation, finding that both parties will suffer because of the choices made and the consequences of those choices. See Hanson v. Hanson, 2012 WL 426597 (Minn. Ct. App. Feb. 13, 2012).

When the parties' standard of living is maintained by debt financing, the parties cannot expect the same lifestyle after their dissolution. See Chamberlain v. Chamberlain, 615 N.W.2d 405, 409-10 (Minn. Ct. App. 2000). This issue was directly addressed in Powell v. Powell, 2012 WL 762230 (Minn. Ct. App. Mar. 12, 2012). The parties had been married for 21 years. It was clear that the parties had an upper-class lifestyle during the last several years of the marriage, with their monthly expenses ranging between $17,000 and $19,500. In the last two or three years prior to dissolution, however, the parties' expenses exceeded the husband's income and they fell into a pattern of overspending. As a result, the parties accumulated significant HELOC debt. In making its decision on spousal maintenance, the trial court rejected the wife's claimed budget of $11,027 and found that her reasonable budget was $7,968 because the parties could not maintain the same standard post-divorce. A similar decision was reached in Conner v. Conner, 2005 WL 1153622 (Minn. Ct. App. May 17, 2005) review denied (Minn. July 19, 2005).

These cases illustrate why it is important to know the parties' historical spending patterns and their most recent spending patterns and why it is equally, if not more, important to know the reasons for any changes in spending. In addition, if it is clear that the parties spent beyond their means, thereby incurring debt, the budget should be reduced to reflect a reasonable standard that can be maintained on income alone. Failure to take these factors into consideration when finalizing your client's budget may result in a finding that your client is not credible, an outcome that no lawyer wants.

Melissa J. Nilsson, shareholder and family law attorney can be reached at mnilsson@hensonefron.com. William F. Forsyth, family law attorney, can be reached at wforsyth@hensonefron.com.

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