

APPENDIX1

SUMMARY OF EQUITABLE DISTRIBUTION DECISIONS

The following cases appear in the Equitable Distribution Decisions Chart which follows. Their name, citation, and chart location are in alphabetical order as follows:

| <i>Name</i> | <i>Cite</i> | <i>ChartNumber</i> |
|------------------------------|------------------------------------------------------------------------|--------------------|
| Abbe v Abbe | NYLJ, 2-26-81, Sup. Ct., Kings Co. (Reigler, J.) | 1 |
| Aborn v Aborn | (1993, 2d Dept) 196 AD2d 561, 601 NYS2d 339 | 490 |
| Abramovitz v. Ber- covici | 278 A.D.2d 175, 718 N.Y.S.2d 64 (1st Dep't 2000) | 1004 |
| Abrams v. Abrams | 57 A.D.3d 809, 870 N.Y.S.2d 401 (2d Dep't 2008) | 1356 |
| Acebal v Acebal | NYLJ 11-25-92, P. 25, Col. 5 (Sup. Ct., Nassau Co.) | 485 |
| Ackerman v Acker- man, | NYLJ 10-14-92, P. 26, Col. 3 (Sup. Ct., Nassau Co.) | 482 |
| Ackley v Ackley | (1984, 4th Dept) 100 App Div 2d 153, 472 NYS2d 804 | 56 |
| Adams v Adams | (1987, 2d Dept) 129 App Div 2d 661, 514 NYS2d 420 | 172 |
| Addeo v Addeo | NYLJ, 7-15-86, P. 12, Col. 6. Sup. Ct., Kings Co. (Rigler, J) | 136 |

| <i>Name</i> | <i>Cite</i> | <i>ChartNumber</i> |
|-------------------------|---------------------------------------------------------------------------------------------------------------------------------|--------------------|
| Ahed v Ahed | NYLJ, 9-23-91, P. 27, Col. 5 Sup. Ct., Kings Co. (Schneier, J.) | 433 |
| Ahrend v Ahrend | (1986, 2d Dept) 123 App Div 2d 731, 507 NYS2d 202 | 147 |
| Ahrens v. Ahrens | 2018 WL 1355819 Slip Op. 01724 (4th Dept., 2018) | 1699 |
| Alaimo v Alaimo | (1993, 4th Dept) 199 AD2d 1039, 606 NYS2d 117 | 553 |
| Albert v. Albert | 60 A.D.3d 979, 876 N.Y.S.2d 442 (2d Dep't 2009), leave to appeal denied, 13 N.Y.3d 701, 885 N.Y.S.2d 715, 914 N.E.2d 364 (2009) | 1422 |
| Albertalli v Albertalli | 124 A.D.3d 941, 1 N.Y.S.3d 439 (3d Dep't 2015) | 1666 |
| Alessandro v Alessandro | (1994, 4th Dept) 204 AD2d 1068, 614 NYS2d 963 | 561 |
| Alessi v. Alessi | 289 A.D.2d 782, 734 N.Y.S.2d 665 (3d Dep't 2001) | 1078 |
| Alexander v Alexander | 116 A.D.3d 472, 985 N.Y.S.2d 1(1st Dep't 2014), appeal dismissed, 24 N.Y.3d 1050, 2014 WL 7105486 (2014) | 1635 |
| Allen v Allen | NYLJ, 8/5/94, p. 27, col 1 (S Ct, Nassau Co, Winick, J.) | 613 |
| Allen v. Allen | 263 A.D.2d 691, 693 N.Y.S.2d 708 (3d Dep't 1999) | 931 |

| <i>Name</i> | <i>Cite</i> | <i>ChartNumber</i> |
|-------------------------------------|-------------------------------------------------------------------------|--------------------|
| Allocco v Allocco | (1991, Sup) 152 Misc 2d 529, 578 NYS2d 995 | 446 |
| Allsopp v. Allsopp | NYLJ, 12-12-97, p.32, col. 4, (Sup,Ct, Kings Co., Harkavy, J.) | 786 |
| Allwell v. Allwell | 277 A.D.2d 789, 716 N.Y.S.2d 741 (3d Dep't 2000) | 1005 |
| Almond v. Almond | 247 A.D.2d 862, 668 N.Y.S.2d 299 (4th Dep't 1998) | 856 |
| Altieri v. Altieri | 35 A.D.3d 1093, 827 N.Y.S.2d 735 (3d Dep't 2006) | 1299 |
| Alvares-Correa v. Alvares-Correa | 285 A.D.2d 123, 726 N.Y.S.2d 668 (1st Dep't 2001) | 1006 |
| Alwell v Alwell | (1984, 3d Dept) 98 App Div 2d 549, 471 NYS2d 899 | 53 |
| Amara v. Amara | 243 A.D.2d 433, 662 N.Y.S.2d 595 (2d Dep't 1997) | 787 |
| Ames v Ames | (1995, 1st Dept) 212 AD2d 653, 622 NYS2d 774 | 615 |
| Amisson v. Amisson | 251 A.D.2d 274, 672 N.Y.S.2d 801 (2d Dep't 1998) | 857 |
| Anderson v Ander- son | NYLJ, 4-24-90, P. 22, Col. 5, Sup. Ct., NY Co. (Wilk, J.) | 323 |
| Annis v Annis | (1993, 2d Dept) 189 AD2d 846, 592 NYS2d 786 | 491 |
| Anonymous v Anon- ymous | (1991, 1st Dept) 172 App Div 2d 285, 568 NYS2d 599 | 388 |

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| <i>Name</i> | <i>Cite</i> | <i>ChartNumber</i> |
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| Anonymous v Anonymous | (1995, App Div, 1st Dept) 636 NYS2d 12 | 616 |
| Anonymous v Anonymous | NYLJ, 9/24/93, P.22, Col.1 (Sup.Ct., NY Co.) | 492 |
| Anonymous v Anonymous | NYLJ, 9-6-96, P. 26, Col. 5, Sup. Ct., Suffolk Co., (Lifson, J.) | 696 |
| Anonymous v Anonymous | NYLJ, 6-5-96, P. 31, Col. 5 Sup. Ct., Suffolk Co. (Lifson, J.) | 697 |
| Anonymous v. Anonymous | NYLJ, 1-27-98, P.26, Col.6, Sup Ct, NY County (Diamond, J.) | 858 |
| Anonymous v. Anonymous | 283 A.D.2d 266, 724 N.Y.S.2d 315 (1st Dep't 2001) | 1007 |
| Anonymous v. Anonymous | 289 A.D.2d 106, 735 N.Y.S.2d 26 (1st Dep't 2001) | 1008 |
| Anonymous v. Anonymous | 289 A.D.2d 106, 735 N.Y.S.2d 26 (1st Dep't 2001) | 1079 |
| Anonymous v. Anonymous | 150 A.D.3d 91, 51 N.Y.S.3d 66 (1st Dep't 2017) | 1676 |
| Ansoir v. Ansoir | 61 A.D.3d 536, 878 N.Y.S.2d 17 (1st Dep't 2009) | 1423 |
| Antis v Antis | (1985, 2d Dept) 108 App Div 2d 889, 485 NYS2d 770 | 75 |
| Antinora v Antinora | 125 A.D.3d 1336, 3 N.Y.S.3d 500 (4th Dep't 2015) | 1665 |
| Antoian v Antoian | (1995, 2nd Dept) 215 AD2d 421, 626 NYS2d 535 | 617 |

| <i>Name</i> | <i>Cite</i> | <i>ChartNumber</i> |
|---------------------------|--------------------------------------------------------------------|--------------------|
| Appel v. Appel | 54 A.D.3d 786, 864 N.Y.S.2d 92 (2d Dep't 2008) | 1357 |
| Applebaum v Applebaum | (1988, 1st Dept) 142 App Div 2d 300, 535 NYS2d 717 | 262 |
| Aregano v. Aregano | 289 A.D.2d 1081, 735 N.Y.S.2d 325 (4th Dep't 2001) | 1080 |
| Aristova v. Derkach | 155 A.D.3d 517, 67 N.Y.S.3d 21 (1st Dep't 2017) | 1677 |
| Armando v Ar- mando | (1985, 2d Dept 114 App Div 2d 875, 495 NYS2d 192 | 102 |
| Arnone v. Arnone | 36 A.D.3d 1170, 828 N.Y.S.2d 677 (3d Dep't 2007) | 1300 |
| Arrigo v. Arrigo | 38 A.D.3d 807, 834 N.Y.S.2d 534 (2d Dep't 2007) | 1301 |
| Asselta v Asselta | (1995, App Div, 2d Dept) 634 NYS2d 390 | 618 |
| Arthur v Arthur | 148 A.D.3d 1254, 48 N.Y.S.3d 813 (3d Dep't 2017) | 1678 |
| Atkin v Atkin | NYLJ, 3/26/93, P.25, Col.6 Sup.Ct., Nassau Co. (Hart, J.) | 493 |
| Atkinson v. Atkin- son | 289 A.D.2d 907, 735 N.Y.S.2d 241 (3d Dep't 2001) | 1081 |
| Atweh v. Hashem | 284 A.D.2d 216, 726 N.Y.S.2d 424 (1st Dep't 2001) | 1009 |
| Atwell v. Atwell | 292 A.D.2d 479, 739 N.Y.S.2d 284 (2d Dep't 2002) | 1082 |

| <i>Name</i> | <i>Cite</i> | <i>ChartNumber</i> |
|--------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| Avramis v. Avramis | 245 A.D.2d 585, 664 N.Y.S.2d 885 (3d Dep't 1997) | 859 |
| Aw v. Aw | 254 A.D.2d 239, 678 N.Y.S.2d 266 (2d Dep't 1998) | 887 |
| Azizo v. Azizo | 51 A.D.3d 438, 859 N.Y.S.2d 113 (1st Dep't 2008) | 1358 |
| Bailey v. Bailey | 48 A.D.3d 1123, 853 N.Y.S.2d 238 (4th Dep't 2008) | 1359 |
| Baker v. Baker | 240 A.D.2d 911, 659 N.Y.S.2d 123 (3d Dep't 1997) | 788 |
| Baker v. Baker | 32 A.D.3d 1275, 822 N.Y.S.2d 200 (4th Dep't 2006) | 1270 |
| Balch v Balch | (1993, 4th Dept) 193 AD2d 1079, 598 NYS2d 880, related proceeding (4th Dept) 193 AD2d 1080, 598 NYS2d 1022, related pro- ceeding (4th Dept) 193 AD2d 1080, 598 NYS2d 1023 | 495 |
| Balsamo v Balsamo | (1994, 2d Dept) 200 AD2d 649, 608 NYS2d 7 | 543 |
| Baluta v Baluta | (1995, App Div, 2d Dept) 633 NYS2d 1011 | 619 |
| Baiera v. Baiera | 248 A.D.2d 341, 669 N.Y.S.2d 846 (2d Dep't 1998) | 860 |
| Bann v Bann | NYLJ, 8-15-96, P. 25, Col. 6, Sup. Ct., Queens Co. (Gar- tenstein, JHO.) | 698 |

| <i>Name</i> | <i>Cite</i> | <i>ChartNumber</i> |
|--------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| Bara v Bara | (1985, 2d Dept) 115 App Div 2d 628, 496 NYS2d 287, app dismd without op 67 NY2d 609 and app dismd without op 68 NY2d 664, 505 NYS2d 1028 and app den 70 NY2d 609, 522 NYS2d 110, 516 NE2d 1223 | 112 |
| Barbuto v. Barbuto | 286 A.D.2d 741, 730 N.Y.S.2d 532 (2d Dep't 2001) | 1010 |
| Barnaby v. Barnaby | 259 A.D.2d 870, 686 N.Y.S.2d 230 (3d Dep't 1999) | 932 |
| Barnes v Barnes | (1984, 2d Dept) 106 App Div 2d 535, 483 NYS2d 358 | 72 |
| Barnhart v Barn- hart | 148 A.D.3d 1264, 48 N.Y.S.3d 818 (3d Dep't 2017) | 1679 |
| Barone v. Barone | 292 A.D.2d 481, 740 N.Y.S.2d 350 (2d Dep't 2002) | 1083 |
| Barr v Barr | NYLJ, 12/12/94, p. 31, col 2, (2d Dept) | 575 |
| Bartal v Bartal | (1986, 2d Dept) 117 App Div 2d 698, 498 NYS2d 844 | 118 |
| Barton v Barton | NYLJ, 5-20-82, Sup. Ct., NY Co. (Shainswit, J.) | 12 |
| Basch v Basch | NYLJ, 12/7/93, P.26, Col.1 (Sup.Ct., Nassau Co.) | 494 |

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| Basile v Basile | (1986, 2d Dept) 122 App Div 2d 759, 505 NYS2d 448, later proceeding (2d Dept) 147 App Div 2d 670, 538 NYS2d 998 | 140 |
| Basos v. Basos | 243 A.D.2d 932, 663 N.Y.S.2d 387 (3d Dep't 1997) | 789 |
| Battinelli v Battinelli | (1991, 1st Dept) 174 App Div 2d 503, 571 NYS2d 280 | 413 |
| Granade-Bastuck v. Bastuck | 249 A.D.2d 444, 671 N.Y.S.2d 512 (2d Dep't 1998) | 861 |
| Baumgart v Baumgart | (1993, 4th Dept) 199 AD2d 1049, 605 NYS2d 610 | 595 |
| Beach v Beach | (1990, 3d Dept) 158 App Div 2d 848, 551 NYS2d 429 | 344 |
| Bean v. Bean | 53 A.D.3d 718, 860 N.Y.S.2d 683 (3d Dep't 2008) | 1360 |
| Beason v Sloane | (1991, 4th Dept) 174 App Div 2d 1016, 572 NYS2d 176, app dismd without op 78 NY2d 1007, 575 NYS2d 457, 580 NE2d 1060 | 416 |
| Beardslee v Beard- slee | 124 A.D.3d 969, 1 N.Y.S.3d 483 (3d Dep't 2015) | 1664 |
| Beatrice H. v Eu- gene H. | NYLJ, 1-14-85, P. 15, Col. 1, Sup. Ct., Kings Co., (Ramirez, J.) | 88 |
| Becker v Becker | 186 App Div 2d 106, 588 NYS2d 45, (2d Dept, 1992) | 481 |

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| Beckerman v Beckerman | (1987, 2d Dept) 126 App Div 2d 591, 511 NYS2d 33 | 162 |
| Beece v. Beece | 289 A.D.2d 352, 734 N.Y.S.2d 606 (2d Dep't 2001) | 1011 |
| Behan v Behan | (1990, 2d Dept) 163 App Div 2d 505, 558 NYS2d 179 | 345 |
| Behrens v Behrens | (1988, 2d Dept) 143 App Div 2d 617, 532 NYS2d 893 | 251 |
| Behrmann v Behrmann | (1994, 4th Dept) 204 AD2d 1076, 613 NYS2d 80 | 562 |
| Beiter v Beiter | NYLJ, 2-8-90, P. 27, Col. 6, Sup. Ct., Nassau Co. (McCafrey, J.) | 313 |
| Belilos v. Rivera | 2018 WL 4608918 2018 N.Y. Slip Op. 06223 (2d Dept., 2018) | 1713 |
| Bellinger v. Bellinger | 46 A.D.3d 1200, 847 N.Y.S.2d 783 (3d Dep't 2007) | 1302 |
| Benja-athon v Benja-athon | NYLJ, 8-13-91, P. 25, Col. 3, Sup. Ct., Nassau Co. (Lowey, JHO) | 426 |
| Bennett v. Bennett | 13 A.D.3d 1080, 790 N.Y.S.2d 334 (4th Dep't 2004) | 1207 |
| Bentley v Knight | (1983, 3d Dept) 92 App Div 2d 638, 459 NYS2d 935 | 29 |
| Benzaken v. Benzaken | 21 A.D.3d 391, 799 N.Y.S.2d 579 (2d Dep't 2005) | 1208 |
| Berge v Berge | (1990, 4th Dept) 159 App Div 2d 960, 552 NYS2d 779 | 324 |

| <i>Name</i> | <i>Cite</i> | <i>ChartNumber</i> |
|-----------------------------|-------------------------------------------------------------------------------------------------------------------------|--------------------|
| Berk v. Berk | 5 A.D.3d 165, 773 N.Y.S.2d 53 (1st Dep't 2004) | 1182 |
| Bernstein v. Bern- stein | 18 A.D.3d 683, 795 N.Y.S.2d 733 (2d Dep't 2005) | 1209 |
| Beshara v. Beshara | 281 A.D.2d 577, 722 N.Y.S.2d 573 (2d Dep't 2001) | 1012 |
| Biamonte v Bia- monte | (1987, 1st Dept) 135 App Div 2d 360, 521 NYS2d 421, app den 71 NY2d 802, 527 NYS2d 768, 522 NE2d 1066 | 206 |
| Bidwell v Bidwell | (1986, 3d Dept) 122 App Div 2d 364, 504 NYS2d 327 | 144 |
| Bink v. Bink | 55 A.D.3d 1244, 865 N.Y.S.2d 417 (4th Dep't 2008) | 1361 |
| Bisca v Bisca | (1985, 2d Dept) 108 App Div 2d 773, 485 NYS2d 302, app dismd 66 NY2d 741, 497 NYS2d 365, 488 NE2d 111 | 74 |
| Bishop v Bishop | NYLJ, 7-18-91, P. 25, Col. 1 Sup. Ct., Kings Co. (Schneier, J.) | 422 |
| Bistrrian v. Bistrrian | 176 Misc. 2d 556, 672 N.Y.S.2d 976 (Sup. Ct. 1998) | 862 |
| Bittner v. Bittner | 296 A.D.2d 516, 745 N.Y.S.2d 559 (2d Dep't 2002) | 1084 |
| Blackman v Black- man | (1987, 2d Dept) 131 App Div 2d 801, 517 NYS2d 167 | 189 |

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|-------------------------|------------------------------------------------------------------------------------------------------------------------------|--------------------|
| Blakey v. Blakey | 61 A.D.3d 709, 876 N.Y.S.2d 647 (2d Dep't 2009) | 1424 |
| Blankenship v. Kerr | 225 A.D.2d 645, 639 N.Y.S.2d 841 (2d Dep't 1996) | 699 |
| Blay v. Blay | 51 A.D.3d 1189, 857 N.Y.S.2d 784 (3d Dep't 2008) | 1362 |
| Blickstein v Blickstein | NYLJ, 12-21-82, Sup. Ct., Nass. Co. (Di Paola, J.) mod, remanded 99 App Div 2d 287, 472 NYS2d 110 | 21 |
| Block v. Block | 258 A.D.2d 324, 685 N.Y.S.2d 443 (1st Dep't 1999) | 933 |
| Bofford v Bofford | (1986, 2d Dept) 117 App Div 2d 643, 498 NYS2d 385, app gr 68 NY2d 603 and app dismd without op 68 NY2d 808 | 117 |
| Bogannam v. Bogannam | 60 A.D.3d 985, 877 N.Y.S.2d 336 (2d Dep't 2009) | 1425 |
| Bogdan v. Bogdan | 260 A.D.2d 521, 688 N.Y.S.2d 255 (2d Dep't 1999) | 934 |
| Bohnsack v Bohnsack | (1992, 3d Dept) 185 App Div 2d 533, 586 NYS2d 369 | 461 |
| Booth v. Booth | 24 A.D.3d 1238, 807 N.Y.S.2d 259 (4th Dep't 2005) | 1210 |
| Bootle v Bootle | (1995, 2nd Dept) 214 AD2d 636, 625 NYS2d 280 | 620 |
| Borra v Borra | (1995, 2nd Dept) 218 AD2d 780, 631 NYS2d 76 | 621 |

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| <i>Name</i> | <i>Cite</i> | <i>ChartNumber</i> |
|-------------------------|---------------------------------------------------------|--------------------|
| Boughton v. Boughton | 239 A.D.2d 935, 659 N.Y.S.2d 607 (4th Dep't 1997) | 790 |
| Bowen v Bowen | (1994, 4th Dept) 202 AD2d 1062, 609 NYS2d 129 | 596 |
| Boyle v Boyle | NYLJ, 11-20-98, P. 27, Col 4 | 863 |
| Boyle v. Taylor | 255 A.D.2d 411, 680 N.Y.S.2d 605 (2d Dep't 1998) | 935 |
| Bozman v. Bozman | 43 A.D.3d 1345, 843 N.Y.S.2d 481 (4th Dep't 2007) | 1303 |
| Branche v Holloway | 124 A.D.3d 553, 2 N.Y.S.3d 450 (1st Dep't 2015) | 1663 |

| <i>Name</i> | <i>Cite</i> | <i>ChartNumber</i> |
|------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| Brancoveanu v Brancoveanu | (1988, 2d Dept) 145 App Div 2d 395, 535 NYS2d 86, app dismd without op 73 NY2d 994, 540 NYS2d 1006, 538 NE2d 358, later proceeding (2d Dept) 168 App Div 2d 530, 562 NYS2d 763, app den 77 NY2d 807, 569 NYS2d 611, 572 NE2d 52 and cert den (US) 116 L Ed 2d 129, 112 S Ct 165, costs/fees pro- ceeding (2d Dept) 177 App Div 2d 614, 576 NYS2d 321, app dismd 79 NY2d 1026, 584 NYS2d 438, 594 NE2d 932, recon- sideration den 80 NY2d 925, 589 NYS2d 312, 602 NE2d 1128 | 258 |
| Brandt v Brandt | (1991, 3d Dept) 176 App Div 2d 1016, 574 NYS2d 868 | 436 |
| Braun v. Braun | 11 A.D.3d 423, 782 N.Y.S.2d 785 (2d Dep't 2004), leave to appeal denied, 4 N.Y.3d 702, 790 N.Y.S.2d 649, 824 N.E.2d 50 (2005) | 1183 |
| Brawer v Olmstead | NYLJ, 7-16-90, P. 29, Col. 1, Sup. Ct., Kings Co. (Rigler, J.) | 352 |

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| Brennan v Brennan | (1984, 3d Dept) 103 App Div 2d 48, 479 NYS2d 877, appeal after remand (3d Dept) 124 App Div 2d 410, 507 NYS2d 507 | 65 |
| Brennan v. Bren- nan | 230 A.D.2d 700, 645 N.Y.S.2d 876 (2d Dep't 1996) | 700 |
| Brennan v. Bren- nan | NYLJ, 10-15-99, P.35, col.4 Sup Ct, Richmond Co (Harkavy, J.) | 936 |
| Brier v Brier | (1991, 1st Dept) 171 App Div 2d 427, 567 NYS2d 9 | 398 |
| Brinkmann v Brinkmann | 152 A.D.3d 637, 58 N.Y.S.3d 559 (2d Dep't 2017) | 1680 |
| Brodsky v Brodsky | (1995, 2nd Dept) 214 AD2d 599, 624 NYS2d 960 | 622 |
| Brody v. Brody | 2016 WL 886300 | 1667 |
| Bronstein v Bron- stein | (1994, 3d Dept) 203 AD2d 703, 610 NYS2d 638 | 597 |
| Brooks v. Brooks | 55 A.D.3d 520, 867 N.Y.S.2d 451 (2d Dep't 2008) | 1363 |
| Brough v. Brough | 285 A.D.2d 913, 727 N.Y.S.2d 555 (3d Dep't 2001) | 1013 |
| Brown v Brown | (1994, 4th Dept) 203 AD2d 912, 611 NYS2d 65 | 598 |
| Brown v Brown | NYLJ, 3-18-96, P. 29, Col. 7, Sup. Ct., Kings Co.(Harkavey, J.) | 701 |
| Brown v. Brown | 239 A.D.2d 535, 657 N.Y.S.2d 764 (2d Dep't 1997) | 791 |

| <i>Name</i> | <i>Cite</i> | <i>ChartNumber</i> |
|-----------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
| Brownstein v Brownstein | (1990, 1st Dept) 167 App Div 2d 127, 561 NYS2d 216, app den 77 NY2d 806, 569 NYS2d 610, 572 NE2d 51 | 371 |
| Bruck v Bruck | NYLJ, 3/12/93, P.34, Col.2 (Sup.Ct., Nassau Co.) | 496 |
| Brugge v. Brugge | 245 A.D.2d 1113, 667 N.Y.S.2d 180 (4th Dep't 1997) | 864 |
| Brzuszkiewicz v. Brzuszkiewicz | 28 A.D.3d 860, 813 N.Y.S.2d 793 (3d Dep't 2006) | 1271 |
| Bruzzese v Bruzz- ese | 152 A.D.3d 563, 61 N.Y.S.3d 18 (2d Dep't 2017) | 1681 |
| Buchsbaum v. Buchsbaum | 292 A.D.2d 553, 740 N.Y.S.2d 359 (2d Dep't 2002) | 1085 |
| Bugliari v Bugliari | (1991, 2d Dept) 169 App Div 2d 697, 564 NYS2d 186 | 378 |
| Bullaro v. Bullaro | 231 A.D.2d 666, 648 N.Y.S.2d 46 (2d Dep't 1996) | 702 |
| Burns v Burns | (1993, 4th Dept) 193 AD2d 1104, 598 NYS2d 888, related proceeding (4th Dept) 193 AD2d 1106, 598 NYS2d 1018 and app gr 82 NY2d 664, 610 NYS2d 152, 632 NE2d 462 | 497 |
| Burtchaell v. Burtchaell | 42 A.D.3d 783, 840 N.Y.S.2d 449 (3d Dep't 2007) | 1304 |
| Butler v. Butler | 256 A.D.2d 1041, 683 N.Y.S.2d 603 (3d Dep't 1998) | 937 |

| <i>Name</i> | <i>Cite</i> | <i>ChartNumber</i> |
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| Butler v Butler | (1991, 3d Dept) 171 App Div 2d 985, 568 NYS2d 169 | 403 |
| Cadet v Cadet | NYLJ,12-11-96, P. 31, Col. 6, Sup. Ct., Rockland Co.(Miller, J.) | 703 |
| Caesar v Caesar | NYLJ, 8-1-85, P. 13, Col. 3, Sup. Ct., Kings Co., (Rigler, J.) | 97 |
| Caffrey v. Caffrey | 2 A.D.3d 309, 770 N.Y.S.2d 33 (1st Dep't 2003) | 1184 |
| Cahen-Vorburger v. Vorburger | 12 A.D.3d 275, 785 N.Y.S.2d 435 (1st Dep't 2004), leave to appeal denied, 4 N.Y.3d 706, 795 N.Y.S.2d 517, 828 N.E.2d 620 (2005) | 1185 |
| Calciano v. Calciano | 45 A.D.3d 515, 844 N.Y.S.2d 722 (2d Dep't 2007) | 1305 |
| Callen v. Callen | 287 A.D.2d 818, 731 N.Y.S.2d 772 (3d Dep't 2001) | 1014 |
| Cameron v. Cam- eron | 238 A.D.2d 925, 661 N.Y.S.2d 113 (4th Dep't 1997) | 792 |
| Cameron v. Cam- eron | 22 A.D.3d 911, 802 N.Y.S.2d 542 (3d Dep't 2005) | 1211 |
| Cameron v. Cam- eron | 51 A.D.3d 1165, 857 N.Y.S.2d 793 (3d Dep't 2008), leave to appeal denied, 11 N.Y.3d 702, 864 N.Y.S.2d 389, 894 N.E.2d 653 (2008) | 1364 |
| Campbell v. Camp- bell | 280 A.D.2d 837, 720 N.Y.S.2d 628 (3d Dep't 2001) | 1015 |

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|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|
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| Wallach v. Wallach | 37 A.D.3d 707, 831 N.Y.S.2d 210 (2d Dep't 2007) | 1327 |
| Wallach v. Wallach | 37 A.D.3d 707, 831 N.Y.S.2d 210 (2d Dep't 2007) | 1352 |
| Walls v. Walls | (1995, App Div, 4th Dept) 633 NYS2d 905 | 690 |
| Walls v. Walls | 221 A.D.2d 925, 633 N.Y.S.2d 905 (4th Dep't 1995) | 780 |
| Walsh v. Walsh | 226 A.D.2d 707, 641 N.Y.S.2d 704 (2d Dep't 1996) | 781 |
| Walter v. Walter | 38 A.D.3d 763, 835 N.Y.S.2d 196 (2d Dep't 2007) | 1353 |
| Walters v. Walters | 252 A.D.2d 775, 676 N.Y.S.2d 268 (3d Dep't 1998) | 926 |
| Ward v. Ward | (1983, 3d Dept) 94 App Div 2d 908, 463 NYS2d 634 | 35 |
| Warshaw v. Warshaw | (1991, 1st Dept) 169 App Div 2d 408, 564 NYS2d 137 | 377 |
| Wasserman v. Wasserman | 66 A.D.3d 880, 888 N.Y.S.2d 90 (2d Dep't 2009) | 1454 |
| Waterman v. Waterman | (1990, 2d Dept) 160 App Div 2d 865, 554 NYS2d 298 | 341 |

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| Weaver v Weaver | (1993, 3d Dept) 192 AD2d 777, 596 NYS2d 190 | 534 |
| Weidman v. Weidman | 2018 WL 2709520 2018 N.Y. Slip Op. 04027 (2d Dept., 2018) | 1706 |
| Wechsler v. Wechsler | 58 A.D.3d 62, 866 N.Y.S.2d 120 (1st Dep't 2008), appeal dismissed, 12 N.Y.3d 883, 2009 WL 1620390 (2009) | 1420 |
| Wegman v Wegman | (1985) 129 Misc 2d 968, 494 NYS2d 933, affd in part and mod in part (2d Dept) 123 App Div 2d 220, 509 NYS2d 342, motion gr, amd (App Div, 2d Dept) 512 NYS2d 410 | 106 |
| Weilert v Weilert | (1985, 2d Dept) 115 App Div 2d 473, 495 NYS2d 707, appeal after re- mand (2d Dept) 167 App Div 2d 463, 562 NYS2d 139 | 107 |
| Weinstein v Wein- stein | (1986, 2d Dept) 125 App Div 2d 301, 508 NYS2d 950, later proceeding (2d Dept) 125 App Div 2d 301, 508 NYS2d 992 | 150 |
| Weinstock v Wein- stock | NYLJ, 12-15-83, Sup. Ct., Queens Co (Lonschein, J.) | 43 |
| Weinstock v Wein- stock | (1985, 2d Dept) 114 App Div 2d 450, 494 NYS2d 361 | 100 |

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| Weisbard v. Missett | 289 A.D.2d 482, 735 N.Y.S.2d 153 (2d Dep't 2001) | 1134 |
| Weisfelner v. Weisfelner | 244 A.D.2d 480, 665 N.Y.S.2d 916 (2d Dep't 1997) | 854 |
| Weisfelner v. Weisfelner | 244 A.D.2d 480, 665 N.Y.S.2d 916 (2d Dep't 1997) | 927 |
| Weiss v Weiss | (1995, 2nd Dept) 213 AD2d 542, 624 NYS2d 52 | 691 |
| Welch v. Welch | 233 A.D.2d 921, 649 N.Y.S.2d 560 (4th Dep't 1996) | 782 |
| Wenzel v Wenzel | (1984) 122 Misc 2d 1001, 472 NYS2d 830 | 55 |
| Wexler v. Wexler | 34 A.D.3d 458, 824 N.Y.S.2d 647 (2d Dep't 2006), leave to appeal dis- missed, 8 N.Y.3d 1007, 839 N.Y.S.2d 447, 870 N.E.2d 687 (2007) | 1298 |
| Whalen v Whalen | NYLJ, 9-24-81, Sup. Ct., Nass. Co. (Robbins, J.) | 5 |
| W. H. C. v M. M. C. | (1989, 1st Dept) 156 App Div 2d 237, 548 NYS2d 498 | 320 |
| Wheeler v. Wheeler | 12 A.D.3d 982, 785 N.Y.S.2d 170 (3d Dep't 2004) | 1206 |
| Whispell v Whispell | (1988, 3d Dept) 144 App Div 2d 804, 534 NYS2d 557 | 268 |
| Whitaker v Case | 122 A.D.3d 1015, 996 N.Y.S.2d 752 (3d Dep't 2014) | 1652 |

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| White v White | (1994, 3d Dept) 204 AD2d 825, 611 NYS2d 951 | 552 |
| Wilbur v Wilbur | (1986, 3d Dept) 116 App Div 2d 953, 498 NYS2d 525, appeal after re- mand (3d Dept) 130 App Div 2d 853, 515 NYS2d 636 | 129 |
| Wilcox v. Wilcox | 233 A.D.2d 565, 649 N.Y.S.2d 222 (3d Dep't 1996) | 783 |
| Wilkinson v Wilkin- son | (1989, 3d Dept) 149 App Div 2d 842, 540 NYS2d 357 | 287 |
| Williams v Williams | NYLJ, 12-10-87, P. 15, Col. 3, Sup. Ct., NY Co. (Silberman, J) | 208 |
| Willets v. Willets | 247 A.D.2d 288, 668 N.Y.S.2d 623 (1st Dep't 1998) | 928 |
| Williams v. Wil- liams | 245 A.D.2d 49, 665 N.Y.S.2d 86 (1st Dep't 1997) | 929 |
| Wilner v Wilner | NYLJ, 9-26-88, P. 27, Col. 1, Sup. Ct., Queens Co. (Zel- man, J.) | 249 |
| Wilner v Wilner | NYLJ, 12-3-91, P. 27, Col. 1 (Sup. Ct., Queens Co.) | 394 |
| Wilner v Wilner | (1993, 2d Dept) 192 AD2d 524, 595 NYS2d 978 | 394 |
| Wilson v Wilson | (1984, 1st Dept) 101 App Div 2d 536, 476 NYS2d 120, app dismd, motion dismd 63 NY2d 768, 481 NYS2d 688, 471 NE2d 460 | 63 |

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| Wilson v Wilson | (1994, 2d Dept) 203 AD2d 558, 612 NYS2d 158 | 549 |
| Wilson v. Wilson | 226 A.D.2d 711, 641 N.Y.S.2d 703 (2d Dep't 1996) | 784 |
| Winnie v. Winnie | 229 A.D.2d 677, 645 N.Y.S.2d 167 (3d Dep't 1996) | 785 |
| Winter v. Winter | 50 A.D.3d 431, 857 N.Y.S.2d 69 (1st Dep't 2008) | 1421 |
| Wittig v. Wittig | 258 A.D.2d 883, 685 N.Y.S.2d 342 (4th Dep't 1999) | 1000 |
| Wojtowicz v Woj- towicz | (1991, 4th Dept) 171 App Div 2d 1073, 569 NYS2d 248 | 407 |
| Wood v Wood | (1988, 2d Dept) 139 App Div 2d 506, 526 NYS2d 608 | 228 |
| Wood v. Wood | 256 A.D.2d 1242, 682 N.Y.S.2d 788 (4th Dep't 1998) | 1001 |
| Woodman v. Wood- man | 2018 WL 3007508 2018 N.Y. Slip Op., 04479 (4th Dept., 2018) | 1707 |
| Woodson v Woodson | (1991, 2d Dept) 178 App Div 2d 642, 578 NYS2d 217 | 442 |
| Worsnop v Worsnop | (1994, 2d Dept) 204 AD2d 624, 612 NYS2d 626 | 554 |
| Worthing v Berger | NYLJ, 2-26-90, P. 30, Col. 2, Sup. Ct., West Co. (Fredman, J.) | 312 |

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| Yasparro v Yasparro | (1994, 2d Dept) 207 AD2d 445, 615 NYS2d 753 | 572 |
| Yecies v Yecies | NYLJ, 2-3-92, P. 28, Col. 6 (Sup. Ct., Suffolk Co.) | 475 |
| Yunger v Yunger | (1987, 2d Dept) 133 App Div 2d 451, 519 NYS2d 666 | 199 |
| Yunis v. Yunis | 255 A.D.2d 992, 680 N.Y.S.2d 339 (4th Dep't 1998), aff'd, 94 N.Y.2d 787, 699 N.Y.S.2d 702, 721 N.E.2d 952 (1999) | 1002 |
| Zabin v Zabin | (1991, 2d Dept) 176 App Div 2d 262, 574 NYS2d 75 | 432 |
| Zacharek v Zacharek | (1986, 4th Dept) 116 App Div 2d 1004, 498 NYS2d 625 | 130 |
| Zagari v. Zagari | 19 A.D.3d 1063, 797 N.Y.S.2d 675 (4th Dep't 2005) | 1269 |
| Zago v Zago | (1991, 2d Dept) 177 App Div 2d 691, 577 NYS2d 78, app withdrawn 79 NY2d 943, 583 NYS2d 196, 592 NE2d 804 and app den 80 NY2d 751, 587 NYS2d 287, 599 NE2d 691 | 438 |

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| Zaremba v. Zaremba | 237 A.D.2d 351, 654 N.Y.S.2d 176 (2d Dep't 1997) | 855 |
| Zaremba v Zaremba | (1995, App Div 2d Dept) 635 NYS2d 532 | 692 |
| Zaretsky v. Zaretsky | 66 A.D.3d 885, 888 N.Y.S.2d 84 (2d Dep't 2009) | 1455 |
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| Zelnik v Zelnik | (1991, 1st Dept) 169 App Div 2d 317, 573 NYS2d 261 | 419 |
| Zielinski v. Zielinski | 289 A.D.2d 1017, 735 N.Y.S.2d 302 (4th Dep't 2001) | 1135 |
| Zimberg v Zimberg | (1995, 1st Dept) 215 AD2d 313, 627 NYS2d 23 | 693 |
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| Zuch v Zuch | (1986, 1st Dept) 117 App Div 2d 397, 503 NYS2d 343 | 133 |
| Zurek v. Zurek | 255 A.D.2d 922, 680 N.Y.S.2d 384 (4th Dep't 1998) | 1003 |
| Zurner v Zurner | (1995, 3d Dept) 213 AD2d 906, 624 NYS2d 301 | 694 |
| Zwickel v. Szajer | 45 A.D.3d 1222, 846 N.Y.S.2d 737 (3d Dep't 2007) | 1355 |

SUMMARY OF EQUITABLE DISTRIBUTION DECISIONS
SINCE JULY 19, 1980

Number:1

Case:Abbe v Abbe, NYLJ 2-26-81, Sup. Ct., Kings Co. (Reigler, J.)

Comment:(“What’s mine is mine and what’s yours is mine”)

Years Married:2

Ages/Income:86 - H 67 - W

Child Support:N/A

Maintenance:No

Exclusive Occupancy:No

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:No

Property Distribution to Wife:Joint accounts to husband and remaining account divided by respective contributions.

Number:2

Case:Nehorayoff v Nehorayoff (1981) 108 Misc 2d 311, 437 NYS2d 584

Comment:(abortion practice)

Years Married:18

Ages/Income:

Child Support:\$100/wk (1 child)

Maintenance:No

Exclusive Occupancy:No

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:Hearing ordered

Property Distribution to Wife:25 percent of husband’s interest in abortion practice and 50 percent of resident, furniture and auto.

Number:3

Case:Lesman v Lesman (1981) 110 Misc 2d 815, 442 NYS2d 995, mod (4th Dept) 88 App Div 2d 153, 452 NYS2d 935

Comment:(medical license)

Years Married:8

Ages/Income:H - \$45,000/yr

Child Support:\$100/wk (2 children)

Maintenance:\$200/wk until youngest child turns 18 or wife remarries

Exclusive Occupancy:

Health & Medical Insurance:Yes (wife & children)

Dental Insurance:Yes (wife & children)

Life Insurance:Yes (\$25,000-children)

Counsel Fees:

Property Distribution to Wife:

Number:4

Case:Koyblack v Koyblack (1981) 110 Misc 2d 402, 442 NYS2d 392, mod (2d Dept) 96 App Div 831, 465 NYS2d 581, revd 62 (NY2d 399, 477 NYS2d 109, 465 NE2d 829, on remand (2d Dept) 111 App Div 2d 221, 489 NYS2d 257

Comment:(both spouses employed and no children; used valuation date one month prior to trial)

Years Married:11

Ages/Income:H - \$36,000/yr W-\$14,000/yr

Child Support:N/A

Maintenance:Waived

Exclusive Occupancy:To Husband

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:No

Property Distribution to Wife:Wife given 28 percent of value of house, auto and furnishings; wife given a distributive award of \$20,031.77 representing a 28 percent share of the value of the husband's thrift fund. App Div remitted to consider precise value of thrift fund from date of marriage to date of commencement, directing Special Term to subtract 28% of tax liability from wife's share, and to consider values and distribution of each parties pension.

Number:5

Case:Whalen v Whalen, NYLJ 9-24-81, Sup. Ct., Nass Co. (Robbins, J.)

Comment:(H forged wife's name to two mortgages)

Years Married:29

Ages/Income:H - \$26,000/yr W - \$30,000/yr

Child Support:N/A

Maintenance:Waived
Exclusive Occupancy:
Health & Medical Insurance:No
Dental Insurance:No
Life Insurance:No
Counsel Fees:No
Property Distribution to Wife:House held to be marital property and awarded solely to wife

Number:6
Case:Martinez v Martinez, NYLJ 10-13-81, Sup. Ct., Nass. Co. (Oppido, J.)
Comment:(firemen's pension—four children)
Years Married:22
Ages/Income:\$62.50/wk (2 children)
Child Support:\$130/wk for five years
Maintenance:
Exclusive Occupancy:To 18
Health & Medical Insurance:No
Dental Insurance:No
Life Insurance:No
Counsel Fees:\$5,000 out of sales proceeds. wife paid \$7,000
Property Distribution to Wife:50 percent of marital property and one-third of husband's pension.

Number:7
Case:Majauskas v Majauskas (1981) 110 Misc 2d 323, 441 NYS2d 900, mod (4th Dept) 94 App Div 2d 494, 464 NYS2d 913, affd 61 NY2d 481, 474 NYS2d 699, 463 NE2d 15, 6 EBC 1053
Comment:(policeman pension)
Years Married:8
Ages/Income:
Child Support:\$60 per week per child
Maintenance:\$43/wk
Exclusive Occupancy:
Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:

Property Distribution to Wife:Husband to pay, upon his retirement, one-half of a percentage of the amount of each pension benefit payable to him, less taxes. Percentage to be derived by dividing the number of months the parties were married before commencement of the action by the total number of months of credits husband will have earned toward his pension as of the date of retirement.

Number:8

Case:Jolis v Jolis (1981) 111 Misc 2d 965, 446 NYS2d 138, affd (1st Dept) 98 App Div 2d 692, 470 NYS2d 584

Comment:(husband's separate property \$3.5 million and marital property was \$1.5 million)

Years Married:42

Ages/Income:H - \$208,136/yr

Child Support:N/A

Maintenance:\$65,00/yr

Exclusive Occupancy:No

Health & Medical Insurance:Yes

Dental Insurance:No

Life Insurance:Yes (increase \$65,000 to \$200,000 or make will)

Counsel Fees:\$35,000 (husband paid \$30,000)

Property Distribution to Wife:50 percent of net value of marital property after deducting capital gains taxes.

Number:9

Case:Moran v Moran, NYLJ 3-12-82, Sup. Ct., Nass. Co. (Morrison, J.)

Comment:(action pending 11 yrs; wife left home in 1966)

Years Married:30

Ages/Income:

Child Support:N/A

Maintenance:No

Exclusive Occupancy:Sale

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:No

Property Distribution to Wife:Sell house; \$3,050 to wife; \$6,125 to husband; divide balance and husband to pay \$5,200 to wife from his share. No share of pension to wife.

Number:10**Case:**Hirschfeld v Hirschfeld, NYLJ 5-4-82, Sup. Ct., NY Co. (Gomez, J.) mod 96 App Div 2d 473, 464 NYS2d 789**Comment:**(lawyer—children 19 and 17)**Years Married:**21**Ages/Income:**H - \$33,800/yr W - \$5,500/yr)**Child Support:**\$20/wk/ch for 2 children; college for son**Maintenance:**\$245/wk; on sale - \$175/wk**Exclusive Occupancy:**To 21**Health & Medical Insurance:**Yes (Wife & children)**Dental Insurance:**Yes (Wife & children)**Life Insurance:**Yes**Counsel Fees:**\$7,000; wife paid \$8,000**Property Distribution to Wife:**No distributive award of law practice; remanded for hearing on maintenance.

Number:11**Case:**Jacoby v Jacoby, NYLJ 5-10-82, Sup. Ct., Queens Co. (Rodell, J.)**Comment:**(funds dissipated by husband)**Years Married:**16**Ages/Income:****Child Support:**N/A**Maintenance:**\$100/wk for two years**Exclusive Occupancy:**Sale Ordered**Health & Medical Insurance:**No**Dental Insurance:**No**Life Insurance:**No**Counsel Fees:**\$10,000**Property Distribution to Wife:**40 percent of marital property to wife.

Number:12**Case:**Barton v Barton, NYLJ 5-20-82, Sup. Ct., N.Y. Co. (Shainswit, J.)**Comment:**(lawyer—children 19½ and 16)**Years Married:**22**Ages/Income:**W - \$46,500

Child Support:\$100/wk (2 children) based on husband's commitment to pay other expenses

Maintenance:No

Exclusive Occupancy:Sale Ordered

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:No

Property Distribution to Wife:50 percent of house; 18 percent of ranch; 20 percent of Keough; 24 percent of law practice yearly average net income; and 40 percent of shelters (on sale).

Number:13

Case:O'Brien v O'Brien (1982) 114 Misc 2d 233, 452 NYS2d 801, mod (2d Dept) 106 App Div 2d, 223, 485 NYS2d 548, mod, ctfd ques ans 66 NY2d 576, 498 NYS2d 743, 489 NE2d 712

Comment:(a medical license is property)

Years Married:11

Ages/Income:

Child Support:N/A

Maintenance:No

Exclusive Occupancy:

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:Yes

Counsel Fees:\$7,000; Wife paid \$15,000

Property Distribution to Wife:Remanded for a "rehabilitative award".

Number:14

Case:Volk v Volk, NYLJ 6-24-82, Sup. Ct., Kings Co. (Tomei, J.)

Comment:(both parties of advanced age at marriage & in poor health; defendant's disability will prevent her from becoming self-supporting)

Years Married:5

Ages/Income:H - 75 W - 69 H - \$912/mo; W - \$366/mo

Child Support:N/A

Maintenance:\$100/mo for two years

Exclusive Occupancy:To Husband

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:No

Property Distribution to Wife:75 percent of (\$4,000) marital property to wife.

Number:15

Case:Gottlieb v Gottlieb, NYLJ 6-29-82, Sup. Ct., Queens Co. (Callabretta, J.)

Comment:(husband secreted assets)

Years Married:57

Ages/Income:H - 79 W - 78

Child Support:N/A

Maintenance:No

Exclusive Occupancy:

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$7,500

Property Distribution to Wife:Of \$690,800 marital property, wife awarded \$335,000.

Number:16

Case:Perri v Perri (1982) 115 Misc 2d 478, 454 NYS2d 277 later proceeding (2d Dept) 97 App Div 2D 399, 467 NYS2d 226

Comment:(police pension in pay status; 19-year-old son employed)

Years Married:24

Ages/Income:H - 48; W - H - \$143/wk W - \$140/wk

Child Support:None

Maintenance:No

Exclusive Occupancy:Sale ordered

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:None

Property Distribution to Wife:50 percent of house and personal property; wife received \$180 per month (out of \$185/wk net) from husband's police pension until house sold and the \$240 a month—payments for 60 months; Appellate Division reversed and remanded for new determination as to pension and his annuity which was non-vested; held the award was not equitable and should have been close to, if not totally equal. Improper to use equitable distribution to supplement wife's need for maintenance.

Number:17

Case:Stein v Stein, NYLJ 8-19-82, Sup. Ct., Suffolk Co. (Spatt, J.)

Comment:(wife receiving “no-fault benefits” —lived together only 35 mos—Court appraised marital property at time of trial)

Years Married:6

Ages/Income:H - 48 W - 43

Child Support:N/A

Maintenance:\$125/week for two years

Exclusive Occupancy:N/A

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$5,000 plus \$2,100 for disbursements and experts; Wife paid \$500

Property Distribution to Wife:15 percent of machine shop corporation worth \$30,000 (or \$4,500).

Number:18

Case:Kutanovski v Kutanovski, NYLJ 8-25-82, Sup. Ct., Richmond Co. (Hurowitz, J.) mod 109 App Div 2d 822, 486 NYS2d 338, rearg gtd 120 App Div 2d 511, 502 NYS2d 218

Comment:(medical license is not property)

Years Married:13

Ages/Income:H - 52; W - 50 H - \$61,240/yr W -\$18,975/yr

Child Support:\$100/wk (+ private school) until 21; or 23 or graduates if in college

Maintenance:\$275/week until sale of house then \$150/week until remarry or “takes up residence with another man”

Exclusive Occupancy:sale ordered

Health & Medical Insurance:Yes (W)

Dental Insurance:No

Life Insurance:Yes (H)

Counsel Fees:No

Property Distribution to Wife:Remitted for determination if wife is entitled to any maintenance and re-evaluation of distribution of marital property

Number:19

Case:McCormack v McCormack, NYLJ 10-29-82, Sup. Ct., NY Co. (Myers, J.)

Comment:(husband abandoned wife in 1974; wife entitled to less than half because business didn't fully mature until after 1974)

Years Married:30

Ages/Income:H -53 W - 52 H - \$150,000-\$200,000 W - \$0

Child Support:N/A

Maintenance:\$700/week permanent retroactive to date of application for T/M

Exclusive Occupancy:House to Wife as part of award

Health & Medical Insurance:Yes - B/C, B/S, Major Medical

Dental Insurance:No

Life Insurance:Yes (\$85,000 until wife's death or remarriage)

Counsel Fees:\$36,500 attorney's fees and \$18,000 in accounting fees (return \$6,500 to wife)

Property Distribution to Wife:Distributive award of \$200 a week for life to wife ("tax free"); evaluating her share of \$480,000 value of business at \$90,000-120,000; 50 percent of non-business marital property of \$282,000 to wife (including house).

Number:20

Case:Hebron v Hebron (1982) 116 Misc 2d 803, 456 NYS2d 957

Comment:(distribution of firemen's pension not vested & not matured; division of proceeds of sale of house prior to action creates separate property)

Years Married:16

Ages/Income:H - \$31,400 W - one night a week

Child Support:\$50/wk/ch = \$100/wk

Maintenance:\$75/week permanent

Exclusive Occupancy:N/A

Health & Medical Insurance:Yes - children only

Dental Insurance:No

Life Insurance:\$50,000 per child

Counsel Fees:\$2,000

Property Distribution to Wife:One-third of husband's net pension, when and if received multiplied by fraction + number of months of marriage/number of months benefits accrued.

Number:21

Case:Blickstein v Blickstein, NYLJ 12-21-82, Sup. Ct., Nass. Co. (Di Paola, J.) mod and remanded 99 App Div 2d 287, 472 NYS2d 110

Comment:(marital fault is not generally relevant in equitable distribution of marital property; misconduct that "shocks" the conscience may be considered but is only one factor)

Years Married:13

Ages/Income:H - 35; W - 34 H - \$229/wk net W - \$186/wk net

Child Support:\$600/mo (2 children)

Maintenance:Waived

Exclusive Occupancy:

Health & Medical Insurance:B/C, B/S, Major Medical for children

Dental Insurance:Insurance for children

Life Insurance:No

Counsel Fees:Plaintiff directed to pay her own counsel fees

Property Distribution to Wife:Reversed award of all property to wife and remanded for new property determination but affirmed finding that 60% should go to wife.

Number:22

Case:Lentz v Lentz (1982) 117 Misc 2d 78, 457 NYS2d 401, mod, remanded (2d Dept) 103 App Div 2d 822, 478 NYS2d 56

Comment:(non-vested pension is marital property. Davis applies in NY)

Years Married:20

Ages/Income:H - ; W - H - \$396/wk gr. W - \$157/wk net

Child Support:\$15/wk/ch (3 children)

Maintenance:\$60/week for five years

Exclusive Occupancy:To wife until all children 21

Health & Medical Insurance:None

Dental Insurance:None

Life Insurance:None

Counsel Fees:\$3,500

Property Distribution to Wife:50 percent of net proceeds on sale of house. On appeal, Appellate Division held that non-vested railroad pension was marital property and remanded to Special Term to value and distribute it.

Number:23

Case:Muller v Muller (1982) 116 Misc 2d 660, 456 NYS2d 918 [portions omitted]

Comment:(detailed analysis of valuation of corporation)

Years Married:16

Ages/Income:H - 41 W - 45

Child Support:(2 children)

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:35 percent of value of husband's business (\$18,808.00).

Number:24

Case:Feig v Feig, NYLJ 2-18-83, Sup. Ct. Nass. Co. (Morrison, J.)

Comment:(wife asked for \$213,000 lump sum-Husband's gas station had estimated unreported cash profits of several hundred thousand dollars)

Years Married:7

Ages/Income:

Child Support:\$125/wk/ch (3 children) until 18

Maintenance:\$175/wk for 12 years

Exclusive Occupancy:Title to Wife

Health & Medical Insurance:None

Dental Insurance:None

Life Insurance:None

Counsel Fees:\$36,000

Property Distribution to Wife:Wife got title to house (net equity \$80,000) and all furnishings, and bank accounts with \$60,000 and \$75,000; Husband awarded title to gas station leasehold.

Number:25**Case:**Conteh v Conteh (1982) 117 Misc 2d 42, 457 NYS2d 363**Comment:**(distributive award to wife not warranted where she is entitled to “rehabilitative” maintenance)**Years Married:****Ages/Income:**H - \$50,000**Child Support:?****Maintenance:**Not entitled**Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:**No marital property (husband a physician).

Number:26**Case:**Farenga v Farenga, NYLJ 3-14-83 Sup. Ct., Nas. Co. (Berman, J.)**Comment:**(fault most important factor; caused dissolution and financial downfall; no expert testimony as to values; brutal assaults)**Years Married:30****Ages/Income:**H - 49; W - 47**Child Support:N/A****Maintenance:**\$200/wk for 2 years**Exclusive Occupancy:**Title to Wife**Health & Medical Insurance:**None**Dental Insurance:**None**Life Insurance:**None**Counsel Fees:**None**Property Distribution to Wife:**Title to home and contents to Wife (equity \$61,000-95,000); real property sold and 50/50 split (\$41,000-50,000 equity); each retain vehicles; Keough (\$9,000) and investment in business (\$2,000) to Husband.

Number:27**Case:**Sauer v Sauer (1983, 4th Dept) 91 App Div 2d 1166, 459 NYS2d 131**Comment:**

Years Married:25

Ages/Income:

Child Support:N/A

Maintenance:\$300/month

Exclusive Occupancy:Title to Wife

Health & Medical Insurance:None

Dental Insurance:None

Life Insurance:None

Counsel Fees:?

Property Distribution to Wife:Wife recived home and furnishings (value \$72,000); Husband received his Keough Plan (\$57,000) and furnishings (\$10,000).

Number:28

Case:Reed v Reed (1983, 3d Dept) 93 App Div 2d 105, 462 NYS2d 73

Comment:(default equitable distribution case remanded for valuation)

Years Married:10

Ages/Income:W - \$119/wk

Child Support:\$125/wk (2 children)

Maintenance:\$25/wk for 3 years

Exclusive Occupancy:Title to Wife

Health & Medical Insurance:None

Dental Insurance:None

Life Insurance:None

Counsel Fees:\$1,000 and additional fees as may be awarded

Property Distribution to Wife:Wife received home; remanded for valuation and distribution of assets; non-vested teachers pension held to be marital property.

Number:29

Case:Bentley v Knight (1983, 3d Dept) 92 App Div 2d 638, 459 NYS2d 935

Comment:(Canadian retirement plans divided equally as of date of commencement)

Years Married:5

Ages/Income:H - 41 W - 32

Child Support:No children

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Each parties' Canadian retirement plan divided equally, where marriage was equal financial partnership until husband asked wife to stop working.

Number:30

Case:Duffy v Duffy (1983, 2d Dept) 94 App Div 2d 711, 462 NYS2d 240

Comment:(second marriage, no children, short duration and husband contributed \$32,000 of his separate property to cost of house)

Years Married:3

Ages/Income:H - \$200,000

Child Support:No children

Maintenance:\$300/wk for 3 years

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:None

Dental Insurance:None

Life Insurance:None

Counsel Fees:\$12,000

Property Distribution to Wife:After marital home sold, husband gets \$32,000 as separate property and balance divided 75% to husband and 25% to wife; after oil partnership sold and husband reimbursed \$9,000, balance to be distributed 75% to husband and 25% to wife.

Number:31

Case:Erlich v Erlich, NYLJ 5-16-83, Sup. Ct., Queens Co. (Bambrick, J.)

Comment:(separation agreement executed October 1980 set aside on husband's default; equitable distribution after inquest)

Years Married:9

Ages/Income:H - \$132, 467 W -

Child Support:\$25/wk (one child)

Maintenance:\$125/wk permanent

Exclusive Occupancy:?

Health & Medical Insurance:Yes

Dental Insurance:Yes

Life Insurance:Yes

Counsel Fees:\$5,000

Property Distribution to Wife:Because wife did not offer proof as to value of marital property, each party entitled to retain property in his or her possession.

Number:32

Case:Picco v Picco, NYLJ 5-23-83, Sup. Ct., Richmond Co. (Schneider, J.)

Comment:(husband's non-vested NYC policeman's pension is marital property and equitably distributed if it vests; no distribution of assets where no proof of value)

Years Married:18

Ages/Income:H - \$579.06 net biweekly W - \$6/hr 3 days a week

Child Support:\$70/wk/per child (2 children)

Maintenance:None

Exclusive Occupancy:To Wife until youngest child 21

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:Yes, for children

Counsel Fees:None

Property Distribution to Wife:Wife received 50% of marital home on sale; wife to receive income from rent of apartment in marital home and pay all expenses for its maintenance, except repairs; wife awarded her IRA and all household furnishings; vacant real property worth \$10,000 to be sold and proceeds equally divided; wife awarded \$28,000 (at \$2,000/yr for 14 years) of husband's pension worth \$73,332 "once vested" or no interest if it does not vest; husband to retain one automobile \$5,000 trust account, \$2,500 cash surrender value of life insurance, and half of coin collection and savings bond and gem collection.

Number:33

Case:Damiano v Damiano (1983, 2d Dept) 94 App Div 2d 132, 463 NYS2d 477

Comment:(husband's non-vested pension is marital property)

Years Married:24

Ages/Income:H - \$451/wk gross

Child Support:\$35/wk per child (3)

Maintenance:\$25/wk permanent and 1/2 of mortgage payment

Exclusive Occupancy:To Wife until youngest child 21
Health & Medical Insurance:No
Dental Insurance:No
Life Insurance:No
Counsel Fees:None
Property Distribution to Wife:House divided 50/50 upon sale.
Husband's non-vested pension is marital property.

Number:34
Case:Fioretti v Fioretti, NYLJ 7-28-83, Sup. Ct., Nassau Co.,
(Berman, J.)
Comment:(dental practice of husband distributed)
Years Married:16
Ages/Income:H - 39 (\$84,000) W - 37 (\$60-80wk)
Child Support:\$50/wk/child (3 children)
Maintenance:\$300/wk permanent and husband to pay
mortgage and home insurance
Exclusive Occupancy:To Wife until youngest child 21
Health & Medical Insurance:Yes for children
Dental Insurance:No
Life Insurance:Yes for children
Counsel Fees:\$7,500
Property Distribution to Wife:Wife received 50% of marital
home on sale after repaying \$8,000 loan to husband's parents
out of proceeds, 50% of condominium and stock, automobile 50%
of Keoughs present value and 40% of value of husband's dental
practice.

Number:35
Case:Ward v Ward (1983, 3d Dept) 94 App Div 2d 908, 463
NYS2d 634
Comment:(valuation as of date of commencement; equitable
does not mean equal)
Years Married:30
Ages/Income:W - \$166/biweekly
Child Support:
Maintenance:\$125/month permanent
Exclusive Occupancy:Title to wife
Health & Medical Insurance:No
Dental Insurance:No

Life Insurance:No

Counsel Fees:\$1,500

Property Distribution to Wife:Court distributed marital property 50/50 with title to house to wife and appraisal business to husband and equally divided bank accounts and IRA.

Number:36

Case:MacCarron v MacCarron, NYLJ 8-1-83, Sup. Ct., Bronx Co. (Cotton, J.)

Comment:(interest earned after marriage on bonds which were separate property is marital property; transfer of separate assets to joint names is marital property)

Years Married:3 1/2

Ages/Income:H - retired physician (72) \$36,375 W - unemployed teacher (53)

Child Support:no children

Maintenance:\$150/wk to May 6, 1985

Exclusive Occupancy:N/A

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:None

Property Distribution to Wife:Wife received 30% of \$100,000 transferred after marriage by husband to joint names and 30% of interest on bonds (i.e., \$200) which were separate property; wife directed to return gifts of jewelry to husband. No distribution of husband's pension where no proof as to value—waiver.

Number:37

Case:Haber v Haber, NYLJ, 9-1-83 Sup. Ct., NY Co. (Cobb, J.)

Comment:(foreign ex parte divorce)

Years Married:

Ages/Income:

Child Support:Custody to Husband; wife to pay \$60/wk C/S and 1/2 of private school tuition

Maintenance:None

Exclusive Occupancy:No

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$5,400

Property Distribution to Wife:None

Number:38**Case:**Eisenstadt v Eisenstadt, NYLJ 10-14-83, Sup. Ct., NY Co. (Bowman, J.)**Comment:**(dental license is not property)**Years Married:**5**Ages/Income:**H - \$16,000 W - \$70/wk**Child Support:**N/A**Maintenance:**\$175/wk for 4 years**Exclusive Occupancy:**N/A**Health & Medical Insurance:**Yes**Dental Insurance:**No**Life Insurance:**Yes (\$50,000)**Counsel Fees:****Property Distribution to Wife:**None

Number:39**Case:**Farsace v Farsace (1983, 4th Dept) 97 App Div 2d 951, 468 NYS2d 751**Comment:**(Court may direct a contractual will; where no evidence of pension tax consequences it is not error to fail to consider it)**Years Married:?****Ages/Income:?****Child Support:?****Maintenance:?****Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:**Wife awarded \$102,000 of \$265,551 in marital assets; husband given options regarding his pension.

Number:40**Case:**Roth v Roth (1983, 4th Dept) 97 App Div 2d 967, 468 NYS2d 764

Comment:(homemaker services is a contribution to the acquisition and improvement of marital real estate)

Years Married:20

Ages/Income:?

Child Support:?

Maintenance:\$120/wk permanent

Exclusive Occupancy:?

Health & Medical Insurance:Yes

Dental Insurance:No

Life Insurance:No

Counsel Fees:?

Property Distribution to Wife:Wife to receive 40% of equity in marital real property and 40% of \$488.89 per month pension payable upon husband's retirement at age 65 (present value).

Number:41

Case:Jacob v Jacob (1983, 2d Dept) 97 App Div 2d 813, 468 NYS2d 685

Comment:(wife awarded 90%)

Years Married:?

Ages/Income:W - \$15,860 H - unemployed

Child Support:\$25/wk child for 3 children

Maintenance:None

Exclusive Occupancy:No

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:None

Property Distribution to Wife:Wife to receive 90% of equity in marital home and 90% of proceeds of sale of household furnishings (wife has assets of \$250,000).

Number:42

Case:Roberts v Roberts, NYLJ 11-29-83. Sup. Ct., (Delaney, J.) modified NYLJ 12-29-83

Comment:(law firm valued by taking average income over 5 years; "Excess" earnings approach rejected)

Years Married:16

Ages/Income:H - \$60,000

Child Support:3 children (see maintenance)

Maintenance:\$450/wk unallocated maintenance and child support

Exclusive Occupancy:Yes - until Youngest 18 or wife remarries

Health & Medical Insurance:Yes - for wife until remarriage and children until youngest 18

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$5,000

Property Distribution to Wife:Wife awarded 20% of value of husband's interest in law firm amounting to \$8,480 payable over four years (interest free) and 50% of husband's "Keough", IRA and Joint Trust Plan; 50% of net proceeds of sale of marital home.

Number:43

Case:Weinstock v Weinstock, NYLJ 12-15-83, Sup. Ct., Queens Co. (Lonschein, J.)

Comment:(divorce under DRL 170(5); fault considered; property valued as of date of net worth statements)

Years Married:34

Ages/Income:H - \$18,829

Child Support:N/A

Maintenance:\$165 (then \$150) per week for life and eliminated 236(B)(d)(5) by stipulation

Exclusive Occupancy:No

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$5,000 if husband doesn't pay distributive award

Property Distribution to Wife:35% (\$47,182) of \$134,807 marital property to wife; failure to value furniture is waiver; 50% of husband's pension benefits to wife at retirement or time if goes to pay status, but it shall reduce his \$165 maintenance payment at \$150.

Number:44

Case:McDermott v McDermott (1984) 123 Misc 2d 355, 474 NYS2d 221 affd in part and revd in part on other grounds, mod, in part (2d Dept) 119 App Div 2d 370, 507 NYS2d 390, app dismd 69 NY2d 1028, 517 NYS2d 938, 511 NE2d 81

Comment:(husband abandoned wife in 1968; firemen's pension of husband was vested; Court has power to limit choice of pension option or designation of beneficiary and restrict trustees)

Years Married:34

Ages/Income:H - \$55,000 (62) W - unemployed (59)

Child Support:N/A

Maintenance:\$225/wk until death, remarriage or husband's retirement to collect pension

Exclusive Occupancy:Title of one house to wife and other to husband

Health & Medical Insurance:Yes - for wife

Dental Insurance:No

Life Insurance:No

Counsel Fees:additional \$7,500 (wife paid \$2,500 and husband paid \$500 to wife's attorney)

Property Distribution to Wife:Wife awarded 50% interest in marital property and 50% of husband's pension payments on retirement, and husband directed to designate wife beneficiary (until her death) of 50%.

Number:45

Case:Rodgers v Rodgers (1983, 2d Dept) 98 App Div 2d 386, 470 NYS2d 401

Comment:(permanent maintenance to be retroactive to date of request for T/M but no credit to husband where T/M exceeds permanent award; fairness not mathematical precision is the guide post)

Years Married:7

Ages/Income:H (40) - \$938/biweekly auto business W (54) - \$651/mo

Child Support:N/A

Maintenance:\$50/wk permanent

Exclusive Occupancy:No

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:None

Property Distribution to Wife:Wife not entitled to share of husband's interest in auto business acquired subsequent to commencement of action, nor share of husband's interest in real property which was negligible. Remanded for determination of wife's share of husband's non-vested police pension. "Actuarial testimony should not be considered talismanic."

Number:46

Case:Newell v Newell (1983) 121 Misc 2d 586, 468 NYS2d 814

Comment:(portion of matured and paying disability pension representing retirement subject to ED)

Years Married:23

Ages/Income:H - (53) - \$17,000/yr + \$15,024/yr disability pension W(40) - \$10,000/yr

Child Support:N/A

Maintenance:\$200/mo for 2 years

Exclusive Occupancy:to be sold

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:None

Property Distribution to Wife:Sell and divide net proceeds of home; wife to receive 47.22% of defendant's pension pay which he would have received after 18 years of service [% = numerator — the number of years parties married during which husband accumulated benefits and demoninator - the total number of years husband served prior to retirement] which is \$4,717.28 per year.

Number:47

Case:Harness v Harness (1984, 4th Dept) 99 App Div 2d 658, 472 NYS2d 234

Comment:(although husband's financial contribution to marital property was greater, wife's contribution of housekeeping services and her financial contribution support finding that marriage was an equal partnership)

Years Married:10

Ages/Income:W - \$259/wk

Child Support:N/A

Maintenance:\$100/wk from date of commencement of action to date of entry of order on appeal

Exclusive Occupancy:N/A

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:?

Property Distribution to Wife:?

Number:48

Case:De Stefano v De Stefano, 1-26-84, P. 14, Col. 6, Sup. Ct., Queens Co. (Miller, J.) mod (2d Dept, 1986) 119 App Div 2d 793, 501 NYS2d 419

Comment:(medical-psychiatrist license is marital property); remitted for a new trial

Years Married:10

Ages/Income:H-(41)) \$20,966 W-(47) \$30,000

Child Support:N/A

Maintenance:None

Exclusive Occupancy:N/A

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$1,500

Property Distribution to Wife:Remitted for a new trial on equitable distribution and possible reimbursement cost of completing the wife's education.

Number:49

Case:Spector v Spector, NYLJ 2-16-84, Sup. Ct., NY Co. (Lane, J.)

Comment:(wife suffering from cancer; Court considered husband's fault; distributed property in kind without arriving at fixed percentages; award of almost 50% of husband's earned 1981 income)

Years Married:10

Ages/Income:W - 48 H - 42

Child Support:\$200/wk until emancipation (1 child)

Maintenance:\$375/wk permanent

Exclusive Occupancy:N/A

Health & Medical Insurance:Yes - wife and child

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$25,000 to wife (already paid her attorney \$13,500); husband's conduct in litigation considered

Property Distribution to Wife:Court distributed properties held by the parties; wife received all income producing properties. Husband directed to hold vacation home until wife's death or child's majority and wife awarded exclusive occupancy 3 1/2 months of year; wife received properties worth \$319,000 subject to \$51,000 mortgages.

Number:50

Case:Patti v Patti (1984, 2d Dept) 99 App Div 2d 772, 472 NYS2d 20

Comment:

Years Married:16

Ages/Income:W - \$99/wk net H -

Child Support:1 child

Maintenance:4 years

Exclusive Occupancy:Until child 21 or emancipated

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Marital home divided equally one sale.

Number:51

Case:Rywak v Rywak (1984, 2d Dept) 100 App Div 2d 542, 473 NYS2d 239

Comment:

Years Married:?

Ages/Income:H -) about same W -) income

Child Support:No children

Maintenance:?

Exclusive Occupancy:Sale ordered at husband's option

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife to receive 50% of market value of house or 50% of the net proceeds on sale, and 50% of joint savings at time action begun.

Number:52**Case:**Roffman v Roffman (1983) 124 Misc 2d 636, 476 NYS2d 713**Comment:**(Court used "Most current" valuation; husband's furniture business started 3 years before marriage held marital property; husband directed to provide a bequest to wife as security)**Years Married:32****Ages/Income:**H (61) - \$73,558 W (62) - \$16,950**Child Support:**Emancipated**Maintenance:**\$1,250/mo for two years from entry of judgment**Exclusive Occupancy:**N/A**Health & Medical Insurance:**No**Dental Insurance:**No**Life Insurance:**No**Counsel Fees:**None**Property Distribution to Wife:**Wife received distributive award of all marital property except 20% of husband's close corporation (totalling \$467,000), plus a deferred interest of 50% of husband's profit sharing trust, when paid out, subject to tax liability. Distributive award of business to be paid in four annual payments beginning in one year.

Number:53**Case:**Alwell v Alwell (1984, 3d Dept) 98 App Div 2d 549, 471 NYS2d 899**Comment:**(wife awarded share of appreciation of house which was husband's separate property due to her "direct contribution" to mortgage and home improvements and his failure to show appreciation due to market)**Years Married:2****Ages/Income:**H (42) - \$25,950 W (49) - \$23,400**Child Support:**None**Maintenance:?****Exclusive Occupancy:**N/A**Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?**

Property Distribution to Wife:Each spouse retained own pension; remitted for a determination as to apportionment of appreciation of value of house.

Number:54

Case:Reiner v Reiner (1984, 2d Dept) 100 App Div 2d 872, 474 NYS2d 538

Comment:

Years Married:?

Ages/Income:

Child Support:\$25/week

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:None

Property Distribution to Wife:Wife received 50% of house and husband's business.

Number:55

Case:Wenzel v Wenzel (1984) 122 Misc 2d 1001, 472 NYS2d 830

Comment:(husband convicted of attempted murder of wife and imprisoned—mentally ill; wife unable to work because of stabbing injury; husband dissipated assets)

Years Married:18

Ages/Income:H (42) - imprisoned W (42) - on welfare

Child Support:\$225/wk (3 children)

Maintenance:\$125 per week permanent from date of judgment

Exclusive Occupancy:Wife awarded title to home

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$3,975 + disbursements to wife's attorneys

Property Distribution to Wife:Wife awarded 100% of jointly owned marital home and furnishings, and 100% of husband's vested police pension, as well as bank accounts and cars; appreciation of husband's separate real estate deemed marital property because of wife's contributions, and wife awarded 25% of sale price.

Number:56

Case:Ackley v Ackley (1984, 4th Dept) 100 App Div 2d 153, 472 NYS2d 804

Comment:(a wedding gift is marital property; but where gift is made by spouse's parents, most of it should go to that spouse)

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:Property deeded to husband and wife by wife's parents one year before divorce action, distributed by title to wife with husband to receive 1/2 the difference between its value (\$43,500) and the balance remaining on two loans (\$42,737.49).

Number:57

Case:Mechanick v Mechanick, NYLJ 6-7-84, P. 12, Col. 6, Sup. Ct., Queens Co. (Calabretta, J.)

Comment:(property is "marital" unless established otherwise)

Years Married:4 1/2

Ages/Income:H (38) minimal W (34) - on welfare

Child Support:custody of child to husband as "lesser of two evils"

Maintenance:None

Exclusive Occupancy:No

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$1,500

Property Distribution to Wife:\$12,00 in husband's name held "marital property" because he couldn't established otherwise and divided 50/50.

Number:58

Case:Seldon v Seldon, NYLJ 6-21-84, P. 11, Col. 2, Sup. Ct., NY Co. (Bambrick, J.)

Comment:(1978 antenuptial agreement valid; cut off date for marital property is date prior dismissed action for divorce was commenced)

Years Married:5

Ages/Income:H (43) W (43)

Child Support:No children

Maintenance:\$1,000 per month for 5 years

Exclusive Occupancy:No

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$10,000

Property Distribution to Wife:Ante-nuptial agreement did not bar property distribution as it made no mention of it; wife's failure to value marital property results in award of rehabilitative maintenance.

Number:59

Case:Ryan v Ryan, NYLJ 6-22-84, P. 15, Col. 6, Sup. Ct., Rich Co. (McBrien, J.) (See also # 149)

Comment:(house bought by husband before marriage is marital property)

Years Married:22 1/2

Ages/Income:H-(49) \$37,800 W-(46) \$17,819

Child Support:\$75/wk per child (for 2 children of 4)

Maintenance:\$50 per week until child support ends, remarriage, sale of house, or residing with a male non-relative

Exclusive Occupancy:Until youngest child 21 or emancipated, or wife's remarriage, or residing with a male non-non-relative

Health & Medical Insurance:Yes (for children)

Dental Insurance:No

Life Insurance:No

Counsel Fees:None

Property Distribution to Wife:Wife awarded \$260 per month from husband's current pension entitlement of \$641 a month, when paid; house to be divided 50/50 upon sale.

Number:60

Case:Sementilli v Sementilli (1984, 1st Dept) 102 App Div 2d 78, 477 NYS2d 626

Comment:("equitable does not mean equal")

Years Married:

Ages/Income:H - \$300/wk W - \$150/wk

Child Support:\$80/wk for 4 children

Maintenance:\$25 per week until youngest child 21 or emancipated or remarriage

Exclusive Occupancy:House to wife

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:None equally

Property Distribution to Wife:Home to wife; Italian property to husband; six other parcels divided.

Number:61

Case:Fassett v Fassett (1984, 3d Dept) 101 App Div 2d 604, 475 NYS2d 154

Comment:(valuation in statement of net worth of husband is an informal judicial admission)

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:"Roughly equal" distribution affirmed; wife is competent to testify to the value of personal property; husband's valuation of his business in financial affidavit is an informed judicial admission.

Number:62

Case:D'Alleva v D'Alleva, NYLJ 7-18-84, P. 12, Col. 1, Sup. Ct., Qns. Co. (Calabretta, J.)

Comment:(wife defaulted in appearing for trial; husband awarded custody)

Years Married:9

Ages/Income:H (54) - \$741/bi weekly W (34) - unemployed

Child Support:

Maintenance:\$90 per week for 2 years

Exclusive Occupancy:Exclusive use of one apartment to husband until youngest 21 or emancipated (2 fam. house)

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:No

Property Distribution to Wife:Pension of \$105/mo at age 65 and car to husband; when house sold net proceeds to be divided equally; until sale, rents and expenses of house to be shared equally.

Number:63

Case:Wilson v Wilson (1984, 1st Dept) 101 App Div 2d 536, 476 NYS2d 120, app dismd, motion dismd 63 NY2d 768, 481 NYS2d 688, 471 NE2d 460

Comment:(in short marriage with no children, wife entitled to be restored to economic situation which pre-dated marriage. Standard of living of limited weight)

Years Married:3

Ages/Income:H (64) - \$63,500 + perquisites W (37) \$17,550

Child Support:No children

Maintenance:\$200/wk for 3 years

Exclusive Occupancy:N/A

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$9,673

Property Distribution to Wife:Wife entitled to small percentage of husband's pension which is included in distributive award of \$15,000.

Number:64

Case:McKee v McKee, NYLJ, 8-28-84, P. 11, Col. 1, Sup. Ct., Nass. Co. (Postel, J.)

Comment:(court valued husband's negligence practice at \$250,000 taking into account the value of his legal education)

Years Married:27 1/2

Ages/Income:H - 54 W - 50

Child Support:N/A

Maintenance:\$300/wk for 3 years from entry of judgment

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$10,000 plus disbursements of \$1,452 and appraisal fees of \$4,300

Property Distribution to Wife:Wife awarded 50% of marital home (\$537,000 FMV), Shelter Island property (\$32,000 FMV), Copaigue property (\$65,000 FMV), boat (\$13,500 FMV), Puerto Rico property (\$39,000 FMV); Wife to retain interest in corporation and awarded distributive award of 35% (i.e., \$85,000) of negligence practice payable over five years with statutory interest.

Number:65

Case:Brennan v Brennan (1984, 3d Dept) 103 App Div 2d 48, 479 NYS2d 877, appeal after remand (3d Dept) 124 App Div 2d 410, 507 NYS2d 507

Comment:(although husband's farm started before marriage, it is marital property because of wife's efforts as lender, homemaker and mother, but husband gets back "seed money"; automatic accretions to marital property, after action started, remain marital)

Years Married:23

Ages/Income:H-? W-?

Child Support:\$75 for maintenance and child support remitted for allocation (1 child)

Maintenance:See child support

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:No

Counsel Fees:\$8,000

Property Distribution to Wife:Wife awarded \$217,463 representing 40% of marital property. Husband directed to make immediate payment of \$100,000 with balance secured by 3 year bond and mortgage with 9% interest.

Number:66

Case:Cohen v Cohen (1984, 2d Dept) 104 App Div 2d 841, 480 NYS2d 358, app dismd 64 NY2d 773, 485 NYS2d 990, 475 NE2d 457

Comment:(valuation of husband's interest in accounting firm, based on his own estimates, for the year in which action commenced)

Years Married:?

Ages/Income:?

Child Support:\$75/wk for maintenance and child support remitted for allocation (1 child)

Maintenance:See child support

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 50% of value of husband's interest in accounting practice which he valued at \$112,000 and 50% of net proceeds of sale of terms. Remitted to value and distribute pension.

Number:67

Case:Rubin v Rubin (1984, 2d Dept) 105 App Div 2d 736, 481 NYS2d 172

Comment:(Special Term failed to give sufficient weight to short duration of marriage, wife's lack of contribution to household and husband's business standard of living not important)

Years Married:7

Ages/Income:H - 75; (\$70,000/yr W - 45

Child Support:N/A

Maintenance:\$475 per week for five years or until death or remarriage

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$7,500

Property Distribution to Wife:Wife awarded 50% of net proceeds of sale of marital home and remitted for valuation and distribution of husband's pensions. Wife not entitled to share in appreciation of husband's separate business because she made no direct or indirect contribution.

Number:68

Case:Cunningham v Cunningham (1984, 3d Dept) 105 App Div 2d 997, 482 NYS2d 148

Comment:(“seed money” decision)

Years Married:

Ages/Income:H -37; \$34,000/yr W- 44 \$30,000/yr

Child Support:N/A

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Marital home to be sold and proceeds divided 65% to wife and 35% to husband after wife receives credit for initial downpayment on parties first home and other credits.

Number:69

Case:Lemczak v Lemczak (1984, 4th Dept) 105 App Div 2d 1157, 482 NYS2d 590

Comment:(equal division of marital property)

Years Married:14

Ages/Income:W - 35

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Equal division

Number:70

Case:Durso v Durso (1984, 2d Dept) 106 App Div 2d 608, 483 NYS2d 101

Comment:(wife’s efforts to educate self should not be a reason to limit maintenance)

Years Married:20

Ages/Income:H - \$32,430/yr W -\$8,600/yr

Child Support:\$50/week per child

Maintenance:Six years
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:71
Case:Pinkesz v Pinkesz, NYLJ, 12-4-84, P. 13, Col. 3, Sup. Ct., King's Co. (Ramirez, J.)
Comment:(support award based on pre trial conference)
Years Married:?
Ages/Income:?
Child Support:\$75/week
Maintenance:\$75/week for five years
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:None
Property Distribution to Wife:?

Number:72
Case:Barnes v Barnes (1984, 2d Dept) 106 App Div 2d 535, 483 NYS2d 358
Comment:(marital home and furnishings to wife. Husband's contributions were minimal)
Years Married:17
Ages/Income:W - 52; \$150/wk
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:All marital property to wife.

Number:73

Case:Isasi v Isasi-Diaz (1985, 2d Dept) 107 App Div 2d 661, 483 NYS2d 737

Comment:(husbands freelance additional income indicative of his capacity to earn larger sums in future)

Years Married:20

Ages/Income:H - \$55,600/yr. W - 41 \$3400/yr.

Child Support:\$25/week for 3 of 4 children

Maintenance:\$250/week for ten years

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:\$1500

Property Distribution to Wife:?

Number:74

Case:Bisca v Bisca (1985, 2d Dept) 108 App Div 2d 773, 485 NYS2d 302, app dismd 66 NY2d 741, 497 NYS2d 365, 488 NE2d 111

Comment:(where both spouses contributed equally to the marriage, a division should be made which is as equal as possible)

Years Married:29

Ages/Income:H - ? W - ?

Child Support:

Maintenance:

Exclusive Occupancy:Title to Wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife received title to property worth \$186,479 and, on appeal, a distributive award of \$36,639 payable over 5 years with statutory interest.

Number:75

Case:Antis v Antis (1985, 2d Dept) 108 App Div 2d 889, 485 NYS2d 770

Comment:(wife mentally ill, disfigured from burns and not college educated)

Years Married:28

Ages/Income:H - \$49, 700/yr

Child Support:Son's college tuition room & board

Maintenance:\$200/wk permanent

Exclusive Occupancy:To Wife for 18 months then sold and proceeds divided

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:1/2 of husband's retirement trust as of date of entry.

Number:76

Case:Nevils v Nevils (1985, 2d Dept) 109 App Div 2d 784, 486 NYS2d 1007

Comment:

Years Married:

Ages/Income:?

Child Support:\$75/wk per child for 2 children

Maintenance:\$100/wk for two years 10 months

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded furnishings and contents of marital residence, all monies in custodial accounts at time of separation.

Number:77

Case:Hillmann v Hillmann (1985, 2d Dept) 109 App Div 2d 777, 486 NYS2d 87,

Comment:(wife needs time to be self-supporting where youngest child 7; Exclusive occupancy to custodial parent)

Years Married:13

Ages/Income:H - W - (34)

Child Support:

Maintenance:10 years

Exclusive Occupancy:To wife until youngest 18 or sooner emancipated

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:78

Case:Schussler v Schussler (1985, 2d Dept) 109 App Div 2d 875, 487 NYS2d 67

Comment:(50% distribution where wife homemaker and raised children; No lump sum award)

Years Married:17 1/2

Ages/Income:?

Child Support:\$150/wk for 1 child (custody of 2 split)

Maintenance:\$300/wk for 8 years

Exclusive Occupancy:No

Health & Medical Insurance:Yes - Wife

Dental Insurance:

Life Insurance:Wife to be named beneficiary

Counsel Fees:

Property Distribution to Wife:Wife awarded 50% of marital assets payable over 8 year period (plus interest under CPLR 5004) where husbands, "current financial statement" indicates he can't pay in a lump sum.

Number:79

Case:Tanner v Tanner (1985, 3d Dept) 107 App Div 2d 980, 484 NYS2d 700

Comment:(absent extraordinary circumstances sale of home should be ordered)

Years Married:18

Ages/Income:H - (37) \$14,697/yr W - (37) \$16,786/yr

Child Support:\$50/wk (custody of 2 split)

Maintenance:\$50/wk until wife's remarriage

Exclusive Occupancy:No

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:None

Property Distribution to Wife:Marital residence to be sold and net proceeds equally divided; Wife to receive \$16,398 (over 3 years with interest) as her share of husband's pension.

Number:80

Case:Stevens v Stevens (1985, 3d Dept) 107 App Div 2d 987, 484 NYS2d 708, appeal after remand (3d Dept) 112 App Div 2d 1091, 492 NYS2d 519

Comment:(wife's marital fault a factor in awarding maintenance; her wasteful spending also a factor)

Years Married:15

Ages/Income:?

Child Support:?

Maintenance:\$50/wk for 6 years and husband to pay mortgage and c/c on home until sold

Exclusive Occupancy:To wife until youngest (14) is 21

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$4,000 & \$1812 disb. & \$2400 expert fees

Property Distribution to Wife:

Number:81

Case:Murphy v Murphy (1985, 2d Dept) 110 App Div 2d 688, 487 NYS2d 812

Comment:(wife not capable of competing in today's job market, entitled to permanent maintenance)

Years Married:24

Ages/Income:H - W - 47

Child Support:\$75/week per child (3)

Maintenance:\$200/week permanent

Exclusive Occupancy:?

Health & Medical Insurance:Remitted for hearing

Dental Insurance:?

Life Insurance:Remitted for hearing

Counsel Fees:Remitted for hearing

Property Distribution to Wife:?

Number:82

Case:Cappiello v Cappiello (1985, 1st Dept) 110 App Div 2d 608, 488 NYS2d 399, affd 66 NY2d 107, 495 NYS2d 318, 485 NE2d 983

Comment:(compensation for lost earnings is not authorized. EDL is not designed as a penalty or windfall. Marriage does not automatically vest rights)

Years Married:8

Ages/Income:H - 52 \$80,000 W - 48

Child Support:N/A

Maintenance:None

Exclusive Occupancy:No

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:

Property Distribution to Wife:25% of the marital property to wife.

Number:83

Case:Franz v Franz (1985, 4th Dept) 107 App Div 2d 1060, 486 NYS2d 568

Comment:

Years Married:

Ages/Income:?

Child Support:\$1020/month

Maintenance:\$200/month for 2 years discontinued by App Div

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:84

Case:Nolan v Nolan (1985, 3d Dept) 107 App Div 2d 190, 486 NYS2d 415

Comment:(marital fault is a proper consideration in awarding maintenance. Appreciation in Husband's stocks are marital property. Children's assets considered)

Years Married:16

Ages/Income:**Child Support:**\$75/week per child (3) to 21**Maintenance:**\$100/week for 3 years**Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:**50% of the marital property (\$51,134) payable over 5 years; remanded for further distribution.

Number:85**Case:**Komlusi v Komlusi, NYLJ, 4-19-85, P. 12, Col. 2, Sup. Ct. NY Co. (Kirschenbaum, J.)**Comment:**(no maintenance because wife failed to ask for it)**Years Married:****Ages/Income:?****Child Support:**\$75/week**Maintenance:**None**Exclusive Occupancy:**Yes - of apartment**Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:**50% of sale of apartment if it is converted to cooperative ownership.

Number:86**Case:**Pacifico v Pacifico (1984, 4th Dept) 101 App Div 2d 709, 475 NYS2d 952**Comment:**(equitable Dist. does not require distribution)**Years Married:**8**Ages/Income:****Child Support:**N/A**Maintenance:**\$100/wk for 18 months**Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?**

Counsel Fees:?

Property Distribution to Wife: Remitted for findings in property distribution.

Number:87

Case:Hornbeck v Hornbeck (1984, 2d Dept) 104 App Div 2d 791, 480 NYS2d 45

Comment:

Years Married:?

Ages/Income:?

Child Support:\$300/wk

Maintenance:\$200/wk for 3 years or until remarriage

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$11,000

Property Distribution to Wife:Distributive award to wife of \$33,537, payable \$2,000 a month.

Number:88

Case:Beatrice H. v Eugene H., NYLJ, 1-14-85, P. 15, Col. 1, Sup. Ct., Kings Co., (Ramirez, J.)

Comment:(equitable distribution in common law marriage)

Years Married:27

Ages/Income:H - 51 \$1240/mo W - 53 \$175/wk net

Child Support:

Maintenance:\$50/wk permanent

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$1,500

Property Distribution to Wife:Wife awarded 50% of net proceeds of sale of marital home after reimbursing husband, off the top, for cost of oil burner. No distribution of husband's pension because no testimony as to value.

Number:89

Case:Gainer v Gainer (1985, 2d Dept) 111 App Div 2d 308, 489 NYS2d 297

Comment:(remanded for new distributive award; trial judge must value property and cannot average competing values)

Years Married:?

Ages/Income:?

Child Support:\$100/wk for 2 children to be reduced to \$75 when oldest is 21

Maintenance:\$50/wk for 5 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$5,000

Property Distribution to Wife:Marital property distributed 25% to wife/75% to husband; Wife awarded \$21,491 share of husband's pension and distributive award of \$15,717; Appellate Division deleted distributive award and remanded.

Number:90

Case:Knapp v Knapp (1984, 3d Dept) 105 App Div 2d 1019, 483 NYS2d 461

Comment:(ancillary issues determined by Family Court; exclusive occupancy is usually given to custodial parent)

Years Married:?

Ages/Income:?

Child Support:\$50/wk plus mortgage, taxes & insurance

Maintenance:?

Exclusive Occupancy:To wife until youngest graduates high school or is 19

Health & Medical Insurance:?

Dental Insurance:

Life Insurance:

Counsel Fees:?

Property Distribution to Wife:Equal division of net proceeds of sale of marital home.

Number:91

Case:Casale v Casale (1985, 2d Dept) 111 App Div 2d 737, 489 NYS2d 775

Comment:(rehabilitative maintenance to wife who worked while husband attended law school and parties agreed at outset she would complete education)

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$200/wk for 4 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$2,000

Property Distribution to Wife:?

Number:92

Case:Jeruchimowitz v Jeruchimowitz, NYLJ, 7-30-85, P. 6. Col. 1, Sup. Ct., NY Co., (Turret, J.)

Comment:(market value as of date of summons). Co-op leased to wife before marriage and subscribed by wife after is marital property)

Years Married:6

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:No

Property Distribution to Wife:75% of net value of co-op and 39.4% of tax refund (in proportion to incomes.)

Number:93

Case:Day v Day (1985, 2d Dept) 112 App Div 2d 972, 492 NYS2d 783

Comment:(5 years maintenance for rehabilitation)

Years Married:?

Ages/Income:W - \$247/wk

Child Support:\$37.50/wk per child (2)

Maintenance:\$75/wk for 5 years

Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:“Roughly equal”.

Number:94
Case:Ferriera v Ferriera (1985, 4th Dept) 112 App Div 2d 22, 490 NYS2d 389
Comment:(unallocated support where husband said he would welcome it; “Kay” applies)
Years Married:?
Ages/Income:H - \$44,000+/yr
Child Support:
Maintenance:\$411.15 per week
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:95
Case:Jordan v Jordan, NYLJ 8-20-85, P. 11, Col. 6 Sup. Ct., Kings Co. (Rigler, J.)
Comment:(lottery of \$1.7 million is marital property)
Years Married:6
Ages/Income:H - unemployed W - \$180/wk - unemployment insurance
Child Support:\$150/wk
Maintenance:None
Exclusive Occupancy:?
Health & Medical Insurance:Yes - for children
Dental Insurance:
Life Insurance:\$25,000 for children
Counsel Fees:No
Property Distribution to Wife:Wife awarded 25% of lottery winnings and co-op.

Number:96

Case:Pottala v Pottala (1985, 3d Dept) 112 App Div 2d 553, 490 NYS2d 936

Comment:(permanent maintenance appropriate where wife is economically useful but cannot support herself sufficiently)

Years Married:9

Ages/Income:H - \$37,878 W - \$13,124

Child Support:?

Maintenance:\$110/wk until husband's death or retirement

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:30% of husband's pension.

Number:97

Case:Caesar v Caesar, NYLJ 8-1-85, P. 13, Col. 3, Sup. Ct., Kings Co., (Rigler, J.)

Comment:(military pension)

Years Married:8

Ages/Income:H - \$25,000 W -

Child Support:?

Maintenance:\$50/wk for one year

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$1,000.00

Property Distribution to Wife:40% of husband's military pension, 50% of \$2,000 IRS and 25% of 6,000 savings.

Number:98

Case:Delaney v Delaney (1985, 1st Dept) 111 App Div 2d 111, 489 NYS2d 487, app dismd without op 65 NY2d 609 and app dismd without op 65 NY2d 1052 and reh gr, recalled, substituted op (1st Dept) 114 App Div 2d 312, 494 NYS2d 4

Comment:(husband to convey house to wife in satisfaction of arrears and as part of equitable distribution)

Years Married:23

Ages/Income:H-(45) \$100,000 W-(47) \$20,000

Child Support:?

Maintenance:\$400/wk

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:Yes

Counsel Fees:?

Property Distribution to Wife:?

Number:99

Case:Maloney v Maloney (1985, 2d Dept) 114 App Div 2d 440, 494 NYS2d 356 (See also #120)

Comment:(husband's medical license distributed)

Years Married:?

Ages/Income:H-? W-?

Child Support:\$300/wk (2 children)

Maintenance:\$75/wk for one Year

Exclusive Occupancy:Title to Wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$11,379.96

Property Distribution to Wife:50% of marital home to wife.

Number:100

Case:Weinstock v Weinstock (1985, 2d Dept) 114 App Div 2d 450, 494 NYS2d 361 (See also #43)

Comment:(pension award illusory; (error to award a \$5,000 counsel fee if husband fails to timely pay distributive award))

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$165/wk permanent to be reduced upon receipt of pension monies

Exclusive Occupancy:?

Health & Medical Insurance:Yes - for wife

Dental Insurance:?

Life Insurance:Yes - for wife

Counsel Fees:None

Property Distribution to Wife:50% of husband's pension payments, when received (not really an award as maintenance is reduced) \$46,246.00 to wife out of \$133,861.00.

Number:101

Case:Delgado v Delgado, NYLJ, 11-4-85, P. 14, Col. 2. Sup. Ct., NY Co. (Cotton, J.) (See also #168)

Comment:(wife awarded 1/3 of husband's pension. Her contributions were equal to those of husband)

Years Married:24

Ages/Income:H-\$25,000 W-\$25,000

Child Support:—

Maintenance:None

Exclusive Occupancy:No

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:None

Property Distribution to Wife:38 1/3 of husband's pension to wife, payable when received, less taxes. 50% of jointly owned marital residence to wife.

Number:102

Case:Armando v Armando (1985, 2d Dept) 114 App Div 2d 875, 495 NYS2d 192

Comment:

Years Married:

Ages/Income:

Child Support:

Maintenance:? for 10 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 50% of husband's pension in a lump sum payment.

Number:103

Case:Michalson v Michalson (1985, 2d Dept) 112 App Div 2d 269, 492 NYS2d 44

Comment:

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$100/wk permanent until house sold “plus house payments” and then \$200/wk

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:104

Case:MacAskill v MacAskill (1985, 2d Dept) 114 App Div 2d 1013, 495 NYS2d 451

Comment:(wife stopped work at husband’s request and contributed her inheritance to the marriage)

Years Married:22

Ages/Income:H-(55) \$42,000 W-(54)

Child Support:—

Maintenance:\$225/wk for 3 years, then \$125/wk

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:105

Case:Van Housen v Van Housen (1985, 2d Dept) 114 App Div 2d 411, 494 NYS2d 135

Comment:(although no expert testimony presented as to value of house, stock or pension, a 50/50 split effectuates the intent of EDL)

Years Married:?

Ages/Income:

Child Support:\$50/wk per child

Maintenance:\$200/wk

Exclusive Occupancy:To wife until youngest 21 or occupies house with a male

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of husband's stock and pension (as of date of commencement) (to wife) and 50% of house proceeds when sold.

Number:106

Case:Wegman v Wegman (1985) 129 Misc 2d 968, 494 NYS2d 933, affd in part amd mod in part (2d Dept) 123 App Div 2d 220, 509 NYS2d 342, motion gr, amd (App Div, 2d Dept) 512 NYS2d 410

Comment:(business valued as of 1972 by trial court because wife didn't contribute after separation; App Div reversed and remitted for new distributive award)

Years Married:42

Ages/Income:H-(61) W-(60)

Child Support:N/A

Maintenance:None

Exclusive Occupancy:

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:To be redetermined

Property Distribution to Wife:To be redetermined.

Number:107

Case:Weilert v Weilert (1985, 2d Dept) 115 App Div 2d 473, 495 NYS2d 707, appeal after remand (2d Dept) 167 App Div 2d 463, 562 NYS2d 139

Comment:(since no evidence at trial as to value remitted to determine present value of husband's pension and new property determination)

Years Married:?

Ages/Income:H-\$28,000/yr W-\$383.88/2 wks

Child Support:\$120/wk

Maintenance:\$50/wk for 5 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife: Remitted for a new determination as to marital property.

Number:108

Case:Pulitzer v Pulitzer (1988, 1st Dept) 134 App Div 2d 84, 523 NYS2d 508

Comment:(husband's business valued by "value to owner method"; 1st Dept doesn't prohibit open-ended payments; co-op rights accruing after commencement are not marital property)

Years Married:9

Ages/Income:H-(43) \$150,000 W-(39) unemployed

Child Support:\$300/wk plus 3/4 of pvt. school, camp, dental and medical

Maintenance:\$527/wk for 3 years

Exclusive Occupancy:No

Health & Medical Insurance:For child

Dental Insurance:No

Life Insurance:\$160,000 for child and \$60,000 for wife

Counsel Fees:No

Property Distribution to Wife:Wife awarded 50% (43,750) of sale of summer house and care and 25% of value of husband's business. Both parties, as joint owners can utilize tax shelter.

Number:109

Case:Price v Price (1985, 2d Dept) 113 App Div 2d 299, 496 NYS2d 455, later proceeding (2d Dept) 115 App Div 2d 531, 496 NYS2d 464, later proceeding (2d Dept) 115 App Div 2d 531, 496 NYS2d 689 and ctd ques ans, affd 69 NY2d 8, 511 NYS2d 219, 503 NE2d 684

Comment:(appreciation in separate property due to spouse's contributions as homemaker and parent is marital property)

Years Married:12

Ages/Income:

Child Support:\$600/wk 2 children

Maintenance:Carrying charges on residence until sold

Exclusive Occupancy:?

Health & Medical Insurance:For children
Dental Insurance:For children
Life Insurance:For children
Counsel Fees:
Property Distribution to Wife:Remitted for hearing to determine amount of appreciation.

Number:110
Case:Michalek v Michalek (1985, 3d Dept) 114 App Div 2d 655, 494 NYS2d 487
Comment:(no equitable distribution of pension because of wife's failure of proof)
Years Married:5
Ages/Income:?
Child Support:N/A
Maintenance:Waived
Exclusive Occupancy:
Health & Medical Insurance:Waived
Dental Insurance:Waived
Life Insurance:Waived
Counsel Fees:Waived
Property Distribution to Wife:2/3 to husband; 1/3 to wife; pension could not be divided because it was not valued.

Number:111
Case:Griffin v Griffin (1985, 2d Dept) 115 App Div 2d 587, 496 NYS2d 249
Comment:(husband guilty of economic fault; can use annual earnings where no evidence of value of business)
Years Married:
Ages/Income:
Child Support:\$100/wk
Maintenance:\$200/wk for 2 years
Exclusive Occupancy:Title to wife
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$15,756 to wife
Property Distribution to Wife:50% to wife.

Number:112

Case:Bara v Bara (1985, 2d Dept) 115 App Div 2d 628, 496 NYS2d 287, app dismd without op 68 NY2d 664, 505 NYS2d 1028 and app den 70 NY2d 609, 522 NYS2d 110, 516 NE2d 1223, 67 NY2d 609 and app dismd without op 68 NY2d 664, 505 NYS2d 1028 and app den 70 NY2d 609, 522 NYS2d 110, 516 NE2d 1223

Comment:(valued thrift plan as of date of commencement)

Years Married:20

Ages/Income:?

Child Support:N/A

Maintenance:\$165/wk permanent

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$7,037 to wife

Property Distribution to Wife:Wife awarded 50% of husband's thrift plan and shares of stock which appreciated due to market.

Number:113

Case:Rosen v Rosen (1985, 4th Dept) 115 App Div 2d 233, 495 NYS2d 814, later proceeding (4th Dept) 115 App Div 2d 237, 495 NYS2d 817

Comment:(automatic decrease in maintenance & child support where wife a student)

Years Married:17

Ages/Income:H-\$55,000 W-0

Child Support:\$100/wk per child (2), to be reduced after 3 yrs

Maintenance:\$200/wk for 2 yrs. then \$100/wk for yr

Exclusive Occupancy:N/A

Health & Medical Insurance:Husband to provide for 3 yrs for children and then parties equally share cost

Dental Insurance:Parties to share all uninsured medical, dental & orthodontia

Life Insurance:\$100,000 for children so long as husband liable for support

Counsel Fees:?

Property Distribution to Wife:?

Number:114

Case:Parsons v Parsons (1985, 4th Dept) 115 App Div 2d 289, 496 NYS2d 138

Comment:("seed money" returned to wife)

Years Married:11

Ages/Income:?

Child Support:N/A

Maintenance:\$85/wk permanent

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$600 to wife

Property Distribution to Wife:Net proceeds of house divided equally after reimbursing wife \$60,000 her house was worth when transferred to joint names after marriage. Husband liable for home improvement loan.

Number:115

Case:Sorrentino v Sorrentino (1986, 2d Dept) 116 App Div 2d 564, 497 NYS2d 420

Comment:(home valued as of date of trial; distribution of bank accounts reflected what each brought in marriage)

Years Married:7

Ages/Income:H-\$30,000 W-0

Child Support:?

Maintenance:\$100/wk for 5 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:1/2 of marital residence (i.e., \$44,000) and 25% of parties bank accounts (i.e., \$5,122.50) to wife.

Number:116

Case:Serrano, v Serrano, NYLJ 1-26-86, P. 17, Col. 1, Sup. Ct., Kings Co. (Schneier, J)

Comment:(husband incarcerated for assaulting wife)

Years Married:4

Ages/Income:H-(34)-0 W-(23)-\$15,000

Child Support:?

Maintenance:None

Exclusive Occupancy:Title to co-op to husband

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:None

Property Distribution to Wife:Court awarded title to \$6,000 co-op to husband and directed he pay wife \$3,000 within 9 months.

Number:117

Case:Bofford v Bofford (1986, 2d Dept) 117 App Div 2d 643, 498 NYS2d 385, app gr 68 NY2d 603 and app dismd without op 68 NY2d 808

Comment:(proper to value business as of date of commencement and consider post-commencement events in equitable distribution)

Years Married:?

Ages/Income:?

Child Support:? (1 child)

Maintenance:\$500/wk for 2 yrs then \$300/wk until death or remarriage

Exclusive Occupancy:?

Health & Medical Insurance:For wife & daughter

Dental Insurance:For wife & daughter

Life Insurance:For wife & daughter in amount of unpaid balance of distributive award

Counsel Fees:\$27,500 to wife plus \$6,490 for appraisal and expert fees

Property Distribution to Wife:50% of defendant's business (i.e., \$216,666) to wife payable over 15 years.

Number:118

Case:Bartal v Bartal (1986, 2d Dept) 117 App Div 2d 698, 498 NYS2d 844

Comment:(wife's employment is insufficient to meet reasonable needs does not preclude maintenance)

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$25/wk for 5 years retroactive to 3/4/83

Exclusive Occupancy:No

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of net proceeds of sale of marital home to wife.

Number:119

Case:Clarkson v Clarkson (1986, 3d Dept) 116 App Div 2d 824, 496 NYS2d 854

Comment:(valuation of a debt owed, on an annuity cost basis is proper)

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:House, furnishings and cash to wife; business to husband; each party received property worth \$78,000.

Number:120

Case:Maloney v Maloney, NYLJ, 5-16-86, P. 17, Col. 2, Sup. Ct., Rich. Co. (Kuffner, J.) (See also # 99)

Comment:(husband's medical license distributed)

Years Married:15

Ages/Income:H-W-1700

Child Support:College education

Maintenance:None

Exclusive Occupancy:Title to wife

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:Yes

Counsel Fees:None

Property Distribution to Wife:Wife kept house she bought after separation and was given distributive award of \$456,632 representing 35% of value of license payable over 10 years with 8% compound interest.

Number:121

Case:Vasquez v Vasquez, NYLJ, 4-4-86, P. 13, Col. 1., Sup. Ct., NY Co. (Schackman, J)

Comment:(parties pooled all expenses; distributive award of husband's art career denied)

Years Married:14

Ages/Income:H-employed W-in school

Child Support:N/A

Maintenance:None

Exclusive Occupancy:N/A

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:None

Property Distribution to Wife:None

Number:122

Case:Spector v Spector, NYLJ, 3-21-86, P. 13, Col. 2, Sup. Ct. NY. Co. (Baer, J)

Comment:(no distributive award to wife of husband's rock management business which started before marriage)

Years Married:3

Ages/Income:?

Child Support:N/A

Maintenance:\$400/wk 4 years

Exclusive Occupancy:Occupancy of apartment

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$20,000 + \$1,800 accountant's fee & \$300 appraisal fee

Property Distribution to Wife:Wife awarded 50% of net equity in house 1/2 of furniture

Number:123

Case:Coffey v Coffey (1986, 2d Dept) 119 App Div 2d 620, 501 NYS2d 74

Comment:(“seed money” case; wife not entitled to 50/50 share of assets husband brought into marriage and made marital property)

Years Married:15

Ages/Income:W-\$150/wk

Child Support:?

Maintenance:\$160/wk for 3 years

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:Hearing ordered

Property Distribution to Wife:Wife entitled to 1/2 of increase in appreciation of home and certificates of deposit.

Number:124

Case:Dayanoff v Dayanoff (1986, 2d Dept) 118 App Div 2d 679, 500 NYS2d 31

Comment:(wife awarded certain properties in event husband fails to pay debts on marital residence)

Years Married:?

Ages/Income:?

Child Support:\$100/wk

Maintenance:\$400/wk Permanent

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:Hearing ordered

Property Distribution to Wife:Wife awarded title to the marital residence free of outstanding debts.

Number:125

Case:Erdheim v Erdheim (1986, 2d Dept) 119 App Div 2d 623, 501 NYS2d 77, app den 68 NY2d 607

Comment:(wife not required to reduce life-style in view of her husband's high earnings prior to leaving)

Years Married:15

Ages/Income:H-(38) \$150,000 W-(35)

Child Support:

Maintenance:\$50/wk permanent

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:\$10,000 + \$1,908 disbursements

Property Distribution to Wife:Wife awarded Cadillac, furnishings, jewelry, furs, china, marital residence and distributive award of \$18,808. Also necessities of \$41,340, arrears of \$68,059 and lien of \$2,500 set-off against husband's share of house.

Number:126

Case:Gannon v Gannon (1986, 4th Dept) 116 App Div 2d 1030, 498 NYS2d 647

Comment:(remitted for permanent maintenance and new property distribution)

Years Married:27+1/2

Ages/Income:H-\$24,000 W-(46) \$10,000

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:Trial court directed to fix fees on remittal

Property Distribution to Wife:

Number:127

Case:Gundlah v Gundlah (1986, 4th Dept) 116 App Div 2d 1026, 498 NYS2d 641, app den 68 NY2d 603

Comment:

Years Married:?

Ages/Income:?

Child Support:

Maintenance:\$250/wk for 3 years
Exclusive Occupancy:
Health & Medical Insurance:
Dental Insurance:
Life Insurance:Remitted on this issue
Counsel Fees:
Property Distribution to Wife:Furniture to wife.

Number:128
Case:Naramore v Naramore (1986, 3d Dept) 118 App Div 2d 899, 499 NYS2d 463
Comment:
Years Married:19
Ages/Income:
Child Support:Ref. to Fam. Ct
Maintenance:\$35/wk for 3 years
Exclusive Occupancy:
Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:Hearing directed
Property Distribution to Wife:Wife awarded 50% of marital property.

Number:129
Case:Wilbur v Wilbur (1986, 3d Dept) 116 App Div 2d 953, 498 NYS2d 525, appeal after remand (3d Dept) 130 App Div 2d 853, 515 NYS2d 636
Comment:(zero value to husband's business based on asset valuation method)
Years Married:?
Ages/Income:H-W-(46)
Child Support:
Maintenance:\$250/wk permanent
Exclusive Occupancy:
Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:
Property Distribution to Wife:

Number:130

Case:Zacharek v Zacharek (1986, 4th Dept) 116 App Div 2d 1004, 498 NYS2d 625

Comment:(wife awarded 70% of marital property considering its origin)

Years Married:6

Ages/Income:

Child Support:

Maintenance:\$75/wk for 2 years

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:?

Property Distribution to Wife:50% of husband's pension to wife; 70% of marital property to wife.

Number:131

Case:Neumark v Neumark (1986, 2d Dept) 120 App Div 2d 502, 501 NYS2d 704

Comment:(profit sharing is subject to equitable distribution; wife received slightly greater share of net equity in property)

Years Married:28

Ages/Income:H-? W-(62)

Child Support:N/A

Maintenance:\$2,500/mo permanent

Exclusive Occupancy:Title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:Hearing directed

Property Distribution to Wife:Wife awarded 50% of husband's vested pension and profit sharing and slightly greater share of net equity in 3 parcels of real property.

Number:132

Case:Harrell v Harrell (1986, 2d Dept) 120 App Div 2d 565, 502 NYS2d 57

Comment:(error not to distribute assets which one spouse dissipated without satisfactory explanation)

Years Married:

Ages/Income:?

Child Support:

Maintenance:?

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:?

Property Distribution to Wife:?

Number:133

Case:Zuch v Zuch (1986, 1st Dept) 117 App Div 2d 397, 503 NYS2d 343

Comment:(co-op which closed after marriage is marital property)

Years Married:9

Ages/Income:H-(58) W-(37)

Child Support:Unemployed N/A

Maintenance:None

Exclusive Occupancy:

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:None

Property Distribution to Wife:Co-op distributed 51.17% to husband and 47.82% to wife in proportion to their contributions.

Number:134

Case:Kerlinger v Kerlinger (1986, 2d Dept) 121 App Div 2d 691, 504 NYS2d 454

Comment:(permanent maintenance for wife who hadn't worked in 20 years)

Years Married:26

Ages/Income:?

Child Support:N/A

Maintenance:\$175/wk permanent

Exclusive Occupancy:?

Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:135

Case:Kaltenbach v Kaltenbach (1986, 2d Dept) 121 App Div 2d 689, 504 NYS2d 452

Comment:(error to value coin and stamp collections at \$10,000 each)

Years Married:?

Ages/Income:?

Child Support:\$200/wk

Maintenance:3 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$35,000

Property Distribution to Wife:Wife awarded 50% of marital home, 20% of realty; joint liabilities to be paid from sale of home before distribution of proceeds.

Number:136

Case:Addeo v Addeo, NYLJ, 7-15-86, P. 12, Col. 6, Sup. Ct, Kings Co. (Rigler, J)

Comment:(police disability payments are not a marital asset; wife's jewelry not subject to reclamation)

Years Married:20

Ages/Income:?

Child Support:\$300/mo to wife for 10 yr old. Each to support older child in their custody

Maintenance:None

Exclusive Occupancy:Until 10 year old child was 16

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:None

Property Distribution to Wife:Equitable distribution of house when sold, stock, joint accounts and tax liabilities.

Number:137

Case:Taylor v Taylor (1986, 2d Dept) 122 App Div 2d 134, 504 NYS2d 698

Comment:(maintenance for 7 years where wife had no skills and no high school diploma)

Years Married:16

Ages/Income:H-W-(32)

Child Support:N/A—Custody awarded to husband

Maintenance:7 yrs.

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$2,500

Property Distribution to Wife:?

Number:138

Case:Lobotsky v Lobotsky (1986, 2d Dept) 122 App Div 2d 253, 505 NYS2d 444

Comment:(equitable distribution where marriage declared void; husband entitled to “seed money”, reappraisal of maintenance after 3 years)

Years Married:10

Ages/Income:H-? W-?

Child Support:\$50/wk per child (2)

Maintenance:\$75/wk for 3 yrs at which time a reappraisal of plaintiff's financial status may be made

Exclusive Occupancy:No

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 50% of net proceeds from sale of marital home and furnishings after credit of \$18,891 to husband.

Number:139

Case:Douglas v Douglas (1986) 132 Misc 2d 203, 503 NYS2d 530

Comment:(wife to pay 1/2 of joint debts from her inheritance)

Years Married:19

Ages/Income:H-\$50,000 W-?

Child Support:\$350/wk maint. & child support

Maintenance:see child support

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:140

Case:Basile v Basile (1986, 2d Dept) 122 App Div 2d 759, 505 NYS2d 448, later proceeding (2d Dept) 147 App Div 2d 670, 538 NYS2d 998

Comment:(husband awarded \$15,000 from former marital residence since it was bought prior to marriage and he provided downpayment of \$15,000)

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:None

Property Distribution to Wife:?

Number:141

Case:Korman v Korman, NYLJ, 9-16-86, P. 13, Col. 4, Sup. Ct., Kings Co. (Rigler, J)

Comment:(distribution of wife's medical license and husband's medical practice. Husband awarded 20% of wife's license. License merges into practice)

Years Married:12

Ages/Income:H-? W-?

Child Support:\$1,250/mo child & private school, wife to pay camp

Maintenance:None

Exclusive Occupancy:House to husband

Health & Medical Insurance:Husband to pay 1/2 of all uninsured medical and dental

Dental Insurance:

Life Insurance:Husband to provide \$250,000 per child

Counsel Fees:None

Property Distribution to Wife:Wife awarded 30% (\$69,000) of husband's medical practice, \$34,000 from \$100,000 joint account, 35% (\$234,500) of Treasury Bill, 50% (\$100,000) of equity in marital home as of date of commencement, 20% (\$48,860) of husband's Keogh and IRA, 50% (\$4,275) of Israeli bond 50% (\$23,225) of Oppenheimer Fund, 25% (\$60,000) of tax shelters. Husband awarded 20% (\$70,400) of wife's medical license.

Number:142

Case:Lohmiller v Lohmiller, NYLJ, 9-16-86, P. 15, Col. 2, Sup. Ct., West Co. (Buell, J) (See also # 237)

Comment:

Years Married:13

Ages/Income:H-(43) \$47,000 W-(39) unemployed

Child Support:

Maintenance:\$175/wk until September 30, 1989

Exclusive Occupancy:Directed Sold

Health & Medical Insurance:Yes—defendant to maintain

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$7,500 to wife

Property Distribution to Wife:Marital residence to be sold and net proceeds equally divided; automobiles to each spouse, 3rd automobile to be sold and proceeds divided; wife awarded 50% (\$3,250) of husband's profit sharing; 50% (\$6,850) of CD; and 50% of savings.

Number:143

Case:Mortimer v Mortimer, NYLJ, 9-23-86, P. 7, Col. 4, Sup. Ct., NY Co. (Stecher, J)

Comment:(sliding scale reduction of maintenance award)

Years Married:15

Ages/Income:H-(43) \$200,000 W-(41)
Child Support:\$10,000/yr per child
Maintenance:\$40,000/yr for 5 years; then reduced by \$10,000/yr starting 6th year
Exclusive Occupancy:Co-op directed sold
Health & Medical Insurance:Medical and dental for children
Dental Insurance:
Life Insurance:No
Counsel Fees:None
Property Distribution to Wife:Co-op to be sold and net proceeds after payment of loans to be equally divided.

Number:144
Case:Bidwell v Bidwell (1986, 3d Dept) 122 App Div 2d 364, 504 NYS2d 327
Comment:(not error to refuse to allow expert testimony on value of wife's services; radiology practice valued at zero)
Years Married:30
Ages/Income:H-(56) W-(54)
Child Support:N/A
Maintenance:\$1,200/mo for 2 yrs then \$1,000/mo thereafter permanent
Exclusive Occupancy:
Health & Medical Insurance:No
Dental Insurance:No
Life Insurance:No
Counsel Fees:None
Property Distribution to Wife:Wife awarded marital property worth \$120,717. Husband awarded marital property worth \$96,325. Court valued husband's radiology practice at zero.

Number:145
Case:Musumeci v Musumeci (1986) 133 Misc 2d 139, 506 NYS2d 629
Comment:(pension valued as of date of commencement; no contributions of wife to marriage after husband's abandonment)
Years Married:6
Ages/Income:H-? W-?
Child Support:N/A
Maintenance:Not requested

Exclusive Occupancy:No
Health & Medical Insurance:No
Dental Insurance:No
Life Insurance:No
Counsel Fees:\$3,000 to wife
Property Distribution to Wife:Wife awarded \$716 a year from husband's pension.

Number:146
Case:Thompson v Pittman (1986, 2d Dept) 123 App Div 2d 683, 506 NYS2d 979
Comment:(house bought prior to marriage)
Years Married:?
Ages/Income:H-? W-?
Child Support:\$200/wk
Maintenance:No
Exclusive Occupancy:
Health & Medical Insurance:No
Dental Insurance:No
Life Insurance:No
Counsel Fees:\$2,000 to wife
Property Distribution to Wife:Wife awarded \$18,000 distributive award.

Number:147
Case:Ahrend v Ahrend (1986, 2d Dept) 123 App Div 2d 731, 507 NYS2d 202
Comment:(given the long duration of the marriage, property should be equally divided)
Years Married:22
Ages/Income:H-unemployed W-\$27,000
Child Support:remitted for new child support hearing
Maintenance:remitted for new hearing on maintenance
Exclusive Occupancy:
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$2,000 to wife
Property Distribution to Wife:Proceeds of marital home and IBM stock split 50/50.

Number:148

Case:Eli v Eli (1986, 2d Dept) 123 App Div 2d 819, 507 NYS2d 435

Comment:(100% of marital property to wife)

Years Married:?

Ages/Income:H-? W-?

Child Support:N/A

Maintenance:\$100/wk for 1 year, then \$50/wk for 3 yrs

Exclusive Occupancy:

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:None

Property Distribution to Wife:100% of marital property to wife.

Number:149

Case:Ryan v Ryan (1986, 2d Dept) 123 App Div 679, 506 NYS2d 977 (See also # 59)

Comment:(although marital home is husband's separate property, proper to direct 50/50 division of proceeds)

Years Married:23

Ages/Income:H-? W-?

Child Support:\$75/wk per child

Maintenance:\$50/wk until child support ends, remarriage or residing with male non-relative

Exclusive Occupancy:Yes—until remarriage, youngest is 21, or residing with male non-relative

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:None

Property Distribution to Wife:Wife awarded 50% of net proceeds of future sale of marital home; \$260 a month from husband's pension.

Number:150

Case:Weinstein v Weinstein (1986, 2d Dept) 125 App Div 2d 301, 508 NYS2d 950, later proceeding (2d Dept) 125 App Div 2d 301, 508 NYS2d 992

Comment:(error to fail to award child support and direct open ended payments for mortgage, taxes and insurance—remitted to fix these amounts)

Years Married:?

Ages/Income:H-? W-?

Child Support:\$25/wk per child (2)

Maintenance:\$200/wk for 7 years from 10/14/83 plus mortgage and carrying charges until sold

Exclusive Occupancy:Yes—until November, 1989

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?—\$400 appraisal fee

Property Distribution to Wife:50% of net proceeds of sale of marital home to wife; 50% of husband's pension and employee investment plan, amounting to \$54,816, to wife.

Number:151

Case:Capasso v Capasso (1986, 1st Dept) 119 App Div 2d 268, 506 NYS2d 686, appeal after remand (1st Dept) 129 App Div 2d 267, 517 NYS2d 952, app den, app dismd 70 NY2d 988, 526 NYS2d 429, 521 NE2d 436, later proceeding (1st Dept) 179 App Div 2d 570, 578 NYS2d 206

Comment:(in absence of unusual circumstances a reasoned decision can only be made in light of total value of property; requests for findings cannot be the decision of the court; realty valued by husband's advisor)

Years Married:12

Ages/Income:H-W-

Child Support:Parties to share college costs equally

Maintenance:?

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:Share equally

Dental Insurance:Share equally

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 50% of non-business assets and 20% of business assets for a total of \$5.73 million less \$202,000 as her share of a loan.

Number:152

Case:Petrie v Petrie (1986, 3d Dept) 124 App Div 2d 449, 507 NYS2d 550, reh den (App Div, 3d Dept) 511 NYS2d 558 and app dismd without op 69 NY2d 1038, 517 NYS2d 1030, 511 NE2d 89

Comment:(proper to value commercial property at assessed value rather than replacement cost; proper to direct that husband give a note in payment of distributive award)

Years Married:10

Ages/Income:H-W-

Child Support:\$35/wk per child (5)

Maintenance:\$150/wk for 5 years, retroactive to date of service

Exclusive Occupancy:Title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:No

Counsel Fees:\$1,500 to wife

Property Distribution to Wife:Wife was awarded marital residence (\$25,000), furnishings (\$4,000), automobile (\$1,000), \$2,000 in cash and husband was directed to give her a note for \$35,000 payable over 20 years with 8% interest. Husband received assets worth \$68,550.

Number:153

Case:McCrea v McCrea (1986, 3d Dept) 124 App Div 2d 400, 507 NYS2d 763

Comment:(not improper to value items plaintiff retained based on defendant's estimate)

Years Married:34

Ages/Income:H-(56) \$24,428 W-(54) unemployed

Child Support:N/A

Maintenance:?

Exclusive Occupancy:Title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 50% of marital assets.

Number:154

Case:Nemia v Nemia (1984, 3d Dept) 106 App Div 2d 679, 484 NYS2d 502, later proceeding (3d Dept) 124 App Div 2d 407, 507 NYS2d 768, app den 69 NY2d 611, 517 NYS2d 1025, 511 NE2d 84

Comment:(wife has assets of over \$300,000 and got an unrealistic return of 3% to 4%)

Years Married:?

Ages/Income:H-? W-?

Child Support:N/A

Maintenance:\$300/wk for 10 months

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:None

Property Distribution to Wife:Wife awarded over \$100,000.

Number:155

Case:Graepel v Graepel (1986, 2d Dept) 125 App Div 2d 447, 509 NYS2d 377

Comment:(where no testimony as to present value of pension and lump sum impractical, proper to award a percentage of payments at retirement)

Years Married:?

Ages/Income:H-? W-?

Child Support:\$47.50/wk per child (4)

Maintenance:remitted to determine amount and duration

Exclusive Occupancy:Yes—until youngest 21 or emancipated

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:\$2,000 to wife

Property Distribution to Wife:Wife awarded 1/3 of husband's net periodic retirement benefits accrued during marriage when paid and 50% of net proceeds from future sale of marital residence.

Number:156

Case:Simmonds v Simmonds, NYLJ, 12-22-86, P. 12, Col. 3, Sup. Ct., NY Co. (Stecher, J)

Comment:

Years Married:

Ages/Income:H-(58) \$27,000 W-(35) \$12,000

Child Support:\$250/mo (1)

Maintenance:Not requested

Exclusive Occupancy:No

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:None

Property Distribution to Wife:Not requested.

Number:157

Case:Rosenberg v Rosenberg (1987, 2d Dept) 126 App Div 2d 537, 510 NYS2d 659, app den 70 NY2d 601, 518 NYS2d 1023, 512 NE2d 549

Comment:(proper to value close corporation by stockholders agreement; improper to deduct 5% for wife's adultery)

Years Married:?

Ages/Income:H-? W-?

Child Support:?

Maintenance:?

Exclusive Occupancy:Yes

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 30% of husband's business and 50% of all other marital property.

Number:158

Case:Matsuo v Matsuo (1986, 3d Dept) 124 App Div 2d 864, 508 NYS2d 630

Comment:(improper to use "book value" to value husband's medical practice)

Years Married:18

Ages/Income:H-(60) W-(45)

Child Support:? (2 children)

Maintenance:10 years from commencement

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:additional fee denied

Property Distribution to Wife:Wife to receive 50% of net proceeds of sale of marital residence, automobile, household furnishings. Distributive award of \$106,615 to be modified after reevaluation of husband's medical practice.

Number:159

Case:Lord v Lord (1986, 3d Dept) 124 App Div 2d 930, 508 NYS2d 676

Comment:(unless patently inadequate, marital property to be valued at date of commencement "Seed money" and tracing upheld)

Years Married:15

Ages/Income:H-(60) W-(45)

Child Support:

Maintenance:Yes

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 50% of value of 1 property interest, and 50% of value of 4 other buildings after credit to husband for his separate property used to acquire buildings. Interest of 10% awarded on pay-out.

Number:160

Case:Povosky v Povosky (1986, 4th Dept) 124 App Div 2d 1068, 508 NYS2d 722

Comment:(error not to consider tax consequences where sufficient evidence presented; wife entitled to interest from date of commencement and entry of money judgment)

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:161

Case:Kawasaki v Kasting (1986, 4th Dept) 124 App Div 2d 1034, 508 NYS2d 762

Comment:(husband responsible for 65% of marital debts where he was awarded 65% of liquid assets)

Years Married:10

Ages/Income:?

Child Support:N/A

Maintenance:No

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Husband received 65% of undistributed assets and wife received 35%. Husband responsible for 65% of marital debts.

Number:162

Case:Beckerman v Beckerman (1987, 2d Dept) 126 App Div 2d 591, 511 NYS2d 33

Comment:(no permanent or retroactive maintenance and no interest on award where wife didn't ask for it; testimony on value of household work is admissible; valuation by Rev Rul 59-60)

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$700/wk for 5 years

Exclusive Occupancy:?

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:None

Property Distribution to Wife:Wife awarded 39% of marital assets (\$670,087) paid without interest.

Number:163

Case:Holihan v Holihan, NYLJ, 1-15-87, P. 13, Col. 2, Sup. Ct., Rockland Co. (Weiner, J) (See also # 388)

Comment:(court valued wife's license to practice law as of commencement by calculating difference between present value of what wife would earn as a lawyer and as a teacher to age 65)

Years Married:26

Ages/Income:H-(50) \$42,000 W-(47) \$110,000

Child Support:None

Maintenance:No

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:None

Property Distribution to Wife:Husband awarded 20% (\$116,739.80) of value (\$583,699) of wife's license to practice law; and 50% of value of all other assets as of date of commencement; stocks, IRA, Dreyfuss, and Cash Reserve valued as of date of trial.

Number:164

Case:Tereszkiewicz v Tereszkiewicz (1987, 2d Dept) 128 App Div 2d 605, 512 NYS2d 862

Comment:(unfair to value pension without a discount for income tax; remitted for recomputation of wife's interest in retirement benefits)

Years Married:?

Ages/Income:H-? W-?

Child Support:?

Maintenance:\$200/wk

Exclusive Occupancy:Ordered sold on appeal

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$5,000

Property Distribution to Wife: Marital home ordered sold and net proceeds equally divided; wife awarded 50% of present value of husband's retirement benefits; remitted for recomputation; actuarial testimony is not talismanic.

Number:165

Case:Davis v Davis (1987, 1st Dept) 128 App Div 2d 470, 513 NYS2d 405

Comment:(where wife failed to establish value of husband's medical practice and that it was "marital" and value of his retirement plans, she was not entitled to share in them)

Years Married:21

Ages/Income:H-(55) \$235,000 W-(43) None

Child Support:\$150/wk 1 child

Maintenance:Waived

Exclusive Occupancy:To wife

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$15,000

Property Distribution to Wife:Wife received approximately \$260,000, while husband received \$199,000 of assets she proved to be marital and which she valued.

Number:166

Case:Miller v Miller (1987, 2d Dept) 128 App Div 2d 844, 513 NYS2d 764

Comment:(where both spouses equally contribute to a marriage of long duration, a division of marital assets should be made that is as equal as is possible)

Years Married:20

Ages/Income:H-\$38,000 W-\$289/biweekly

Child Support:

Maintenance:\$50/wk for 4 years from date of judgment

Exclusive Occupancy:Ordered sold when youngest 21 or both children emancipated

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$6,487

Property Distribution to Wife:When marital home (now worth \$75,000 net) is sold, wife to be credited with amounts paid by her on mortgage and major repairs after date of judgment, and net proceeds to be equally divided. Wife to be credited at sale with \$17,500 representing her share of value of husband's \$35,000 pension plus interest at statutory rate from July 17, 1985. Wife also awarded household furnishings whose "original value" estimated by husband to be \$40,000.

Number:167

Case:Stempler v Stempler, NYLJ, 4-6-87, P. 20, Col. 5, Sup. Ct., West Co. (DiFede, JHO) mod (1988, 2d Dept) 143 App Div 2d 410, 532 NYS2d 550

Comment:(husband's 1/3 interest in law firm valued at one years compensation plus 1/3 of perquisites and net profit. Wife awarded 50% of marital assets; not error to award wife 1/3 of stock and bank account when husband made contribution. Valuation of practice "not unjust" given conflicting testimony)

Years Married:20

Ages/Income:H-(44) \$140,000 W-(42) None

Child Support:\$300/wk per child (2 children) until each 21 or emancipated retroactive to date of commencement, plus unreimbursed psychiatrist

Maintenance:\$300/wk for 7 yrs from date of judgment retroactive to date of commencement plus an automobile until 1/31/88

Exclusive Occupancy:Title to wife

Health & Medical Insurance:Yes, for wife during time husband obligated for maintenance, and for children until 21 or emancipated

Dental Insurance:No

Life Insurance:Yes, on husband's life to provide for maintenance and child support

Counsel Fees:\$4,000 pendente lite plus \$15,000 by App Div and \$5,000 accountant's fee

Property Distribution to Wife:Wife awarded marital home in lieu of a distributive award of \$400,000. This included 50% of value of husband's law practice. Wife awarded 50% of certain stock to be valued on remitter.

Number:168

Case:Del Gado v Del Gado (1987, 1st Dept) 129 App Div 2d 426, 513 NYS2d 689 (See also # 101)

Comment:(no equitable distribution of husband's pension rights when not requested by wifes attorney and not valued, in view of circumstances of the case)

Years Married:20

Ages/Income:H-\$32,000 W-same

Child Support:N/A

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Three family home to be sold and net proceeds equally divided; no distribution of husband's pension; husband made no claim to wife's nursing license or any pension she might be entitled to.

Number:169

Case:Hecht v Hecht, NYLJ, 4-14-87 P. 16, Col. 2, Sup. Ct., Kings Co. (Schneier, J)

Comment:(custody of 3 year old awarded to husband who lives in apartment owned by his father)

Years Married:5

Ages/Income:H-(26) unemployed W-(25)

Child Support:None

Maintenance:Waived

Exclusive Occupancy:N/A

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:None

Property Distribution to Wife:Each party entitled to 50% of furniture in marital apartment

Number:170

Case:Shahidi v Shahidi (1987, 2d Dept) 129 App Div 2d 627, 514 NYS2d 259

Comment:(wife given option to purchase husband's share of \$500,000 marital home for \$250,000; husband's IBM stock and its appreciation since 1962 is his separate property)

Years Married:20

Ages/Income:H-? W-?

Child Support:N/A

Maintenance:\$400/wk permanent retroactive to date of application (12/13/83)

Exclusive Occupancy:Ordered sold if wife didn't exercise option to buy

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:None

Property Distribution to Wife:Each party awarded 50% of the value of the marital property.

Number:171

Case:Spinello v Spinello (1987, 2d Dept) 129 App Div 2d 694, 514 NYS2d 456

Comment:

Years Married:?

Ages/Income:H-? W-?

Child Support:\$1,075/mo

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded \$12,777 has her share of marital property.

Number:172

Case:Adams v Adams (1987, 2d Dept) 129 App Div 2d 661, 514 NYS2d 420

Comment:(error to direct parties to reimburse plaintiff's parents for cost of extension on house since they are not parties to action)

Years Married:?

Ages/Income:H-? W-?

Child Support:\$50/wk per child (2)

Maintenance:\$50/wk for 1 year and all carrying charges up to \$758/mo until sold

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Each party to have 50% of joint bank accounts; remitted for further proceedings on distributive award

Number:173

Case:Mahon v Mahon (1987, 2d Dept) 129 App Div 2d 684, 515 NYS2d 446

Comment:(as long as husband pays child support he gets to claim children as dependents)

Years Married:?

Ages/Income:H-? W-?

Child Support:\$70/wk per child (5)

Maintenance:\$70/wk

Exclusive Occupancy:Title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Title to marital home to be conveyed to wife.

Number:174

Case:Vasquez, v Vasquez, NYLJ, 1-23-87, P. 19, Col. 1, Sup. Ct., Queens Co. (Zelman, J)

Comment:(inquest on husband's default; court considered husband's fault in statutory rape of wife's daughter from prior marriage)

Years Married:5

Ages/Income:H-(41) W-(35)

Child Support:No children

Maintenance:\$50/wk for 2 years or until she can find employment

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$1,500 to wife

Property Distribution to Wife:Wife awarded 50% of husband's profit sharing plan; house ordered sold and net proceeds divided equally.

Number:175

Case:Melnik v Melnik (1986, 3d Dept) 118 App Div 2d 902, 499 NYS2d 470

Comment:(not error in fixing maintenance to refuse to consider misconduct after divorce action commenced and not a factor in termination of the marriage)

Years Married:27

Ages/Income:H-(50) \$43,000 W-(48) \$10,000

Child Support:?

Maintenance:\$100/wk

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:176

Case:Le Ruzic v Le Ruzic (1987, 3d Dept) 127 App Div 2d 940, 512 NYS2d 532

Comment:(both parties contributed equally to the extent of their respective incomes)

Years Married:10

Ages/Income:H-? W-?

Child Support:?

Maintenance:\$100/mo for 10 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded \$15,000 as her share of marital property.

Number:177**Case:**Cavaretta v Cavaretta (1987, 4th Dept) 127 App Div 2d 1002, 512 NYS2d 945**Comment:**(trial court without authority to direct entry of a conditional judgment in the event there are insufficient funds to pay wife distributive share)**Years Married:?****Ages/Income:**H-? W-?**Child Support:?****Maintenance:?****Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:**Wife awarded 60% of the marital property, except 50% of husband's pension.

Number:178**Case:**Scheer v Scheer (1987, 2d Dept) 130 App Div 2d 479, 515 NYS2d 61**Comment:**(husband's failure to produce subpoenaed records of family business and his tax records entitled court to infer that records would not support his claim he was not an owner)**Years Married:?****Ages/Income:**H-W-(40)**Child Support:**\$120/wk per child (ages 17 & 20)**Maintenance:**\$1,750/mo for 5 years**Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:**\$7,000 (wife paid \$3,000)**Property Distribution to Wife:**Wife awarded 50% of value of husband's interest in family auto parts business Remitted for valuation.

Number:179**Case:**Shapiro v Shapiro, NYLJ, 5-12-87, P. 15, Col. 1, Sup. Ct., Kings Co. (Schneier, J)

Comment:(wife awarded 60% of marital property where she was primary homemaker and parent and principal wage earner; husband's failure to value wife's pension results in loss of his equitable share)

Years Married:30

Ages/Income:H-(61) W-(54) \$40,000

Child Support:

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Husband awarded 40% of (\$64,686) of value of marital property (which was worth \$120,212).

Number:180

Case:Morton v Morton (1987, 2d Dept) 130 App Div 2d 558, 515 NYS2d 499

Comment:(error to refuse to award wife a share of husband's podiatry practice; although her direct contributions were not significant and parties' separated several years, her contributions as a homemaker are worthy of full consideration)

Years Married:15

Ages/Income:H-? W-?

Child Support:? 2 children

Maintenance:\$200/wk for 5 years

Exclusive Occupancy:?

Health & Medical Insurance:For children

Dental Insurance:For Children

Life Insurance:For Wife until husband's obligations to her end

Counsel Fees:None

Property Distribution to Wife:Wife awarded 30% (26,550) of value of husband's podiatry practice and 50% of all other marital property. Husband to pay interest at statutory rate in 10 year pay-out of distributive award.

Number:181

Case:Tabriztchi v Tabriztchi (1987, 2d Dept) 130 App Div 2d 652, 515 NYS2d 582

Comment:(trial court did not err in failing to award wife a share of husband's pension because no proof of its value was provided)

Years Married:?

Ages/Income:H-? W-? \$75/wk 2 children

Child Support:\$175/wk for 5 years

Maintenance:until child is 18

Exclusive Occupancy:

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 50% of net proceeds of sale of marital residence.

Number:182

Case:La Paglia v La Paglia (1987) 134 Misc 2d 1030, 514 NYS2d 317 (portions omitted)

Comment:(an illegal numbers and loan sharking business operated in parties' candy store is not marital property requiring equitable distribution)

Years Married:14

Ages/Income:

Child Support:\$125/wk (1 child)

Maintenance:None

Exclusive Occupancy:until child 18 or becomes emancipated

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 50% of (\$97,975.00) of the marital property and 50% of net proceeds on sale of home when child 18. Wife to pay all carrying charges until sold and will receive \$38,275 of her distributive award out of husband's share of proceeds.

Number:183

Case:Mavra v Mavra (1987, 2d Dept) 131 App Div 2d 447, 516 NYS2d 472

Comment:(proper to distribute assets based upon the ratio of the parties' earnings during the latter years of the marriage; proper to award child support based on ratio of salaries)

Years Married:?

Ages/Income:H-? W-?

Child Support:based on ratio of salaries

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:None

Property Distribution to Wife:Marital assets distributed 75% to wife and 25% to husband.

Number:184

Case:Spain v Spain (1987, 3d Dept) 130 App Div 2d 806, 515 NYS2d 134

Comment:(joint custody awarded with father to have physical custody; remitted)

Years Married:?

Ages/Income:H-? W-?

Child Support:\$30/wk

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:None

Property Distribution to Wife:Remitted.

Number:185

Case:Lydick v Lydick (1987, 3d Dept) 130 App Div 2d 915, 516 NYS2d 326, app den 70 NY2d 607, 521 NYS2d 224, 515 NE2d 909

Comment:(proper not to award wife a share of husband's pension where he has no other income, she is awarded all other assets and permanent maintenance)

Years Married:?

Ages/Income:H-? W-?

Child Support:?**Maintenance:**\$100/mo permanent**Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:**Wife awarded all marital assets with a net value of about \$7,000 and husband awarded his pension with income of \$623 month.

Number:186**Case:**Karp v Karp, NYLJ, 6-16-87, P. 12, Col. 2, Sup. Ct., NY Co. (Stecher, J)**Comment:**(prior to amendment to DRL § 236(B)(4)(b) court valued all assets without “tax effecting” them, as of date the parties signed separate residence agreement—although action tried 5 years later)**Years Married:**27**Ages/Income:**H-(60) W-(56)**Child Support:**N/A**Maintenance:**None**Exclusive Occupancy:**No**Health & Medical Insurance:**No**Dental Insurance:**No**Life Insurance:**No**Counsel Fees:**None**Property Distribution to Wife:**Wife awarded \$5,801,223 which was 1/3 of the marital estate, subject to 1/3 of the contingent tax liability.

Number:187**Case:**Del Vecchio v Del Vecchio (1987, 2d Dept) 131 App Div 2d 536, 516 NYS2d 700**Comment:**(proper to value marital residence based upon wife’s testimony concerning her knowledge of recent sale of a neighbor’s house of similar design)**Years Married:?****Ages/Income:**H-? W-?**Child Support:?**

Maintenance:?
Exclusive Occupancy:until child 18
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$2,000 to wife
Property Distribution to Wife:

Number:188
Case:Feldman v Feldman, NYLJ, 6-18-87, P. 17, Col. 5, Sup. Ct., Kings Co. (Schneier, J)
Comment:(no award to either party of marital property or liabilities because of failure of proof as to value)
Years Married:9
Ages/Income:H-(36) \$432/wk net plus perks W-(30) \$197/wk net
Child Support:\$150/wk (1)
Maintenance:None
Exclusive Occupancy:
Health & Medical Insurance:For child
Dental Insurance:For child
Life Insurance:
Counsel Fees:\$4,000 to wife
Property Distribution to Wife:No award to either party of property in possession of the other or liabilities because of failure of proof.

Number:189
Case:Blackman v Blackman (1987, 2d Dept) 131 App Div 2d 801, 517 NYS2d 167
Comment:(court ordered sale of marital residence to meet future expenses and pay off marital debts even though custodial parent will have greater residence expense)
Years Married:14
Ages/Income:H-? \$7809 W-(32) \$30,732
Child Support:\$70/wk (1)
Maintenance:\$60/wk for 5 years
Exclusive Occupancy:Ordered sold
Health & Medical Insurance:For child
Dental Insurance:No
Life Insurance:No

Counsel Fees:None

Property Distribution to Wife:Parties stipulated to equal division of proceeds of sale of marital residence.

Number:190

Case:Last v Last (1987, 2d Dept) 132 App Div 2d 531, 517 NYS2d 269

Comment:

Years Married:?

Ages/Income:

Child Support:\$50/wk per child (2)

Maintenance:\$50/wk for 1 year

Exclusive Occupancy:Sold

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$3,500 to wife

Property Distribution to Wife:Wife awarded 50% of proceeds of sale of marital property.

Number:191

Case:Clerk v Clerk (1987, 1st Dept) 132 App Div 2d 456, 517 NYS2d 512, app den in part, clarified, in part (1st Dept) 133 App Div 2d 328, app den 70 NY2d 611, 523 NYS2d 495, 518 NE2d 6

Comment:(error to value art based upon a multiple of the value of the frames)

Years Married:14

Ages/Income:H-(57) W-(50)

Child Support:no children

Maintenance:None

Exclusive Occupancy:To wife

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:None

Property Distribution to Wife:Wife awarded 30% of marital real estate (worth \$185,000).

Number:192

Case:Malamut v Malamut (1987, 2d Dept) 133 App Div 2d 101, 518 NYS2d 639, later proceeding (2d Dept) 171 App Div 2d 780, 567 NYS2d 499

Comment:(where wife is an emotional cripple and not fully functional, permanent maintenance should be awarded; although not binding, no abuse of discretion to consider amount fixed in separation agreement for maintenance)

Years Married:19

Ages/Income:H-? \$100,000 W-?

Child Support:\$400/mo (1)

Maintenance:\$3,600/mo until death or remarriage

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:None

Property Distribution to Wife:Wife awarded contents of marital home, 50% of proceeds of sale of home, a share of stock previously sold and a share of husband's pension.

Number:193

Case:Jones v Jones (1987, 2d Dept) 133 App Div 2d 217, 519 NYS2d 22

Comment:(not error to award maintenance for unlimited time where for last 11 years wife required psychiatric treatment, unable to hold a job for more than 2 years and efforts to learn new work unavailing)

Years Married:18

Ages/Income:H-(51) \$58,000 W-(50) \$0

Child Support:Husband to pay college tuition, room and board until 21

Maintenance:\$190/wk permanent

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$4,125 plus \$248 disbursements to wife

Property Distribution to Wife:Wife awarded a share of husband's pension upon his retirement.

Number:194

Case:Francis v Francis (1987, 2d Dept) 133 App Div 2d 335, 519 NYS2d 234

Comment:(Appellate Division modified payout where schedule of payments imposed by trial court did not leave husband with sufficient funds to maintain himself in a separate household)

Years Married:20

Ages/Income:H-? W-?

Child Support:\$150/wk (3)

Maintenance:\$125/wk

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$4,500

Property Distribution to Wife:Wife awarded 50% of husband's thrift plan, and 50% of his pension payments when received.

Number:195

Case:Ruvolo v Ruvolo (1987, 2d Dept) 133 App Div 2d 364, 519 NYS2d 267

Comment:(wife awarded entire remainder of proceeds of sale of marital home in light of "very marked discrepancy" in probable future financial circumstances of the parties)

Years Married:?

Ages/Income:H-\$86,000+W-(52)

Child Support:?

Maintenance:\$1,500/mo permanent

Exclusive Occupancy:?

Health & Medical Insurance:For wife's benefit

Dental Insurance:?

Life Insurance:For benefit of wife

Counsel Fees:None

Property Distribution to Wife:Wife awarded her own IRA and entire proceeds of sale of marital home after paying 3 mortgages, \$83,000 marital debt and taxes on sale of house.

Number:196

Case:Herrmann v Herrmann (1987, 4th Dept) 132 App Div 2d 972, 518 NYS2d 501

Comment:(trial court placed undue emphasis on fact that wife would receive the only “liquid” assets in awarding her 36% of the marital property)

Years Married:35

Ages/Income:H-? W-?

Child Support:N/A

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:For wife’s benefit

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded ownership of shop and distributive award of \$17,350.

Number:197

Case:Pressman v Pressman, NYLJ, 9/29/87, P. 6, Col. 3, Sup. Ct., NY Co. (Schackman, J), mod (1988, 1st Dept) 143 App Div 2d 555, 532 NYS2d 520

Comment:(wife awarded 5% of appreciation of husband’s business utilizing “Capasso” as a yard stick)

Years Married:9

Ages/Income:H-(30’s) W-(30’s)

Child Support:No children

Maintenance:\$3,000/wk for 2 yrs, then \$7,500/wk for 2 yrs, then \$2,000/wk for 2 yrs

Exclusive Occupancy:No

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:None

Property Distribution to Wife:Wife awarded 5% of appreciation of \$4,981,695 in husband’s business and 50% of other marital assets for a net total of \$1,006,805.

Number:198

Case:Peterson v Peterson (1987, 2d Dept) 133 App Div 2d 448, 519 NYS2d 566

Comment:(doing repairs and paying taxes may be contributions to appreciation of marital residence that is wife’s separate property)

Years Married:11

Ages/Income:H-() \$33,000 W-(60) \$0

Child Support:

Maintenance:?

Exclusive Occupancy:Title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$1,000 to wife

Property Distribution to Wife:Remitted for hearing to determine if any part of appreciation in marital residence, which was wife's before marriage is due to husband's contributions or efforts!

Number:199

Case:Yunger v Yunger (1987, 2d Dept) 133 App Div 2d 451, 519 NYS2d 666

Comment:(court must state valuation date and method of valuation)

Years Married:?

Ages/Income:H-() W-()

Child Support:?

Maintenance:\$20,000/yr for 12 years

Exclusive Occupancy:Title to husband

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$40,936 to wife's attorney, accountant and real estate appraisal fees

Property Distribution to Wife:Wife awarded \$101,000 for interest in house, award of \$105,000 representing 30% of husband's business reversed and remitted for valuation and findings.

Number:200

Case:Wachtel v Wachtel, NYLJ, 10-6-87, P. 15, Col. 2, Sup. Ct., Kings Co. (Schneier, J)

Comment:

Years Married:34

Ages/Income:H-(70) W-(63)

Child Support:N/A

Maintenance:None

Exclusive Occupancy:Option to husband to buy

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:No

Property Distribution to Wife:Wife awarded 50% (i.e., \$225,262) of the marital property.

Number:201

Case:Romano v Romano (1987, 2d Dept) 133 App Div 2d 680, 519 NYS2d 850

Comment:(maintenance awarded for five years or until wife is employed, whichever is sooner)

Years Married:?

Ages/Income:H-() W-()

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:✓

Dental Insurance:✓

Life Insurance:✓

Counsel Fees:\$10,500 to wife

Property Distribution to Wife:Wife awarded a distributive award of \$35,700

Number:202

Case:Gluck v Gluck (1987, 2d Dept) 134 App Div 2d 237, 520 NYS2d 581

Comment:(improper to direct credit of \$10 per week to husband for every \$1,000 earned by son; and error to award life insurance for benefit of child beyond age of emancipation; not error to refuse to consider tax consequences of pension where no evidence presented by party seeking discount)

Years Married:22

Ages/Income:H-() W-()

Child Support:\$150/wk for one child

Maintenance:200/wk for 5 years

Exclusive Occupancy:?

Health & Medical Insurance:For son

Dental Insurance:No

Life Insurance:For son

Counsel Fees:50% of wife's fees of \$9,129 to wife

Property Distribution to Wife:Wife awarded 50% of value of pension

Number:203

Case:Raviv v Raviv, NYLJ, 11-9-87, P. 19, Col. 2, Sup. Ct., Queens Co. (LaFauci, J) (1989, 2d Dept) 153 App Div 2d 932, 545 NYS2d 739

Comment:(court considered husband's lack of candor and veracity and marital fault in awarding maintenance; wife not awarded share of husband's business because of failure to offer evidence of value. Award of exclusive occupancy to noncustodial parent)

Years Married:15

Ages/Income:H-(48) \$22,000 W-(44) \$0

Child Support:N/A

Maintenance:\$1,000 per month for 5 years

Exclusive Occupancy:to wife as noncustodial parent for 5 years

Health & Medical Insurance:For 5 years

Dental Insurance:For 5 years

Life Insurance:\$60,000 for 5 years

Counsel Fees:None

Property Distribution to Wife:Wife awarded 50% (55,000) of marital assets; Appellate Division modified to award wife half of \$61,000 profit on purchase option.

Number:204

Case:Monks v Monks (1987, 2d Dept) 134 App Div 2d 334, 520 NYS2d 810

Comment:(husband entitled to seed money)

Years Married:7

Ages/Income:H-(35) W-()

Child Support:

Maintenance:None

Exclusive Occupancy:N/A

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$3,105 to wife

Property Distribution to Wife:Distributive award reversed and remitted.

Number:205

Case:Scalchunes v Scalchunes (1987, 2d Dept) 134 App Div 2d 337, 520 NYS2d 812, app den 72 NY2d 808, 533 NYS2d 57, 529 NE2d 425

Comment:(wife awarded 35% of date of commencement value of husband's business. In this case buy-sell agreement is conclusive)

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$8,000 to wife and \$2,000 experts fees

Property Distribution to Wife:Wife awarded 35% share (i.e., \$113,348) of value of husband's business. Parties stipulated to equal distribution of other assets.

Number:206

Case:Biamonte v Biamonte (1987, 1st Dept) 135 App Div 2d 360, 521 NYS2d 421, app den 71 NY2d 802, 527 NYS2d 768, 522 NE2d 1066

Comment:(wife was the major contributor to household; husband only contributed \$40 a week)

Years Married:47

Ages/Income:

Child Support:

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 50% of proceeds of sale of parties' marital vacation home.

Number:207**Case:**Formato v Formato (1987, 2d Dept) 134 App Div 2d 564, 521 NYS2d 464**Comment:**(maintenance to end on “cohabitation”. Provision for future increases in support approved)**Years Married:?****Ages/Income:**H-(?) \$72,000 W-(46) \$10,500**Child Support:**\$150/wk for 4 years then \$200/wk (2 children)**Maintenance:**\$300/week for 4 years then \$200/wk until remarriage or “cohabitation.”**Exclusive Occupancy:**Yes**Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:**\$5,000 to wife**Property Distribution to Wife:**Wife awarded marital property worth \$20,095 and \$11,735 from husband’s pension when received by him, 35% of husband’s military pension when received and 50% of proceeds of sale of marital residence but she has to pay mortgage and carrying charges.

Number:208**Case:**Williams v Williams, NYLJ, 12-10-87, P. 15, Col. 3, Sup. Ct., NY Co (Silberman, J)**Comment:**(no distribution of value of wife’s license to practice law or husband’s medical license where each concentrated on own career)**Years Married:**5**Ages/Income:**H-(31) \$27,000 W-(32) \$57,000**Child Support:**N/A**Maintenance:**None**Exclusive Occupancy:**No**Health & Medical Insurance:**No**Dental Insurance:**No**Life Insurance:**No**Counsel Fees:**None**Property Distribution to Wife:**Each party responsible for \$4,000 of \$8,000 joint debt; each to retain savings of \$1,000; wife to retain her \$12,000 pension and profit sharing.

Number:209

Case:Nalbandian v Nalbandian (1987, 2d Dept) 135 App Div 2d 621, 522 NYS2d 199, app den 71 NY2d 802, 527 NYS2d 768, 522 NE2d 1066

Comment:(maintenance to be suspended upon wife's receipt of proportion of husband's pension)

Years Married:?

Ages/Income:H-? W-?

Child Support:?

Maintenance:\$950/mo to be suspended upon husband's retirement and receipt of portion of husband's pension.

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:50% of husband's policy to wife

Counsel Fees:None

Property Distribution to Wife:?

Number:210

Case:De Cabrera v Cabrera-Rosete (1987) 70 NY2d 879, 524 NYS2d 176, 518 NE2d 1168

Comment:(not an abuse of discretion to deny husband a share of appreciation of co-op bought with wife's separate property)

Years Married:6

Ages/Income:H-? W-?

Child Support:N/A

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$10,000 to wife

Property Distribution to Wife:Wife retained co-op apartment bought in 1979 with \$182,000 of her separate property.

Number:211

Case:Seeley v Seeley (1987, 2d Dept) 135 App Div 2d 703, 522 NYS2d 603

Comment:(husband awarded maintenance in view of the marked discrepancies in the parties' future earning capacities)

Years Married:?

Ages/Income:H-? W-?

Child Support:?

Maintenance:\$100/month for 5 years to husband

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:?

Property Distribution to Wife:Wife awarded 50% (%6,000) of appreciation in value of husband's "separate" house which appreciated during marriage.

Number:212

Case:Siegel v Siegel (1987, 2d Dept) 132 App Div 2d 247, 523 NYS2d 517, app dismd 71 NY2d 1021, 530 NYS2d 108, 525 NE2d 753 and app den 74 NY2d 602, 541 NYS2d 985

Comment:(marital property traced to separate property remains marital; valuation of tangible real and personal property valued as of trial. Marital assets may not be valued as of a date after trial)

Years Married:?

Ages/Income:H-? W-?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 50% (\$1,547,500) of the marital assets.

Number:213

Case:Freyer v Freyer (1987) 138 Misc 2d 158, 524 NYS2d 147

Comment:(academic degree (PhD) is marital asset subject to equitable distribution; non-vested medical license is marital property; must "tax-effect" valuation of license and degrees; husband's homemaker contributions considered)

Years Married:8

Ages/Income:H- W-

Child Support:\$75/wk (1 child)

Maintenance:None

Exclusive Occupancy:To wife until child 18 or her remarriage

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:None

Property Distribution to Wife:Upon sale of marital home wife to receive her \$20,000 contribution of separate property and balance of net proceeds to be divided evenly; distributive award of \$79,200 (or \$7,920 a year for 10 years with interest at legal rate) to husband.

Number:214

Case:Kuhn v Kuhn (1987, 4th Dept) 134 App Div 2d 900, 521 NYS2d 929

Comment:(where marriage short but wife in poor health and unable to be selfemployed not error to award maintenance until she is eligible for social security)

Years Married:?

Ages/Income:H-? W-?

Child Support:

Maintenance:Until wife eligible for social security

Exclusive Occupancy:N/A

Health & Medical Insurance:Yes—to extent not covered

Dental Insurance:Yes—to extent not covered

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:215

Case:Friedenberg v Friedenberg (1988, 2d Dept) 136 App Div 2d 593, 523 NYS2d 578

Comment:(improper to direct sale of marital residence if wife shares it with another person. Maintenance reduced in futuro. Husband not to receive any benefits until he complies with DRL 253)

Years Married:?

Ages/Income:H-() W-()

Child Support:\$120/wk except during summer weeks spent with plaintiff

Maintenance:\$75/wk for 6 months; \$50/wk for 30 mos; \$35/wk for 3 years

Exclusive Occupancy:To wife until she remarries or child emancipated or reaches majority

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$2,250 to wife

Property Distribution to Wife:Wife awarded a portion of husband's pension without determining value. Net proceeds of sale of marital residence to be divided equally after wife credited for mortgage payments after August 27, 1985; husband to receive 25% of Ocean Avenue property, without interest, when sold.

Number:216

Case:Lisetza v Lisetza (1988, 3d Dept) 135 App Div 2d 20, 523 NYS2d 632

Comment:(permanent maintenance in short marriage; disproportionate allocation of spousal share in proceeds of sale of marital home in accordance with parties own understanding)

Years Married:6

Ages/Income:H-(?) \$25,000/yr W-(56) \$500/mo

Child Support:N/A

Maintenance:\$75/wk permanent

Exclusive Occupancy:No

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$2,500 to wife plus? \$500 witness fee

Property Distribution to Wife:Wife awarded first \$15,000 from sale of marital residence and balance divided equally, matter remitted.

Number:217

Case:Reidy v Reidy (1988, 2d Dept) 136 App Div 2d 614, 523 NYS2d 860

Comment:(fact that parties may have lived frugally does not preclude substantial maintenance award where disparity in incomes is great and husband can pay without hardship)

Years Married:20

Ages/Income:H- W-
Child Support:N/A
Maintenance:\$875/wk for 6 years
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$20,000 to wife
Property Distribution to Wife:Apparently an equal distribution

Number:218
Case:Sinclair v Sinclair (1988, 2d Dept) 136 App Div 2d 694, 524 NYS2d 53
Comment:(court must consider tax effect before distributing pension)
Years Married:?
Ages/Income:H- W-
Child Support:\$50/wk per child
Maintenance:\$120 wk for 10 years
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$4,000 to wife
Property Distribution to Wife:Wife to receive 50% of husband's supplemental pension benefits when received, net of taxes.

Number:219
Case:Parris v Parris (1988, 2d Dept) 136 App Div 2d 685, 524 NYS2d 99
Comment:(proper to direct sale of marital home where custodial parents need to occupy it is outweighed by both parties' immediate need for their share of proceedings)
Years Married:?
Ages/Income:H-() W-() \$103/wk net
Child Support:None—custody to husband
Maintenance:\$65 wk for 6 years
Exclusive Occupancy:No—ordered sold

Health & Medical Insurance:?**Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:**Net proceeds of sale of marital home to be divided equally.

Number:220**Case:**Koffroth v Koffroth (1988) 138 Misc 2d 426, 524 NYS2d 992**Comment:**(standard of living the parties established during the marriage governs maintenance awards)**Years Married:**20**Ages/Income:**H-(40) \$75,000 W-(40) \$35,000**Child Support:**None**Maintenance:**\$100/week**Exclusive Occupancy:**No—ordered sold**Health & Medical Insurance:**Yes, both to provide for daughter until 21**Dental Insurance:**No**Life Insurance:**No**Counsel Fees:?****Property Distribution to Wife:**Parties divided some marital assets equally and court made an equal division of balance of assets and marital debt.

Number:221**Case:**Hansen v Hansen (1988, 2d Dept) 137 App Div 2d 491, 524 NYS2d 235**Comment:**(increase in wife's pension distributed 2/3 to wife and 1/3 to husband where wife contributed 2/3 of all household expenses)**Years Married:**5**Ages/Income:**H-() W-()**Child Support:?****Maintenance:?****Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?**

Counsel Fees:?

Property Distribution to Wife:Increase in wife's pension distributed 2/3 to wife and 1/3 to husband.

Number:222

Case:Keehn v Keehn (1988, 2d Dept) 137 App Div 2d 493, 524 NYS2d 238

Comment:(improper to direct payment for all unreimbursed medical expenses; child support ends on paying parent's death)

Years Married:19

Ages/Income:H-() \$75,781 W-() unemployed

Child Support:\$100/wk per child (3 ch) until each 21 or emancipated

Maintenance:\$125/wk for 7 years or until remarriage

Exclusive Occupancy:To wife until youngest 21 or emancipated

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:H to provide \$100,000 for children until they are emancipated

Counsel Fees:\$9,000 to wife payable \$1,000 a month

Property Distribution to Wife:Net proceeds of sale of marital home to be equally divided. Wife awarded \$12,851 as a lump sum in lieu of 50% of husband's annuity.

Number:223

Case:Reeves v Reeves (1988, 2d Dept) 137 App Div 2d 586, 524 NYS2d 478

Comment:(proper to ratify a precommencement 70/30 distribution of proceeds of sale of marital home; improper to distribute marital property where parties to second marriage separately maintained their assets, income and liabilities)

Years Married:?

Ages/Income:?

Child Support:N/A

Maintenance:None

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:None

Number:224**Case:**Hinden v Hinden NYLJ, 2-16-88, P. 42, Col. 2, Sup. Ct. Nass Co., (Wager, J.)**Comment:**(distribution in "kind" made of preferred stock of husband's closely held corporation which court valued at face value because of lack of marketability)**Years Married:**43**Ages/Income:**H-(65) \$400,000 W-(65) \$2,160**Child Support:**N/A**Maintenance:**\$4,000 per month with credit to husband for dividends paid to wife on her stock.**Exclusive Occupancy:**Title to wife**Health & Medical Insurance:**No**Dental Insurance:**No**Life Insurance:**No**Counsel Fees:**\$15,000 *pendente life***Property Distribution to Wife:**Wife received total assets valued at \$1,653, 665, representing 50% of the value of the marital property.

Number:225**Case:**Marcus v Marcus (1988, 2d Dept) 135 App Div 2d 216, 525 NYS2d 238, mod (2d Dept) 137 App Div 2d 131**Comment:**(commencement date of an action for divorce which is later discontinued is not the cut-off date for EDL where the husband accepted the care of the wife and benefits of marriage. Psychiatrist license merged into practice of long duration)**Years Married:**34**Ages/Income:**H-() W-()**Child Support:**N/A**Maintenance:**?**Exclusive Occupancy:**?**Health & Medical Insurance:**?**Dental Insurance:**?**Life Insurance:**?**Counsel Fees:**?

Property Distribution to Wife:Distribution of 47% to wife and 53% to husband of marital property. Wife also awarded 50% (\$380,032) of husband's retirement benefits. Remitted for valuation of husband's medical practice.

Number:226

Case:Pagan v Pagan (1988, 2d Dept) 138 App Div 2d 685, 526 NYS2d 498

Comment:(wife's accidental discharge of a firearm which injured husband properly not considered as marital fault)

Years Married:?

Ages/Income:H-() W-(42)

Child Support:\$75/wk

Maintenance:\$100 per week for 7 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$3,000 to wife

Property Distribution to Wife:Wife awarded 80% of net proceeds of the prospective sale of the marital home.

Number:227

Case:Golub v Golub (1988) 139 Misc 2d 440, 527 NYS2d 946

Comment:(a leasehold is not an asset for purposes of equitable distribution; increase in spouse's career as an actress and model is marital property)

Years Married:4

Ages/Income:H-() \$290,000+W-() \$150,000+

Child Support:N/A

Maintenance:None

Exclusive Occupancy:Marital townhouse to husband

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:None awarded

Property Distribution to Wife:Wife awarded 50% (\$800,000) of net value of marital townhouse and 10% (\$10,840) of the increase in value of husband's law practice to date of commencement; each party to retain personal property he or she presently possesses.

Number:228**Case:**Wood v Wood (1988, 2d Dept) 139 App Div 2d 506, 526 NYS2d 608**Comment:**(where action started in 1980 fair to value marital property as of date of interlocutory divorce in 1982 rather than trial date in 1985; where marital home is separate property of noncustodial parent and there are adequate funds to pay for alternate housing exclusive occupancy is unwarranted)**Years Married:**3 1/2**Ages/Income:**H-()? W-()?**Child Support:**\$350/wk per child (2 children)**Maintenance:**\$300 a week for 5 years**Exclusive Occupancy:**Ordered sold**Health & Medical Insurance:**No**Dental Insurance:**No**Life Insurance:**No**Counsel Fees:**Wife awarded \$30,000 in addition to \$50,000 *pendente lite* award**Property Distribution to Wife:**Wife awarded 15% (\$173,295) of appreciation in value of husband's separate assets which was the sole marital property (pension, anesthesiology practice and home)

Number:229**Case:**Di Bella v Di Bella (1988, 2d Dept) 140 App Div 2d 292, 527 NYS2d 541**Comment:**(where husband secreted assets not error to estimate them where no concrete evidence of their value produced; counsel fees denied where inadequate "documentation" provided regarding attorneys' time and services)**Years Married:**31**Ages/Income:**H-(69) W-(66)**Child Support:**N/A**Maintenance:**\$300/wk**Exclusive Occupancy:**?**Health & Medical Insurance:**?**Dental Insurance:**?**Life Insurance:**?**Counsel Fees:**Denied

Property Distribution to Wife:Wife awarded assets totalling 46.4% (\$242,000) of the \$500,000 marital estate that the trial court estimated

Number:230

Case:Tsoucalas v Tsoucalas (1988, 2d Dept) 140 App Div 2d 333, 527 NYS2d 828

Comment:(child support may be based on a parent's earning potential where husband worked in family diner for \$3 an hour)

Years Married:13

Ages/Income:H-() \$275/wk W-() \$0

Child Support:\$110/wk (1 child)

Maintenance:None

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 50% of the proceeds of the sale of the marital residence.

Number:231

Case:Gilkes v Gilkes NYLJ, 5-10-88, P. 5, Col. 3, Sup. Ct., NY Co. (Baer, J) mod 150 App Div 2d 200, 540 NYS2d 808

Comment:(premature to determine issue of college expenses for 11 year old daughter. Rent stabilized marital apartment is an asset "if" converted to co-op or condo within 3 years from judgment. In such event husband can buy some of the stock at "insider" price)

Years Married:18

Ages/Income:H-(43) \$144,000 W-(43) \$35,000

Child Support:\$170/wk (1 child)

Maintenance:\$280/wk for 5 years

Exclusive Occupancy:Of marital apartment to wife

Health & Medical Insurance:For wife and child

Dental Insurance:For wife and child

Life Insurance:Yes

Counsel Fees:?

Property Distribution to Wife:On appeal wife awarded 25% interest in vacation home worth \$219,000 at trial; Trial court awarded wife 50% (\$60,000) of husbands Keogh, IRS worth \$7,500, money market worth \$3,000 and a 1978 Chevy. Husband awarded a 1962 Jaguar (\$25,000) and 50% (\$60,000) of the Keogh.

Number:232

Case:Iacobucci v Iacobucci (1988, 2d Dept) 140 App Div 2d 412, 528 NYS2d 114

Comment:(proper to award equal division of stock in family business where son is majority stockholder and no evidence presented of its worth through book value or shareholder agreement)

Years Married:36

Ages/Income:H-? W-?

Child Support:(2 children)

Maintenance:\$500/mo permanent

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$12,500 to wife

Property Distribution to Wife:Wife awarded \$33,442 in necessities and 50% of all marital property.

Number:233

Case:Levine v Levine, NYLJ, 6-7-88, P. 27, Col. 6, Sup. Ct., Queens Co. (Zelman, J) mod in part 167 App Div 2d 449, 562 NYS2d 132

Comment:(where marital asset dissipated wrongfully before "marriage went sour" there is no entitlement to a distribution)

Years Married:12

Ages/Income:H-() \$57,000 W-(39)

Child Support:\$110/wk per child (2 children)

Maintenance:\$75/wk

Exclusive Occupancy:Of marital apartment to wife. Husband directed to pay rental.

Health & Medical Insurance:For children; for wife if she pays for it

Dental Insurance:No

Life Insurance:No

Counsel Fees:?

Property Distribution to Wife:No assets left to distribute.

Number:234

Case:Shink v Shink (1988, 2d Dept) 140 App Div 2d 506, 528 NYS2d 847

Comment:(provision in judgment for modification of child support at a future time, without reconsideration of circumstances existent at that time, is improper)

Years Married:4

Ages/Income:H-() W-(31)

Child Support:\$100/wk (1 child)

Maintenance:\$150 for five years from judgment

Exclusive Occupancy:?

Health & Medical Insurance:For wife

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$1,500 to wife's attorney

Property Distribution to Wife:Automobile to be sold and proceeds divided equally.

Number:235

Case:Kramer v Kramer, NYLJ, 5-24-88, P. 27, Col. 3, Sup. Ct., Nassau Co. (Winick, J)

Comment:(husband was found "totally unworthy of belief", to have violated the tax laws by not keeping records and failing to report income. Court considered his past and future waste of assets and his hiding of assets)

Years Married:27

Ages/Income:H-()? W-()?

Child Support:N/A

Maintenance:Waived

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$20,000 "extra" counsel fee to wife's attorney

Property Distribution to Wife:Wife awarded 75% of marital home worth \$300,000 and 50% (\$20,500) of an account in husband's name. Husband got pension/profit sharing worth \$52,323. Wife's pension/profit sharing worth \$12,846.

Number:236

Case:Guglielmo v Guglielmo, NYLJ, 5-25-85, P. 29, Col. 2, Sup. Ct., Suffolk Co. (Fiero, J)

Comment:(marriage annulled based on wife's incurable mental illness. Wife contributed to household prior to onset of illness. At time of trial wife on public assistance)

Years Married:31

Ages/Income:H-(53) \$30,000 W-(51)

Child Support:Unemancipated child with husband

Maintenance:\$60/wk permanent

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$9,205 to wife's attorney

Property Distribution to Wife:Wife awarded 30% of the marital property and held responsible for 50% of marital debt, so her total award was \$74,215.

Number:237

Case:Lohmiller v Lohmiller (1988, 2d Dept) 140 App Div 2d 497, 528 NYS2d 586, app dismd (App Div, 2d Dept) 528 NYS2d 800 (See also # 142)

Comment:(not reversible error in this case to deny husband right to make an opening statement)

Years Married:13

Ages/Income:H-? W-?

Child Support:\$150/wk

Maintenance:\$175/wk

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$7,500 toward wife's counsel fees

Property Distribution to Wife:?

Number:238

Case:Schaeffer v Schaeffer (1988, 2d Dept) 142 App Div 2d 568, 530 NYS2d 234

Comment:(not an abuse of discretion to direct sale of marital home where custodial considerations do not require it)

Years Married:?

Ages/Income:H-? W-?

Child Support:\$250/wk and all reasonable medical and dental expenses

Maintenance:None

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:None

Property Distribution to Wife:Wife awarded a lump sum of \$2,900 representing 50% of husband's pension benefit and 50% of net equity of marital home after sale and satisfaction of marital debts.

Number:239

Case:Shoenfeld v Shoenfeld, NYLJ 7-6-88, P. 27. Col. 6, Sup. Ct., Nassau (Brucia, J) mod in part 168 App Div 2d 674, 563 NYS2d 560

Comment:(distribution of physician's license and practice where practice of five years not fully matured; valued at commencement date)

Years Married:6

Ages/Income:H-(40) W-(34)

Child Support:\$350/wk 2 children

Maintenance:\$300/mo for 3 yrs, then \$200/wk for 3 yrs then \$100/wk

Exclusive Occupancy:Title to one house to wife

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:Yes for children

Counsel Fees:None

Property Distribution to Wife:Wife awarded 13% of husband's medical license and board certification in Family Practice and 25% of the value of his practice (total = \$52,600). Each party received houses worth \$225,000. Wife responsible for 25% of marital debt. Husband given 11 years to pay distributive award with interest at 8%.

Number:240

Case:Megally v Megally (1988, 2d Dept) 142 App Div 2d 721, 531 NYS2d 301

Comment:(husband's present income and potential as a doctor justified permanent maintenance and private school)

Years Married:?

Ages/Income:H-? W-?

Child Support:\$350/W plus private school to \$10,000 a year (1 child)

Maintenance:\$250/wk permanent

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 50% of property held by husband; husband awarded 25% of property held by wife.

Number:241

Case:Reingold v Reingold (1988, 2d Dept) 143 App Div 2d 126, 531 NYS2d 585

Comment:(not an abuse of discretion to value house at average of 2 appraisals; where no proof of value of tax shelter proper to award share of contribution made to it)

Years Married:24

Ages/Income:H-(55) \$100,000 plus benefits W-(52)

Child Support:N/A

Maintenance:\$475/wk permanent

Exclusive Occupancy:Wife gives option to purchase at \$142,500

Health & Medical Insurance:For wife

Dental Insurance:For wife

Life Insurance:?

Counsel Fees: Remitted for hearing

Property Distribution to Wife: Wife awarded 50% of net value of marital home, half of tax shelter and half of value of silverware.

Number: 242

Case: Mahlab v Mahlab (1988, 2d Dept) 143 App Div 2d 116, 531 NYS2d 580

Comment: (not an abuse to deny husband share of marital home where he made no financial contribution to it or any contribution to its "passive" appreciation)

Years Married:?

Ages/Income: H-? W-?

Child Support: \$100/wk

Maintenance:?

Exclusive Occupancy: Title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife: Sole title to marital home to wife.

Number: 243

Case: Sheik v Sheik (1988, 2d Dept) 143 App Div 2d 183, 531 NYS2d 631

Comment: (house not ordered sold where children contributed to increasing its value)

Years Married:

Ages/Income: H-? W-?

Child Support: \$50/wk/per child

Maintenance: \$3,300/mo for 3 yrs, then \$2,800/mo until marital residence is sold

Exclusive Occupancy: To wife until 12 year old graduates high school or reaches 19 years of age

Health & Medical Insurance: For wife

Dental Insurance: No

Life Insurance: For wife and for children's college

Counsel Fees: \$12,500 for wife's fees and expenses

Property Distribution to Wife: Wife awarded 50% of net value of marital home upon its sale.

Number:244

Case:Culnan v Culnan (1988, 3d Dept) 142 App Div 2d 805, 530 NYS2d 688, app dismd without op 73 NY2d 994, 540 NYS2d 1005, 538 NE2d 357

Comment:(failure to establish value of pension of husband results in reversal of award to wife)

Years Married:7

Ages/Income:H-()? W-(29)

Child Support:\$85/wk (one child)

Maintenance:\$85 per week for 10 years

Exclusive Occupancy:?

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$5,196 to wife

Property Distribution to Wife:No marital property.

Number:245

Case:Desnoyers v Desnoyers (1988, 3d Dept) 142 App Div 2d 873, 530 NYS2d 906

Comment:(equitable distribution is not designed to punish parties; court “inferred” bar was from husband’s inheritance)

Years Married:42

Ages/Income:H-()? W-()?

Child Support:N/A

Maintenance:\$100/wk permanent

Exclusive Occupancy:No

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$2,000 to wife

Property Distribution to Wife:Wife awarded \$18,000 as a marital distribution for her equitable interest in her husband’s bar and \$10,000 for her share of the marital home

Number:246

Case:Petrie v Petrie (1988, 2d Dept) 143 App Div 2d 258, 532 NYS2d 283, later proceeding (2d Dept) 144 App Div 2d 549, 535 NYS2d 958 and app den 73 NY2d 702, 537 NYS2d 490, 534 NE2d 328

Comment:(equal distribution of assets, which gave all liquid assets to wife and pension to husband, was inequitable)

Years Married:38

Ages/Income:H-() W-()

Child Support:N/A

Maintenance:None

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:None

Property Distribution to Wife:Each spouse received assets worth \$105,700—wife given 1st option to buy husband's share of marital home. Wife to receive 50% of husband's pension payments.

Number:247

Case:Rider v Rider (1988, 3d Dept) 141 App Div 2d 1004, 531 NYS2d 44

Comment:(appreciation of realty by construction of home is marital, but encumbrances and loans must be deducted)

Years Married:4

Ages/Income:H-()? W-()

Child Support:N/A fixed by Family Court

Maintenance:None

Exclusive Occupancy:No

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$500 to wife

Property Distribution to Wife:Remitted to fix.

Number:248

Case:Sneed v Sneed, NYLJ, 9-9-88, P. 18, Col. 1, Sup. Ct., NY Co. (Baer, J)

Comment:(need of custodial parent to live in marital residence outweighed need to sell it and pay debts; wife to keep 2/3 of net rental income until sale)

Years Married:19

Ages/Income:H-(57) unemployed

Child Support:\$75/wk per child

Maintenance:None

Exclusive Occupancy:Yes—to wife until youngest child 18 or emancipated or wife's remarriage

Health & Medical Insurance:For wife and children

Dental Insurance:For wife and children

Life Insurance:For wife and children

Counsel Fees:None

Property Distribution to Wife:Wife awarded 50% of net equity of sale of marital apartment building, 50% of husband's pension (worth \$32,831 at date of commencement) over a period of 3 years with interest at statutory rate from date of commencement and 50% of all other marital assets.

Number:249

Case:Wilner v Wilner, NYLJ, 9-26-88, P. 27, Col. 1, Sup. Ct., Queens Co. (Zelman, J)

Comment:(wife awarded 75% of marital assets where husband wasted \$700,000 in marital assets, secreted and understated his income at trial; counsel fees awarded for stonewalling)

Years Married:32

Ages/Income:H-()? W-(60)

Child Support:N/A

Maintenance:\$200/wk until wife "employable" or remarries

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$26,634 to wife plus \$1,875 accountant's fees

Property Distribution to Wife:Wife awarded 75% of net profits from sale of marital home (worth \$136,000 net), her personal account worth \$10,500, \$75.00 of the husband's insurance policy (worth \$45,000). Husband allowed to keep his business with a book value of \$9,000.

Number:250

Case:Lauricella v Lauricella (1988, 2d Dept) 143 App Div 2d 642, 532 NYS2d 907

Comment:(not error to compute pension award without considering tax consequences where no evidence presented; child support awarded where parties intended custodial account be used for college)

Years Married:18

Ages/Income:H-()? W-()?

Child Support:\$100/wk (2 children)

Maintenance:\$175/wk for 5 years

Exclusive Occupancy:Yes—until younger child is 21

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:Yes—for a 5 year period

Counsel Fees:None

Property Distribution to Wife:Wife awarded 50% of net proceeds from sale of marital home after credit to each spouse of pre-marital contributions; 18/65 of 50% of husband's pension; 50% of appreciation of bonds transferred into joint names.

Number:251

Case:Behrens v Behrens (1988, 2d Dept) 143 App Div 2d 617, 532 NYS2d 893

Comment:(marital home ordered sold where parties financially incapable of maintaining it and lower cost housing available; medical license reemerged after sale of practice)

Years Married:?

Ages/Income:H-()? W-()?

Child Support:\$150/wk per child plus husband to pay for college

Maintenance:\$100/wk until Oct 1988

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$15,000 to wife

Property Distribution to Wife:Wife awarded 1/3 of value of husband's medical practice (worth \$120,000) and 1/3 of Keogh pursuant to a QDRO. Remitted for valuation and distribution of husband's medical license which "re-emerged".

Number:252

Case:De Marco v De Marco (1988, 2d Dept) 143 App Div 2d 328, 532 NYS2d 293

Comment:(appreciation of personal injury settlement proceeds is marital property)

Years Married:21

Ages/Income:H-()? W-()?

Child Support:N/A

Maintenance:\$75/wk for 5 years

Exclusive Occupancy:Yes—to wife and husband until youngest child 21 or emancipated (2 family house)

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:None

Property Distribution to Wife:Wife awarded lump sum amounting to 40% of husband's retirement pension (worth \$98,475). 50% of stocks, bank accounts, savings, real estate and 50% of the appreciation in monies each party received in settlement of a personal injury suit.

Number:253

Case:Ullah v Ullah, NYLJ, 11-8-88, P. 24, Col. 3, Sup. Ct., Kings Co (Rigler, J.) (See also # 337)

Comment:(\$8 million Lotto prize won by husband is marital property and divided equally)

Years Married:5

Ages/Income:H-()? W-()?

Child Support:\$7500/yr per child (2 children)

Maintenance:None

Exclusive Occupancy:?

Health & Medical Insurance:Yes, husband to provide for children

Dental Insurance:No

Life Insurance:Each party to provide \$100,000 for children

Counsel Fees:None

Property Distribution to Wife:19 remaining Lotto payments of \$380,955 divided equally as well as all assets bought with proceeds of first two payments.

Number:254

Case:Lynch v Lynch NYLJ, 11/10/88 P. 28, Col. 1, Sup. Ct., West Co. (Buell, J)

Comment:(\$1 million lottery prize won by wife is marital property and divided 40% to husband, 60% to wife; the lottery win should not deprive wife of maintenance while husband employed)

Years Married:32

Ages/Income:H-(61)? \$48,021 W-(60) \$14,000

Child Support:N/A

Maintenance:\$800 a month until death, remarriage or husband's retirement

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:None

Property Distribution to Wife:Husband awarded 40% of each \$44,481.20 annual lottery payment; each party awarded 50% of the other's pension payments starting when husband retires.

Number:255

Case:Maher v Maher (1988, 2d Dept) 144 App Div 2d 343, 533 NYS2d 961

Comment:(title to marital home to wife where she is custodial parent and it came from her family. Husband's \$14,000 arrears under temporary order was an offset)

Years Married:?

Ages/Income:H-()? W-()?

Child Support:custody to wife

Maintenance:?

Exclusive Occupancy:Title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Title to marital home and contents to wife.

Number:256

Case:Smith v Smith, NYLJ, 11-21-88, P. 30, Col. 4, Sup. Ct., Westchester Co. (Buell, J.)

Comment:(lottery winnings are marital property)

Years Married:5

Ages/Income:H-(32) \$29,958 W-(31) \$17,732

Child Support:N/A

Maintenance:\$85/wk for 4 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$2,500 to wife

Property Distribution to Wife:Wife awarded 15% (\$3,718.68) of husband's net annual payment of \$24,791.24 lottery winnings.

Number:257

Case:Sweetser v Sweetser (1988, 2d Dept) 144 App Div 2d 450, 534 NYS2d 200

Comment:

Years Married:?

Ages/Income:H-()? W-()?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded a \$250,000 interest in corporation.

Number:258

Case:Brancoveanu v Brancoveanu (1988, 2d Dept) 145 App Div 2d 395, 535 NYS2d 86, app dismd without op 73 NY2d 994, 540 NYS2d 1006, 538 NE2d 358, later proceeding (2d Dept) 168 App Div 2d 530, 562 NYS2d 763, app den 77 NY2d 807, 569 NYS2d 611, 572 NE2d 52 and cert den (US) 116 L ED 2d 129, 112 S CT 165, costs/fees proceeding (2d Dept) 177 App Div 2d 614, 576 NYS2d 321, app dismd 79 NY2d 1026, 584 NYS2d 438, 594 NE2d 932, reconsideration den 80 NY2d 925, 589 NYS2d 312, 602 NE2d 1128

Comment:(husband's attempt to hire someone to kill wife is so egregious as to deny him a share of wife's dental practice; no immediate need for sale of marital home)

Years Married:8

Ages/Income:H-()? W-()?

Child Support:\$200/wk (2 children)

Maintenance:?

Exclusive Occupancy:to wife

Health & Medical Insurance:for children

Dental Insurance:No

Life Insurance:for children

Counsel Fees:?

Property Distribution to Wife:Wife awarded 60% of net proceeds of sale of marital residence. Husband denied share of wife's dental practice. No distribution of husband's law practice.

Number:259

Case:Newman v Newman, NYLJ, 12-12-88, P. 24, Col. 2, Sup. Ct., NY Co. (Silberman, J.)

Comment:(husband's license to practice law merged into bankrupt Finley, Kumble law practice which had a negative value; no sale of marital residence where not economically practical)

Years Married:20

Ages/Income:H-()? \$135,000 W-()? \$14,000

Child Support:\$4,200/mo

Maintenance:No

Exclusive Occupancy:to wife until youngest child emancipated or her remarriage

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:None

Property Distribution to Wife:Wife awarded 50% of net proceeds of sale of marital residence. Husband directed to assume debts of approximately \$700,000 after using \$30,000 in savings for them. Tax shelter divided equally.

Number:260

Case:Sperduto v Sperduto (1988, 2d Dept) 145 App Div 2d 476, 535 NYS2d 433

Comment:(wife financially supported marriage while husband learned his trade)

Years Married:11

Ages/Income:H-()? W-()?

Child Support:N/A

Maintenance:\$200/week for 5 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$7,500 to wife

Property Distribution to Wife:?

Number:261

Case:Lauer v Lauer (1988, 2d Dept) 145 App Div 2d 470, 535 NYS2d 427

Comment:(need of custodial parent to occupy home outweighed by financial need to sell it)

Years Married:?

Ages/Income:H-()? \$130,000 W-()? \$30,000

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Sale of marital home and equal division of the proceeds.

Number:262

Case:Applebaum v Applebaum (1988, 1st Dept) 142 App Div 2d 300, 535 NYS2d 717

Comment:(co-op purchased by wife after husband left is “separate” property)

Years Married:?

Ages/Income:H-()? W-()?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:All marital property divided on a “more or less equal basis.”

Number:263

Case:Thomas v Thomas (1988, 2d Dept) 145 App Div 2d 477, 535 NYS2d 736

Comment:(proper to value pension at date of commencement)

Years Married:?

Ages/Income:H-()? W-()?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Equal division of marital assets.

Number:264

Case:Mullin v Mullin (1988, 4th Dept) 144 App Div 2d 1020, 534 NYS2d 294, app den 74 NY2d 604, 543 NYS2d 397, 541 NE2d 426

Comment:(maintenance reduced on appeal in this “long” marriage because wife in work force several years)

Years Married:?

Ages/Income:H-()? W-()? \$24,000

Child Support:\$225/wk

Maintenance:\$100/wk for 5 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$7,000 to wife

Property Distribution to Wife:?

Number:265

Case:Lichon v Lichon (1988, 4th Dept) 144 App Div 2d 1021, 534 NYS2d 296, app den 74 NY2d 603, 542 NYS2d 518, 540 NE2d 713

Comment:(husband's waste of marital assets in buying business justified larger share of marital property to wife)

Years Married:?

Ages/Income:H-()? W-()?

Child Support:?

Maintenance:?

Exclusive Occupancy:title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Marital property divided 50-50 but husband to pay mortgage on marital residence of \$32,000. Husband awarded his business worth \$5,213.

Number:266

Case:Scheuer v Scheuer (1988, 3d Dept) 144 App Div 2d 225, 534 NYS2d 537

Comment:(child's learning disability constituted special circumstances justifying private school)

Years Married:?

Ages/Income:H-()? W-()?

Child Support:\$230/wk (1 child) plus half of college or boarding school

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:267

Case:Donnelly v Donnelly (1988, 3d Dept) 144 App Div 2d 797, 534 NYS2d 766, app dismd 73 NY2d 992, 540 NYS2d 1001, 538 NE2d 353

Comment:(permanent maintenance is appropriate in 23 year marriage. Maintenance is designed to maintain standard of living)

Years Married:23

Ages/Income:H-()? \$22,500 W-(44)? \$14,836

Child Support:?

Maintenance:\$550/mo (then \$500 in 1989) until youngest child is 21

Exclusive Occupancy:To wife until youngest child is 21

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$1,500 to wife

Property Distribution to Wife:Equal division of proceeds of sale of marital residence after credit to wife “off the top” for mortgage and tax payments and capital improvements.

Number:268

Case:Whispell v Whispell (1988, 3d Dept) 144 App Div 2d 804, 534 NYS2d 557

Comment:(husband awarded minimal maintenance because of his “unindustrious lifestyle” and fault. 11.5% of marital property to husband. Wife made major contribution and his was negative)

Years Married:14

Ages/Income:H-()? W-()?

Child Support:?

Maintenance:\$100/mo to husband for one year

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Husband received \$7,000, 50% of joint stock and one of two cars. Wife awarded marital property worth \$113,000, her half of marital residence worth \$48,500 and the other half of it gifted to her by her parents. Husband’s share was 11.5%

Number:269

Case:Jones v Jones (1989) 144 Misc 2d 295, 534 NYS2d 1016, later Prodeeding (2d Dept) 182 App Div 2d 674, 582 NYS2d 266

Comment:(court valued husband's medical practice and unmerged portion of his license)

Years Married:15

Ages/Income:H-()? W-()?

Child Support:\$125/wk per child (4 children) until 21 or emancipated

Maintenance:None

Exclusive Occupancy:Title to wife

Health & Medical Insurance:Husband to provide for children and pay deductible

Dental Insurance:No

Life Insurance:Husband to provide \$250,000 per child

Counsel Fees:\$7,500 to wife

Property Distribution to Wife:Marital residence and real estate worth \$449,000 divided equally. Husband's medical license worth \$183,527 divided equally. Husband's medical practice, worth \$75,000 divided 70% to husband, 30% to wife. Other assets consisting of IRA's and savings equally divided. Parties retained furniture and collectibles. Wife's share worth \$385,000, husband's share worth \$418,360.

Number:270

Case:Turner v Turner (1988, 3d Dept) 145 App Div 2d 752, 535 NYS2d 485

Comment:(remittal not warranted where it would result in additional counsel fees and deplete the parties' modest assets)

Years Married:32

Ages/Income:H-()? W-()?

Child Support:N/A

Maintenance:\$50 per week permanent

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 50% of the marital residence and family business.

Number:271

Case:Ducharme v Ducharme (1988, 3d Dept) 145 App Div 2d 737, 535 NYS2d 474, app den 73 NY2d 708, 540 NYS2d 1003, 538 NE2d 355

Comment:(marital debts to be determined at same time as marital property evaluated; “inequitable” to value assets as of commencement)

Years Married:16

Ages/Income:H-()? W-()?

Child Support:\$120 per wk (3 children)

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:Husband to pay half of wife’s expert fees

Property Distribution to Wife:Wife awarded 50% of marital assets less 50% of marital debts (she received marital residence and \$107,318, and husband awarded farm).

Number:272

Case:Cotton v Cotton (1989, 2d Dept) 147 App Div 2d 436, 537 NYS2d 557

Comment:(husband’s co-op shares would not be liquidated where it would leave him homeless)

Years Married:33

Ages/Income:H-(62) W-(56)

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$8,500 to wife

Property Distribution to Wife:Wife awarded one-half (94,181.50) of the marital assets.

Number:273

Case:Denholz v Denholz (1989, 2d Dept) 147 App Div 2d 522, 537 NYS2d 607, app dismd without op 74 NY2d 716, 543 NYS2d 401, 541 NE2d 430, reconsideration den 74 NY2d 843, 546 NYS2d 560, 545 NE2d 874

Comment:(in short marriage wife entitled, to extent possible, to be restored to economic situation she enjoyed prior to marriage; wife entitled to credit for separate property contribution)

Years Married:1 1/2

Ages/Income:H-()? W-()?

Child Support:N/A

Maintenance:\$330 per month for 5 yrs

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$6,000 to wife

Property Distribution to Wife:Wife awarded \$14,793 representing one half of parties joint bank account plus one third of appreciation of marital residence.

Number:274

Case:Hackett v Hackett (1989, 2d Dept) 147 App Div 2d 611, 538 NYS2d 20

Comment:(stock given to husband's nominee is marital property where he controlled it)

Years Married:?

Ages/Income:H-()? \$67,000 W-()? \$4 per hour

Child Support:N/A

Maintenance:\$150 per week for 10 yrs

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$10,000 awarded to wife

Property Distribution to Wife:Virtual equal distribution of property.

Number:275

Case:Getz v Getz, NYLJ, 3-2-89, P. 28, Col. 6, Sup. Ct., West. Co. (Colabella, J.)

Comment:(husband's "celebrity-status" as a jazz-saxophone player not a marital asset. Failure to maximize earning potential is not economic dissipation)

Years Married:24

Ages/Income:H-(60) \$45,000

Child Support:N/A

Maintenance:None

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:None

Property Distribution to Wife:Wife awarded 50% of net proceeds of sale of marital residence worth \$1.75 million, and other assets and realty and 50% of husband's royalties attributable to marriage, when received.

Number:276

Case:Rosenberg v Rosenberg (1988, 4th Dept) 145 App Div 2d 916, 536 NYS2d 605, amd, app den, in part (4th Dept) 149 App Div 2d 985 and app den 74 NY2d 603, 543 NYS2d 396, 541 NE2d 425

Comment:(no authority for child support until college graduation; interest in law firm valued based on partnership agreement; value of marital residence generally fixed as of time of trial)

Years Married:22

Ages/Income:H-(56) \$45,000 W-(52) \$200,000

Child Support:\$25/ week per child (6 children)

Maintenance:Denied

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:None

Property Distribution to Wife:Marital assets divided 70% to wife and 30% to husband; wife given 15 years to pay husband his share with interest at statutory rate.

Number:277

Case:Gruner v Gruner (1989, 2d Dept) NYLJ, 4-7-89, P. 27, Col. 2

Comment:(maintenance awarded where wife's health problems restricted her future earning capacity)

Years Married:?

Ages/Income:?

Child Support:?**Maintenance:**\$150/wk for 5 years**Exclusive Occupancy:**To wife until sold**Health & Medical Insurance:****Dental Insurance:****Life Insurance:**To wife**Counsel Fees:****Property Distribution to Wife:**Parties were directed to sell marital residence and evenly divide the proceeds.

Number:278**Case:**Cusimano v Cusimano (1989, 2d Dept) 149 App Div 2d 397, 539 NYS2d 502, mod (2d Dept) 180 App Div 2d 707, 579 NYS2d 737**Comment:**(a court is not bound by a party's account of his own finances and if his version is patently unbelievable may find the income higher than that claimed; equal distribution awarded)**Years Married:**11**Ages/Income:?****Child Support:**\$40/week per child (3 children)**Maintenance:**\$75/wk for 3 years**Exclusive Occupancy:**To wife per stipulation**Health & Medical Insurance:****Dental Insurance:****Life Insurance:****Counsel Fees:?****Property Distribution to Wife:**Wife to receive half of net proceeds of sale of house and \$37,300 as her equitable share of the husband's business and other assets.

Number:279**Case:**Vogel v Vogel (1989, 2d Dept) 149 App Div 2d 501, 539 NYS2d 982**Comment:**(wife directed to pay half of monies she took from parties' joint account)**Years Married:****Ages/Income:****Child Support:**\$25/week (1 child)**Maintenance:**\$75/wk for 3 years

Exclusive Occupancy:**Health & Medical Insurance:****Dental Insurance:****Life Insurance:****Counsel Fees:?****Property Distribution to Wife:**Equal division of all cash assets; matter remitted for distribution of other marital assets.

Number:280**Case:**Stolow v Stolow (1989, 2d Dept) 149 App Div 2d 683, 540 NYS2d 484, motion gr, in part, motion den, in part (2d Dept) 152 App Div 2d 559**Comment:**(immediate sale of house ordered where expenses of maintaining it are wastefully extravagant; capitalization of earnings method using average pre-tax earnings is appropriate to valuating close corporation)**Years Married:**18**Ages/Income:?****Child Support:**Remitted**Maintenance:**Remitted**Exclusive Occupancy:**Ordered Sold**Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:**Remitted**Property Distribution to Wife:**Wife to receive 50% of marital residence, 30% of husband's business and \$91,500 as share of other residence. Remitted for valuation of husband's business.

Number:281**Case:**Lestrangle v Lestrangle (1989, 2d Dept) 148 App Div 2d 587, 539 NYS2d 53**Comment:**(adultery of wife does not deprive her of equal share of marital assets. Date of trial used for valuation of marital property)**Years Married:**27**Ages/Income:?****Child Support:**None awarded to husband who did not pursue it**Maintenance:?****Exclusive Occupancy:?****Health & Medical Insurance:?**

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded equal share of the marital assets.

Number:282

Case:McCann v McCann (1989) 142 Misc 2d 1083, 539 NYS2d 281

Comment:(no share of appreciation in separate real property without expert testimony to establish portion attributable to claiming spouses direct or indirect contributions)

Years Married:4

Ages/Income:H-36 \$40,000 W-29 \$12,000

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 50% (\$9,000) of joint funds paid for improvement to husband's home.

Number:283

Case:Miller v Miller (1989, 2d Dept) 150 App Div 2d 652, 541 NYS2d 524

Comment:(where parties are receiving fixed pension payments it is appropriate to equitably distribute the payments)

Years Married:45

Ages/Income:H-86 W-74

Child Support:N/A

Maintenance:None

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 50% of husband's \$34,000 annual pension, less taxes, and husband awarded 50% of wife's \$9,000 annual pension, less taxes, if any; wife awarded 50% (\$5,000) of cash surrender value of husband's life insurance.

Number:284

Case:Reck v Reck (1989, 4th Dept) 149 App Div 2d 934, 540 NYS2d 67

Comment:(husband directed by Appellate Division to pay wife's counsel fees for the appeal)

Years Married:17

Ages/Income:H-\$42,000/yr W-\$2,800/yr

Child Support:\$75/wk per child (two children)

Maintenance:\$150 per week

Exclusive Occupancy:To wife until youngest child emancipated

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:To wife

Property Distribution to Wife:Wife awarded 50% of her marital property *and half of net proceeds of sale of home*. Husband awarded 50% of fair market value of marital home as of 1972 and his \$1,600 original contribution to down payment. Wife awarded entire appreciation of \$232,000 since date husband departed home failing to make further contribution to house or family.

Number:285

Case:Moody v Moody, NYLJ, 6-7-89, P. 26, Col. 2, Sup. Ct., Kings Co. (Schneier, J.) affd 172 App Div 2d 730, 569 NYS2d 116

Comment:(husband who did not contribute to expenses of home or support wife or child since he left marital home in 1972 not entitled to share in appreciation since date of departure from home)

Years Married:34

Ages/Income:H-72 W-64

Child Support:None

Maintenance:None

Exclusive Occupancy:No

Health & Medical Insurance:No

Dental Insurance:No
Life Insurance:No
Counsel Fees:None
Property Distribution to Wife:

Number:286

Case:Cappello v Cappello, NYLJ, 6-27-89, P. 26, Col. 5, Sup. Ct., Nassau Co (Liebowitz, JHO) affd (1991, 2d Dept) 172 App Div 2d 479, 567 NYS2d 834

Comment:(where divorce follows separation judgment, maintenance may be fixed de novo; wife awarded 75% of marital home valued as of date of commencement of divorce action where wife maintained property and paid all carrying charges since separation)

Years Married:23

Ages/Income:H-44 \$62,000/yr W-43 \$10,400/yr

Child Support:N/A

Maintenance:\$150 per week

Exclusive Occupancy:To wife until sale or buyout

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:None

Property Distribution to Wife:Wife awarded 50% of the value of the husband's beneficial plans less taxes (\$14,738) and 75% of the value of the marital home valued at \$134,000 at date of commencement, together with all furnishings.

Number:287

Case:Wilkinson v Wilkinson (1989, 3d Dept) 149 App Div 2d 842, 540 NYS2d 357

Comment:

Years Married:24

Ages/Income:H-\$56,000 W-\$6,400

Child Support:\$100 per week for 13 year old and \$50 per week for 20 year old

Maintenance:\$225 per week for 5-1/2 years then \$150 per week

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 50% of the marital portion of the husband's pension.

Number:288

Case:Largiader v Largiader (1989, 2d Dept) 151 App Div 2d 724, 542 NYS2d 789

Comment:(proper to value pension as of date of commencement; interest on wife's share awarded from date of commencement because of husband's delay and stonewalling; error in failing to value and distribute household furnishings)

Years Married:28

Ages/Income:H-

Child Support:N/A

Maintenance:\$200/per week

Exclusive Occupancy:

Health & Medical Insurance:Husband to provide for wife

Dental Insurance:?

Life Insurance:wife beneficiary

Counsel Fees:None, wife paid her attorneys \$31,000

Property Distribution to Wife:Wife awarded title to marital home and husband's pension; all other assets divided equally.

Number:289

Case:Ierardi v Ierardi (1989, 2d Dept) 151 App Div 2d 548, 542 NYS2d 322

Comment:(where parties are childless and healthy there is no compelling reason to award either party exclusive occupancy; generally marital residence should be valued as of date of trial; option to buy to party who wants to remain in occupancy there)

Years Married:?

Ages/Income:?

Child Support:N/A

Maintenance:?

Exclusive Occupancy:Option to husband to buy wife's share

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Husband given option to purchase wife's 50% share of marital premises for \$80,000; equal distribution awarded of parties' tax deferred annuities.

Number:290

Case:Patricia Lynn N. v Vincent Michael N. (1989, 2d Dept) 152 App Div 2d 549, 543 NYS2d 693

Comment:

Years Married:?

Ages/Income:?

Child Support:\$75/wk (1 child)

Maintenance:?

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:None

Property Distribution to Wife:Net proceeds of sale of marital residence to be divided equally.

Number:291

Case:Schnee v Schnee (1989, 2d Dept) 152 App Div 2d 665, 544 NYS2d 18

Comment:(although a second marriage, permanent maintenance warranted in light of wife's advanced age, limited earning capacity, standard of living during marriage and husband's substantial income)

Years Married:8

Ages/Income:H-42 (?) W-56 Unemployed

Child Support:N/A

Maintenance:\$500/per week

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$25,000 counsel fees and \$5,000 experts' fees to wife

Property Distribution to Wife:\$514,611 distributive award to wife.

Number:292

Case:Lenczycki v Lenczycki (1989, 2d Dept) 152 App Div 2d 621, 543 NYS2d 724

Comment:(wife not entitled to share in marital assets where she wastefully dissipated family savings, attempted to conceal impropriety and caused tax liabilities)

Years Married:10

Ages/Income:?

Child Support:?

Maintenance:\$250/per week for 3 years or until remarriage plus \$1,000 for monthly rent for 18 mos

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:?

Property Distribution to Wife:?

Number:293

Case:Curley v Curley, NYLJ, 7-24-89, P. 28, Col. 4, Sup. Ct., Nassau Co. (DeMaro, J.)

Comment:(husband's pension valued as of earliest retirement date in 1990 covering period of employment to that date; wife's assets attributed with 8% interest for purpose of maintenance award)

Years Married:31

Ages/Income:H-61 \$40,000 W-60 \$615/mo

Child Support:N/A

Maintenance:\$200/per week until 11/30/90 then \$100 per week until 12/31/93

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:Wife beneficiary

Counsel Fees:None

Property Distribution to Wife:Wife awarded 50% of marital assets totalling \$485,000 after credit for tax consequences and one-half of pension benefit husband would be entitled to as of 12/1/90 multiplied by 69.60% (\$680).

Number:294

Case:Mercado v Mercado, NYLJ, 7-25-89, P. 25, Col. 6, Sup. Ct., Suffolk Co. (Geiler, J.)

Comment:(lay opinions admissible as to value of home; no share of husband's pension where no evidence of its value)

Years Married:13

Ages/Income:?

Child Support:?

Maintenance:Ordered sold

Exclusive Occupancy:

Health & Medical Insurance:For wife and children so long as obligated for support

Dental Insurance:

Life Insurance:For wife (\$15,000) and children (\$50,000) so long as obligated for support and maintenance payments, respectively

Counsel Fees:None

Property Distribution to Wife:Marital home to be sold and net proceeds divided equally.

Number:295

Case:Mele v Mele (1989, 2d Dept) 152 App Div 2d 685, 544 NYS2d 25

Comment:(not error to distribute pension without evidence of value or tax implications where the proper formula has been applied, and there is no lump sum award)

Years Married:9

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 50% of husband's pension benefits.

Number:296

Case:Dispuva v Dispuva, NYLJ, 7-25-89, P. 24, Col. 4, Sup. Ct., Nassau Co. mod 181 App Div 2d 810, 581 NYS2d 376 (2d Dept, 1992)

Comment:(abuse of discretion to ward wife a share of enhanced earning capacity attributable to husband's degree and certification as a CPA when she failed to show a substantial contribution to this asset)

Years Married:11

Ages/Income:H-34 \$44,000 W-34 \$34,000

Child Support:\$140/wk

Maintenance:Waived

Exclusive Occupancy:Option to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:Yes-for the wife and children

Counsel Fees:\$7,500 to wife

Property Distribution to Wife:Wife given option to either pay husband \$87,500 for his interest in marital residence or have exclusive possession instead of full title with house to be sold upon child's 18th birthday and proceeds divided equally. Husband awarded 50% of wife's pension.

Number:297

Case:Dawson v Dawson (1989, 2d Dept) 152 App Div 2d 717, 544 NYS2d 172

Comment:(valuation of a pension is necessary only when the holder is directed to pay a lump sum; improper to provide for increase of support *in futuro*)

Years Married:19

Ages/Income:?

Child Support:\$100/per week for 5 years plus \$470 per month for 5 years to pay for carrying charges for marital cooperative apartment

Maintenance:To wife for 5 years

Exclusive Occupancy:

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$2,500 to wife

Property Distribution to Wife:Wife entitled to 50% of the marital assets.

Number:298

Case:McAlpine v McAlpine (1989) 143 Misc 2d 30, 539 NYS2d 680, mod (2d Dept) 176 App Div 2d 285, 574 NYS2d 385

Comment:(fellowship in Society of Actuaries is a marital asset; wife not entitled to share in this asset as she made no contribution)

Years Married:4

Ages/Income:H-29 \$72,000 W-31 \$27,000

Child Support:N/A

Maintenance:None

Exclusive Occupancy:No

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:None

Property Distribution to Wife:Net proceeds of sale of marital home to be distributed 70% to husband, 30% to wife after return of \$25,000 "seed" money to husband and \$8,250 of appreciation due to it.

Number:299

Case:Morrissey v Morrissey (1989, 2d Dept) 153 App Div 2d 609, 544 NYS2d 643

Comment:(proper to value plastic surgery practice using capitalization of net earnings method and to adjust all income for personal expenses)

Years Married:30

Ages/Income:H-56 W-53

Child Support:College expenses for daughter

Maintenance:\$300/per week until sale of marital residence

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:Hearing ordered

Property Distribution to Wife:Wife awarded 50% (\$396,250) of value of husband's medical practice, pension rights (\$70,258) and other marital property.

Number:300

Case:Latham v Latham, NYLJ, 9-1-89, P. 24, Col. 1, Sup. Ct., Kings Co. (Riegler, J.)

Comment:

Years Married:12

Ages/Income:

Child Support:\$30/wk per child (2 children)

Maintenance:None

Exclusive Occupancy:No

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$2,500 to wife

Property Distribution to Wife:Lot to be sold and net proceeds equally divided.

Number:301

Case:Day v Day (1989, 3d Dept) 152 App Div 2d 827, 544 NYS2d 38

Comment:(court is not limited by the parties requests in Court, in its ability to grant an appropriate judgment based on fairness)

Years Married:27

Ages/Income:?

Child Support:?

Maintenance:\$325/mo for 5 years

Exclusive Occupancy:Title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:None

Property Distribution to Wife:Wife awarded marital residence and lake property worth \$116,000; husband awarded properties of comparable value.

Number:302

Case:Savasta v Savasta, NYLJ, 9-13-89, P. 27, Col. 2, Sup. Ct., Nass. Co (DeMaro, J)

Comment:(valuation of Board certification as an emergency room physician distributed. Husband's license not distributed; nor was his certification as an internist)

Years Married:10

Ages/Income:H-38 \$120,000 W-43 none

Child Support:\$400/wk (1 child) plus unreimbursed medical & dental for 4 years

Maintenance:\$500/wk for three years then \$250/wk for 16 months

Exclusive Occupancy:No

Health & Medical Insurance:For child

Dental Insurance:For child

Life Insurance:To wife to satisfy husband's obligations

Counsel Fees:\$30,000 counsel fees and experts' fees to wife

Property Distribution to Wife:Parties stipulated to divide marital property equally each receiving \$180,000 in equity; wife awarded 10% (\$57,188) of present value of husband's board certification at date of commencement of action.

Number:303

Case:Ferlo v Ferlo (1989, 4th Dept) 152 App Div 2d 980, 544 NYS2d 254

Comment:(wife to receive an additional distributive award in lieu of maintenance)

Years Married:20

Ages/Income:H-late 30's W-late 30's \$3,000

Child Support:\$100/mo

Maintenance:No

Exclusive Occupancy:No

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:None

Property Distribution to Wife:Real property to be sold and net proceeds after payment of other debts to be evenly divided. Wife awarded additional distributive award of \$5,000 in lieu of maintenance.

Number:304

Case:Parlow v Parlow, (1989, Sup. Ct., West. Co.) 145 Misc 2d 850, 548 NYS2d 373

Comment:(husband's teaching license and underlying degrees merged into career as a teacher; husband awarded exemption for child who lived with him)

Years Married:23

Ages/Income:H-\$44,000 W-\$25,875

Child Support:Waived
Maintenance:Waived
Exclusive Occupancy:To husband
Health & Medical Insurance:No
Dental Insurance:No
Life Insurance:No
Counsel Fees:None
Property Distribution to Wife:Marital residence worth \$267,000 to be sold and parties to divide equally net proceeds.

Number:305
Case:Reina v Reina (1989, 3d Dept) 153 App Div 2d 775, 544 NYS2d 895
Comment:(not an abuse of discretion to award different percentages of each asset)
Years Married:14
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:Wife given distributive award of \$110,800 representing 50% of real estate, 40% of value of husband's business and 20% of value of restored automobiles.

Number:306
Case:Foster v Foster (1989, 2d Dept) 154 App Div 2d 334, 545 NYS2d 812
Comment:
Years Married:?
Ages/Income:
Child Support:\$400/wk unallocated between child support and maintenance
Maintenance:
Exclusive Occupancy:To wife for 10 years
Health & Medical Insurance:?
Dental Insurance:?

Life Insurance:?**Counsel Fees:** Remitted for hearing or stipulation to submit affidavits**Property Distribution to Wife:?**

Number:307**Case:**Smith v Smith (1989, 2d Dept) 154 App Div 2d 365, 545 NYS2d 842**Comment:**(no maintenance where wife and husband had “roughly equal incomes”)**Years Married:?****Ages/Income:**H-\$1250/mo W-\$1250/mo**Child Support:**None—defendant to pay \$10,000 toward tuition**Maintenance:**None**Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:?**

Number:308**Case:**Valenza v Valenza, NYLJ, 1-16-90, P. 31, Col. 4, Sup. Ct., Queens Co. (Kassoff, J.)**Comment:**(wife attempted to murder husband on two occasions; Husband raped and assaulted wife on numerous occasions. Husband entitled to 70% of marital assets)**Years Married:**4**Ages/Income:**H-37 W-38**Child Support:**Future Oblig. Stip.**Maintenance:**Not Requested**Exclusive Occupancy:**To Wife**Health & Medical Insurance:**No**Dental Insurance:**No**Life Insurance:**No**Counsel Fees:**None**Property Distribution to Wife:**Wife awarded 30% of marital assets to be reduced by \$4700 which represents the amount she paid to murder plaintiff less her share of law guardian fee.

Number:309

Case:Hupp v Hupp, NYLJ, 2-9-90, P.28, Col. 1. Sup. Ct., West Co. (Miller, J.)

Comment:(court imputed income of \$10,400 to “disabled husband; application of child support guidelines unjust and inappropriate)

Years Married:1 ½

Ages/Income:H(35) \$23,000 W-\$25,888

Child Support:\$7500/yr. (2 ch)

Maintenance:None

Exclusive Occupancy:N/A

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:10,000 awarded to wife

Property Distribution to Wife:No marital property to distribute.

Number:310

Case:Impagliazzo v Impagliazzo, NYLJ, 4-5-90, P. 28, Col. 1, Sup. Ct., Nassau Co. (McCaffrey, J.)

Comment:(court awarded unlimited maintenance where daughter past 21 who was severely handicapped lived with wife)

Years Married:23

Ages/Income:H(47) \$64,000 W(44) \$2,661

Child Support:\$180/wk (1 ch)

Maintenance:\$175/week

Exclusive Occupancy:N/A

Health & Medical Insurance:Yes for wife and child

Dental Insurance:No

Life Insurance:No

Counsel Fees:None

Property Distribution to Wife:Settled by stipulation.

Number:311

Case:Mallin v Mallin, NYLJ, 3-7-90, P. 28, Col. 3, Sup. Ct., Nassau Co. (Kohn, J.)

Comment:(in action for divorce under DRL 170(5) all assets valued at date of commencement of action)

Years Married:23

Ages/Income:H(47) \$45,736 W(45) \$28,080
Child Support:\$65/wk per ch. plus one half of school.
Maintenance:None
Exclusive Occupancy:N/A
Health & Medical Insurance:For Children
Dental Insurance:For Children
Life Insurance:\$100,000 For Children
Counsel Fees:None
Property Distribution to Wife:Marital Assets consisting of home and husband's pension, valued at \$395,905 divided equally.

Number:312
Case:Worthing v Berger, NYLJ, 2-26-90, P. 30, Col. 2, Sup. Ct., West Co. (Fredman, J.)
Comment:(husband denied share of appreciation of wife's separate property marital residence)
Years Married:8
Ages/Income:?
Child Support:N/A
Maintenance:None
Exclusive Occupancy:N/A
Health & Medical Insurance:No
Dental Insurance:No
Life Insurance:No
Counsel Fees:None
Property Distribution to Wife:Each party retained their own personal property.

Number:313
Case:Beiter v Beiter, NYLJ, 2-8-90, P. 27, Col. 6, Sup. Ct., Nassau Co. (McCaffrey, J.)
Comment:(wife denied exclusive occupancy where all children were emancipated)
Years Married:30
Ages/Income:H- \$52,606 W(54) \$7,000
Child Support:N/A
Maintenance:\$200/week for 5 years
Exclusive Occupancy:Denied
Health & Medical Insurance:

Dental Insurance:**Life Insurance:****Counsel Fees:**None**Property Distribution to Wife:**Wife awarded one-half (\$41,945) of defendant's pension to be paid upon his retirement; marital home to be sold and net proceeds divided equally.

Number:314**Case:**Thompson v Thompson, NYLJ, 1-5-90, P. 28, Col. 3, Sup. Ct., Nassau Co. (McCaffrey, J.)**Comment:**(defendant's conviction of raping his 17 year old step-daughter constituted egregious conduct because it effected wife's economic status)**Years Married:**10**Ages/Income:**H(40) \$0 W(44) \$21,700**Child Support:**\$25/wk per ch**Maintenance:**Not requested**Exclusive Occupancy:**No**Health & Medical Insurance:**No**Dental Insurance:**No**Life Insurance:**No**Counsel Fees:**None**Property Distribution to Wife:**Wife awarded a 2291 distributive award representing 50% of the marital portion of defendant's pension and 65% (28,405) of the remaining marital assets.

Number:315**Case:**Kalnins v Kalnins, NYLJ, 11-16-89, P. 23, Col. 3, Sup. Ct., NY. Co. (Baer, J.)**Comment:**(wife suffered permanent brain damage prior to marriage; husband awarded all marital assets in light of high maintenance award. MBA valued at \$70,000)**Years Married:**14**Ages/Income:**H- \$83,000 W(43)**Child Support:**N/A**Maintenance:**\$3,500/mo permanent**Exclusive Occupancy:?****Health & Medical Insurance:**Yes for wife**Dental Insurance:**No**Life Insurance:**Yes

Counsel Fees:?

Property Distribution to Wife:Husband awarded all marital assets valued at \$411,753; he was directed to buy a single premium annuity and bridge life insurance to assure payment of maintenance when he retires.

Number:316

Case:Rosenberg v Rosenberg (1989, 2d Dept) 155 App Div 2d 428, 547 NYS2d 90

Comment:(children's custodial accounts to be maintained for college; court not bound by husband's reported income; 13 year marriage is of moderate duration)

Years Married:13

Ages/Income:?

Child Support:\$150/wk per ch (4 ch)

Maintenance:\$150/wk for 6 years

Exclusive Occupancy:?

Health & Medical Insurance:Yes for wife

Dental Insurance:?

Life Insurance:Yes for wife and children

Counsel Fees:\$10,000 to Wife

Property Distribution to Wife:Equal division of marital assets.

Number:317

Case:Cohen v Cohen (1989, 3d Dept) 154 App Div 2d 808, 546 NYS2d 473

Comment:(maintenance should be of such duration as to enable a spouse to become self-supporting)

Years Married:21

Ages/Income:?

Child Support:\$100/wk for 3 ch

Maintenance:\$200/week for 6 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:318

Case:Oswald v Oswald (1989, 3d Dept) 154 App Div 2d 817, 546 NYS2d 475

Comment:(second marriage for both parties)

Years Married:8

Ages/Income:?

Child Support:\$140/wk (1 ch)

Maintenance:For 10 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:Hearing Ordered

Property Distribution to Wife:Wife awarded \$59,515 of \$180,000 in marital assets.

Number:319

Case:Rothbaum v Rothbaum (1989, 2d Dept) 155 App Div 2d 650, 548 NYS2d 242, app dismd without op 76 NY2d 770, 559 NYS2d 978, 559 NE2d 672 and app den, on reh 76 NY2d 918, 563 NYS2d 56, 564 NE2d 666

Comment:(an award of special relief (life ins) is inappropriate when maintenance is denied)

Years Married:4

Ages/Income:?

Child Support:?

Maintenance:None

Exclusive Occupancy:

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:None

Property Distribution to Wife:No marital property.

Number:320

Case:W. H. C. v M. M. C. (1989, 1st Dept) 156 App Div 2d 237, 548 NYS2d 498

Comment:

Years Married:16

Ages/Income:H(46) W(46)

Child Support:?**Maintenance:**\$1,300/wk**Exclusive Occupancy:**To Wife until youngest child 21**Health & Medical Insurance:**For Wife and children**Dental Insurance:?****Life Insurance:**\$500,000 for wife and children**Counsel Fees:**Wife awarded \$25,000 legal fees and \$5,000 accounting fees.**Property Distribution to Wife:**Wife awarded 35% (\$71,980) of husband's interest in law partnership, 20% (\$35,520) of husband's computer investment, \$32,079 for her share of the husband's pension plans and half of the net proceeds of the sale of the house.

Number:321**Case:**Goldfarb v Goldfarb, NYLJ, 1-5-90, P. 21, Col. 5, Sup. Ct., NY Co. (Baer, J.) affd (1st Dept) 173 App Div 2d 335, 569 NYS2d 725**Comment:**(both parties were disabled; the husband had disability income; the wife had social security disability benefits; they separated after 3 years of marriage)**Years Married:**8**Ages/Income:**H(45) \$46,362 W(44) \$9,240**Child Support:**N/A**Maintenance:**\$600/mo for life**Exclusive Occupancy:?****Health & Medical Insurance:**For Wife nonreimbursement**Dental Insurance:**For Wife nonreimbursement**Life Insurance:**No**Counsel Fees:**\$5,000 to wife's attorney**Property Distribution to Wife:?**

Number:322**Case:**Kustura v Kustura, NYLJ, 9-22-90, P. 25, Col. 2, Sup. Ct., Kings Co. (Schneier, J.)**Comment:**(oil paintings created by husband, an artist, were held to be marital property and physically divided)**Years Married:**5**Ages/Income:**H(38) W(32)**Child Support:**\$75/wk per ch (2 ch)**Maintenance:**None

Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:\$100,000 for children
Counsel Fees:None
Property Distribution to Wife:Equal physical division of forty oil paintings.

Number:323
Case:Anderson v Anderson, NYLJ, 4-24-90, P. 22, Col. 5, Sup. Ct., NY Co. (Wilk, J.)
Comment:(both parties were recovering alcoholics living off income from the wife's trust fund; husband had not worked since 1972)
Years Married:26
Ages/Income:H(54) W(54) \$125,000 net
Child Support:N/A
Maintenance:\$3,000/mo for 3 yrs.
Exclusive Occupancy:Title to Wife
Health & Medical Insurance:No
Dental Insurance:No
Life Insurance:For Husband
Counsel Fees:To husband's attorney; \$1,250 to husband's experts' fees.
Property Distribution to Wife:House and apartment bought with wife's trust fund corpus and put in joint names awarded to wife; value of contents to be shared equally.

Number:324
Case:Berge v Berge (1990, 4th Dept) 159 App Div 2d 960, 552 NYS2d 779
Comment:(wife awarded a share of breeder's awards resulting from horse breeding during the marriage)
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:Permanent
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?

Life Insurance:?**Counsel Fees:?**

Property Distribution to Wife:Wife awarded 50% of marital portion of the husband's profit sharing and 50% of the husband's breeder's awards and future breeder's awards.

Number:325

Case:De Beer v De Beer (1990, App Div, 1st Dept) 162 App Div 2d 165, 556 NYS2d 299

Comment:(husband an unemployed actor)

Years Married:12

Ages/Income:H-\$278 week W-\$300 week

Child Support:\$100/wk (1 ch)

Maintenance:None

Exclusive Occupancy:

Health & Medical Insurance:For Child

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:326

Case:Gross v Gross (1990, 2d Dept) 160 App Div 2d 976, 554 NYS2d 699

Comment:(husband awarded title to house he purchased after separation because wife did not contribute to its acquisition or maintenance)

Years Married:30

Ages/Income:?

Child Support:N/A

Maintenance:\$350/wk for 4 yrs.

Exclusive Occupancy:Title to Wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$1,700 to wife

Property Distribution to Wife:Wife awarded exclusive ownership of marital residence and greater share of the husband's pension and stock savings plan.

Number:327

Case:Guttman v Guttman (1990, 1st Dept) 159 App Div 2d 431, 554 NYS2d 986, app den 76 NY2d 703, 559 NYS2d 982, 559 NE2d 676

Comment:(Court apportioned a potential tax liability on a disallowed shelter)

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:To wife for 5 years

Exclusive Occupancy:

Health & Medical Insurance:?

Dental Insurance:

Life Insurance:

Counsel Fees:?

Property Distribution to Wife:Each party awarded \$82,445; marital residence to be sold; tax liability apportioned 40% to wife and 60% to husband.

Number:328

Case:Holihan v Holihan (1990, 2d Dept) 159 App Div 2d 685, 553 NYS2d 434

Comment:(wife failed to establish that husband's guidance counselor's license substantially enhanced his future earnings since there was no calculation of what he would have earned without it)

Years Married:24

Ages/Income:

Child Support:None awarded (5 ch) Husband to contribute to college tuition expenses

Maintenance:None

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Husband awarded 20% (\$116,739) of value of wife's license to practice law; all other marital assets divided equally.

Number:329

Case:Leider v Otero-Leider (1990, 1st Dept) 161 App Div 2d 277, 554 NYS2d 911

Comment:

Years Married:

Ages/Income:H ? W- \$5,700

Child Support:

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Husband awarded all of his business interests, real estate holdings, pension and 50% of the marital home. Wife awarded all of the value of her license to practice law and the other 50% of the marital home.

Number:330

Case:Lipan v Lipan (1990, 1st Dept) 160 App Div 2d 201, 554 NYS2d 7

Comment:(distribution of taxi medallion purchased by husband prior to marriage)

Years Married:?

Ages/Income:?

Child Support:

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 2/3 interest in value of marital home and 1/8 interest in value of taxi medallion.

Number:331

Case:Morrongiello v. Paulsen, 195 App Div 2d 594, 601 NYS2d 121 (2d Dept., 1993)

Comment:Distributive award payable over 10 years when husband had no assets, and debts only

Years Married:10
Ages/Income:
Child Support:
Maintenance:Denied
Exclusive Occupancy:
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$5,000 to wife
Property Distribution to Wife:Wife awarded 30% of portion of husband's law license which was marital property (\$72,174.80), and rings - Husband received credit of \$1,575 and credit of \$24,547 - Husband to pay distributive award over 10 years

Number:332
Case:Rossi v Rossi (1990, 2d Dept) 163 App Div 2d 376, 558 NYS2d 108
Comment:(home purchased by the husband prior to marriage distributed)
Years Married:4
Ages/Income:H- \$76,000 W- \$16,000
Child Support:N/A
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:Net proceeds of sale of marital home distributed 60% to the husband, 40% to the wife.

Number:333
Case:Schlosberg v Schlosberg (1990, 2d Dept) 163 App Div 2d 381, 558 NYS2d 111
Comment:(maintenance increased on appeal from 2 years to 7 years, in light of the marked disparity between the income and resources of the respective parties)
Years Married:?
Ages/Income:?
Child Support:?

Maintenance:\$500 week
Exclusive Occupancy:Title to Wife
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:Wife awarded sole ownership of the marital home worth \$347,000 and a distributive award of \$129,600.

Number:334
Case:Simmons v Simmons (1990, 3d Dept) 159 App Div 2d 775, 551 NYS2d 997
Comment:(failure to consider tax consequences not error where no evidence thereof offered)
Years Married:21
Ages/Income:H(43) \$32,000 W(45) \$11,000
Child Support:\$50/wk per ch (2 ch)
Maintenance:? for 7 yrs.
Exclusive Occupancy:To Wife until youngest child emancipated
Health & Medical Insurance:
Dental Insurance:For Wife and Children
Life Insurance:
Counsel Fees:Wife awarded \$2,000 counsel fees and \$237 disbursements
Property Distribution to Wife:Distribution of husband's pension benefits upon retirement.

Number:335
Case:Smith v Smith (1990, 1st Dept) NYLJ, 6-28-90, P. 23, Col. 3
Comment:(lottery winnings divided equally)
Years Married:5
Ages/Income:H(32) \$30,000 W(31) \$17,732
Child Support:N/A
Maintenance:None
Exclusive Occupancy:
Health & Medical Insurance:
Dental Insurance:

Life Insurance:

Counsel Fees:None

Property Distribution to Wife:Lottery payment of \$30,989 for 21 years divided equally

Number:336

Case:Thom v Thom (1990, 3d Dept) 162 App Div 2d 811, 558 NYS2d 219

Comment:(not improper to direct sale of the house without valuing it where no objection and it was the parties' only asset)

Years Married:6

Ages/Income:H- \$24,000 W- \$20,000

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$3,000 to wife

Property Distribution to Wife:House to be sold and proceeds divided equally.

Number:337

Case:Ullah v Ullah (1990, 2d Dept) 161 App Div 2d 699, 555 NYS2d 834; app den 76 NY2d 704, 559 NYS2d 983, 559 NE2d 677 (See also # 253)

Comment:(\$8 million lottery winnings marital property and divided equally because predominately the result of luck)

Years Married:5

Ages/Income:?

Child Support:\$7500/year per ch (2 ch)

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:None

Property Distribution to Wife:Wife awarded 50% of \$8 million lottery winnings.

Number:338

Case:Fish v Fish (1990, 3d Dept) 161 App Div 2d 979, 557 NYS2d 549

Comment:(fourth marriage for husband. Second marriage for wife)

Years Married:8

Ages/Income:?

Child Support:N/A

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 40% of appreciation in value of husband's house resulting from addition of a garage to which she contributed 40%.

Number:339

Case:McDonald v McDonald (1989, 4th Dept) 155 App Div 2d 929, 547 NYS2d 752

Comment:(wife requires maintenance as long as she is caring for children)

Years Married:?

Ages/Income:H-? W(40)

Child Support:?

Maintenance:\$150/wk

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:?

Property Distribution to Wife:?

Number:340

Case:McNenney v McNenney (1990, 1st Dept) 159 App Div 2d 440, 553 NYS2d 667

Comment:(not improper to award counsel fees upon a post trial application without a hearing where it would be duplicative of trial testimony)

Years Married:5

Ages/Income:H-\$48,000 W-\$21,000

Child Support:\$200/wk for 1 yr. then \$200/wk (1 ch)

Maintenance:\$100/wk for 1 year

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:For Child

Life Insurance:For Child

Counsel Fees:Yes

Property Distribution to Wife:Wife awarded \$6900 for dissipated funds and debt obligation and 50% of husband's 401K plan.

Number:341

Case:Waterman v Waterman (1990, 2d Dept) 160 App Div 2d 865, 554 NYS2d 298

Comment:

Years Married:?

Ages/Income:?

Child Support:\$280/wk (2 ch)

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:?

Property Distribution to Wife:Wife awarded 25% of stock appreciation of husband's securities portfolio and his flea market business.

Number:342

Case:Pacillo v Pacillo (1989, 3d Dept) 155 App Div 2d 736, 547 NYS2d 448

Comment:(child support to be reduced during husband's seasonal joblessness)

Years Married:17

Ages/Income:H-\$350/wk W-?

Child Support:\$90/wk

Maintenance:?

Exclusive Occupancy:To wife until youngest child emancipated

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Net proceeds of sale of home to be equally divided.

Number:343

Case:Teitler v Teitler (1989, 1st Dept) 156 App Div 2d 314, 549 NYS2d 13, app dismd without op 75 NY2d 963, 556 NYS2d 247, 555 NE2d 619

Comment:(wife awarded 75% of the appreciation in value of her art business)

Years Married:8

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:?

Property Distribution to Wife:Husband awarded 50% (\$1,000,000) of the value of the marital residence and 25% of the appreciation of the value of the wife's art business.

Number:344

Case:Beach v Beach (1990, 3d Dept) 158 App Div 2d 848, 551 NYS2d 429

Comment:(error to direct that maintenance be retroactive to the date of commencement where wife did not seek it until requested in her statement of proposed disposition)

Years Married:12

Ages/Income:H \$672/wk W-?

Child Support:\$125 per week per ch. (2 ch)

Maintenance:\$35/wk unt. until youngest child 18 or emancipated

Exclusive Occupancy:To wife until youngest child 18 or emancipated

Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:None
Property Distribution to Wife:

Number:345
Case:Behan v Behan (1990, 2d Dept) 163 App Div 2d 505, 558 NYS2d 179
Comment:(pre-divorce standard of living, subsequent disparity between incomes of parties and unlikely prospect that \$11,000 wife could earn more than \$11,000 warranted 10 years' maintenance)
Years Married:29
Ages/Income:H \$55,000 W(46) \$11,000
Child Support:N/A
Maintenance:\$150/wk for 10 yrs. or husband's retirement whichever last occurs
Exclusive Occupancy:
Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:?
Property Distribution to Wife:?

Number:346
Case:Francis v Francis (1989, 2d Dept) 156 App Div 2d 637, 548 NYS2d 816
Comment:(exclusive occupancy properly awarded to custodial parent where house air conditioned to alleviate sick child's condition)
Years Married:?
Ages/Income:?
Child Support:\$50/wk per ch (2 ch)
Maintenance:
Exclusive Occupancy:To wife until children emancipated
Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:?

Property Distribution to Wife:Bank account evenly divided.

Number:347

Case:Glasberg v Glasberg (1990, 2d Dept) 162 App Div 2d 586, 556 NYS2d 772

Comment:(proper to award wife a greater share of marital assets in view of parties financial circumstances including husband's separate assets)

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:?

Property Distribution to Wife:?

Number:348

Case:Niles v Niles (1990, 3d Dept) 157 App Div 2d 951, 550 NYS2d 208

Comment:(plaintiff awarded less than 40% of value of marital property)

Years Married:?

Ages/Income:?

Child Support:Def. to pay 40% of college expenses

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:?

Property Distribution to Wife:Plaintiff awarded \$115,000 of marital property worth \$470,620; defendant received no interest in plaintiff's pension.

Number:349

Case:Palmer v Palmer (1989, 2d Dept) 156 App Div 2d 651, 549 NYS2d 148

Comment:(distribution of marital home in ratio to parties earnings during marriage)

Years Married:12

Ages/Income:?

Child Support:N/A

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 74% interest in marital home; husband awarded 50% of household furnishings.

Number:350

Case:Feldman v Feldman, NYLJ, 11-28-89, P. 23, Col. 4, Sup. Ct., Kings Co. (Corso, JHO)

Comment:(no distributive award of husband's business where wife failed to value it)

Years Married:28

Ages/Income:H W-unempl.

Child Support:

Maintenance:\$150/wk without duration

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:\$50,000 for wife

Counsel Fees:?

Property Distribution to Wife:Wife awarded 50% (i.e. \$317,912) of the marital assets and half the net proceeds of the sale of the parties' vacation home.

Number:351

Case:Venkursawmy v Venkursawmy, NYLJ, 3-16-90, P. 29, Col. 5, Sup. Ct., NY Co. (Baer, J.)

Comment:(the only marital asset was awarded to wife where husband attempted to murder her by setting her on fire)

Years Married:31

Ages/Income:?

Child Support:?

Maintenance:
Exclusive Occupancy:
Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:?
Property Distribution to Wife:Wife awarded title to the marital home.

Number:352

Case:Brawer v Olmstead, NYLJ, 7-16-90, P. 29, Col. 1, Sup. Ct., Kings Co. (Rigler, J.)

Comment:(husband gets credit for “seed money” to purchase house; husband responsible for most of debt incurred “for his own purposes”)

Years Married:11

Ages/Income:H(44) W(44) \$14,000

Child Support:\$400/wk (2 ch)

Maintenance:\$150/wk for 2 yrs.

Exclusive Occupancy:To wife until youngest child emancipated

Health & Medical Insurance:For Children

Dental Insurance:No

Life Insurance:\$250,000 for children

Counsel Fees:\$5,000 to the wife

Property Distribution to Wife:Net profits of sale of house to be equally divided after husband gets credit for his use of \$25,000 separate funds to purchase house (rental income received by wife to be considered an advance distribution).

Number:353

Case:Greenwald v Greenwald (1990, 1st Dept) 164 App Div 2d 706, 565 NYS2d 494

Comment:(where parties separated in 1980 all active assets valued at 1987 commencement date and all passive assets as of date of trial in 1989)

Years Married:30

Ages/Income:H(62) \$1,400,000 W(59) \$300/day

Child Support:

Maintenance:None

Exclusive Occupancy:

Health & Medical Insurance:**Dental Insurance:****Life Insurance:****Counsel Fees:?**

Property Distribution to Wife:Husband to transfer \$449,470 to wife who kept her retirement account of \$103,804; all remaining assets divided equally; each party retained a co-op apartment (equal division of assets).

Number:354

Case:Mink v Mink (1990, 3d Dept) 163 App Div 2d 748, 558 NYS2d 329

Comment:(husband reimbursed for separate property he traced into joint bank account and “seed money” for house)

Years Married:4**Ages/Income:?****Child Support:**\$53/wk**Maintenance:****Exclusive Occupancy:****Health & Medical Insurance:****Dental Insurance:****Life Insurance:****Counsel Fees:**\$2,000 to Wife

Property Distribution to Wife:Husband to be reimbursed \$12,500 for his separate property contribution before equal division of proceeds of sale of marital home. Husband entitled to \$7,500 from parties joint bank accounts, before equal distribution, representing proceeds of sale of his separate property, during the marriage, which he traced to this account.

Number:355

Case:More v More, NYLJ, 8-10-90, P. 22, Col. 2, Sup. Ct., Nassau Co. (O'Brien, J.)

Comment:(income “imputed” to husband who “understated” his income; CSSA guidelines applied only to first \$80,000; failure to pay mortgage for 1 1/2 years in a wasteful dissipation)

Years Married:18**Ages/Income:**H(41) \$120,000 “imputed” W(38) \$36,000**Child Support:**\$300/wk (2 ch)**Maintenance:**\$1,000 a week for 6 yrs.**Exclusive Occupancy:**

Health & Medical Insurance:**Dental Insurance:****Life Insurance:**\$750,000 for wife and children**Counsel Fees:**\$124,365 to Wife and total experts fees of \$13,000**Property Distribution to Wife:**Husband charged with full value of equity in marital home; wife awarded 25% of value of husband's business (wife received \$366,062; husband received \$496,062).**Number:**356**Case:**Ginsberg v Ginsberg (1990, 2d Dept) 164 App Div 2d 906, 559 NYS2d 744, app dismd without op 77 NY2d 873, 568 NYS2d 915, 571 NE2d 85**Comment:**(where divorce follows separation judgment proper to consider child support *de novo*; proper to continue alimony in separation judgment)**Years Married:**3**Ages/Income:**H-? \$400,000 W-? \$43,000**Child Support:**\$500/wk.**Maintenance:**\$500/wk**Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:**Remitted for hearing to establish value of services**Property Distribution to Wife:?****Number:**357**Case:**Nell v Nell (1990, 1st Dept) 166 App Div 2d 154, 560 NYS2d 426**Comment:**(wife failed to meet burden of proof with respect to maintenance. No showing of necessity or inability to support herself)**Years Married:?****Ages/Income:**H-? W-?**Child Support:**N/A**Maintenance:**Denied**Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?**

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded \$50,000 as her equitable distributive share of proceeds of sale of a cooperative apartment.

Number:358

Case:Helen A. S. v Werner R. S. (1990, 2d Dept) 166 App Div 2d 515, 560 NYS2d 797

Comment:(court should construe the term “marital property” broadly and “separate property” narrowly)

Years Married:21

Ages/Income:H-? \$35,000 W-? \$16,000

Child Support:N/A

Maintenance:\$150/wk. for 2 yrs. from wife’s departure

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$16,949 to Wife

Property Distribution to Wife:Mortgage obligation husband’s liability.

Number:359

Case:Marcello v Marcello (1990, 2d Dept) 166 App Div 2d 558, 560 NYS2d 841

Comment:(child support may be based on earning potential rather than actual income)

Years Married:12

Ages/Income:H-? W-?

Child Support:\$90/wk per child (2 ch.)

Maintenance:None

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:Denied

Property Distribution to Wife:Wife was awarded \$150,000 distributive award, the equivalent of one-half of the net value of the marital residence which was built during the marriage.

Number:360**Case:**Ritz v Ritz (1990, 2d Dept) 166 App Div 2d 568, 560 NYS2d 853**Comment:**(Court used IRS Revenue Ruling; 59-60 to value Dental Center. inappropriate to award pre-judgment interest on distributive award)**Years Married:**14**Ages/Income:**H-? W-?**Child Support:**?**Maintenance:**?**Exclusive Occupancy:**?**Health & Medical Insurance:**?**Dental Insurance:**?**Life Insurance:**?**Counsel Fees:**?**Property Distribution to Wife:**The wife was awarded 50% of the husband's interest in his Family Dental Center, in the sum of \$275,345.

Number:361**Case:**Hochman v Hochman, NYLJ, 10-1-90, P. 30, Col. 4 Sup. Ct., Nassau Co. (O'Brien, J.)**Comment:**(allocation of marital debts; wife given 6 month option to buy out husband's interest in home)**Years Married:**12**Ages/Income:**H-44 \$67,000 W-41 \$41,800**Child Support:**\$240/wk. (2 ch.)**Maintenance:**\$200/wk. for 6 yrs. from commencement or until wife dies or remarries**Exclusive Occupancy:**Yes—until wife remarries or children are 21 or emancipated. Then the house must be sold.**Health & Medical Insurance:**Yes—for the children**Dental Insurance:**?**Life Insurance:**\$100,000 for children as beneficiaries and \$50,000 for benefit of wife for as long as husband is required to pay maintenance.**Counsel Fees:**?**Property Distribution to Wife:**N/A

Number:362

Case:Rosen v Rosen, NYLJ, 10-9-90, P. 31, Col. 5, Sup. Ct., Kings Co. (Rigler, J.)

Comment:(income “imputed” to husband for child support award where he “camouflaged” his true income; wife’s MBA value based on current use rather than hypothetical use)

Years Married:21

Ages/Income:H-? \$70,600 W-? \$64,500

Child Support:\$210.87 per wk. (1 ch.)

Maintenance:No

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$11,425 to Wife

Property Distribution to Wife:Wife was directed to pay 40% of the total marital debts and husband was directed to pay 60% of them. Wife was awarded assets worth \$234,312. Wife to receive 67 1/2% and husband to receive 32% of proceeds to compensate wife for her share of the husband’s nonliquid pension.

Number:363

Case:Sommers v Sommers, NYLJ, 10-2-90, P. 27, Col. 1, Sup. Ct., Nassau Co. (O’Brien, J.)

Comment:(Court refused to consider CPA license and teacher’s license as marital property because no meaningful contribution to attainment was made by spouse; maintenance award may exceed ability to pay.)

Years Married:16

Ages/Income:H-41 \$48,000 W-38 \$39,000

Child Support:\$230/wk. (2 ch.) plus 50% of summer camp

Maintenance:\$120/wk. until the death, remarriage or 5 yrs. from judgment. date of the judgment.

Exclusive Occupancy:?

Health & Medical Insurance:Yes

Dental Insurance:?

Life Insurance:\$25,000 for the wife and \$125,000 for the children

Counsel Fees:\$35,000 counsel fees and \$5,000 expert fees to the wife

Property Distribution to Wife:Wife awarded 60% (\$125,000) of value of her MBA degree and husband 40% (\$80,000). Each party awarded 50% (\$120,000) of value of husband's business and 50% of value of real estate and the crystal. Wife received \$504,000 and the husband \$464,000.

Number:364

Case:Relf v Relf, NYLJ, 10-18-90, P. 30 Col. 3, Sup. Ct. Nassau Co. (McGinity, J.)

Comment:(capitalization of earnings used to value architectural practice)

Years Married:15

Ages/Income:H-mid 30's W-mid 30's

Child Support:\$14,500 per yr. (3 ch.)

Maintenance:\$200/wk. for 3 yrs.

Exclusive Occupancy:?

Health & Medical Insurance:Yes—for children

Dental Insurance:No

Life Insurance:Yes—for children

Counsel Fees:Denied

Property Distribution to Wife:Wife given a credit of \$203,630 for the initial contribution to purchase of marital residence, and received one-half of enhancement of the value of the real estate. The wife's total share was \$312,315 and the husband's share was \$107,685. Each party awarded his/her respective stocks, IRA's and savings accounts.

Number:365

Case:Lincer v Lincer, NYLJ, 10-23-90, P. 22 Col. 1, Sup. Ct., NY. Co. (Glen, J.)

Comment:(husband's advanced training (2 yr. fellowship) which enhanced his earning capacity treated as asset)

Years Married:6

Ages/Income:H-? \$60,000 W-?

Child Support:\$181.71 per wk. (1 ch.)

Maintenance:\$2,000/mo. for 4 yrs.

Exclusive Occupancy:?

Health & Medical Insurance:Yes—for child

Dental Insurance:?

Life Insurance:\$400,000 naming child as beneficiary

Counsel Fees:\$7,500 counsel fees and \$2,500 expert fees to the wife

Property Distribution to Wife:Wife awarded title to marital residence, the Ford automobile and 50% of the value of the husband's architectural business. (\$50,000)

Number:366

Case:Feldman v Feldman, NYLJ, 11-16-90, P. 29, Col. 5, Sup. Ct., Nassau Co. (O'Brien, J.)

Comment:(Court denied husband's request for a credit or offset for capital gains tax liability incurred from sale of marital residence because he was presumed to know the consequences of his acts)

Years Married:37

Ages/Income:H-? W-?

Child Support:N/A

Maintenance:\$1,000/wk.

Exclusive Occupancy:No

Health & Medical Insurance:Yes

Dental Insurance:?

Life Insurance:\$800,000 for wife

Counsel Fees:Denied

Property Distribution to Wife:Wife received \$55,975.96 from sale of parties' apartment and husband received \$51,233.06. Each awarded 50% of the existing liquid marital assets (\$22,000 each). Husband allocated entire capital gain from sale of apartment.

Number:367

Case:Flynn v Flynn, NYLJ, 12-7-90, P. 29, Col. 5 Sup. Ct., Kings Co. (Rigler, J.)

Comment:(custody to husband)

Years Married:7

Ages/Income:H-? \$38,400 W-? Unemployed

Child Support:\$25/mo. to hus. (3 ch.)

Maintenance:Denied

Exclusive Occupancy:To husband

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$32,000 to Wife

Property Distribution to Wife:Treasury bills of \$270,000 and equity in the marital residence constituted marital property and as divided between the parties, constituted their respective separate property.

Number:368

Case:Rosenbaum v Rosenbaum, NYLJ, 12-13-90, P. 26, Col. 6 Sup. Ct., Kings Co. (Rigler, J.)

Comment:

Years Married:?

Ages/Income:H-mid 40's \$50,000 W-late 40's \$26,000

Child Support:\$209.70 per wk. (2 ch.)

Maintenance:None

Exclusive Occupancy:No—ordered sold

Health & Medical Insurance:Yes—for children

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$1,000 to Wife

Property Distribution to Wife:?

Number:369

Case:Robinson v Robinson (1990, 2d Dept) 166 App Div 2d 428, 560 NYS2d 665, app dismd without op 76 NY2d 1017, 565 NYS2d 767, 566 NE2d 1172 and app den 77 NY2d 807, 569 NYS2d 611, 572 NE2d 52

Comment:(condo appreciation valued based on mortgage application)

Years Married:4 1/2

Ages/Income:H-? W-?

Child Support:\$232.23 per wk. (2 ch.)

Maintenance:\$105.95/wk. for 4 yrs.

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$3,000 to Wife

Property Distribution to Wife: Marital home to be sold and net proceeds equally divided. Husband to pay wife \$22,216.81 representing her share of his pension, plus \$9,374.94 representing her share of his Tax Deferred Annuity. Wife was directed to pay husband \$1,300 representing one-half of funds previously removed by her. Each party retained title to their respective automobiles.

Number:370

Case:Foppiano v Foppiano (1990, 2d Dept) 166 App Div 2d 550, 560 NYS2d 831

Comment:(jewelry given by the husband to the wife during the marriage constituted marital property)

Years Married:?

Ages/Income:H-? W-?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$44,797 to Wife

Property Distribution to Wife:Wife awarded \$18,500 representing her equitable share of appreciation of husband's condominium.

Number:371

Case:Brownstein v Brownstein (1990, 1st Dept) 167 App Div 2d 127, 561 NYS2d 216, app den 77 NY2d 806, 569 NYS2d 610, 572 NE2d 51

Comment:(time limit for maintenance should only be imposed to enable party to become self-supporting to achieve past standard of living)

Years Married:?

Ages/Income:H-? \$125,000 W-?

Child Support:\$150/wk per ch.

Maintenance:\$400/wk. permanent

Exclusive Occupancy:No

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:\$100,000 for wife

Counsel Fees:?

Property Distribution to Wife:Wife awarded \$107,000 for her interest in gold coins and a deferred annuity. A fish market purchased during the marriage was wife's separate property. Matter remitted for a determination of what gifts of jewelry were given to the wife, the values to be assigned to such gifts and in what manner the gifts were to be equitably distributed.

Number:372

Case:Derderian v Derderian (1990, 1st Dept) 167 App Div 2d 158, 561 NYS2d 239, app den 77 NY2d 804, 568 NYS2d 912, 571 NE2d 82, later proceeding (1st Dept) 178 App Div 2d 374, 578 NYS2d 141

Comment:

Years Married:?

Ages/Income:H-? W-?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:373

Case:Rauer v Rauer (1990, 2d Dept) 168 App Div 2d 549, 562 NYS2d 772, app den 77 NY2d 807, 569 NYS2d 610, 572 NE2d 51

Comment:

Years Married:?

Ages/Income:H-? W-?

Child Support:N/A

Maintenance:For 5 yrs.

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded \$927,046.20 representing 50% of the net appreciation of the husband's real estate holdings.

Number:374

Case:Dolan v Dolan (1990, 3d Dept) 167 App Div 2d 654, 562 NYS2d 875 app gr 77 NY2d 805, 568 NYS2d 912, 571 NE2d 82 and affd 78 NY2d 463, 577 NYS2d 195, 583 NE2d 908, 14 EBC 2114

Comment:(disability portion of pension is not marital property)

Years Married:21

Ages/Income:H-? \$29,742 W-? \$23,500

Child Support:\$100/wk. (1 ch.)

Maintenance:No

Exclusive Occupancy:No

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:Denied

Property Distribution to Wife:The wife received a distributive award of one-half of the value of the husband's interest in certain real estate, payable immediately.

Number:375

Case:Nowocien v Nowocien (1990, 4th Dept) 167 App Div 2d 968, 562 NYS2d 306

Comment:(no authority exists for a distributive award to provide compensation for wife's educational needs)

Years Married:?

Ages/Income:H-? W-?

Child Support:\$119/wk. including \$40/wk. for educational expenses

Maintenance:Remitted for reconsideration

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:The court directed the sale of the marital residence and of the land on Long Island and the proceeds equally divided between the parties. Wife awarded one-half of the non-disability portion of husband's monthly pension payment.

Number:376

Case:Hoyt v Hoyt (1990, 3d Dept) 166 App Div 2d 800, 563 NYS2d 161

Comment:(Averaging of two real estate appraisals approved because the Second Department "implicitly expressly approved of the averaging of competing appraisals by a trial court;" limited maintenance to wife's request in her net worth statement)

Years Married:5 1/2

Ages/Income:H-? W-?

Child Support:N/A

Maintenance:\$100/wk. until wife dies or remarries.

Exclusive Occupancy:N/A

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:?

Property Distribution to Wife:Remitted to reconsider award of maintenance.

Number:377

Case:Warshaw v Warshaw (1991, 1st Dept) 169 App Div 2d 408, 564 NYS2d 137

Comment:

Years Married:4

Ages/Income:H-45 \$125,000 W-40 None

Child Support:N/A

Maintenance:\$2,000/mo. plus rent or \$1,500 if evicted from marital apartment, for 5 yrs.

Exclusive Occupancy:N/A

Health & Medical Insurance:Yes

Dental Insurance:?

Life Insurance:\$75,000 for duration of maintenance award

Counsel Fees:No

Property Distribution to Wife: Proceeds from the sale of a mobile home and parcel of land (\$11,312.51) to be apportioned between the parties according to the actual contribution by each. Matter remitted for proof of the separate values of land and mobile home and appropriate award.

Number:378

Case:Bugliari v Bugliari (1991, 2d Dept) 169 App Div 2d 697, 564 NYS2d 186 (See also # 439)

Comment:(wife was awarded counsel fees based upon husband's failure to meet obligations under pendente lite order, which added to her legal fees and husband's attempts to avoid New York Jurisdiction)

Years Married:22

Ages/Income:H-? W-?

Child Support:N/A

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$39,000 to Wife

Property Distribution to Wife:Wife given distributive award of \$13,288.

Number:379

Case:Church v Church (1991, 3d Dept) 169 App Div 2d 851, 564 NYS2d 572

Comment:(lack of valuation should not preclude award of interest in husband's pension because wife was seeking a share of periodic benefits husband will receive in future rather than a lump sum distribution)

Years Married:20

Ages/Income:H-? W-?

Child Support:N/A

Maintenance:No

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$6,000 to Wife

Property Distribution to Wife:The wife was awarded 40% of the husband's medical license. The matter was remitted to the Supreme Court for a determination of the value of the wife's pension, the percentage to be awarded to each party and the method of distribution of that pension.

Number:380

Case:Lorica v Lorica (1991, 3d Dept) 169 App Div 2d 954, 564 NYS2d 850

Comment:(court properly valued marital residence as of date of commencement of action; no patent inequity in selection of valuation date)

Years Married:3

Ages/Income:H-? W-?

Child Support:N/A

Maintenance:None

Exclusive Occupancy:No

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:No

Property Distribution to Wife:Marital residence and adjoining lot to be sold and net proceeds divided equally. Husband awarded \$24,417.50 less one-half of the cost of the sale of the real property and for one-half the value of a tractor and 2 snowmobiles. Wife received a credit for one-half of car. Wife awarded one-half of a percentage of each pension payment actually distributed to the husband in the future, to be determined in accordance with the formula set forth in *Majauskas*. Matter was remitted for determination of percentage of husband's pension to which wife is entitled.

Number:381

Case:Quilty v Quilty (1991, 3d Dept) 169 App Div 2d 979, 564 NYS2d 877

Comment:

Years Married:?

Ages/Income:H-? \$120,000 W-?

Child Support:\$2900/mo.

Maintenance:\$2,100/mo.

Exclusive Occupancy:?

Health & Medical Insurance:Yes

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Court valued marital property as of the date of commencement of action at \$101,400 and credited husband with the initial contribution of \$83,000 (the value of the house at the time of the marriage.) It awarded the wife 50% of the difference.

Number:382

Case:Saxton v Saxton (1990, 3d Dept) 168 App Div 2d 767, 564 NYS2d 216

Comment:(indefinite maintenance was inappropriate)

Years Married:19

Ages/Income:H-? W-41 \$15,000

Child Support:\$150/wk. for 2 children

Maintenance:\$150/wk. until wife dies, remarries or for 10 years.

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:383

Case:Carter v Carter (1990, 2d Dept) 168 App Div 2d 594, 563 NYS2d 433

Comment:

Years Married:10

Ages/Income:H-? W-?

Child Support:\$100/wk. (2 ch.)

Maintenance:\$75/wk. for 2 yrs. or until wife dies, remarries

Exclusive Occupancy:Yes—to wife until remarriage or children's graduation from high school, or emancipation.

Health & Medical Insurance:Yes

Dental Insurance:Yes—for wife and children

Life Insurance:Yes

Counsel Fees:?

Property Distribution to Wife:?

Number:384

Case:Kaplinski v Kaplinski NYLJ, 1-8-91, P. 24, Col. 3 Sup. Ct., Kings Co. (Schneier, J.)

Comment:(wife's equitable interest in marital property was 75% and the husband's interest was 25%)

Years Married:25

Ages/Income:H-56 \$10,000 W-49 \$46,000

Child Support:\$30/wk. (1 ch.)

Maintenance:None

Exclusive Occupancy:Title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:Equal division of net proceeds upon sale of marital residence.

Number:385

Case:Debeny v Debeny NYLJ, 1-24-91, P. 21, Col. 2 Sup. Ct., Nassau Co. (Yachnin, J.)

Comment:(Court calculated 7.25% return on distributive award in fixing maintenance)

Years Married:36

Ages/Income:H-68 \$60,000 W-65 Unemployed

Child Support:N/A

Maintenance:\$200/wk. until husband dies or retires

Exclusive Occupancy:To wife until marital residence is sold

Health & Medical Insurance:Husband to continue same health insurance for wife as in effect

Dental Insurance:?

Life Insurance:?

Counsel Fees:Denied

Property Distribution to Wife:The wife's equitable interest in the marital property was 75% and the husband's interest was 25%. The wife was also awarded title and possession of the marital residence.

Number:386

Case:O'Connor v O'Connor NYLJ, 2-8-91, P. 23, Col. 3 Sup. Ct., Kings Co. (Rigler, J.)

Comment:(husband intentionally attempted to deprive wife of her share of the marital home)

Years Married:?

Ages/Income:H-? W-?

Child Support:N/A

Maintenance:\$125/wk. permanent

Exclusive Occupancy:No

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$5,000 to Wife

Property Distribution to Wife:Wife awarded 60% and husband awarded 40% of the marital property: proceeds from sale of marital house, treasury bills of \$60,000, savings account \$41,750, credit union of \$3,300, Husband's IRA of \$15,400, Wife's IRA of \$1,000 and Nat. West. account of \$12,700. Husband's pension to be divided in accordance with *Majauskas* formula with wife receiving 50% of marital portion of pension. Wife also awarded \$81,030 from sale of marital residence, in addition to the 60%.

Number:387

Case:Gordon v Gordon (1991, 1st Dept) 170 App Div 2d 384, 566 NYS2d 850

Comment:

Years Married:?

Ages/Income:H-? \$35,000 W-? \$30,000

Child Support:\$160/wk. (2 ch.)

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:Yes

Dental Insurance:?

Life Insurance:?

Counsel Fees:Denied

Property Distribution to Wife:Parties each awarded 50% of proceeds from sale of Pennsylvania property. Wife awarded 50% of husband's pension and 401(K) plan and awarded 50% of the marital house. Husband had option to purchase her interest in house.

Number:388

Case:Anonymous v Anonymous (1991, 1st Dept) 172 App Div 2d 285, 568 NYS2d 599 (See also # 163)

Comment:

Years Married:?

Ages/Income:H-? W-?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:Denied

Property Distribution to Wife:Wife awarded a lump sum of \$250,000 and \$66,897.64 representing capital stock and pension benefits of the husband. She was also awarded a judgment for \$67,944.72 and a judgment for \$116,777 plus interest.

Number:389

Case:Goldberg v Goldberg (1991, 1st Dept) 172 App Div 2d 316, 568 NYS2d 394

Comment:(husband's dissipation of or secreting of marital assets constituted a form of "economic fault" which should be considered in making equitable distribution)

Years Married:27

Ages/Income:H-66 W-61

Child Support:N/A

Maintenance:\$12,500/mo. permanent

Exclusive Occupancy:Yes—to wife, marital apartment (rental)

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife granted a distributive award of \$1,855,123 on account of family trust, the trust fund and Country Club bond and permitted to retain jewelry valued at \$43,000 as her separate property.

Number:390

Case:O'Donnell v O'Donnell (1991, 2d Dept) 172 App Div 2d 654, 568 NYS2d 455

Comment:(judgment entered on default)

Years Married:?

Ages/Income:H-? W-?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:The court directed that the marital residence be sold and the proceeds divided equally between the parties.

Number:391

Case:Kutovsky v Kutovsky, NYLJ, 4-26-91, P. 25, Col. 4 Sup. Ct., Kings Co. (Rigler, J.)

Comment:(husband penalized who dissipated assets; as husband had hidden income, Court awarded child support based on child's needs and standard of living)

Years Married:6

Ages/Income:H-? W-?

Child Support:\$600/mo.

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$5,000 to Wife

Property Distribution to Wife:Parties' apartment to be sold and the net proceeds equally divided. Husband directed to pay all debts incurred during marriage. Husband was directed to pay wife \$52,500 from his share of net proceeds of sale of marital residence, representing the additional value the wife would have received from the apartment had he not dissipated the assets.

Number:392

Case:Madori v Madori, NYLJ, 5-13-91, P. 33, Col. 2 Sup. Ct., Westchester Co. (Donovan, J.)

Comment:(husband was allowed deductions for both children for tax purposes. husband's specialty as doctor, acquired after license valued)

Years Married:6

Ages/Income:H-mid 30's \$95,000 W-mid 30's Unemployed.

Child Support:\$1666.67 per mo. (2 ch.)

Maintenance:None

Exclusive Occupancy:No

Health & Medical Insurance:Yes

Dental Insurance:No

Life Insurance:Yes—for children

Counsel Fees:\$32,000 to Wife

Property Distribution to Wife:Wife awarded 40% of value of the husband's enhanced earning capacity amounting to \$54,744 plus 3 years legal interest less 1/3 for taxes (\$64,000). Wife awarded title to marital home after \$87,000 equity equally divided. Husband directed to transfer title to automobile to wife and pay for all debts except \$3,600.

Number:393

Case:Shirazi v Ioulian, NYLJ, 6-24-91, P. 29, Col. 1, Sup. Ct., Nassau Co. (O'Brien, J.)

Comment:(dowry paid by the wife's father under marriage contract was husband's separate property)

Years Married:6

Ages/Income:H-? \$54,000 W-?

Child Support:\$175/wk. (1 ch.)

Maintenance:\$5,000 to \$10,000 to defray cost of educational program at college or graduate level, plus 100/wk. for 2 yrs.

Exclusive Occupancy:No

Health & Medical Insurance:Yes—for child

Dental Insurance:?

Life Insurance:Yes—for wife and child

Counsel Fees:\$9,950 plus disbursements of \$2,326 to Wife

Property Distribution to Wife:?

Number:394

Case:Wilner v. Wilner, 192 App Div 2d 524, 595 NYS2d 978 (2d Dept., 1993)

Comment:Wasteful dissipation of assets by husband's gambling

Years Married:33

Ages/Income:Wife -63 Husband -64
Child Support:N/A
Maintenance:\$200 per week non durational maintenance
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:
Life Insurance:?
Counsel Fees:To wife
Property Distribution to Wife:Wife awarded 75% of proceeds from sale of marital residence

Number:395
Case:Rodriguez v Rodriguez, NYLJ, 7-12-91, P. 28, Col. 2 (App Div, 2d Dept)
Comment:
Years Married:?
Ages/Income:H-? W-?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:Remitted to the Supreme Court for further findings.

Number:396
Case:Persaud v Persaud (1991, 3d Dept) 170 App Div 2d 763, 563 NYS2d 580
Comment:(abuse of discretion to allow exclusive occupancy even if wife remarries. Husband complicated case by hiding assets)
Years Married:?
Ages/Income:H-? W-?
Child Support:\$250/wk. (1 ch.)
Maintenance:?
Exclusive Occupancy:Yes—to wife
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?

Counsel Fees:\$10,300 to Wife

Property Distribution to Wife:Husband was directed to pay to wife the entire balance of the parties' joint savings account and to execute a deed conveying his interest in parties' Puerto Rican condominium to wife.

Number:397

Case:Chirls v Chirls (1991, 2d Dept) 170 App Div 2d 641, 566 NYS2d 931, app den 78 NY2d 853, 573 NYS2d 467, 577 NE2d 1059

Comment:(payments of unreimbursed medical expenses for the children are in the nature of improper open-ended obligations. Court should avoid a distribution involving a relatively long and uncertain time)

Years Married:17

Ages/Income:H-? lower six figures W-? \$180/wk.

Child Support:?

Maintenance:\$200/wk. for six years

Exclusive Occupancy:?

Health & Medical Insurance:Yes

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$5,000 to wife

Property Distribution to Wife:?

Number:398

Case:Brier v Brier (1991, 1st Dept) 171 App Div 2d 427, 567 NYS2d 9

Comment:

Years Married:20

Ages/Income:H-? \$34,000 W-? \$29,500

Child Support:\$125/wk. (1 ch.)

Maintenance:Waived

Exclusive Occupancy:No

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:Yes ?

Property Distribution to Wife:Wife given distributive award of \$54,380, to be paid in monthly installments over 3 years, with interest at the rate of 9% per year, from date of judgment.

Number:399

Case:Powers v Powers (1991, 2d Dept) 171 App Div 2d 737, 567 NYS2d 293

Comment:(trial court not bound by the husband's tax returns but could find that his income was higher than he reported; award of maintenance is not determined by actual earnings, but rather, by earning capacity)

Years Married:?

Ages/Income:H-? \$50,000 W-?

Child Support:N/A

Maintenance:\$100/wk. for 5 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:The wife was awarded 50% of the value of the husband's interest in the co-op. (i.e., \$80,000)

Number:400

Case:Carr v Carr (1991, 2d Dept) 171 App Div 2d 776, 567 NYS2d 495, later prodeeding (2d Dept) 187 App Div 2d 408, 589 NYS2d 564

Comment:

Years Married:?

Ages/Income:H-? W-?

Child Support:

Maintenance:Yes ?

Exclusive Occupancy:

Health & Medical Insurance:?

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$2,000 to Wife

Property Distribution to Wife:?

Number:401

Case:Sperling v Sperling (1991, 2d Dept) 165 App Div 2d 338, 567 NYS2d 538

Comment:(states rules for durational vs. non-durational maintenance)

Years Married:20

Ages/Income:H-? \$30,000 W-37 \$9,500

Child Support:\$80/wk. (2 ch.)

Maintenance:\$200/wk. for 4 yrs. decreasing to \$100/wk. for next 4 yrs.

Exclusive Occupancy:Yes—until the sale of the marital home, no later than 4 yrs. after youngest child graduates from high school

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Sale of marital residence ordered when youngest child finishes kindergarten, at which time proceeds to be divided equally.

Number:402

Case:Lolli-Ghetti v Lolli-Ghetti (1991, 1st Dept) 165 App Div 2d 426, 568 NYS2d 29, amd, on reh (NY App Div 1st Dept) 1991 NY App Div LEXIS 7536 and app den 78 NY2d 864, 578 NYS2d 879, 586 NE2d 62

Comment:(a spouse's recalcitrance in the bitter aftermath of the break-up of a marriage or his/her failure to comply with the support obligations are inappropriate considerations in fashioning a distributive award; appreciation of separate property distributed; first Department permits "open-ended obligations")

Years Married:8

Ages/Income:H-40 \$90,000 W-39

Child Support:\$500/mo. per child plus all educational expenses

Maintenance:\$1,000/mo. for 2 yrs.

Exclusive Occupancy:?

Health & Medical Insurance:Yes

Dental Insurance:?

Life Insurance:Yes for children

Counsel Fees:?

Property Distribution to Wife:?

Number:403

Case:Butler v Butler (1991, 3d Dept) 171 App Div 2d 985, 568 NYS2d 169

Comment:(distribution of assets, which increase in value during marriage, acquired in exchange for unequal amounts of each spouse's separate property must depend on circumstances of the case)

Years Married:?

Ages/Income:H-? W-?

Child Support:Remitted for recalculation pursuant to CSSA

Maintenance:\$400/mo. until child is 18

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$104,000 to Wife

Property Distribution to Wife:Equal distribution of marital property.

Number:404

Case:Clark v Clark (1991, 3d Dept) 171 App Div 2d 986, 568 NYS2d 170

Comment:(wife ordered to pay child support)

Years Married:24

Ages/Income:H-? W-? \$28,360

Child Support:Remitted for recalculation pursuant to CSSA

Maintenance:Denied

Exclusive Occupancy:?

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:?

Property Distribution to Wife:Wife awarded 2/3 of proceeds of sale of marital residence.

Number:405

Case:Dugue v Dugue (1991, 3d Dept) 172 App Div 2d 974, 568 NYS2d 244

Comment:(Court properly refused to equitably apportion value of wife's nursing license because experts did not present an evaluation of it based on the wife's actual past and projected future earnings)

Years Married:13
Ages/Income:H-? W-?
Child Support:?
Maintenance:?
Exclusive Occupancy:Ordered sold
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:No
Property Distribution to Wife:Wife awarded a 46.75% interest in husband's pension, or \$6,484.22 per year.

Number:406
Case:Verrilli v Verrilli (1991, 3d Dept) 172 App Div 2d 990, 568 NYS2d 495 app den 78 NY2d 863, 578 NYS2d 878, 586 NE2d 61
Comment:(Court could properly take into account indirect contributions the wife made to the husband's acceptance in the community and the success of his professional practice enabling her to share in post-separation acquisitions of the husband)
Years Married:24
Ages/Income:H-? \$250,000 W-58
Child Support:?
Maintenance:\$48,000/yr. until wife remarries or dies
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:Denied
Property Distribution to Wife:Wife credited with one-fourth the value of the husband's real estate business. The court divided the proceeds from the sale of the marital property equally.

Number:407
Case:Wojtowicz v Wojtowicz (1991, 4th Dept) 171 App Div 2d 1073, 569 NYS2d 48
Comment:(husband should not be compelled to subsidize his adult child by providing living quarters for him)
Years Married:?
Ages/Income:H-? W-?
Child Support:?

Maintenance:\$125/wk.

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:?

Dental Insurance:No

Life Insurance:No

Counsel Fees:Yes ?

Property Distribution to Wife:Wife awarded 50% (\$1,900,000) of marital property.

Number:408

Case:Cleary v Cleary (1991, 4th Dept) 171 App Div 2d 1076, 569 NYS2d 250

Comment:(not error to fail to distribute husband's pension where wife never specifically requested distribution of it; error to find that position at job is a property interest)

Years Married:?

Ages/Income:H-? W-?

Child Support:\$125/wk. retroactive to date of commencement

Maintenance:No

Exclusive Occupancy:No

Health & Medical Insurance:?

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$2,000 to Wife

Property Distribution to Wife:The Court directed the immediate sale of the marital house and the net proceeds equally divided between the parties. The wife was awarded 50% of the husband's pension.

Number:409

Case:Cockrell v Cockrell (1991, 4th Dept) 172 App Div 2d 1024, 569 NYS2d 282

Comment:(wife established special circumstances to require husband to pay for the child's private college education)

Years Married:30

Ages/Income:H-? W-?

Child Support:\$8,000 for private college

Maintenance:\$250/wk. for 8 yrs. and \$125/mo. for 7 yrs.

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:No

Property Distribution to Wife:Husband awarded one-half of the appreciation in the marital residence from the date of the marriage. The Court credited the wife for her \$70,000 contribution of separate property towards the marital residence.

Number:410

Case:Pontorno v Pontorno (1991, 2d Dept) 172 App Div 2d 734, 569 NYS2d 120

Comment:(Court properly denied maintenance as parties were married for only 15 months and wife had ability to be self-supporting, having terminated her employment solely due to her pregnancy)

Years Married:1 1/2

Ages/Income:H-? W-?

Child Support:?

Maintenance:Denied

Exclusive Occupancy:No

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:?

Property Distribution to Wife:?

Number:411

Case:Malin v Malin (1991, 2d Dept) 172 App Div 2d 721, 569 NYS2d 743

Comment:(where no evidence in record to determine the dollar amount of tax consequences supporting Court's decision to reduce wife's share in the husband's pension by 44% improper to reduce wife's share)

Years Married:?

Ages/Income:H-? W-?

Child Support:N/A

Maintenance:\$500/wk. for 5 yrs.

Exclusive Occupancy:N/A

Health & Medical Insurance:N/A

Dental Insurance:No

Life Insurance:No

Counsel Fees:Denied

Property Distribution to Wife:Wife awarded 50% of the marital property.

Number:412

Case:Del Papa v Del Papa (1991, 2d Dept) 172 App Div 2d 798, 569 NYS2d 170

Comment:

Years Married:?

Ages/Income:H-? W-?

Child Support:\$120/wk. (2 ch.)

Maintenance:?

Exclusive Occupancy:Yes—until the youngest child reached majority

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:\$25,000 designating 2 children as beneficiaries

Counsel Fees:No

Property Distribution to Wife:Wife awarded 50% of the value of the husband's pension and annuity.

Number:413

Case:Batinelli v Batinelli (1991, 1st Dept) 174 App Div 2d 503, 571 NYS2d 280

Comment:(Proper to admit wife's testimony as to disabilities she suffered)

Years Married:?

Ages/Income:H-? W-?

Child Support:?

Maintenance:\$80,000/yr. until death of either party or until modified pursuant to DRL 236(B)(9) or DRL 248

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:Remitted for new determination

Property Distribution to Wife:Remitted for a new determination.

Number:414

Case:Garges v Garges (1991, 3d Dept) 175 App Div 2d 511, 572 NYS2d 780

Comment:

Years Married:5

Ages/Income:H-? W-?

Child Support:N/A

Maintenance:\$100/wk. for 6 mos., then \$75/wk. for another 6 mos.

Exclusive Occupancy:No

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:415

Case:Graham v Graham (1991, 3d Dept) 175 App Div 2d 540, 572 NYS2d 800

Comment:

Years Married:10

Ages/Income:H-? \$22,000 W-?

Child Support:Remitted for reconsideration in pursuant to CSSA

Maintenance:Denied

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:Denied

Property Distribution to Wife:The Court permitted the husband to purchase the wife's interest in the marital residence, which was valued at \$275,000. It also awarded \$2,000 to the wife for her services in wallpapering, painting and redecorating the husband's Westchester property. Remitted to determine whether \$4,000 IRA account were separate or marital and to fix their value and make a distribution thereof.

Number:416

Case:Beason v Sloane (1991, 4th Dept) 174 App Div 2d 1016, 572 NYS2d 176, app dismd without op 78 NY2d 1007, 575 NYS2d 457, 580 NE2d 1060

Comment:

Years Married:?

Ages/Income:H-? W-?

Child Support:\$75/wk. retroactive to date of Answer and Counterclaim

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$10,410 to Wife

Property Distribution to Wife:The Court awarded \$20,000 to wife representing her share of the \$50,000 net proceeds from the sale of real property retained by the husband.

Number:417

Case:Greenman v Greenman (1991, 3d Dept), 175 App Div 2d 360, 572 NYS2d 95 app dismd without op 78 NY2d 1124, 578 NY2d 880, 586 NE2d 63

Comment:(no requirement that marital assets be liquidated prior to distribution or each item of marital property be made on an equal basis)

Years Married:40

Ages/Income:H-? W-?

Child Support:N/A

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:418

Case:Davis v Davis (1991, App Div, 1st Dept) 175 App Div 2d 45, 573 NYS2d 162

Comment:(marital assets divided 60% to wife, 40% to husband based on husband's economic fault; counsel fees awarded because of obstructionistic conduct)

Years Married:19

Ages/Income:H-? \$60,000 W-? \$24,000

Child Support:\$1,000/mo. (1 ch.)

Maintenance:\$1,000/mo.

Exclusive Occupancy:Title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Each party was awarded a home and an automobile and some cash. The distribution was "fairly equal".

Number:419

Case:Zelnick v Zelnick (1991, 1st Dept) 169 App Div 2d 317, 573 NYS2d 261

Comment:(no requirement that the non-titled spouse prove precisely how active efforts of either party quantitatively contributed to property's appreciation; all he/she need show is that the appreciation was due in part to his/her marital efforts or contributions)

Years Married:?

Ages/Income:H-? W-?

Child Support:\$2,500/mo. (1 ch.)

Maintenance:\$2,500/mo. until wife's death or remarriage

Exclusive Occupancy:Title to husband

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$15,750 to Wife

Property Distribution to Wife:The net marital assets amounting to \$1,683,773 were divided 60% to the wife and 40% to the husband. The wife's share included title to the parties' cooperative apartment valued at \$380,000 and a lump sum payment of \$210,000. The husband was awarded exclusive title to property located in Tennessee valued at \$654,000.

Number:420

Case:Gastineau v Gastineau (1991) 151 Misc 2d 813, 573 NYS2d 819

Comment:(wife awarded assets because husband terminated his football contract, thereby dissipating assets)

Years Married:7**Ages/Income:**H-34 Unemployed W-31 Unemployed**Child Support:**\$200/wk. (1 ch.)**Maintenance:**\$150/wk. for 3 years**Exclusive Occupancy:**Title to wife**Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:**\$250,000, naming child as beneficiary**Counsel Fees:?****Property Distribution to Wife:**Wife awarded 50% of increase in value of a house which the husband had purchased at her suggestion, 2 months before the marriage.

Number:421**Case:**Schlachet v Schlachet (1991, 1st Dept) 176 App Div 2d 198, 574 NYS2d 320**Comment:**(open ended direction for child care not error; proper to value psychologist practice by capitalizing "weighted average excess earnings")**Years Married:**8**Ages/Income:**H-60 W-45**Child Support:**\$1400/mo. and private school tuition and child care**Maintenance:**\$400/mo. for 4 yrs.**Exclusive Occupancy:?****Health & Medical Insurance:**Yes—70% of child's medical insurance**Dental Insurance:?****Life Insurance:?****Counsel Fees:**\$20,000 to Wife**Property Distribution to Wife:**Wife was awarded 1/3 of the marital assets, consisting of the Huntington house with an equity of \$264,000 and 1/3 of the husband's pension. Husband appointed receiver to sell 2 BMW motorcycles and give wife 1/3 of the proceeds. Wife appointed receiver of Porsche automobile to sell it and give husband 2/3 of proceeds.

Number:422**Case:**Bishop v Bishop NYLJ, 7-18-91, P. 25 Col. 1 Sup. Ct., Kings Co. (Schneier, J.)

Comment:(as no evidence of appreciation in the value of the marital residence, it remained husband's separate property)

Years Married:26

Ages/Income:H-58 \$29,000 W-45 \$23,000

Child Support:\$84/wk. (1 ch.)

Maintenance:Denied

Exclusive Occupancy:No

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$25,000 to Wife

Property Distribution to Wife:Wife awarded 50% of appreciation of husband's psychological practice.

Number:423

Case:Harrington v Harrington, NYLJ, 7-18-91, P. 27, Col. 3, Sup. Ct., Westchester Co. (Collabella, J.)

Comment:

Years Married:9

Ages/Income:H-47 \$117,821 W-44 \$35,000

Child Support:\$1668.11 per mo.

Maintenance:Denied

Exclusive Occupancy:Yes

Health & Medical Insurance:Yes

Dental Insurance:?

Life Insurance:?

Counsel Fees:Denied

Property Distribution to Wife:Husband awarded 75% and wife 25% of the value of the Brooklyn property. Wife granted a distributive award of \$14,583 representing her 25% interest. Marital residence declared to be husband's separate property.

Number:424

Case:Grund v Grund NYLJ, 8-5-91, P. 27, Col. 4 Sup. Ct., Suffolk Co. (Leis, J.)

Comment:(CATT benefits equally distributed; Husband's pension options limited)

Years Married:26

Ages/Income:H-50 \$85,000 W-45 \$5,088/yr.

Child Support:

Maintenance:\$350/wk. until husband retires

Exclusive Occupancy:To wife until marital residence sold

Health & Medical Insurance:Yes—until husband retires

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$12,000 to Wife

Property Distribution to Wife:Each party awarded 50% of marital assets in the amount of \$150,145.50 if they were to be distributed immediately. Each party retained their respective pension plans and Keogh and credit union accounts in their possession, leaving \$126,695 due to the wife and \$54,680 to the husband to be satisfied from the marital residence. The wife was awarded exclusive occupancy of the marital residence until the child's emancipation, at which time the house would be sold and the net proceeds distributed between the parties, with the wife to receive 69.9% of the net proceeds and the husband 30%.

Number:425

Case:Pullman v Pullman (1991, 1st Dept) 176 App Div 2d 113, 573 NYS2d 690

Comment:(party seeking to rebut presumption that assets commingled with other property acquired during the marriage are marital property must adequately trace source of assets)

Years Married:14

Ages/Income:H-? W-?

Child Support:Remanded for recalculation pursuant to CSSA

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$20,500 to Wife

Property Distribution to Wife:Parties each awarded 50% of the proceeds from sale of marital residence. Wife was awarded 50% of all marital assets except for husband's pension. Wife was awarded 25% of husband's pension benefits and also 50% of \$36,000 payable upon husband's retirement.

Number:426

Case:Benja-athon v Benja-athon, NYLJ, 8-13-91, P. 25, Col. 3, Sup. Ct., Nassau Co. (Lowey, JHO)

Comment:(portion of personal injury settlement representing loss of ability to be a surgeon is marital property)

Years Married:11

Ages/Income:H-? \$90,000 W-?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:All assets deemed marital property and distributed equally.

Number:427

Case:Dittman v Dittman, NYLJ, 8-15-91, P. 27, Col. 4 Sup. Ct., Westchester Co. (Colabella, J.)

Comment:(Court imputed an earning capacity to the husband of at least \$100,000 per year)

Years Married:16

Ages/Income:H-44 \$139,418.83 W-41

Child Support:\$261.54 per wk. (1 ch.)

Maintenance:\$200/wk. for 8 yrs.

Exclusive Occupancy:?

Health & Medical Insurance:Yes—for wife for 3 yrs. and for child.

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife entitled to 40% of marital property (\$390,275) represented by value of the husband's medical license to practice medicine as a general practitioner (\$156,110) plus her share of 25% of a structured settlement (\$152,784.75). She was awarded the marital residence in part-payment of her distributive award and title to the furniture and to a 1984 Camaro. The wife received a distributive award of \$53,900 with interest of 9% per year.

Number:428

Case:Hansen v Hansen, NYLJ, 8-21-91, P. 24, Col. 4 Sup. Ct., Kings Co. (Schneier, J.)

Comment:(husband held accountable for waste of marital asset; maintenance denied because husband could not meet his own financial obligations if he had to pay maintenance)

Years Married:8

Ages/Income:H-35 \$800/wk. W-40 \$6,000/yr.

Child Support:\$194/wk. (2 ch.)

Maintenance:Denied

Exclusive Occupancy:To wife until marital home is sold

Health & Medical Insurance:Yes—for children and wife for 3 yrs.

Dental Insurance:?

Life Insurance:\$100,000 for children

Counsel Fees:\$300 to Wife

Property Distribution to Wife:The husband was directed to pay for an outstanding tax liability for the parties' condominium.

Number:429

Case:Falcone v Falcone, NYLJ, 9-4-91, P. 25, Col. 6, Sup. Ct., Queens Co. (Lonschein, J.)

Comment:(application of CSSA formula is “unjust or inappropriate” where wife had to pay child support)

Years Married:17

Ages/Income:H-? \$37,415 W-? \$42,629

Child Support:\$150/wk. (2 ch.)

Maintenance:Denied

Exclusive Occupancy:?

Health & Medical Insurance:Yes

Dental Insurance:?

Life Insurance:Yes

Counsel Fees:\$3,500 to Wife

Property Distribution to Wife:Wife awarded a 50% interest in husband's pension and 50% of proceeds from sale of marital residence and an additional \$8,000 from husband's share. Wife awarded \$9,200 from sale of securities, her IRA account (\$2,400) the title to 2 vacant lots adjacent to marital home.

Number:430

Case:Elkaim v Elkaim (1991, 1st Dept) 176 App Div 2d 116, 574 NYS2d 2

Comment:

Years Married:?

Ages/Income:H-? W-?

Child Support:N/A

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:Denied

Property Distribution to Wife:Each party permitted to retain their respective pension rights without any distributive claims by the other. The wife's pension was worth \$90,860 and the husband's pension was worth \$53,542.

Number:431

Case:Meikle v Meikle (1991, 2d Dept) 176 App Div 2d 257, 574 NYS2d 71

Comment:

Years Married:20

Ages/Income:H-? W-?

Child Support:\$800/wk. per ch. (3 ch.)

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 50% of net income derived during the period from the date of abandonment until the date of judgment from certain real estate, one-half of fair market value of apartment which husband acquired rent free from the date of abandonment until the date of judgment and a 35% share of another corporation.

Number:432

Case:Zabin v Zabin (1991, 2d Dept) 176 App Div 2d 262, 574 NYS2d 75

Comment:(award of maintenance could not be conditioned on wife obtaining therapy or on her achieving a particular occupational goal.)

Years Married:8

Ages/Income:H-? W-?

Child Support:N/A
Maintenance:Denied
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$21,680 to Wife
Property Distribution to Wife:The wife was awarded 1/2 of the husband's net worth less the value of the marital residence.

Number:433
Case:Ahed v Ahed, NYLJ, 9-23-91, P. 27, Col. 5, Sup. Ct., Kings Co. (Schneier, J.)
Comment:
Years Married:?
Ages/Income:H-37 \$350/wk. W-36 \$35,000
Child Support:\$75/wk. (1 ch.)
Maintenance:Remitted for reconsideration. Ct. for reconsideration
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:Denied
Property Distribution to Wife:The husband transferred his title to certain Brooklyn property to the wife for \$1,000. Each party was awarded 50% of all marital assets.

Number:434
Case:Mangone v Mangone (1991, 4th, Dept) 175 App Div 2d 655, 573 NYS2d 800
Comment:(husband given the option of selling his business and real property (which he claimed had a negative value) and dividing net proceeds with wife or transferring title to wife subject to encumbrances)
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?

Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:435

Case:Poretsky v Poretsky (1981, 2d Dept) 176 App Div 2d 713, 574 NYS2d 796

Comment:(courts favor allowing the custodial parent to remain in the marital home at least until the youngest child reaches 18 or is emancipated)

Years Married:10

Ages/Income:H-? \$38,000 W-?

Child Support:?

Maintenance:\$245 a week 4 years

Exclusive Occupancy:To wife

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:Denied

Property Distribution to Wife:Wife awarded 50% of the marital property based upon her contributions as spouse, homemaker and parent.

Number:436

Case:Brandt v Drandt (1981, 3d Dept) 176 App Div 2d 1016, 574 NYS2d 868

Comment:(wife's use of \$8,000 for clothing, vacation for children, her attorneys' retainer and every day expenses is not a waste of assets)

Years Married:18

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$4,000

Property Distribution to Wife:Wife awarded \$102,037 out of which \$77,892 represented the marital home in which she and her 5 children will reside.

Number:437

Case:Smerling v Smerling (1991, 1st Dept) 177 App Div 2d 429, 576 NYS2d 271

Comment:(due to speculative nature of valuing husband's business as of the date of commencement, court valued it at its sale price, which occurred during pendency of action; this is an exception to activepassive rule)

Years Married:25

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 40% of net proceeds (\$3,436,132) of the sale of husband's movie chain, sole title to marital residence and 50% of all remaining marital assets.

Number:438

Case:Zago v Zago (1991, 2d Dept) 177 App Div 2d 691, 577 NYS2d 78, app withdrawn 79 NY2d 943, 583 NYS2d 196, 592 NE2d 804 and app den 80 NY2d 751, 587 NYS2d 287, 599 NE2d 691

Comment:(seed money case)

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Husband awarded credit of \$33,000 he contributed in separate property toward purchase of marital residence.

Number:439

Case:Dolan v Dolan (1991) 78 NY2d 463, 577 NYS2d 195, 583 NE2d 908, 14 EBC 2114 (See also #378)

Comment:(to the extent the husband's ordinary disability pension represented deferred compensation, it is indistinguishable from a retirement pension and marital property subject to equitable distribution)

Years Married:18

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 50% interest in 47.62% of husband's disability pension and 23.81% of any future increase in the monthly pension payment from the date of commencement of the action.

Number:440

Case:Sclafani v Sclafani (1991, 3d Dept) 178 App Div 2d 830, 577 NYS2d 711

Comment:(property acquired during marriage is presumed to be marital property; separate property is to be narrowly construed; burden of proof is on party claiming separate property)

Years Married:9

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$7,500

Property Distribution to Wife:Wife was awarded 30% of the value of husband's stock in his brother's business.

Number:441

Case:Maimon v Maimon (1991, 2d Dept) 178 App Div 2d 635, 578 NYS2d 210

Comment:(as wife was in a superior financial position, it was error for Supreme Court to award her counsel fees)

Years Married:22

Ages/Income:?

Child Support:§ \$75/wk. for 100 weeks

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:None awarded

Property Distribution to Wife:50% of marital assets awarded to wife.

Number:442

Case:Woodson v Woodson (1991, 2d Dept) 178 App Div 2d 642, 578 NYS2d 217

Comment:(wife entitled to share in investment property acquired by husband after commencement of action because of her contributions to it)

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 31% of the current appraised value of certain investment property.

Number:443

Case:Kniffen v Kniffen (1992, 1st Dept) 179 App Div 2d 416, 578 NYS2d 552, app den 80 NY2d 760, 591 NYS2d 138, 605 NE2d 874

Comment:

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:Remand for hearing

Property Distribution to Wife:Marital home declared to be wife's separate property.

Number:444

Case:Popack v Popack (1992, 2d Dept) 179 App Div 2d 746, 578 NYS2d 650, app dismd without op 79 NY2d 1040, 584 NYS2d 449, 594 NE2d 943

Comment:(Court found husband's annual income was \$85,000 although he reported \$21,600; wife awarded 50% of value of marital residence although title in name of husband and his sister for 4 years before action started)

Years Married:15

Ages/Income:H-39 \$85,000 W-40 \$7,800

Child Support:N/A

Maintenance:\$250 a week for 3 years, then \$400 a week for 10 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:\$225,000 for the wife until distributive award paid

Counsel Fees:Remitted for hearing

Property Distribution to Wife:The wife was awarded a distributive award of \$255,000 representing 50% of the value of the marital residence.

Number:445

Case:Harmon v Harmon (1992, 1st Dept) 173 App Div 2d 98, 578 NYS2d 897

Comment:(CSSA formula should not be blindly applied to the combined parental income in excess of \$80,000 without consideration of child's actual needs; husband's interest in law firm valued based on death benefit provision (without taxes) of partnership agreement)

Years Married:25

Ages/Income:H \$127,324 W \$52,000

Child Support:Husband to pay 75% of son's tuition and college cost (remanded)

Maintenance:\$400 a week for 1 year

Exclusive Occupancy:?

Health & Medical Insurance:Husband to pay for child

Dental Insurance:?

Life Insurance:Husband to obtain \$100,000 for wife for 1 year

Counsel Fees:?

Property Distribution to Wife:Marital assets and liabilities were distributed equally. Wife awarded \$129,535 as her distributive share of husband's interest in law practice.

Number:446

Case:Allocco v Allocco (1991, Sup) 152 Misc 2d 529, 578 NYS2d 995

Comment:(two degrees and completion of Civil Service Exam are marital property; Court valued enhanced earning capacity comparing policeman to lieutenant)

Years Married:25

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded credit of \$53,981.87 for one-half of husband's enhanced earning capacity.

Number:447

Case:Heine v Heine (1992, 1st Dept) 176 App Div 2d 77, 580 NYS2d 231, app den 80 NY2d 753, 587 NYS2d 905, 600 NE2d 632

Comment:(property acquired during marriage is presumptively marital; burden of proof is with the party who claims it is separate)

Years Married:20

Ages/Income:H-? \$450,000 W-?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded distributive award of \$1,222,750.00 representing 50% of townhouse after credit to husband for initial investment of \$54,400. Wife also awarded 50% of husband's limited partnership interests and interest in apartment buildings, less a credit of 50% of the capital gains tax paid by the husband when the townhouse is sold.

Number:448

Case:Traut v Traut (1992, 2d Dept) 181 App Div 2d 671, 580 NYS2d 792

Comment:(seed money case; wife given option to retain title to house)

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:Option to wife to retain title

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife entitled to recoup her \$10,000 separate property contribution before sale and equal distribution of marital residence is made. Wife awarded 50% (\$72,000) of value of husband's business, plus 50% of value of the real property upon which husband's business was located.

Number:449

Case:Sommer v Sommer (1991, 2d Dept) 176 App Div 2d 1022, 575 NYS2d 178

Comment:(in evaluating business by capitalizing earnings over a 5 year period, abnormally high year should be excluded. Business lack of marketability should also be taken into consideration in arriving at its value)

Years Married:23

Ages/Income:H-48 W-46

Child Support:\$204/wk until 21st birthday of one ch. & \$139/wk until 21st birthday second ch.

Maintenance:\$50 a week for 5 yrs

Exclusive Occupancy:Title to wife

Health & Medical Insurance:?

Dental Insurance:H responsible for 65.5% of reasonable health care expenses not covered by W's insurance

Life Insurance:?

Counsel Fees:\$2,500 to wife's attorney

Property Distribution to Wife:Matter remitted for recalculation of value of husband's business and to award equitable distribution in accordance therewith of 50% of all marital property to wife.

Number:450

Case:Sotiropoulos v Sotiropoulos (1992, 1st Dept) 181 App Div 2d 449, 581 NYS2d 29

Comment:

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?
Property Distribution to Wife:?

Number:451

Case:Urtis v Urtis (1992, 4th Dept) 181 App Div 2d 1001, 581 NYS2d 947

Comment:“even where the marital assets are divided equally the court is not required to divide each asset equally”)

Years Married:28

Ages/Income:H-64 \$36,800 W-54 \$40,000

Child Support:\$482/mo.

Maintenance:None

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:None awarded

Property Distribution to Wife:All marital property was divided equally. Wife awarded a 25% interest in husband's business.

Number:452

Case:Chasin v Chasin (1992, 3d Dept) 182 App Div 2d 862, 582 NYS2d 512, related proceeding (NY App Div 3rd Dept) 1993 NY App Div LEXIS 7106

Comment:(blind application of the CSSA formula to the combined parental income over \$80,000 without any express findings of the children's actual needs is an abdication of judicial responsibility; health insurance is not a proper add-on; maintenance based on marital standard of living)

Years Married:20+

Ages/Income:H-48 \$100,000 W-43 \$37,000

Child Support:\$400/wk plus 75% necessary medical and health care expenses

Maintenance:\$100 a week to wife

Exclusive Occupancy:Title to wife

Health & Medical Insurance:Wife directed to provide insurance for ch. through her employer

Dental Insurance:?

Life Insurance:H directed to maintain \$500,000 policy

Counsel Fees:?

Property Distribution to Wife:All marital property divided equally. Wife was awarded \$371,750 worth of property by receiving title to the marital residence, a QDRO for \$100,000 from the husband's pension and a distributive award of \$127,500 payable in 8 installments.

Number:453

Case:Phillips v Phillips (1992, 2d Dept) 182 App Div 2d 746, 582 NYS2d 743

Comment:

Years Married:29

Ages/Income:H-? \$200,000 W-49 \$15,400

Child Support:N/A

Maintenance:\$600 a week non-durational

Exclusive Occupancy:Title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Marital residence distributed to wife pursuant to parties' stipulation.

Number:454

Case:Fithian v Fithian (1992, 4th Dept) 182 App Div 2d 1111, 582 NYS2d 891

Comment:

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:None

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded \$7,243 representing 40% of amount husband withdrew from parties' account to pay for his counsel fees.

Number:455

Case:De La Torre v De La Torre (1992, 2d Dept) 183 App Div 2d 744, 583 NYS2d 479

Comment:(50% of tax liability on money withdrawn from husband's pension must be deducted from wife's proportionate share before arriving at value of her distributive award)

Years Married:?

Ages/Income:?

Child Support:\$94.67/wk per child (2 ch.)

Maintenance:\$100 a week for 3 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife granted a distributive award of \$13,508.30

Number:456

Case:Elmaleh v Elmaleh (1992, 2d Dept) 184 App Div 2d 544, 584 NYS2d 857

Comment:(equitable distribution of husband's partnership interest because it could not be valued; pension valued at date of commencement)

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 50% of the value of the husband's retirement trust plan and 50% of partnership interests the husband acquired during the marriage plus 79.79% of the proceeds from sale of California real property.

Number:457

Case:Schmidt v Schmidt (1992, 2d Dept) 184 App Div 2d 629, 584 NYS2d 883

Comment:

Years Married:?

Ages/Income:H-? \$28,000

Child Support:?

Maintenance:?

Exclusive Occupancy:No

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Husband permitted to remain in the first floor apartment of marital residence and wife was awarded possession of remainder of premises.

Number:458

Case:Tarascio v Tarascio (1992, 2d Dept) 183 App Div 2d 890, 585 NYS2d 59

Comment:(Court must reduce husband's income by the amount of maintenance award in computing his income to determine his basic child support obligation)

Years Married:?

Ages/Income:?

Child Support:\$7,255 a yr. then \$8,555 a yr. upon termination of maintenance

Maintenance:To wife

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$8,500 to wife

Property Distribution to Wife:Wife awarded \$4,000 as her equitable share of the Oldsmobile.

Number:459

Case:Kalisch v Kalisch (1992, 2d Dept) 184 App Div 2d 751, 585 NYS2d 476

Comment:(a discount for lack of marketability should be applied to the value of shares of closely held corporation which cannot be reasonably sold on a public market; defendant given right to move to modify distributive award if his business was closed by New York State and liquidated)

Years Married:11

Ages/Income:H-? W-?

Child Support:\$375/wk

Maintenance:?

Exclusive Occupancy:To wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:Denied

Property Distribution to Wife:Wife awarded 40% (\$604,500) of value of husband's close corporate stock and 50% (\$14,613) of the parties assets with interest at 9% until paid, and distributed the parties' personal property.

Number:460

Case:Harned v Harned (1992, 2d Dept) 185 App Div 2d 226, 585 NYS2d 780, app den 80 NY2d 762, 592 NYS2d 671, 607 NE2d 818

Comment:(not improper to value marital residence at time of commencement where parties separated a month before action started and it was the husband's separate property)

Years Married:12

Ages/Income:H-? W-? \$26,000

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded \$27,950 representing 50% of value of marital assets.

Number:461

Case:Bohnsack v Bohnsack (1992, 3d Dept) 185 App Div 2d 533, 586 NYS2d 369

Comment:(distributive award to be paid in 5 annual installments with interest at 9% retroactive to date of commencement; if husband defaults in payment of an installment, he shall pay compound interest of 1.5% a month on the unpaid installment; husband to pay mortgage, taxes, repairs, insurance and upkeep of marital home; valuation date for stock is the date of commencement)

Years Married:12

Ages/Income:H-\$60,485

Child Support:\$337.32 per week (3 ch.)

Maintenance:\$200 a week for 5 years

Exclusive Occupancy:To wife

Health & Medical Insurance:Yes-for wife and children.

Husband to pay all unreimbursed medical

Dental Insurance:Yes-for wife and children

Life Insurance:Yes-for wife and children

Counsel Fees:Awarded to wife

Property Distribution to Wife:Wife awarded equitable distribution of \$102,262. Remitted to value stock at date of commencement.

Number:462

Case:Loeb v Loeb (1992, 2d Dept) 186 App Div 2d 174, 587 NYS2d 738

Comment:(an award of maintenance not determined by actual earnings, but, rather, by earning capacity; trial Court has right to discredit husband's reasons for retirement and conclude it should not affect wife's right to maintenance)

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:Lifetime maintenance to wife

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:463

Case:Repka v Repka (1992, 2d Dept) 186 App Div 2d 119, 588 NYS2d 39, later proceeding (App Div, 2d Dept) 186 App Div 2d 124

Comment:(inequitable to direct husband to sell his business and give wife a distributive award of half, without considering tax consequences; tax consequences of capital gain considered)

Years Married:32

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:Title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife was awarded a 50% of the value of all marital property in accordance with stipulation and 50% of the net value, after taxes, of husband's business and marital home.

Number:464

Case:Robertson v Robertson (1992, 2d Dept) 186 App Div 2d 124, 588 NYS2d 43

Comment:(wife awarded "seed money" for marital apartment; equal division of proceeds in marriage of long duration)

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Each party awarded 50% of net proceeds of sale of marital apartment after wife received credit of \$45,633 representing her separate property contributed toward its purchase. Husband awarded 55% interest of proceeds from sale of Hampton Bays property.

Number:465

Case:Ramshaw v Ramshaw (1992, 2d Dept) 186 App Div 2d 243, 588 NYS2d 310

Comment:(no authority to impose open-ended obligation on wife to obtain counseling as an implied condition of custody)

Years Married:15

Ages/Income:H-? W-35

Child Support:

Maintenance:\$110 a week 4 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:466

Case:Patricia B. v Steven B. (1992, 2d Dept) 186 App Div 2d 609, 588 NYS2d 874

Comment:(date of commencement of action was proper date for determining appreciation in value of periodontal practice which was husband's separate property because the marriage was effectively over at that time)

Years Married:6

Ages/Income:H-40 \$225,000 W-42 \$0

Child Support:N/A

Maintenance:\$500 a week

Exclusive Occupancy:?

Health & Medical Insurance:None

Dental Insurance:None

Life Insurance:None

Counsel Fees:\$35,100 to wife for counsel and expert fees

Property Distribution to Wife:Wife was awarded 33 1/3% of the increase in value of the husband's separate property periodontal practice and a share of the husband's IRS and Keough accounts.

Number:467

Case:Icart v Icart (1992, 3d Dept) 186 App Div 2d 918, 589 NYS2d 127

Comment:(seed money case)

Years Married:?
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:Wife awarded 83.5% of net proceeds of sale of marital residence and rental cottages.

Number:468
Case:Cohen v Cohen (1992, 1st Dept) 184 App Div 2d 347, 585 NYS2d 348, clarified (App Div, 1st Dept) 185 App Div 2d 197
Comment:(it is error to treat a distributive award as maintenance because the DRL contemplates it will be tax free)
Years Married:13
Ages/Income:?
Child Support:\$500/wk (2 ch.)
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$10,000 to wife
Property Distribution to Wife:Remitted to Supreme Court for detailed findings.

Number:469
Case:Ehrlich v Ehrlich (1992, 1st Dept) 184 App Div 2d 400, 587 NYS2d 142
Comment:(there is no requirement that the distribution of each item of marital property be on an equal or 50-50 basis)
Years Married:?
Ages/Income:?
Child Support:Yes-?
Maintenance:Yes
Exclusive Occupancy:?
Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:No

Property Distribution to Wife:Wife awarded an interest in the net appreciation of husband's separate property to the extent that her direct and indirect contributions were casually related to that appreciation.

Number:470

Case:Rosenkrantz v Rosenkrantz (1992, 1st Dept) 184 App Div 2d 478, 585 NYS2d 426

Comment:

Years Married:?

Ages/Income:H-? \$20,000 W-49 \$25,000

Child Support:N/A

Maintenance:\$2,500 a month permanent

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded distributive award of \$111,562.50 with respect to husband's business interests, and 50% of net proceeds of marital house. Matter remitted because Supreme Court failed to distribute proceeds from sale of stock obtained from exercise of warrants and options.

Number:471

Case:Sabino v Sabino (1991, 2d Dept) 176 App Div 2d 717, 574 NYS2d 1002

Comment:(husband denied a distributive award based on wife's attainment of a computer programming certificate during marriage because he did not make any substantial contributions)

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:472

Case:Malcolm v Malcolm, NYLJ, 10-11-91, P. 29, Col. 4 (Sup. Ct. Kings Co.)

Comment:

Years Married:21

Ages/Income:W-48 \$36,000 H-53 \$13,000

Child Support:N/A

Maintenance:None

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:The wife was awarded 50% of the proceeds of the marital residence. The husband was awarded a distributive award of \$19,000, representing 50% of the value of the wife's pension.

Number:473

Case:Catapano v Catapano, NYLJ, 11-22-91, P. 29, Col. 5 (Sup. Ct., Suffolk Co.)

Comment:(parties separated after 19 months; wife unemployed at time of trial; wife given right to enter money judgment if distributive award and counsel fees are not paid by certain date)

Years Married:4

Ages/Income:H-41 \$61,000 W-? \$10,712

Child Support:\$187/wk plus arrears

Maintenance:Waived if husband is current on child supp. payments. Otherwise, \$100 a week until child commences school full time

Exclusive Occupancy:?

Health & Medical Insurance:Yes-for child

Dental Insurance:Yes-for child

Life Insurance:\$100,000 for child

Counsel Fees:Wife awarded \$5,700 counsel fees

Property Distribution to Wife:Wife awarded 50% of income tax refund of \$5,247 and 50% of husband's 401K plan.

Number:474

Case:Safah v Safah, NYLJ, 1-8-92, P. 26, Col. 5 (Sup. Ct. Suffolk Co.)

Comment:(wife awarded 100% of marital property based on husband's egregious conduct)

Years Married:?

Ages/Income:H-70+W-40

Child Support:\$242.50 a month (2 ch.)

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:Yes-for the children

Dental Insurance:?

Life Insurance:\$50,000 for children

Counsel Fees:Wife awarded \$26,536

Property Distribution to Wife:Wife granted 100% of all marital property including title to Florida property, husband's pension and social security payments allocable to the children.

Number:475

Case:Yecies v Yecies, NYLJ, 2-3-92, P. 28, Col. 6 (Sup. Ct., Suffolk Co.)

Comment:(Court valued and distributed husband's enhanced earning capacity as an allergist)

Years Married:9

Ages/Income:?

Child Support:\$90/wk. 2 ch.

Maintenance:?

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded a one-half share of the value of the husband's pension (\$15,594.35); 50% of the net proceeds of the sale of the marital home after husband is credited with \$45,000 separate money he contributed to purchase the house and \$16,378.89 he paid for house repairs and \$20,000 for child support. The wife also awarded 50% of net proceeds from the sale of the husband's stock and 25% of the value of the husband's enhanced earning capacity.

Number:476

Case:Meisl v Meisl (1989, 2d Dept) 153 App Div 2d 839, 545 NYS2d 331, later proceeding (2d Dept) 180 App Div 2d 782, 581 NYS2d 606

Comment:(husband's motion to vacate default denied)

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$100 a week for 5 yrs

Exclusive Occupancy:Title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife was awarded title to the marital residence.

Number:477

Case:Greenwald v Greenwald (1992, 2d Dept) 181 App Div 2d 811, 583 NYS2d 158

Comment:(Court set the date of trial as the valuation date of the parties' insurance brokerage business which was a marital asset)

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:Yes-?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$5,000

Property Distribution to Wife:Yes-?

Number:478

Case:Feldman v Feldman (1992, 2d Dept) 181 App Div 2d 656, 581 NYS2d 607

Comment:

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$150 a week

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:\$50,000 - for wife

Counsel Fees:? Wife awarded \$81,912 as a distributive award of the marital property.

Property Distribution to Wife:

Number:479

Case:Gordon v Gordon, NYLJ, 3-10-92, P. 22, Col. 5 (Sup. Ct., NY Co.)

Comment:(wife's attempt to arrange an assault upon the husband was sufficiently egregious to be factored in where determining equitable distribution)

Years Married:38

Ages/Income:H-60 W-59

Child Support:N/A

Maintenance:\$2,000 a month permanent

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:Wife to pay \$25,000 to husband

Property Distribution to Wife:The wife was awarded \$1,492,551 being 44% of the net marital estate. The husband was awarded 100% of the remaining 56% being \$1,871,097.

Number:480

Case:Mrs. C v Mr. C. NYLJ, 8-18-92, P. 26, Col. 3 (Sup. Ct., Nassau Co.)

Comment:(value of law license distributed equally in brief marriage)

Years Married:4

Ages/Income:H-29 W-29

Child Support:N/A

Maintenance:\$100/wk for 4 yrs

Exclusive Occupancy:?

Health & Medical Insurance:?**Dental Insurance:?****Life Insurance:?****Counsel Fees:**No**Property Distribution to Wife:**Wife received a distributive award of 50% of the value of the husband's law license, valued at \$292,000, payable over 5 years, 50% of the parties' real estate investments, and 50% of the parties' savings accounts.

Number:481**Case:**Becker v Becker, 186 App Div 2d 106, 588 NYS2d 45, (2d Dept, 1992)**Comment:**(equal distribution)**Years Married:?****Ages/Income:?****Child Support:?****Maintenance:?****Exclusive Occupancy:**Ordered sold**Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:**Wife awarded 50% of net proceeds of sale of marital residence.

Number:482**Case:**Ackerman v Ackerman, NYLJ, 10-14-92, P. 26, Col. 3 (Sup. Ct., Nassau Co.)**Comment:****Years Married:?****Ages/Income:?****Child Support:?****Maintenance:?****Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:**\$4,500 to wife**Property Distribution to Wife:?**

Number:483

Case:Nolfo v Nolfo, 187 App Div 2d 570, 591 NYS2d 333 (2d Dept, 1992)

Comment:

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$75 a week "permanent"

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:484

Case:Ferrante v Ferrante, NYLJ, 11-25-92, P. 26, Col. 4 (Sup. Ct., Rockland Co.)

Comment:(seed money case results in title to wife)

Years Married:8

Ages/Income:H-44 unemployed w-36 \$29,000

Child Support:N/A

Maintenance:Denied

Exclusive Occupancy:Title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded credit of \$74,731 representing her contribution of separate property received from her father, to the purchase of the marital residence. The Court directed title to the house be given to the wife because the equity was less than \$74,000.

Number:485

Case:Acebal v Acebal, NYLJ, 11-25-92, P. 25, Col. 5 (Sup. Ct., Nassau Co.)

Comment:(couple lived together 20 years)

Years Married:12

Ages/Income:H-52 \$49,202 W-53 \$8,900

Child Support:N/A
Maintenance:No
Exclusive Occupancy:Ordered sold
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$7,500 to wife
Property Distribution to Wife:Wife awarded 50% of the value of the marital residence for 10 years when both parties contributed to it and 100% of the value during a 6-year period when only the wife paid all expenses. She was also awarded a 50% interest in property located in the Dominican Republic (worth \$12,000) with the right to purchase the husband's share within 12 months, an automobile and title to a cemetery plot.

Number:486
Case:Nolfo v Nolfo (1992, 2d Dept) 188 App Div 2d 451, 590 NYS2d 902
Comment:(premature to direct husband to set aside funds for children's college; open ended payments for uninsured medical expenses are prohibited)
Years Married:12
Ages/Income:H-? \$80,000 + bonus. W-?
Child Support:?
Maintenance:\$400 for 5 years, then \$350 for 3 years, plus 15% (up to \$15,750) of compensation over \$80,000 for first 5 years and 10% (up to \$10,500 for next 3 years)
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:For wife for 8 years
Counsel Fees:\$60,500 to wife
Property Distribution to Wife:?

Number:487
Case:Sklar v Sklar, NYLJ, 12-17-92, P. 27, Col. 1 (Sup. Ct., Kings Co.)
Comment:(equal distribution)
Years Married:10
Ages/Income:H-44 W-32 \$6,000
Child Support:?

Maintenance:Denied

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:Denied

Property Distribution to Wife:Marital property of \$875 equally distributed (wife granted a distributive award of \$437.50).

Number:488

Case:Shen v Jen (1987, 1st Dept) 134 App Div 2d 182, 520 NYS2d 770, app dismd without op 72 NY2d 840, 530 NYS2d 555, 526 NE2d 46 and appeal after remand (1st Dept) 176 App Div 2d 157, 574 NYS2d 41

Comment:(wife awarded distributive award of co-op apartment, bought during trial by husband at "insiders price," valued three years after trial)

Years Married:?

Ages/Income:H-? W-?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded \$34,250 as distributive share of co-op apartment purchased by husband.

Number:489

Case:Horsburgh v Horsburgh (1992, 1st Dept) 183 App Div 2d 412, 583 NYS2d 267

Comment:(maintenance limited because of wife's age, good health, ability to become self-supporting and failure to show she subordinated a career to be a homemaker, companion, or parent)

Years Married:?

Ages/Income:H-? W-?

Child Support:\$769.23 bi-weekly (2 ch.)

Maintenance:\$4,166.67 a month for 7 years

Exclusive Occupancy:?

Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:Denied
Property Distribution to Wife:?

Number:490
Case:Aborn v. Aborn, 196 App Div 2d 561, 601 NYS2d 339 (2d Dept., 1993)
Comment:Appropriate not to consider CSSA formula; proper to rely on earning capacity
Years Married:?
Ages/Income:?
Child Support:\$400 per week
Maintenance:\$150 per week for 7 years
Exclusive Occupancy:?
Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:\$62,500 plus \$1,500 for appraiser's fees
Property Distribution to Wife:Wife received distributive award of \$165,530.50 Husband directed to pay award in installments of \$500 per month for 7 years and thereafter of \$2,000 per month

Number:491
Case:Annis v. Annis, 189 App Div 2d 846, 592 NYS2d 786 (2d Dept., 1993)
Comment:[After remittitur]
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:Wife awarded 1/3 of husband's pension plans in conformity with Majauskas formula

Number:492**Case:**Anonymous v. Anonymous NYLJ, 9/24/93, P.22, Col.1
(Sup.Ct., NY Co.)**Comment:**Valuation of interest in law practice based on death benefit provision of partnership agreement; wife awarded 51% of marital property**Years Married:**11**Ages/Income:**Husband - 49/ \$1.5 million Wife - 39/ \$0**Child Support:**\$2,500 per month for 2 children plus \$2,250 housing allotment plus cost of education, camp and extra lessons and equipment**Maintenance:**\$5,500 per month for 6 years plus \$3,150 per month for cost of housing**Exclusive Occupancy:?****Health & Medical Insurance:**For the children**Dental Insurance:**For the children**Life Insurance:****Counsel Fees:**\$15,000 accountants' fees Counsel fee issue referred to separate hearing**Property Distribution to Wife:**Wife awarded 50% of husband's interest in law firm Wife awarded a total of \$3,835,805.30 in cash and property

Number:493**Case:**Atkin v. Atkin NYLJ, 3/26/93, P.25, Col.6 Sup.Ct., Nassau Co. (Hart, J.)**Comment:**Wife awarded 50% of value of husband's physician's license suspended due to drug abuse.**Years Married:**20**Ages/Income:**Wife - \$39,000 Husband - ?**Child Support:**\$44.20 per week until emancipation or completion of 4 years of college, whichever comes first (1 child)**Maintenance:**No**Exclusive Occupancy:**No**Health & Medical Insurance:**No**Dental Insurance:**No**Life Insurance:**No**Counsel Fees:**No

Property Distribution to Wife:Wife awarded \$151,225 (50% of value of husband's license) with payment to be made in 10 annual installments of \$15,122.50 each, plus 9% interest; wife also awarded \$7,879.46 plus interest, representing 1/2 of her payment of tax liens and \$7,580.09 for repairs of marital residence

Number:494

Case:Basch v. Basch NYLJ, 12/7/93, P.26, Col.3 (Sup.Ct., Nassau Co.)

Comment:Wasteful dissipation of marital assets; rule placing burden of proof on party seeking affirmative relief applied with flexibility where titled spouse had control over all cash business

Years Married:34

Ages/Income:Wife - 56 Husband - 61

Child Support:N/A

Maintenance:\$450 per week non durational

Exclusive Occupancy:Title to wife

Health & Medical Insurance:Yes For wife

Dental Insurance:Yes For wife

Life Insurance:\$200,000 for wife to secure maintenance

Counsel Fees:\$10,000 to wife

Property Distribution to Wife:Wife awarded 70% (\$245,058) of marital estate (\$347,225) based upon economic fault of the husband, including title to marital residence, and furniture and distributive award of \$81,333 without interest Husband awarded title to 35th Street apartment, New Jersey co-op, his car, the 23rd Street Card Shop, bank accounts, stock certificates in his name, and watches

Number:495

Case:Balch v. Balch, 193 App Div 2d 1079, 598 NYS2d 880 (4th Dept., 1993)

Comment:Return of separate property contribution to marital residence and furniture

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?**Counsel Fees:**\$1,500**Property Distribution to Wife:**Wife awarded equity in marital residence; husband directed to pay that portion of home equity debt he incurred after parties separated; wife awarded most of the household furniture

Number:496**Case:**Bruk v. Bruk NYLJ, 3/12/93, P.34, Col.2 (Sup.Ct., Nassau Co.)**Comment:**Second marriage; return of separate property contribution to house**Years Married:?****Ages/Income:**Wife-44 Husband - 54**Child Support:**N/A**Maintenance:**\$500 per week for 4 years**Exclusive Occupancy:**Ordered sold**Health & Medical Insurance:****Dental Insurance:?****Life Insurance:****Counsel Fees:**Denied**Property Distribution to Wife:**Marital residence directed to be sold for \$490,000 - Wife entitled to the first \$56,000 out of net proceeds of the sale and balance to be shared equally by the parties - Wife awarded 40% of value of husband's practice and other assets and 40% of \$45,000 removed by husband and 40% of his retirement account

Number:497**Case:**Burns v. Burns, 193 App Div 2d 1104, 598 NYS2d 888 (4th Dept., 1993)**Comment:**Husband entitled to claim child as tax exemption**Years Married:?****Ages/Income:**Wife - 42 Husband - ?**Child Support:**\$620 per week**Maintenance:**\$500 per week for 6 years**Exclusive Occupancy:****Health & Medical Insurance:****Dental Insurance:****Life Insurance:**\$125,000 for wife**Counsel Fees:**\$40,000

Property Distribution to Wife:Wife awarded 50% of marital estate of \$854,140.71 - Husband received credit of \$54,460 for payments from his separate property - Wife's net share was \$388,230.36, including the value of her MBA degree

Number:498

Case:Cardero v. Cardero NYLJ, 10/19/93, P.32, Col.6 Sup.Ct., Orange Co. (Miller, J.)

Comment:Defendant responsible for 65% of marital debts due to earning disparity of the parties

Years Married:10

Ages/Income:?

Child Support:N/A

Maintenance:Stipulated

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:No

Property Distribution to Wife:Marital assets equally divided; wife to pay husband \$2,759.21; wife awarded title to her JC Penney account and her automobile Husband awarded funds in his SEFCU account; husband to pay 65% of debts; parties equally responsible to repay loan from wife's parents

Number:499

Case:Chew v. Chew, 157 Misc2d 322, 596 NYS2d 950 Sup.Ct., NY Co. (Silbermann. J.)

Comment:Waiver of claim to wife's masters degree because of failure to present expert proof of value; an apartment under cooperative offering plan is an asset. Maintenance to husband

Years Married:14

Ages/Income:Husband / 64 Wife - 42/ \$180,000

Child Support:N/A

Maintenance:\$450 per week non durational-maintenance to husband

Exclusive Occupancy:N/A

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:For husband

Counsel Fees:No

Property Distribution to Wife:Wife awarded one-half of net profit from sale of marital apartment, if husband exercises option to purchase apartment within 5 years

Number:500

Case:Conti v. Conti NYLJ, 3/22/93, P.22, Col.6 Sup.Ct., Kings Co. (Schneier, J.)

Comment:No distribution of unvalued auto business. Not bound to calculate child support based on CSSA where evidence established income higher than reported

Years Married:13

Ages/Income:Husband 63 \$500 per week, gross Wife - 54 /

Child Support:\$75 per week (1 child)

Maintenance:\$200 per week until death or remarriage

Exclusive Occupancy:Title to wife

Health & Medical Insurance:For wife and child until child's emancipation

Dental Insurance:

Life Insurance:For Wife and-child until child emancipated

Counsel Fees:\$20,000 to wife

Property Distribution to Wife:Wife awarded 50% of husband's 1/2 interest in commercial property (valued at \$175,000), husband's 1/2 interest in business (valued at \$250,000), and sole title to marital residence (valued at \$429,000)

Number:501

Case:Daisneria v. Daisneria, 188 App Div 2d 944, 591 NYS2d 890 (3d Dept., 1992)

Comment:No distribution of wife's nursing license which was marital property; remittal to value car unjustified where amount in issue relatively insignificant

Years Married:7

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife received \$35,000 from sale of marital residence, representing value of land intended as a gift from her family, husband received \$17,710, representing his separate property investment, remainder divided equally; wife received 50% of joint funds

Number:502

Case:Drohan v. Drohan, 193 App Div 2d 1070, 599 NYS2d 200 (4th Dept., 1993)

Comment:General insurance agency valued by capitalizing earnings, subtracting current assets and adding book value

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$250 per week non durational maintenance

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 35% of value of husband's insurance agency and 50% of the remaining marital assets Husband to pay the wife \$174,583.50 over 15 years (\$11,638.90 per year) plus interest of 9%

Number:503

Case:Glazer v. Glazer, 190 App Div 2d 951, 593 NYS2d 905 (3d Dept., 1993)

Comment:Error to value pension after date of commencement

Years Married:23

Ages/Income:?

Child Support:(1 child) remitted for recalculation

Maintenance:\$100 per week for 10 years

Exclusive Occupancy:To wife

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:No

Property Distribution to Wife:Wife awarded possession of marital residence and furnishings, title to a joint savings account containing \$10,926.68 and a distributive award of \$50,000 payable in 10 semi-annual installments of \$5,000 each Husband was awarded a checking account with \$2,000 title to pensions in his name and title to 2 bond funds and an annuity; remitted to value pension and to recompute precise amounts awarded

Number:504

Case:Herman v. Herman, NYLJ, 3/18/93, P.30, Col.3 (2d Dept., 1993)

Comment:

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:Wife awarded 50% of proceeds from sale of marital residence less money she removed from children's custodial accounts

Number:505

Case:Hirsch v. Hirsch NYLJ, 3/31/93, P.25, Col.2 Sup.Ct., Nassau Co. (Winick, J.)

Comment:Court followed rule that it may estimate loss to injured party and make award based on that estimate where husband a liar who secreted cash.

Years Married:33

Ages/Income:

Child Support:No

Maintenance:\$200 per week non durational maintenance

Exclusive Occupancy:Title to wife

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$10,000 plus \$1,256 for disbursements to wife

Property Distribution to Wife:Wife awarded \$100,000 to compensate her for assets secreted by husband, sole title to marital residence, \$1,150 for jewelry taken by the husband, and 50% of the value of husband's pension

Number:506

Case:Hollis v. Hollis, 188 App Div 2d 960, 592 NYS2d 110 (3d Dept., 1992)

Comment:Judgment "deemed" to incorporate the Court's decision

Years Married:2

Ages/Income:Husband / \$46,800 Wife /

Child Support:\$100 per week until termination of wife's maintenance then \$125 per week (1 child)

Maintenance:\$100 per week for 6 months and \$50 per week for 26 weeks

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife not entitled to share in appreciation of separate property

Number:507

Case:Horowitz v. Horowitz NYLJ, 8/3/93, P.25, Col.2 Sup.Ct., Nassau Co.)

Comment:

Years Married:10

Ages/Income:Husband - 35 / \$2,500 per month plus commissions and bonuses Wife - ?

Child Support:\$216.35 per week until oldest child is 21 and \$147.20 per week until the youngest is 21 (2 children)

Maintenance:\$200 per week for 2 years

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:For the children and 2 years for the wife

Dental Insurance:No

Life Insurance:\$250,000

Counsel Fees:None

Property Distribution to Wife:Wife's jewelry to be sold and proceeds shared by the parties, equally, after wife gets \$23,500 reimbursement of her separate assets Marital residence to be sold (valued at \$585,000)

Number:508

Case:Jabri v. Jabri, 193 App Div 2d 782, 598 NYS2d 535 (2d Dept., 1993)

Comment:After remittitur

Years Married:28

Ages/Income:?

Child Support:\$50 per week per child (4 children

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:Denied

Property Distribution to Wife:?

Number:509

Case:Kabat v. Kabat, 193 App Div 2d 582, 597 NYS2d 423 (2d Dept., 1993)

Comment:75% of marital property to wife where husband had substantial separate property

Years Married:19

Ages/Income:Wife - 63

Child Support:N/A

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife was awarded 75% (\$170,283.75) of marital property in light of her substantial non-economic contribution during the marriage

Number:510

Case:Kaftal v. Kaftal NYLJ, 2/8/93, P.28, Col.6 Sup.Ct. Kings Co. (Rigler, J.)

Comment:No distribution of husband's medical practice where wife did not provide evaluation Wife's income below poverty income guidelines

Years Married:6

Ages/Income:Husband / ?\$36,000 Wife / ?\$550 per month

Child Support:\$25 per month to husband (1 child)

Maintenance:\$75 per week for 2 years to wife

Exclusive Occupancy:No

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:Denied

Property Distribution to Wife:Wife awarded all the personal property in the marital residence

Number:511

Case:Kaye v. Kaye, 192 App Div 2d 365, 596 NYS2d 33 (1st Dept., 1993)

Comment:Wife's claims for financial relief denied

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:No

Exclusive Occupancy:No

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:No

Property Distribution to Wife:Wife not entitled to any distribution for the value of her one-time \$125,000 tax exemption

Number:512

Case:Lagnena v. Lagnena NYLJ, 12/10/93, P.34, Col.1 (Sup.Ct. Suffolk Co.)

Comment:

Years Married:14

Ages/Income:Husband - 71/\$8,640 Wife - 67/\$48,240

Child Support:N/A

Maintenance:\$12,000 per year non durational

Exclusive Occupancy:Title to wife

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:\$4,000 to wife plus \$812.50 for appraiser's fees

Property Distribution to Wife:Distributive award to husband of \$18,550 representing 50% of interest accrued to wife's separate property placed in joint accounts, and \$9,000 representing 50% of parties' stock - Husband also awarded 40% of value of marital residence after deducting wife's separate property (\$110,800) - Total distributive award to husband \$138,350 - Title to marital residence to wife; furniture divided equally

Number:513

Case:Lauria v. Lauria, 187 App Div 2d 888, 590 NYS2d 559 (3d Dept., 1992)

Comment:Child support should be retroactive to date of application; error to excuse payment of share of health and day care costs

Years Married:3

Ages/Income:Wife / \$54,000 Husband / \$24,000

Child Support:\$151.10 biweekly remitted for determination of child care and health care-expenses and to determine amount of arrears

Maintenance:Denied

Exclusive Occupancy:N/A

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:Denied husband's request

Property Distribution to Wife:Husband awarded 40% of net increase in equity of wife's house (\$20,600) plus interest at 9% from the date of commencement Remitted for further proceedings

Number:514

Case:Lee v. Wilcox-Lee NYLJ, 11/2/93, P.31, Col.6 Sup.Ct., Suffolk Co. (Connavo, J.)

Comment:Equal division of increase in value of marital residence which was husband's separate property

Years Married:7

Ages/Income:?**Child Support:**\$160 per week to husband (2 children)**Maintenance:**None**Exclusive Occupancy:**No**Health & Medical Insurance:**No**Dental Insurance:**No**Life Insurance:**No**Counsel Fees:**None**Property Distribution to Wife:**Equal division of marital assets

Number:515**Case:**Maddalena v. Maddalena NYLJ, 8/3/93, P.23, Col.3
Sup.Ct., Kings Co. (Rigler, J.)**Comment:**Excess earnings approach to value business - Child support based on actual needs (standard of living where in sufficient evidence to determine gross income)**Years Married:**17-1/2**Ages/Income:**Wife - 45 Husband 45**Child Support:**\$300 per week (1 child)**Maintenance:**\$200 per week for 5 years**Exclusive Occupancy:**Title to wife**Health & Medical Insurance:**No**Dental Insurance:**No**Life Insurance:**No**Counsel Fees:**\$25,000 plus \$5,768.50 for experts' fees to wife**Property Distribution to Wife:**Equal division of value of marital assets (each entitled to \$783,269.50) - Wife awarded title to marital residence (\$310,000), title to Florida villa (\$30,000), husband's pension (d314,097) and title to Cadillac (\$4,000) - Husband awarded security business (\$880,448), Crossland account (\$17,000), annuity fund (\$10,994) - Wife also awarded a distributive award of \$125,172.50 over 4 years in equal payments of \$31,120

Number:516**Case:**Maher v. Maher, 196 App Div 2d 530, 601 NYS2d 165 (2d Dept., 1993)**Comment:**Law license merged into career, wife's counsel fees increased on appeal due to great disparity in income**Years Married:**28

Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$30,000 to wife
Property Distribution to Wife:?

Number:517
Case:Mattwell v. Mattwell, 194 App Div 2d 715, 600 NYS2d 98 (2d Dept., 1993)
Comment:Equitable distribution following foreign ex parte divorce - Husband dissipated and secreted assets
Years Married:40
Ages/Income:?
Child Support:N/A
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$13,000 to wife
Property Distribution to Wife:Husband awarded \$400.25 per month (25% of \$1,601 per month) representing 25% of net pension benefits received by wife

Number:518
Case:McSparron v McSparron, 87 NY2d 275, 639 NYS2d 265, 662 NE2d 745 (1995)
Comment:professional degree/license does not merge into career or practice
Years Married:20
Ages/Income:Wife-\$48,000
Child Support:
Maintenance:none to wife
Exclusive Occupancy:ordered sold
Health & Medical Insurance:no
Dental Insurance:no

Life Insurance:no

Counsel Fees:no

Property Distribution to Wife:remitted to value husband's law license

Number:519

Case:Mennelli v. Mennelli NYLJ, 11/18/93, P.34, Col.4 Sup.Ct., Nassau Co. (Winick, J.)

Comment:Distribution of husband's severance benefits

Years Married:17

Ages/Income:Husband - 60/\$50,000 Wife - 56/\$15,000

Child Support:N/A

Maintenance:\$250 bi-weekly for 6 years, retroactive to date of commencement

Exclusive Occupancy:No

Health & Medical Insurance:COBRA or equivalent for 6 years for wife

Dental Insurance:

Life Insurance:\$40,000 for 6 years for wife

Counsel Fees:\$15,000

Property Distribution to Wife:Wife awarded representing 50% (\$1,071.31) of cash surrender value of husband's life insurance, 50% of husband's severance benefits of \$5,000, 49.64% of husband's monthly pension payout, pursuant to @if Majauskas @rf formula, and title to automobile - Husband awarded title to van and personal property located the marital residence

Number:520

Case:Milewski v. Milewski, 197 App Div 2d 562, 602 NYS2d 660 (2d Dept., 1993)

Comment:Parties' financial needs outweighed wife's needs as custodial parent to exclusive possession of marital residence

Years Married:?

Ages/Income:?

Child Support:\$151.85 per week (1 child)

Maintenance:\$350 per week non durational maintenance

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$13,258 to wife

Property Distribution to Wife: Marital residence ordered sold and proceeds divided equally - Wife awarded 50% of husband's pension and stock plans

Number:521

Case:Miller v. Miller NYLJ, 5/24/93, P.31, Col.1 Sup.Ct., Richmond Co. (Marrero, J.)

Comment:Commingling of separate assets with marital funds must be shown by more than a mere deposit into marital bank accounts

Years Married:23

Ages/Income:Wife - ?/\$15,346 Husband - ?/\$1,892 per month

Child Support:\$318.24 per month (1 child)

Maintenance:Denied

Exclusive Occupancy:To wife, until youngest child is 21 or sooner emancipated

Health & Medical Insurance:For the child

Dental Insurance:For the child

Life Insurance:For the child

Counsel Fees:Denied

Property Distribution to Wife:Wife awarded 50% of value of marital portion of the husband's pension/deferred compensation (\$47,500) and 50% of value of marital home less \$67,500 representing husband's separate property

Number:522

Case:Moller v. Moller, 188 App Div 2d 807, 591 NYS2d 244 (3d Dept., 1992)

Comment:No equitable distribution of personal property where neither party supplied evidence of its value.

Years Married:6

Ages/Income:?

Child Support:?

Maintenance:\$50 per week for 2 years

Exclusive Occupancy:Title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 50% of value of marital improvements to husband's separate property (\$33,371.77) and ownership of the marital residence

Number:523

Case:Newmark v. Newmark, 189 App Div 2d 863, 593 NYS2d 59 (2d Dept., 1993)

Comment:

Years Married:25

Ages/Income:Husband - 57/\$100,000 Wife - 62/\$0

Child Support:N/A

Maintenance:\$500 per month, non-durational maintenance plus \$200 per month for arrears

Exclusive Occupancy:Title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:For the wife

Counsel Fees:?

Property Distribution to Wife:Remitted to Supreme Court to determine present value of husband's pension benefits Wife awarded 50% of New Hampshire property upon sale, and \$51,203.67 in arrears, and title to marital residence

Number:524

Case:Palmadessa v. Palmadessa NYLJ, 2/4/93, P.30, Col.3 Sup.Ct., Queens Co. (Friedmann, J.)

Comment:Merger of license into medical practice; pension valued at date of commencement

Years Married:8

Ages/Income:Husband - 40 Wife - 39

Child Support:N/A

Maintenance:\$250 per week for 3 years

Exclusive Occupancy:No

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$25,000

Property Distribution to Wife:Wife awarded \$136,329 which included 30% of value of husband's medical practice (valued at \$454,433) and 50% of the remaining marital assets - Each retained his/her IRA's (\$8,779 each) - Wife received \$59,581 from husband's pension, pursuant to QDRO - Parties to remain joint owners of real estate investments and split investments and distributions Wife awarded Acura automobile or \$15,000 - Husband received \$20,000 from wife's \$40,000 separate property

Number:525

Case:Purpura v. Purpura, 193 App Div 2d 793, 598 NYS2d 538 (2d Dept., 1993)

Comment:Marital property should be defined as of date of commencement of action Wife awarded only 35% of marital assets notwithstanding long marriage Equitable does not necessarily means equal

Years Married:20+20

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 35% of the bulk of marital assets - Husband received credit allowance for wife's proportionate share of tax liability

Number:526

Case:Rando-Quillin v. Rando-Quillin, 195 App Div 2d 636, 599 NYS2d 705 (3d Dept., 1993)

Comment:Wife awarded money for personal injuries inflicted by husband and for property damage he caused to her car

Years Married:22 months

Ages/Income:Wife - 70 Husband - 80

Child Support:N/A

Maintenance:No

Exclusive Occupancy:No

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:No

Property Distribution to Wife:Wife awarded life estate in property which belonged to husband before the marriage and to which he transferred title to the wife and husband as tenants by the entirety Wife received distributive award of \$7,500 reflecting 1/2 of value of improvements to this property

Number:527

Case:Relf v. Relf, 197 App Div 2d 611, 602 NYS2d 690 (2d Dept., 1993)

Comment:Trial Court imputed income to husband and based maintenance and child support on it

Years Married:?

Ages/Income:Wife - ?Husband - ?\$50,000

Child Support:\$278 per week (3 (children)

Maintenance:\$200 per week for 3 years

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:Wife awarded equitable share of \$50,000 of husband's professional practice and 50% of net value of marital residence - Remitted to determine timing for payment

Number:528

Case:Salzman v. Bass NYLJ, 2/28/93, P.27, Col.2 Sup.Ct., Westchester Co. (Colabella, J.)

Comment:Husband awarded custody; distribution of unmerged license and medical practice of wife Combined income above \$80,000 used in computing child support

Years Married:16

Ages/Income:Wife - 38/\$112,042 Husband - 41/\$112,841

Child Support:\$28,110 per year (\$540 per week) for 2 children plus 50% of unreim-bursed medical expenses for children plus arrears of \$100 per week

Maintenance:No

Exclusive Occupancy:Title to husband who "bought out" wife

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:Denied

Property Distribution to Wife:Husband awarded 25% of wife's medical license and practice, of \$128,000 - Wife permitted to retain assets she held in her name (\$51,364), her car (\$5,000), jointly owned stock (\$17,190) and bonds (\$450) for a total of \$74,004 - Husband awarded assets in his name (\$59,341), joint savings (\$13,303) and stock, for a total of \$72,464 - Each spouse was awarded 50% of the net value of marital residence (\$212,000)

Number:529

Case:Shew v. Shew, 193 App Div 2d 1142, 598 NYS2d 623 (4th Dept., 1993)

Comment:

Years Married:27

Ages/Income:Wife - 45

Child Support:N/A

Maintenance:\$175 for 5 years and \$100 for the next 5 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:530

Case:Torgersen v. Torgersen, 188 App Div 2d 1023, 592 NYS2d 539 (4th Dept., 1992)

Comment:Appropriate to use discretionary factors to fix child support; contribution to college fund affirmed

Years Married:

Ages/Income:

Child Support:\$14,000 per year, to be increased to \$18,000 per year when the child is 18 and \$8,124 for college fund (1 child)

Maintenance:?

Exclusive Occupancy:

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:\$8,000 to wife

Property Distribution to Wife:Wife awarded 50% of marital assets

Number:531

Case:Vicinanzo v. Vicinanzo, 193 App Div 2d 962, 598 NYS2d 362 (3d Dept., 1993)

Comment:Wife awarded counsel fees attributable to husband's dilatory conduct; law practice valued, without expert opinion, based on an average years earnings -

Years Married:33

Ages/Income:?

Child Support:?

Maintenance:\$500 per week non durational

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$40,000 to wife

Property Distribution to Wife:Marital property was distributed equally between the parties (valued at \$2.6 million)

Number:532

Case:Wacholder v. Wacholder, 188 App Div 2d 130, 593 NYS2d 896 (3d Dept., 1993)

Comment:No authority for distributive award for lost earnings - Child support awarded retroactively after child 21 - Appropriate to depart from CSSA "Tuition benefit" is marital property -

Years Married:28

Ages/Income:?

Child Support:Wife reimbursed \$10,229 for 2/3rd of college costs and \$36,516.91 for 2/3rd of figure skating

Maintenance:None

Exclusive Occupancy:Title to wife

Health & Medical Insurance:No

Dental Insurance:No

Life Insurance:No

Counsel Fees:Denied

Property Distribution to Wife:Wife awarded 50% of husband's 2 pensions (valued at \$32,478) - The wife's distributive award was \$15,489 - Wife was awarded title to marital residence and husband awarded title to rental properties

Number:533

Case:Waldman v. Waldman, 196 App Div 2d 650, 601 NYS2d 623 (2d Dept., 1993)

Comment:Valuation of commercial real estate

Years Married:?

Ages/Income:?

Child Support:

Maintenance:\$87 per week until husband pays wife the remaining \$38,148 of her distributive award

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:Yes Plus \$15,000 for wife to defend husband's appeal

Property Distribution to Wife:Distributive award to wife of \$310,236

Number:534

Case:Weaver v. Weaver, 192 App Div 2d 777, 596 NYS2d 190 (3d Dept., 1993)

Comment:

Years Married:23

Ages/Income:Wife - 43/\$11,800 Husband - 46/\$44,000

Child Support:

Maintenance:\$200 per month until death, remarriage or if husband retires at age 62

Exclusive Occupancy:To wife pursuant to stipulation

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Husband was directed to pay marital debts of \$22,600

Number:535

Case:Godfryd v. Godfryd, 201 AD2d 927, 607 NYS2d 765 (4th Dept., 1994)

Comment:Wife not responsible for 50% of marital debt where husband incurred it for his own vacation

Years Married:22

Ages/Income:H: \$41,000 W:-0-

Child Support:N/A

Maintenance:\$100 per wk for 5 yrs

Exclusive Occupancy:N/A

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife received distributive award of \$12,400, one-half of proceeds from sale of cabin property and specific items of personal property. Husband received title to marital residence.

Number:536

Case:Jenness v. Jenness, 294 AD2d 783, 611 NYS2d 696 (3d Dept., 1994)

Comment:Wife awarded share of appreciation in value of husband's home (separate property)

Years Married:5

Ages/Income:?

Child Support:N/A

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife received one-half (\$9,870) of value of the appreciation of husband's home (his separate property) plus specific personal property remitted re: wife's entitlement to recovery of insurance policy after fire destroyed her property.

Number:537

Case:Kokalari v. Kokalari, NYLJ, 1/5/94, p.24, col 5, (2d Dept.)

Comment:

Years Married:?

Ages/Income:?

Child Support:\$400 per wk retroactive to 1984 (date of commencement)

Maintenance:\$20 per week retroactive to 1984

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:538

Case:Kreizel v. Kreizel, 201 AD2d 318, 608 NYS2d 632 (1st Dept)

Comment:

Years Married:

Ages/Income:

Child Support:\$1,150 per month for 8 yrs

Maintenance:\$5,000 per month for 8 years

Exclusive Occupancy:To the wife

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:\$50,000 for attorney's fees plus \$5,000 for accountant's fees to wife

Property Distribution to Wife:

Number:539

Case:Maier v. Maier, 201 AD2d 919, 607 NYS2d 778 (4th Dept., 1994)

Comment:Husband not entitled to credit for payments of support made under temporary order that exceeded amount awarded in divorce judgement

Years Married:29

Ages/Income:W: 47 \$15,000 H: 49 \$54,902

Child Support:\$235.50 per wk retroactive to entry of judgement

Maintenance:\$100 per week until wifereceives share of husband's pension

Exclusive Occupancy:ordered sold

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:Wife received 1/2 of husband's pension when husband retires. \$20,000 from proceeds of sale of marital residence.

Number:540

Case:Phelps v. Phelps, 199 AD2d 608, 604 NYS2d 339 (1993)

Comment:Husband's medical licence and his practice were valued. Wife awarded a portion of the value of each.

Years Married:17

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:Wife received \$79,595.16 which represented one half value of husband's medical practice, plus \$93,422.95 representing 15% of value of husband's medical licence.

Number:541

Case:Semans v. Semans, 199 AD2d 790, 605 NYS2d 510 (3d Dept.,1993)

Comment:Non-durational maintenance

Years Married:25

Ages/Income:H: \$120,000 W: \$9,000

Child Support:

Maintenance:\$2,000 per month non-durational maintenance

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Judgement reversed

Number:542

Case:Sommers v. Sommers, 203 AD2d 975, 611 NYS2d 971 (4th Dept., 1994)

Comment:Separate property contribution (down pymt) to marital home & its appreciation remains separate property. Proper to take judicial notice of gov't inflation statistics in delivering separate property portion of home.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$120 per wk for 5 years

Exclusive Occupancy:To wife until theyoungest child is emancipated

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Husband received 25.5% of the net proceeds from the sale of the marital residence

Number:543

Case:Balsamo v. Balsamo, 200 AD2d 649, 608 NYS2d 7 (2d Dept 1994)

Comment:70% of marital assets to wife where husband did not earn since 1971

Years Married:31

Ages/Income:

Child Support:N/A

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:Wife received 70% of marital property

Number:544

Case:Hartog v. Hartog, 194 AD2d 286, 605 NYS2d 749 (1st Dept., 1994)

Comment:Price is expanded: need not quantify spouse's contribution to appreciation of separate property; pre-separation standard of living must be considered in awarding maintenance. Distributive award reduced by share of tax paid on profit from sale of marital assets

Years Married:26

Ages/Income:W:58 -0- H: 61

Child Support:

Maintenance:\$650 per week for 5 years

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:Wife received \$837,187.50 representing 25% of increased value of husband's share of jewelry business, one-half of certain bank accounts, brokerage accounts and personal property (\$1 million) and 50% of husband's pension and IRA (\$750,000).

Number:545

Case:Lerner v. Lerner, 201 AD2d 375, 607 NYS2d 929 (1st Dept., 1994)

Comment:

Years Married:13

Ages/Income:

Child Support:

Maintenance:?

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:\$50,000 to wife

Property Distribution to Wife:Marital property divided equally between the parties

Number:546

Case:Collura v. Collura, 204 AD2d 589, 612 NYS2d 202 (2d Dept., 1994)

Comment:

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife received 50% of proceeds from sale of marital residence.

Number:547

Case:Pilato v. Pilato, 206 AD2d 589, 612 NYS2d 202 (4th Dept., 1994)

Comment:Proper to use “asset valuation method” to value shares of husband’s closely held corporation

Years Married:?

Ages/Income:?

Child Support:Remitted for calculation

Maintenance:for 7 years

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:Wife entitled to a share in the appreciation of shares in a corporation which was the husband’s separate property

Number:548

Case:Summer v. Summer, 206 AD2d 930, 615 NYS2d 192 (4th Dept., 1994)

Comment:Photography collection is marital property?

Years Married:?

Ages/Income:?

Child Support:N/A

Maintenance:\$2,500 per month to wife until 12/93 where she is eligible for social security and \$2,000 per month thereafter for 5 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:549

Case:Wilson v. Wilson, 203 AD2d 558, 612 NYS2d 158 (2d Dept., 1994)

Comment:Children's future reasonable unmeasured health care expenses must be apportioned

Years Married:17

Ages/Income:?

Child Support:\$262 per week

Maintenance:\$500 per week for 8 years

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:Yes

Counsel Fees:Yes

Property Distribution to Wife:?

Number:550

Case:Raniolo v. Raniolo, 203 AD2d 558, 612 NYS2d 589 (2d Dept., 1994)

Comment:

Years Married:27

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:Wife received distributive award of \$423,500, representing 50% of marital assets.

Number:551

Case:Wallach v. Wallach, 204 AD2d 211, 612 NYS2d 33 (1st Dept., 1994)

Comment:Appreciation of separate property due to market forces or inflation remains separate property

Years Married:?

Ages/Income:?

Child Support:N/A

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Husband received 50% of increase in value of wife's separate property and 50% of valued other marital property consisting of personalty.

Number:552

Case:White v. White, 204 AD2d 825, 611 NYS2d 951 (3d Dept., 1994)

Comment:Distributive award of portion of value of interest in law firm valued by capitalization of earnings approach by Appellate Division. "Reasonable needs" must be continued in light of "standard of living" during marriage

Years Married:26

Ages/Income:H:\$200,000 W:

Child Support:Remitted

Maintenance:\$750 per week permanent maintenance

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:Remitted

Property Distribution to Wife:Wife received 50% of the husband's interest in his law firm valued at \$221,691. (i.e. \$110,846)

Number:553

Case:Alaimo v. Alaimo, 199 AD2d 1039, 606 NYS2d 117 (4th Dept., 1993)

Comment:Error to classify assets as marital or separate using date of commencement of action

Years Married:44

Ages/Income:

Child Support:

Maintenance:None

Exclusive Occupancy:N/A

Health & Medical Insurance:Denied

Dental Insurance:

Life Insurance:

Counsel Fees:Denied

Property Distribution to Wife:Wife awarded one-half interest in husband's pension, 50% of husband's interest in 2 mortgages, \$167,411 (representing wife's 50% equitable share of marital bank accts), \$10,000 (50% interest in husband's mutual bonds), \$53,500 (50% interest in rental properties), and \$50,877 (50% interest in proceeds of rental properties that have been sold), \$9,500 to equalize the different values in the parties' residences, and \$7,935 for her equal interest in furniture.

Number:554

Case:Worsnop v. Worsnop, 204 AD2d 624, 612 NYS2d 626 (2d Dept., 1994)

Comment:

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$120 per week for 2 yrs then \$60 per week for another 2 yrs

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:555

Case:Curry v. Curry, NYLJ, 12/21/94 p.21, col.5 (S. Ct, NY Co, Saxe, J)

Comment:Wife, who cared for parties' disabled child, awarded 60% of marital property, thus getting an "enhanced" distributive award of 10% of the marital estate.

Years Married:34

Ages/Income:W: 68 unemployed H:59

Child Support:

Maintenance:Lifetime maintenance to wife.

Exclusive Occupancy:

Health & Medical Insurance:Yes

Dental Insurance:

Life Insurance:Yes

Counsel Fees:

Property Distribution to Wife:Wife awarded equitable distribution of 60% of the marital estate

Number:556

Case:De Jesus v. De Jesus, NYLJ, 12/20/94, p.31, col 1 (S. Ct, Rockland Co, Miller, J.)

Comment:Equitable distribution of incentive stock option (ISOP), Recognition & retirement plan (RRP) and Employee plan (ESOP). Majuskas applied only to ESOP.

Years Married:

Ages/Income:

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:Denied

Property Distribution to Wife:Wife awarded 50% of husband's employee benefit plans consisting of 1,526.50 shares under ESOP and 2,036 shares in RRP.

Number:557

Case:Hansen v. Hansen, 207 AD2d 824, 616 NYS2d 637 (2d Dept., 1994)

Comment:Waste of assets by husband in managing building

Years Married:?
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:Yes
Dental Insurance:?
Life Insurance:?
Counsel Fees:Yes
Property Distribution to Wife:?

Number:558

Case:Kaufman v. Kaufman, 207 AD2d 528, 616 NYS2d 65 (2d Dept., 1994)

Comment:Distribution of value of wife's master's degree in urban planning. Reimbursement for separate property contribution to marital property; 9% interest from date of commencement of pension award; merger of law licence into law practice of "associate."

Years Married:20

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 60% of net proceeds of sale of marital residence after receiving her initial downpayment of \$36,000; 50% of husband's pension, and 9% interest and distribution award of \$78,602.41. Husband received \$9,000 credit for wife's master's degree.

Number:559

Case:Mahony v. Mahony, NYLJ, 6/30/94, p.28, col 1 (S. Ct., NY Co, Saxe, J.)

Comment:Comingling separate assets with property acquired during marriage are presumed to be marital.

Years Married:24

Ages/Income:H: \$120,000 W:Between \$35-\$105,000

Child Support: Referred to a hearing
Maintenance:
Exclusive Occupancy: Ordered sold
Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees: \$100,000 to wife's attorney
Property Distribution to Wife: Wife received a distributive award of \$152,270.48 plus 50% of proceeds from sale of marital residence

Number: 560
Case: Otto v. Otto, 207 AD2d 530, 616 NYS2d 82 (2d Dept., 1994)
Comment:
Years Married: 13
Ages/Income: H: \$50,000
Child Support: Remitted
Maintenance: \$100 per week for 5 years
Exclusive Occupancy:
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees: Remitted
Property Distribution to Wife:?

Number: 561
Case: Alessandro v. Alessandro, 204 AD2d 530, 614 NYS2d 963 (4th Dept., 1994)
Comment:
Years Married: 32
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?

Property Distribution to Wife:Wife awarded 50% of net income derived from real estate. Matter remitted

Number:562

Case:Behrmann v. Behrmann, NYLJ, 6/2/94, p.33, col 1 204 AD2d 1076, 613 NYS2d 80 (4th Dept., 1994)

Comment:Maintenance obligation is exclusive of extraordinary medical & dental expenses & extraordinary repairs of the marital residence

Years Married:21

Ages/Income:?

Child Support:?

Maintenance:Lifetime maintenance awarded to Wife

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$5,000 to wife's counsel

Property Distribution to Wife:?

Number:563

Case:Milevos v. Milevos, 201 AD2d 267, 607 NYS2d 260 (1st Dept., 1994)

Comment:Appraisal of marital home

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$100 per month for 10 yrs.

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$10,000

Property Distribution to Wife:?

Number:564

Case:Ingram v. Ingram, 208 AD2d 593, 617 NYS2d 361 (1st Dept., 1994)

Comment:

Years Married:19

Ages/Income:W: 40
Child Support:\$800 per week for 3 children
Maintenance:\$750 per week until youngest child entered high school (5-6 yrs)
Exclusive Occupancy:Ordered sold
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$45,000 to wife
Property Distribution to Wife:Wife awarded 50% of net proceeds from sale of marital residence and 35% of other marital property

Number:565
Case:Dempster v. Dempster, 204 AD2d 1070, 613 NYS2d 78 (4th Dept., 1994)
Comment:Value of business or reorganization should be based on it's future earning capacity. Parties may rely on bankruptcy reorganization plan which did not exist at commencement
Years Married:
Ages/Income:
Child Support:
Maintenance:\$5,000 per month, for life
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:
Counsel Fees:Remitted
Property Distribution to Wife:Remitted

Number:566
Case:Kirshenbaum v. Kirshenbaum, 203 AD2d 534, 611 NYS2d 228 (2d Dept, 1994)
Comment:Husband awarded \$20,000 damages for malicious prosecution by the wife. Proper to value "active" asset at date of commencement
Years Married:
Ages/Income:
Child Support:\$600 per wk for 2 children
Maintenance:\$200 per wk for 3 yrs

Exclusive Occupancy:
Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:Denied
Property Distribution to Wife:Remitted

Number:567
Case:Leabo v. Leabo, 203 AD2d 254, 610 NYS2d 274 (2d Dept., 1994)
Comment:Wife employed. Husband received disability insurance required to pay maintenance to wife
Years Married:31
Ages/Income:
Child Support:
Maintenance:\$200 per month for 3 yrs
Exclusive Occupancy:To wife
Health & Medical Insurance:Yes—for the children
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:568
Case:Lladis v. Lladis, 207 AD2d 331, 615 NYS2d 409 (2d Dept., 1994)
Comment:Permanent maintenance awarded to wife
Years Married:?
Ages/Income:?
Child Support:\$125 per week
Maintenance:\$235 per wklifetime
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:569

Case:Moyston v. Jarrett, 198 AD2d 216, 603 NYS2d 500 (2d Dept., 1993)

Comment:

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Marital residence directed to be sold and husband provided \$25,000 as his equitable share

Number:570

Case:Pagano v. Pagano, 202 AD2d 216, 609 NYS2d 313 (2d Dept., 1994)

Comment:Wife found to be capable to become self-supporting

Years Married:

Ages/Income:

Child Support:

Maintenance:\$350 per week to wife

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:Wife awarded 50% of value of husband's pension (\$11,428)

Number:571

Case:Sanders v. Copley, 199 AD2d 152, 605 NYS2d 261 (1st Dept., 1993)

Comment:

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:To wife

Health & Medical Insurance:?**Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:**Wife awarded 50% of parties' building. Husband awarded a distributive cash award of \$362,000. Wife received sole title to parties' building

Number:572**Case:**Yasparro v. Yasparro, 207 AD2d 445, 615 NYS2d 753 (2d Dept., 1994)**Comment:**Wife awarded 60% of value of her beauty shop**Years Married:?****Ages/Income:****Child Support:**\$100 per week**Maintenance:?****Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:**Husband awarded 40% of value of parties' business

Number:573**Case:**Zion v. Zion, 201 AD2d 404, 607 NYS2d 659 (2d Dept., 1994)**Comment:****Years Married:?****Ages/Income:?****Child Support:**\$92 per wk, per child and \$50 per wk for child care**Maintenance:****Exclusive Occupancy:****Health & Medical Insurance:**1/2 of unreimbursed expenses to be paid by husband**Dental Insurance:**1/2 of unreim-bursed expenses to be paid by husband**Life Insurance:**Yes**Counsel Fees:**

Property Distribution to Wife:Wife awarded title to marital residence and a building, and \$25,000, representing a 25% share in the husband's business. Husband awarded title to commercial building

Number:574

Case:Corsel v. Corsel, 204 AD2d 1076, 613 NYS2d 82 (4th Dept., 1994)

Comment:A single act of adultery is not so egregious as to warrant consideration in fixing maintenance

Years Married:

Ages/Income:

Child Support:

Maintenance:\$250 per wk for 5 yrs & \$175 per wk thereafter lifetime maintenance

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:Yes \$100,000 term life insurance for wife

Counsel Fees:

Property Distribution to Wife:Wife awarded title to summer home and \$100,000 as her contribution to husband's townhouse

Number:575

Case:Barr v. Barr, NYLJ 12/12/94 p.31, col 2, (2d Dept.)

Comment:Wife to receive credit for half of mortgage and tax payments for marital residence

Years Married:

Ages/Income:

Child Support:

Maintenance:\$4,166.67 per month for 7 years

Exclusive Occupancy:To wife

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:Wife to receive credit for one half of mortgage and tax payments

Number:576

Case:Miller v. Miller, 201 AD2d 542, 607 NYS2d 714 (2d Dept., 1994)

Comment:

Years Married:21

Ages/Income:

Child Support:Remitted

Maintenance:Denied

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:Remitted

Property Distribution to Wife:?

Number:577

Case:Chase v. Chase, 208 AD2d 883, 618 NYS2d 94 (2d Dept., 1994)

Comment:

Years Married:?

Ages/Income:?

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:?

Counsel Fees:Denied

Property Distribution to Wife:Wife awarded 50% of value of all marital property

Number:578

Case:M v. M, NYLJ 1/28/94, p. 25, col. 5 (Sup. Ct, Westchester Co, Sweeney, J.)

Comment:Future modifications of maintenance and child support provided in judgement

Years Married:24

Ages/Income:H: 49 \$152,000 W: 46

Child Support:\$3,000 per month to be reduced to \$2,500 per month when older son is a fulltime college student or emancipated

Maintenance:\$1,200 per month lifetime maintenance until the marital residence is sold; then \$2,500 per month thereafter until oldest son in college full-time or emancipated; then increased to \$3,000 thereafter until child support stops; then increased to \$4,500 per month

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:Yes

Dental Insurance:

Life Insurance:Yes

Counsel Fees:\$28,000 to wife

Property Distribution to Wife:Wife awarded 50% of proceeds of sale of the marital residence

Number:579

Case:Faber v. Faber, 206 AD2d 644, 614 NYS2d 771 (3d Dept., 1994)

Comment:Return of separate property contribution to marital property. Cost of child care must be prorated & separately stated; wife directed to execute IRS Tax Waiver to allow husband dependency exemption

Years Married:

Ages/Income:H: \$51,435

Child Support:Remitted

Maintenance:

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:Remitted

Dental Insurance:

Life Insurance:Denied

Counsel Fees:

Property Distribution to Wife:Wife awarded 50% of proceeds of the sale of the marital residence and \$22,000 for her separate contribution she paid to purchase the house

Number:580

Case:Finfer v. Finfer, NYLJ, 5/3/94, p.22 col 3 (S. Ct, NY Co, Silberman, J.)

Comment:Husband who filed for bankruptcy, estopped from making claim to marital assets because he did not list his interest in marital assets

Years Married:39

Ages/Income:H: 56 W: 54

Child Support:N/A
Maintenance:Denied
Exclusive Occupancy:N/A
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:

Number:581
Case:Scheinert v. Scheinert, NYLJ, 9/26/94, p.30, col 3, (S. Ct, Kings Co, Rigler, J.)
Comment:Wife given right to enter money judgement of distributive award not paid
Years Married:
Ages/Income:
Child Support:\$50 per week
Maintenance:Reserved for determination
Exclusive Occupancy:
Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:Denied
Property Distribution to Wife:Wife awarded 50% of the value of a joint bank account (\$7,200)

Number:582
Case:Schwartz v. Schwartz, NYLJ, 10/24/94, p.27, col 1, (S. Ct, Kings Co, Rigler, J.)
Comment:Husband's refusal to deliver "get" considered under DRL 236(B)(5)(b)(6)(d)
Years Married:23
Ages/Income:
Child Support:N/A
Maintenance:Denied to husband
Exclusive Occupancy:N/A
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:To be determined on submission

Property Distribution to Wife:Husband awarded title to farm in Israel & \$25,000 for his counsel fees in exchange for GET to wife. Wife awarded \$46,523 representing 50% of the value of the parties' remaining material assets plus her pearls valued at \$3,000

Number:583

Case:Peress v. Peress, NYLJ, 7/12/94, p.26 col 2 (S. Ct, NY Co, Saxe, J.)

Comment:Valuation of husband's business

Years Married:15

Ages/Income:

Child Support:\$300 per wk and cost of after-school care

Maintenance:\$300 per week for 3 years

Exclusive Occupancy:

Health & Medical Insurance:Yes

Dental Insurance:

Life Insurance:

Counsel Fees:\$75,000 to wife

Property Distribution to Wife:Wife awarded 50% of value of marital portion of husband's business (\$611,149) and 50% of the appreciation (\$131,187), 50% of the proceeds of the sale of the Bridgehampton house, \$23,000 of retirement fund and \$1,250 for her IRA.

Number:584

Case:DeSantis v. DeSantis, 205 AD2d 928, 613 NYS2d 737 (3d Dept., 1994)

Comment:

Years Married:21

Ages/Income:H:\$53,000

Child Support:

Maintenance:\$125 per wk for 5 yrs

Exclusive Occupancy:To wife for 5 yrs

Health & Medical Insurance:Denied

Dental Insurance:

Life Insurance:

Counsel Fees:\$1,000 to wife

Property Distribution to Wife:Wife awarded 50% of the proceeds of the sale of the marital residence when sold (after 5 yrs) and 50% of remaining marital assets—but matter was remitted for more detailed findings

Number:585

Case:Elmore v. Elmore, 208 AD2d 1134, 617 NYS2d 966 (3d Dept., 1994)

Comment:Husband who reduced marital debts by reducing marital assets not charged for this

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$425 per week

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:To wife Amount unspecified

Property Distribution to Wife:?

Number:586

Case:Oliver v. Oliver, 206 AD2d 967, 615 NYS2d 951 (4th Dept., 1994)

Comment:Error to award wife share of property purchased years after parties separated but before commencement of action

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$15,007.50 to wife

Property Distribution to Wife:?

Number:587

Case:Dietz v. Dietz, 203 AD2d 879, 610 NYS2d 981 (3d Dept., 1994)

Comment:Proper to award wife half of profit from sale of husband's corporation notwithstanding finding it was separate property

Years Married:7

Ages/Income:H:\$100,000 and commissions W:?

Child Support:

Maintenance:\$400 per week for 3 years

Exclusive Occupancy:N/A

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$15,000 to wife

Property Distribution to Wife:Wife awarded \$50,000 representing one half of profits realized from prior sale of husband's corporation. 50% of shares of Frontier stock (7,900 shares), and a distributive award of \$69,000.

Number:588

Case:Suydam v. Suydam, 203 AD2d 806, 610 NYS2d 976 (3d Dept., 1994)

Comment:Distribution of value of therapy practice

Years Married:22

Ages/Income:W:\$36,000 H: \$120,000

Child Support:Remitted

Maintenance:None

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:\$20,000 to husband

Property Distribution to Wife:Husband awarded commercial bldg. valued at \$474,756, 5 acres of vacant land (\$5000,000), 11.8 acres of other vacant land valued at (\$178,044), his medical practice valued at (\$446,245), fitness equipment, winter pleasure craft (\$3,625), Ford van, a Ford Taurus, specific personal property, a reserve fund account (\$25,043), gold coins (\$10,447), Fidelity IRA's (\$26,111), \$44,114, one-half his pension (\$16,752). The total value awarded to husband was \$1,736,774. The wife was awarded property with a total value of \$1,036,029.

Number:589

Case:Feldman v. Feldman, 194 AD2d 207, 605 NYS2d 777 (2d Dept., 1993)

Comment:Although husband, a “poor record-keeper” inheritances and intervivos gifts & their appreciation filed in husband’s name, were held to be separate property

Years Married:40

Ages/Income:W: 61 H: 61

Child Support:N/A

Maintenance:\$650 per week lifetime maintenance to wife

Exclusive Occupancy:

Health & Medical Insurance:Yes For wife

Dental Insurance:

Life Insurance:Yes \$400,000 death benefit for wife

Counsel Fees:\$32,000 to wife

Property Distribution to Wife:?

Number:590

Case:Krinsky v. Krinsky, 208 AD2d 599, 618 NYS2d 36 (2d Dept., 1994)

Comment:One-half of husband’s joint savings account with husband’s father deemed marital property. Failure to rebut presumption under Banking Law §675

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$300 per week for 5 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$25,000 for counsel fees and \$3,500 for expert accountant’s fees to wife

Property Distribution to Wife:Wife awarded 50% of the husband’s 50% interest in a joint bank account with his father

Number:591

Case:Marano v. Marano, 200 AD2d 718, 607 NYS2d 359 (2d Dept., 1994)

Comment:Dental licence did not reemerge as separate asset; distribution of value of dental practice; error to award sale of home where 2 children

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy: Yes until the youngest child is 18 yrs old or becomes emancipated

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:592

Case:Richards v. Richards, 207 AD2d 628, 615 NYS2d 784 (3d Dept., 1994)

Comment:Open-ended obligation to pay repairs and improvements on marital home is impermissible

Years Married:13

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:Wife awarded 50% of appreciation of the value of the marital residence and 50% of marital assets

Number:593

Case:Stavans v. Stavans, 207 AD2d 392, 615 NYS2d 712 (2d Dept., 1994)

Comment:

Years Married:37

Ages/Income:?

Child Support:N/A

Maintenance:Waived

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Marital assets were distributed evenly. Wife was awarded \$154,948 payable over one year in quarterly installments of \$38,737.

Number:594

Case:Taylor v. Argentino, NYLJ, 4/29/94, p.30, col 3, (S. Ct, Westchester Co., Nicolai, J.)

Comment:

Years Married:10

Ages/Income:

Child Support:\$400 per month

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:50%

Dental Insurance:

Life Insurance:\$50,000

Counsel Fees:

Property Distribution to Wife:Wife awarded \$3,000 (50% of funds withdrawn from joint bank account)

Number:595

Case:Baumgart v. Baumgart, 199 AD2d 1049, 605 NYS2d 610 (4th Dept., 1993)

Comment:Improper to make provisions for future termination of maintenance upon wife being employed more than 30 hours a week or not attending school for a continuous year.

Years Married:32

Ages/Income:?

Child Support:?

Maintenance:\$140 per week until the wife is 62 yrs old

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:596

Case:Bowen v. Bowen, 202 AD2d 1062, 609 NYS2d 129 (4th Dept., 1994)

Comment:Inequitable to award husband share of property where no evidence it was purchased with marital funds

Years Married:

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:Wife awarded 90% of the Brooklyn property and 50% of the proceeds of the sale of the Barbados property

Number:597

Case:Bronstein v. Bronstein, 203 AD2d 703, 610 NYS2d 638 (3d Dept., 1994)

Comment:Child support adjudged pursuant to DRL § 240[1-b][5][11][c]

Years Married:12

Ages/Income:

Child Support:\$479 every 2 weeks

Maintenance:\$125 per week

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:598

Case:Brown v. Brown, 203 AD2d 912, 611 NYS2d 65 (4th Dept., 1994)

Comment:Income imputed to husband who gave up his career to open a clothing store

Years Married:?

Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:Husband awarded a distributive award of \$47,039.50

Number:599
Case:Cardia v. Cardia, 203 AD2d 650, 610 NYS2d 620 (3d Dept., 1994)
Comment:
Years Married:
Ages/Income:H: \$60,000
Child Support:\$150 per week
Maintenance:\$100 per week
Exclusive Occupancy:
Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:Denied
Property Distribution to Wife:?

Number:600
Case:Carpenter v. Carpenter, 202 AD2d 813, 608 NYS2d 751 (3d Dept., 1994)
Comment:Custodial parent is entitled to tax exemption unless she gives a written release to non-custodial parent
Years Married:20
Ages/Income:W: \$21,440
Child Support:\$843 per month
Maintenance:\$1,000 per month for 10 yrs or until the marital residence is sold
Exclusive Occupancy:Yes to wife until youngest child is 21
Health & Medical Insurance:
Dental Insurance:
Life Insurance:

Counsel Fees:

Property Distribution to Wife:Husband to receive \$62,500 upon sale of marital residence. Wife received a distributive award of \$32,000 and husband received a distributive award of \$55,000

Number:601

Case:Carrozzo v. Carrozzo, 202 AD2d 1070, 609 NYS2d 123 (4th Dept., 1994)

Comment:Non-durational maintenance awarded

Years Married:

Ages/Income:W: 52

Child Support:?

Maintenance:Lifetime maintenance to wife

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:602

Case:Cinnamond v. Cinnamond, 203 AD2d229, 610 NYS2d 276 (2d Dept., 1994)

Comment:

Years Married:16

Ages/Income:H: \$40,000

Child Support:?

Maintenance:\$150 per week for 2 yrs after entry of divorce judgement; then \$100 per wk for the next 2 yrs

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$7,500 to wife

Property Distribution to Wife:?

Number:603

Case:Conceicao v. Conceicao, 203 AD2d 677, 611 NYS2d 318 (3d Dept., 1994)

Comment:Husband dissipated marital assets through gambling; wife awarded 70% of property

Years Married:22

Ages/Income:H: 52 W:62

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:Wife awarded 70% of the proceeds of the sale of the parties' real property

Number:604

Case:Daniels v. Daniels, 202 AD2d 862, 609 NYS2d 946 (3d Dept., 1994)

Comment:Marital home awarded to wife where husband had gone bankrupt and was free of debt and had acted irresponsibly

Years Married:17

Ages/Income:H: \$45,912

Child Support:\$210 per week

Maintenance:\$75 per week

Exclusive Occupancy:Title to wife

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:Wife awarded sole title to marital residence

Number:605

Case:Giuffre, v. Guiffre, 204 AD2d 684, 612 NYS2d 439 (2d Dept., 1994)

Comment:

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 50% of marital portion of husband's pension

Number:606

Case:Gordon v. Gordon, 202 AD2d 634, 609 NYS2d 95 (2d Dept., 1994)

Comment:

Years Married:

Ages/Income:

Child Support:\$135 per week

Maintenance:\$150 per week for 5 years

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:Denied

Property Distribution to Wife:Wife awarded 50% of husband's stock, a portion of husband's pension (a lump sum of \$31,217). Marital residence was directed to be sold

Number:607

Case:Southwick v. Southwick, 202 AD2d 996, 612 NYS2d 704 (4th Dept., 1994)

Comment:60% of marital assets to wife

Years Married:

Ages/Income:

Child Support:

Maintenance:\$150 per week for 5 years

Exclusive Occupancy:Yes

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:Wife awarded 60% of marital assets (\$120,800)

Number:608

Case:Costantino v. Costantino, NYLJ, 7/4/94 p.32 col 4 (S. Ct Richmond Co, Marrero, J.)

Comment:

Years Married:29

Ages/Income:W: 51 H: 53 \$401,331

Child Support:N/A

Maintenance:\$64,092 per year for lifetime maintenance

Exclusive Occupancy:?

Health & Medical Insurance:Yes

Dental Insurance:?

Life Insurance:

Counsel Fees:

Property Distribution to Wife:Parties executed stipulation of settlement in 1991—pursuant to this agreement, the wife's share of marital property was \$739,627

Number:609

Case:Grotzky v. Grotzky, 208 AD2d 676, 617 NYS2d 517 (2d Dept., 1994)

Comment:

Years Married:17

Ages/Income:?

Child Support:?

Maintenance:\$200 per week lifetime maintenance

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$30,000

Property Distribution to Wife:Remitted

Number:610

Case:Madori v. Madori, 201 AD2d 859, 608 NYS2d 331 (3d Dept., 1994)

Comment:Distribution of husband's enhanced earning capacity as a physician

Years Married:13

Ages/Income:?

Child Support:?

Maintenance:Denied
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:
Counsel Fees:Yes
Property Distribution to Wife:Wife received a 40% equitable interest in husband's enhanced earning capacity.

Number:611
Case:Kessinger v. Kessinger, 202 AD2d 752, 608 NYS2d 358 (3d Dept., 1994)
Comment:
Years Married:20
Ages/Income:H: \$184,556 W: \$27,400
Child Support:Remitted
Maintenance:
Exclusive Occupancy:
Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:
Property Distribution to Wife:Parties executed stipulation of settlement

Number:612
Case:Di Santo v. Di Santo, 198 AD2d 838, 604 NYS2d 413 (4th Dept., 1993)
Comment:
Years Married:12
Ages/Income:
Child Support:
Maintenance:\$100 per week for 5 years
Exclusive Occupancy:
Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:\$2,000
Property Distribution to Wife:Wife received title to marital residence

Number:613

Case:Allen v. Allen, NYLJ, 8/5/94 p.27, col 1 (S Ct, Nassau Co, Winick, J.)

Comment:Book value of husband's business is not synonymous with market value

Years Married:14

Ages/Income:

Child Support:\$384.62 per week until oldest child is 21 or sooner if emancipated & thereafter \$261.54 per wk

Maintenance:\$750 per week for 3 years and then \$375 per week until wife is 62, \$150 per week thereafter

Exclusive Occupancy:N/A

Health & Medical Insurance:Yes

Dental Insurance:

Life Insurance:Yes \$150,000

Counsel Fees:No

Property Distribution to Wife:Wife received title to marital home, 33 1/3% of the book value of the husband's business (\$90,025), plus credit for 50% of the husband's stock portfolio (\$130,828) and cash on hand (\$26,000). Wife also received 50% interest in husband's pension (\$165,600) cash value of life insurance (\$50,350)—for a total of \$384,389. All marital jewelry was directed to be sold & the proceeds divided 50-50. Wife received title to 1988 Jaguar, and 1973 Porsche was awarded to husband.

Number:614

Case:Fleitz v. Fleitz, 200 AD2d 874, 606 NYS2d 825 (3d Dept., 1994)

Comment:Disability insurance payments for loss of husband's index finger as "separate property"

Years Married:24

Ages/Income:W: 42 H: 48

Child Support:Remitted

Maintenance:Remitted

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:Remitted

Number:615

Case:Ames v Ames, 212 App Div 2d 653, 622 NYS2d 774 (1st Dept, 1995)

Comment:error to fail to include termination date for child support; parents should share costs of children's future reasonable health care expenses in proportion to their incomes

Years Married:?

Ages/Income:?

Child Support:73.45% of health, medical, hospital and dental expenses not covered by insurance paid by husband and 26.55% paid by wife; \$1196/mo child support.

Maintenance:\$100/wk to wife until she receives share of proceeds of sale of marital residence

Exclusive Occupancy:ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:

Counsel Fees:remitted to determine amount, if any, to be paid by husband

Property Distribution to Wife:50% of proceeds from sale of marital residence

Number:616

Case:Anonymous v Anonymous, 636 NYS2d 12 (App Div, 1st Dept, 1995)

Comment:interest from date of decision to date of judgment

Years Married:?

Ages/Income:?

Child Support:to wife

Maintenance:to wife

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:wife awarded 50% of penthouse portion of apartment which was husband's separate property

Number:617

Case:Antoian v Antoian, 215 App Div 2d 421, 626 NYS2d 535 (2nd Dept, 1995)

Comment:husband's income was slightly less than that of wife and distributive award was proportionate to each parties' contribution during marriage; party seeking interest in spouse's business has burden of proof in establishing its value; wife failed to show value to husband's business

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:55% of marital estate to wife

Number:618

Case:Asselta v Asselta, 634 NYS2d 390 (App Div, 2d Dept, 1995)

Comment:?

Years Married:

Ages/Income:?

Child Support:?

Maintenance:\$125/wk for 7 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:619

Case:Baluta v Baluta, 633 NYS2d 1011 (App Div, 2d Dept, 1995)

Comment:?

Years Married:

Ages/Income:?

Child Support:\$50/wk

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:620
Case:Bootle v Bootle, 214 App Div 2d 636, 625 NYS2d 280 (2nd Dept, 1995)
Comment:requiring wife to pay pro-rata child support share would be unjust and inappropriate
Years Married:?
Ages/Income:?
Child Support:wife to pay husband \$12.50/wk per child
Maintenance:\$200/wk to wife for 7 years
Exclusive Occupancy:
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:not considered on appeal because record contains no information
Property Distribution to Wife:?

Number:621
Case:Borra v Borra, 218 App Div 2d 780, 631 NYS2d 76 (2nd Dept, 1995)
Comment:maintenance is determined by earning capacity, not actual earnings
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:\$150/wk non-durational
Exclusive Occupancy:ordered sold
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:622

Case:Brodsky v Brodsky, 214 App Div 2d 599, 624 NYS2d 960 (2nd Dept, 1995)

Comment:Husband had hidden assets and caused liens to be placed on marital residence; maintenance is not determined by actual earnings, but by earning capacity; husband had hidden income; child support is not necessarily based on parent's actual income but may be based on earning potential

Years Married:?

Ages/Income:?

Child Support:\$180/wk

Maintenance:\$100/wk for 3 years

Exclusive Occupancy:title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$20,000 to wife

Property Distribution to Wife:\$40,000 as her interest in corporation and joint account

Number:623

Case:Campinell v Campinell, 220 App Div 2d 940, 632 NYS2d 863 (3d Dept, 1995)

Comment:Failure to brief issue of merits of cross-appeal is abandonment of issue; wife's mental disorder prevented functioning in competitive work setting

Years Married:28

Ages/Income:H/\$38,000

Child Support:n/a

Maintenance:\$175/wk non-durational, retroactive to date of service of complaint

Exclusive Occupancy:no

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$5000 to wife

Property Distribution to Wife:100% of proceeds of sale of residence to wife

Number:624

Case:Carlin v Carlin, 217 App Div 2d 679, 629 NYS2d 814 (2nd Dept, 1995)

Comment:

Years Married:?

Ages/Income:?

Child Support:remitted

Maintenance:remitted

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$10,000 to wife

Property Distribution to Wife:remitted

Number:625

Case:Cincotta v Cincotta, 633 NYS2d 527 (App Div, 2d Dept, 1995)

Comment:improvements to marital residence were a joint effort; no credit to husband for his \$117,000 separate property contribution

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:denied wife

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$5000

Property Distribution to Wife:50% of proceeds of sale of marital residence

Number:626

Case:Cooper v Cooper, 217 App Div 2d 904, 630 NYS2d 158 (4th Dept, 1995)

Comment:remitted for redistribution; trial court improperly based its award on informal banking arrangements of the parties; agreement must be in writing or part of oral stipulation on the record acknowledged in writing; DRL 236 controls; a party who uses non-marital funds to pay mortgage and taxes may be allowed a credit for a portion of those payments

Years Married:?

Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:627

Case:Damato v Damato, 215 App Div 2d 348, 626 NYS2d 221 (2nd Dept, 1995)

Comment:wife awarded 50% of money husband spent after onset of marital difficulties

Years Married:?

Ages/Income:Wife-54

Child Support:?

Maintenance:\$325/wk for 2 years and then \$275/wk until death of either party, remarriage of wife, or wife attaining 65, whichever first.

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of amount in joint account at date of commencement of action

Number:628

Case:Dean v Dean, 214 App Div 2d 786, 624 NYS2d 666 (3d Dept, 1995)

Comment:remitted for further proceedings where court did not comply with duty to identify factors it relied on and reasons for its conclusions

Years Married:20

Ages/Income:H/\$48,000; W/\$17,500

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:
Property Distribution to Wife:

Number:629
Case:DiCaprio v DiCaprio, 219 App Div 2d 819, 631 NYS2d 975 (4th Dept, 1995)
Comment:Illinois judgment not entitled to full faith & credit
Years Married:
Ages/Income:?
Child Support:?
Maintenance:\$559/mo non-durational
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:630
Case:Du Jack v Du Jack, 632 NYS2d 895 (App Div, 3d Dept, 1995)
Comment:?
Years Married:4
Ages/Income:
Child Support:\$4843/mo
Maintenance:none
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:\$25% (\$250,000) of appreciation of husband's separate business

Number:631

Case:Eaton v Eaton, 214 App Div 2d 933, 626 NYS2d 286 (3d Dept, 1995)

Comment:not abuse of discretion to fail to apply applicable CSSA % to parties combined income over \$80,000 in fixing child support

Years Married:22

Ages/Income:?

Child Support:\$560/bi-weekly [3 ch]

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:632

Case:Eigenbrodt v Eigenbrodt, 217 App Div 2d 752, 629 NYS2d 328 (3d Dept, 1995)

Comment:[reversed and remitted for findings; liability for debt must be distributed in the same manner as marital assets

Years Married:30

Ages/Income:?

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:633

Case:Fanelli v Fanelli, 215 App Div 2d 718, 627 NYS2d 425 (2nd Dept, 1995)

Comment:error not to prorate each parent's share of reasonable child care, health and dental care expenses for the child not covered by insurance

Years Married:4.5

Ages/Income:Husband-30/\$31,000; Wife-28/\$20,000

Child Support:to wife
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:634
Case:Friedman v Friedman, 216 App Div 2d 204, 629 NYS2d 221 (1st Dept, 1995)
Comment:premature to direct payment for college for 11 and 13 year old
Years Married:?
Ages/Income:?
Child Support:father responsible for support & religious education through high school (2 ch)
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:for wife
Counsel Fees:?
Property Distribution to Wife:?

Number:635
Case:Fuchs v Fuchs, 216 App Div 2d 648, 628 NYS2d 193 (3d Dept, 1995)
Comment:not error to adopt value that husband placed on inventory of gun shop in his 1991 tax return, in view of his testimony that it was accurate
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:equal distribution of marital portion of parties' real property and inventory of parties' gun shop

Number:636

Case:Gaccione v Gaccione, 212 App Div 2d 574, 622 NYS2d 743 (1st Dept, 1995)

Comment:

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:husband directed to pay wife's fees

Property Distribution to Wife:wife received \$8600 share of husband's Keogh plan; personal property divided equally;

Number:637

Case:Gann v Gann, 163 Misc 2d 345, 620 NYS2d 707 (Sup, 1994)

Comment:Wife committed waste and awarded jewelry & furs she claimed she sold; husband's income was tax-free disability payments

Years Married:7

Ages/Income:Husband-40/\$10,000 per mo; Wife-45

Child Support:

Maintenance:\$2500/mo tax-free for 1 year

Exclusive Occupancy:no

Health & Medical Insurance:no

Dental Insurance:no

Life Insurance:no

Counsel Fees:no

Property Distribution to Wife:Wife received \$257,000 in jewelry and furs and kept her retirement account(\$138,104).

Number:638

Case:Grenier v Grenier, 210 App Div 2d 557, 620 NYS2d 139 (3d Dept, 1994)

Comment:Husband receiving disability income; failure to value pension is waiver of claim; wife will never be self-supporting; Life ins is not mandatory

Years Married:35

Ages/Income:Husband \$407/wk; Wife \$160/wk

Child Support:n/a

Maintenance:\$215/wk to wife until H 70, then \$150/wk non-durational

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:\$2000 to wife

Number:639

Case:Gulotta v Gulotta, 215 App Div 2d 724, 627 NYS2d 428 (2nd Dept, 1995)

Comment:improper to direct payment of 50% of wife's future unreimbursed medical expenses

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$150/wk non-durational

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$3000 to wife

Property Distribution to Wife:?

Number:640

Case:Guneratne v Guneratne, 214 App Div 2d 871, 625 NYS2d 354 (3d Dept, 1995)

Comment:Wife's economic misconduct in not returning \$275,000 she took from husband's Keogh warrants 70% of remaining marital assets to husband; retroactive child support should be paid to parent who supported child, not child; error to direct retroactive child support go into trust fund for child's college

Years Married:30

Ages/Income:?

Child Support:husband to pay; husband to pay for children's college

Maintenance:for wife

Exclusive Occupancy:no

Health & Medical Insurance:for wife

Dental Insurance:?

Life Insurance:no

Counsel Fees:

Property Distribution to Wife:

Number:641

Case:Hoadley v Hoadley, 212 App Div 2d 1036, 623 NYS2d 447 (4th Dept, 1995)

Comment:husband's business started 3 years before marriage is separate property

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:to wife for 5 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$3000 to wife

Property Distribution to Wife:remitted for recalculation

Number:642

Case:Kahn v Kahn, 633 NYS2d 382 (App Div, 2d Dept, 1995)

Comment:\$150,000 wife withdrew from joint bank account after parties separated was wastefully dissipated or hidden; proper to deem it maintenance

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$250/wk for 1 year.

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:husband awarded all bank accounts in joint names, all stocks and bonds in joint names, BMW, proceeds of escrow accounts, marital home and all furnishings and furniture in marital home

Number:643

Case:Kernan-Critser v Critser, 209 App Div 2d 825, 619 NYS2d 174 (3d Dept, 1994)

Comment:maintenance to husband

Years Married:4

Ages/Income:Wife \$5000/mo

Child Support:?

Maintenance:\$500/mo to H for 6 mo or until employed, whichever first

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:equal distribution of marital property

Number:644

Case:Kessler v Kessler, 212 App Div 2d 1038, 623 NYS2d 435 (4th Dept, 1995)

Comment:Calculating the difference between the salary earned as a special ed teacher with a Master's degree and what she could have earned as a teacher without a Master's in her school district is a more realistic method for valuing the wife's Master's degree

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:remitted for recalculation

Number:645**Case:**Kozlowski v Kozlowski, 633 NYS2d 523 (App Div, 2d Dept, 1995)**Comment:**wife awarded marital residence where bulk of funds to purchase it was her separate property and husband had history of dissipating funds by gambling**Years Married:?****Ages/Income:?****Child Support:?****Maintenance:?****Exclusive Occupancy:**title to wife**Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:**marital residence

Number:646**Case:**Kret v Kret, 634 NYS2d 719 (App Div, 2d Dept, 1995)**Comment:**unrealistic to believe wife can achieve financial independence to eliminate need to rely on husband's support**Years Married:**29**Ages/Income:**Husband-54; Wife-50**Child Support:**n/a**Maintenance:**\$200/wk for 15 years**Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:**denied**Property Distribution to Wife:?**

Number:647**Case:**LaBombardi v LaBombardi, 220 App Div 2d 642, 632 NYS2d 829 (2nd Dept, 1995)**Comment:**premature to direct husband to pay for college for 10 year old child; error to award lifetime maintenance where requested by wife only until age 62

Years Married:?

Ages/Income:?

Child Support:remitted for recalculation; husband to pay pro-rata share of unreimbursed medical expenses;

Maintenance:\$250/wk until wife age 62 or earlier remarriage

Exclusive Occupancy:?

Health & Medical Insurance:

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:648

Case:Lagnena v Lagnena, 215 App Div 2d 445, 626 NYS2d 542 (2nd Dept, 1995)

Comment:wife rebutted presumption of joint tenancy (Bank L \$675) because all the monies in accounts originated with her and she had sole control

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$1000/mo non-durational to husband

Exclusive Occupancy:owned by wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:husband's request denied

Property Distribution to Wife:\$28,750 to husband representing 50% of appreciation of marital home purchased by wife with her separate property.

Number:649

Case:Lampard v Lampard, 219 App Div 2d 835, 632 NYS2d 368 (4th Dept, 1995)

Comment:proper valuation date for husband's real estate venture is date of trial

Years Married:17

Ages/Income:?

Child Support:?

Maintenance:\$3000/mo for 5 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of \$40,000 value of real estate venture; \$45,000 for her share of husband's medical practice, payable in 3 installments.

Number:650

Case:LaPorta v LaPorta, 216 App Div 2d 365, 628 NYS2d 364 (2nd Dept, 1995)

Comment:reversed & remitted for failure to make appropriate findings; award of prospective open-ended, unreimbursed medical expenses for the parties' child was proper

Years Married:

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:651

Case:Lasaponara v Lasaponara, 626 NYS2d 821 (App Div, 2d Dept, 1995)

Comment:

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:wife awarded 50% of 3 parcels of real estate and 55% of 4th parcel

Number:652

Case:LeVigne v LeVigne, 220 App Div 2d 561, 632 NYS2d 610 (2nd Dept, 1995)

Comment:Wife waived claim to a share of husband's pension by failing to request it and offering no evidence as to it; wife's attorney failed to make proper application for counsel fee prior to entry of judgment

Years Married:?

Ages/Income:Wife-\$36,000

Child Support:?

Maintenance:denied wife

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:denied wife

Property Distribution to Wife:?

Number:653

Case:Maddalena v Maddalena, 217 App Div 2d 606, 629 NYS2d 463 (2nd Dept, 1995)

Comment:valuation date must be between date of commencement and trial

Years Married:17

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$25,000

Property Distribution to Wife:\$125,172.50

Number:654

Case:Mann v Mann NYLJ, 1-10-95, P.26, Col. 1, Sup. Ct., New York Co (Saxe,J.)

Comment:Extra-tax liability imposed on wife who refused to sign joint tax return (as bargaining chip);UGMA account is not marital property, but may be used by custodial parent for tuition.

Years Married:29

Ages/Income:Husband-\$76,000; Wife-\$25,000

Child Support:\$200/wk [1 ch]+ payment of uninsured medical expenses + payment of tuition

Maintenance:\$15,000/yr “permanent maintenance”

Exclusive Occupancy:to wife until child 21

Health & Medical Insurance:for son

Dental Insurance:no

Life Insurance:no

Counsel Fees:\$15,000.

Property Distribution to Wife:net proceeds from sale of house to be divided equally. Wife responsible for \$72,785.50 excess tax liability. Wife awarded 50% of pension funds taken by husband

Number:655

Case:Martusewicz v Martusewicz, 217 App Div 2d 926, 630 NYS2d 156 (4th Dept, 1995)

Comment:remitted for futher proceedings; error to impute income to husband in determining his child support obligation where no finding he voluntarily reduced his income; error not to give husband credit for mortgage and tax payments made on marital residence, not from marital assets

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:656

Case:Mayeri v Mayeri, 220 App Div 2d 647, 632 NYS2d 833 (2nd Dept, 1995)

Comment:not error to refuse to award husband credit toward child support arrears for payments he voluntarily made for orthodontic expenses & Bat Mitzvah

Years Married:?

Ages/Income:?

Child Support:husband directed to pay

Maintenance:?

Exclusive Occupancy:to wife until child reaches majority

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:remitted to value wife's law license and distribution, if any

Number:657

Case:McBride v McBride, 635 NYS2d 298 (App Div, 2d Dept, 1995)

Comment:error to direct child support increase of \$750/mo 6 months after judgment where no evidence of ability to increase income and husband did not intentionally diminish his resources or income

Years Married:?

Ages/Income:?

Child Support:\$1250/mo

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:658

Case:McGarrity v McGarrity, 211 App Div 2d 669, 622 NYS2d 521 (2nd Dept, 1995)

Comment:Failure to establish use of bank account for legitimate marital expenses is waste

Years Married:28

Ages/Income:H-59/\$300,000; W-\$32,000

Child Support:n/a

Maintenance:\$30,000/yr to wife until husband retires after age 55

Exclusive Occupancy:title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$11,000 to wife

Property Distribution to Wife:wife awarded title to marital residence worth \$180,000, 50% (\$44,450) of bank account husband dissipated and \$323,450 as share of husband's profit sharing plan

Number:659

Case:McLane v McLane, 209 App Div 2d 1001, 619 NYS2d 899 (4th Dept, 1994)

Comment:wife disabled because of fractures caused by husband

Years Married:

Ages/Income:Husband-52 \$50,000; Wife-52

Child Support:n/a

Maintenance:\$300/wk to wife, retro to date of answer, until she receives benefits from husband's pension.

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$0 because no affidavit of service submitted at trial

Property Distribution to Wife:equal division of property

Number:660

Case:Merzon v Merzon, 210 App Div 2d 462, 620 NYS2d 832 (2d Dept, 1994)

Comment:Wife had RP and was unemployable; proper to value business using factors in Rev. Rul. No. 59-60 and capitalization of earnings method in Rev. Rul. No. 68-609

Years Married:29

Ages/Income:Husband-\$200,000

Child Support:n/a

Maintenance:\$900/wk non-durational

Exclusive Occupancy:title to wife
Health & Medical Insurance:for wife
Dental Insurance:no
Life Insurance:no
Counsel Fees:\$50,000
Property Distribution to Wife:?

Number:661
Case:Micha v Micha, 213 App Div 2d 956, 624 NYS2d 465 (3d Dept, 1995)
Comment:In effecting an ED a court has authority to effectively recoup marital funds applied to the reduction of one party's separate indebtedness and to distribute such funds to the parties in accordance with DRL § 235(B)(5)
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:remitted for further proceedings

Number:662
Case:Micili v Micili NYLJ, 8-31-95, P.24, Col.2, Sup Ct, Suffolk Co., (Leis, J.)
Comment:License valued where, due to husband, it is impossible to value his practice
Years Married:?
Ages/Income:Husband-39 \$40,000; Wife-38 \$20,000
Child Support:\$85/wk to wife (1ch)[H had custody of other ch]
Maintenance:none
Exclusive Occupancy:sold at foreclosure
Health & Medical Insurance:none
Dental Insurance:none
Life Insurance:none
Counsel Fees:\$17,500. to wife

Property Distribution to Wife:20% (\$303,604.) of value of husband's chiropractic license

Number:663

Case:Mugas v Mugas, 210 App Div 2d 958, 621 NYS2d 267 (4th Dept, 1994)

Comment:uninsured child medical expenses must be pro-rated according to income

Years Married:?

Ages/Income:?

Child Support:\$142/week & college tuition should child attend college (1 ch) & pro-rata portion of uninsured medical

Maintenance:\$75/wk for 5 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:35% of value of rental properties

Number:664

Case:Nadel v Nadel, 220 App Div 2d 565, 632 NYS2d 631 (2nd Dept, 1995)

Comment:husband's accounting license merged into his career; unlikely wife would obtain such gainful employment as would make her self supporting.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$2167/mo non-durational

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$55,000

Property Distribution to Wife:?

Number:665

Case:Nolan v Nolan, 215 App Div 2d 795, 626 NYS2d 568 (3d Dept, 1995)

Comment:parties charted their own procedural course limiting EDL trial to testimony of each as to identity and value of assets; general rule is date of valuation normally fixed at date of commencement

Years Married:

Ages/Income:?

Child Support:Husband to pay 63% of wife's actual child care expense of \$55 a week;

Maintenance:

Exclusive Occupancy:issue of sale remitted

Health & Medical Insurance:

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of value of marital residence

Number:666

Case:O'Keefe v O'Keefe, 216 App Div 2d 549, 628 NYS2d 766 (2nd Dept, 1995)

Comment:

Years Married:?

Ages/Income:?

Child Support:

Maintenance:\$2400/mo until sale of real property, then \$2100/mo

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$21980.79 to wife

Property Distribution to Wife:?

Number:667

Case:Orofino v Orofino, 215 App Div 2d 997, 627 NYS2d 460 (3d Dept, 1995)

Comment:proper in computing child support to exclude capital gains from gross income

Years Married:15

Ages/Income:?

Child Support:husband to pay \$15,595 child support (2 children) and 60% of children's uninsured health expenses

Maintenance:none requested

Exclusive Occupancy:?

Health & Medical Insurance:

Dental Insurance:

Life Insurance:no

Counsel Fees:

Property Distribution to Wife:wife awarded 40% of \$1,870,750 joint account

Number:668

Case:Parrish v Parrish, 213 App Div 2d 928, 623 NYS2d 955 (3d Dept, 1995)

Comment:one seeking portion of pension has burden of establishing value of said interest to petitioner; Where disability pension acquired during marriage, burden to establish what portion is separate is on party claiming it is separate

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:husband's monthly pension payment of \$619 apportioned 50-50

Number:669

Case:Pejo v Pejo, 213 App Div 2d 918, 624 NYS2d 290 (3d Dept, 1995)

Comment:no further legal fee to wife where substantial distribution of marital property received by her

Years Married:23

Ages/Income:?

Child Support:?

Maintenance:\$1500/mo for 3 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:no

Counsel Fees:\$13,500 paid by husband voluntarily

Property Distribution to Wife:parties stipulated that wife would receive more than 50% of marital property including coins, etc. worth \$100,000 to \$150,000, at least \$175,000 in cash/securities and \$1,000,000 share of husband's pension with no tax consequences.

Number:670

Case:Pensabene v Pensabene NYLJ, 10-27-95, P.35, Sup. Ct., Kings Co (Harkavy, J.)

Comment:Child support must be retroactive to date of commencement and calculated by each year

Years Married:?

Ages/Income:Husband-\$58,000; Wife-\$31,000

Child Support:\$756.78/mo [1 ch]

Maintenance:none

Exclusive Occupancy:to be determined

Health & Medical Insurance:no

Dental Insurance:no

Life Insurance:no

Counsel Fees:to be determined

Property Distribution to Wife:to be determined

Number:671

Case:Procario v Procario, 164 Misc 2d 79, 623 NYS2d 971 (Sup, 1994)

Comment:court rejected "merger" doctrine; distribution of enhanced earnings plus maintenance award would result in double recovery

Years Married:18

Ages/Income:Husband-52; Wife-48

Child Support:

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:672
Case:Rice v Rice, 634 NYS2d 761 (App Div, 2d Dept, 1995)
Comment:capitalization rate of 2 should be used to value accounting firm by capitalization of excess earnings formula
Years Married:23
Ages/Income:?
Child Support:remitted to recalculate
Maintenance:remitted to recalculate
Exclusive Occupancy:to wife until youngest child finishes high school
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:remitted to recalculate wifes award
Property Distribution to Wife:\$175,375 distributive award as 50% share of Coopers & Lybrand accounting firm interest of husband

Number:673
Case:Roffey v Roffey, 217 App Div 2d 864, 630 NYS2d 114 (3d Dept, 1995)
Comment:right to appeal equitable distribution waived by husband's disposition of sailboat and transforming 2 of 3 marital corporations into a single new corporation
Years Married:27
Ages/Income:Wife-51
Child Support:?
Maintenance:\$1500/mo non-durational
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:\$250,000 payable over 10 years

Number:674

Case:Rosenkrantz v Rosenkrantz, 211 App Div 2d 444, 621 NYS2d 858 (1st Dept, 1995)

Comment:

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Wife awarded 50% (\$135,303) share of certain stock options and warrants

Number:675

Case:Saasto v Saasto, 211 App Div 2d 708, 621 NYS2d 660 (2nd Dept, 1995)

Comment:law license merged into practice; court not bound by party's own account of his finances; wife should not have EDL reduced to reflect loss in value of property husband bought after he left wife & without her consent; husband's obstructionist tactics caused legal fee to be inflated by amount awarded wife; direction to pay "all non-covered and non-deductible medical expenses" after first \$2000 is not an improper "open-ended obligation"

Years Married:

Ages/Income:?

Child Support:?

Maintenance:husband to pay first \$2000 per year of nondeductible and noncovered medical expenses for wife and children; parties to share excess equally]

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:yes - wife & children

Life Insurance:?

Counsel Fees:\$30,000 counsel fee & \$15,000 acct fee to wife

Property Distribution to Wife:50% of husbands law practice worth \$64,938

Number:676

Case:Sayage v Sayage NYLJ, 5-5-95, P.36, Col.3, S.Ct, Kings Co.(Schneier, J.)

Comment:short, childless marriage

Years Married:?

Ages/Income:Husband-32; Wife-28

Child Support:n/a

Maintenance:none

Exclusive Occupancy:n/a

Health & Medical Insurance:none

Dental Insurance:none

Life Insurance:none

Counsel Fees:none

Property Distribution to Wife:Equal division (\$16,475 to wife) of marital property

Number:677

Case:Schmidlapp v Schmidlapp 220 App Div 2d 571, 632 NYS2d 593 (2nd Dept, 1995)

Comment:

Years Married:Property transferred by wife to husband and wife after marriage becomes marital

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:15% of proceeds of sale of improved real property to husband

Number:678

Case:Schumacher v Jacques, 212 App Div 2d 772, 623 NYS2d 303 (2nd Dept, 1995)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:residence sold and property divided equally

Number:679

Case:Seminerio v Seminerio, 634 NYS2d 544 (App Div, 2d Dept, 1995)

Comment:proper to order maintenance until income can be subsidized by social security; error to preclude testimony regarding husband's pending retirement

Years Married:42

Ages/Income:Husband-68; Wife-56

Child Support:n/a

Maintenance:remitted for further proceedings

Exclusive Occupancy:

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:\$6738.50 pension benefits @ \$500 per month

Number:680

Case:Shad v Shad, 213 App Div 2d 622, 624 NYS2d 949 (2nd Dept, 1995)

Comment:wife had severe psychological disorder, was disabled and not able to be self-supporting

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$300/wk non-durational

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?
Property Distribution to Wife:?

Number:681

Case:Sivigny v Sivigny, 213 App Div 2d 243, 624 NYS2d 120 (1st Dept, 1995)

Comment:Lifetime maintenance appropriate where spouse incapable of future self support, or subordinated career to act as homemaker/ parent, has no obvious skills or training or is mentally or physically ill; not proper to pay child support with marital assets rather than earnings & no credit against retro-active child support for child support paid with marital assets; proper to distribute \$41,693 in joint account at date action started where spent by husband to support self, wife & children

Years Married:27

Ages/Income:Husband-47 \$30,000; Wife-45

Child Support:\$80/wk until child 21

Maintenance:\$275/wk non-durational

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$15,400

Property Distribution to Wife:\$29,185 distributive award

Number:682

Case:Straker v Straker, 219 App Div 2d 707, 631 NYS2d 767 (2nd Dept, 1995)

Comment:not error to not apply CSSA formula where husband could not afford to pay more than \$900/mo; Older son did not have any definite plans with regard to college so application to direct husband to pay for half of college expenses was premature

Years Married:?

Ages/Income:?

Child Support:\$900/mo

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:683

Case:Summer v Summer, 85 NY2d 1014, 630 NYS2d 970, 654 NE2d 1218 (1995)

Comment:lifetime maintenance to wife. Must consider if spouse can be self-supporting at level roughly commensurate with marital standard of living.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:non durational to wife

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:684

Case:Terico v Terico, 634 NYS2d 121 (App Div, 1st Dept, 1995)

Comment:proper to decline to apply estimated sale price method of valuation where bona fide nature of sale questionable

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:wife awarded 50% share of husbands business

Number:685

Case:Thomas v Thomas, 634 NYS2d 496 (App Div, 2d Dept, 1995)

Comment: Social Security benefits not subject to equitable distribution; pension valued as of date of commencement of prior discontinued divorce action

Years Married:

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees: denied wife

Property Distribution to Wife:

Number: 686

Case: Trank v Trank, 210 App Div 2d 472, 621 NYS2d 356 (2d Dept, 1994)

Comment: Sanctions for failure to notify App Div of settlement of all or part of appeal

Years Married: 20

Ages/Income: Husband \$52,500; Wife \$7800

Child Support:?

Maintenance: \$150/wk for 5 yrs

Exclusive Occupancy: title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number: 687

Case: Treppeda v Treppeda, 212 App Div 2d 592, 622 NYS2d 749 (1st Dept, 1995)

Comment: not an abuse of discretion to allow husband to proceed pro se

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:688

Case:Trivedi v Trivedi, 635 NYS2d 78 (App Div, 2d Dept, 1995)

Comment:value of pension to be determined at date of commencement and wife entitled to discretionary interest from commencement to distribution (active)

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:689

Case:Vergotz v Vergotz, 209 App Div 2d 1016, 620 NYS2d 628 (4th Dept, 1994)

Comment:Wife suffered from chronic condition contracted from husband; not error to fail to determine net value of parties respective contributions

Years Married:24

Ages/Income:Husband \$65,000; Wife \$22,000

Child Support:n/a

Maintenance:\$750/mo to wife until Dec. 1999; Husband to pay wife's uninsured medical expenses

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:690

Case:Walls v Walls, 633 NYS2d 905 (App Div, 4th Dept, 1995)

Comment:premature to direct contribution for child's college where child had not decided on a college and no evidence about his academic ability, interests or future expenses.

Years Married:25

Ages/Income:Husband \$50,000

Child Support:

Maintenance:\$50/wk for 2 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:691

Case:Weiss v Weiss, 213 App Div 2d 542, 624 NYS2d 52 (2nd Dept, 1995)

Comment:Husband's post-trial assertion he lost his job is not reviewable on appeal

Years Married:?

Ages/Income:Husband \$51,351; Wife \$17,000

Child Support:?

Maintenance:\$225/wk retroactive to date summons served

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$7500 to wife

Property Distribution to Wife:\$26,617 distributive award

Number:692

Case:Zaremba v Zaremba, 635 NYS2d 532 (App Div, 2d Dept, 1995)

Comment:Court must articulate reasons it made child support award on combined income over \$80,000

Years Married:?

Ages/Income:?

Child Support:\$3097/mo - remitted for factors

Maintenance:\$2000/mo for 9 years
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:693

Case:Zimberg v Zimberg, 215 App Div 2d 313, 627 NYS2d 23 (1st Dept, 1995)

Comment:contributions of wife's family to purchase of residence, attribution of substantial income to husband, his secret income, and failure to be forthcoming during trial and with regard to disclosure extinguished his interest in the marital residence; error to direct husband to repay wife's father for purchasing lien and repaying his debt since he was not a party to action

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$330,611.82 to wife

Property Distribution to Wife:title to marital residence to wife

Number:694

Case:Zurner v Zurner, 213 App Div 2d 906, 624 NYS2d 301 (3d Dept, 1995)

Comment:

Years Married:11

Ages/Income:Husband \$48,000; Wife \$28,275

Child Support:? (2 children)

Maintenance:\$100/wk for 2 years

Exclusive Occupancy:ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?**Counsel Fees:?**

Property Distribution to Wife:wife awarded 50% of net value (\$45,750) of marital residence after reimbursing husband his \$11,250 separate property contribution

Number:695

Case:Anderson v. Anderson, 230 A.D.2d 813, 646 N.Y.S.2d 552 (2d Dep't 1996)

Comment:Equitable distribution presents matters of fact to be resolved by the trial court, and its distribution... should not be disturbed unless it can be shown that the court improvidently exercised its discretion.

Years Married:?**Ages/Income:?****Child Support:?****Maintenance:?****Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:?****Number:**696

Case:Anonymous v Anonymous, NYLJ, 9-6-96, P. 26, Col. 5, Sup. Ct., Suffolk Co., (Lifson,J.)

Comment:Husband directed to assume all marital debt

Years Married:11

Ages/Income:Husband-30 \$60,000; Wife-30 \$28,000

Child Support:\$173/wk [4 Ch] + 1/3 of uninsured medical expense [Husband awarded custody]

Maintenance:none

Exclusive Occupancy:n/a

Health & Medical Insurance:existing

Dental Insurance:no

Life Insurance:no

Counsel Fees:none

Property Distribution to Wife:none

Number:697

Case:Anonymous v Anonymous, NYLJ, 6-5-96, P. 31, Col. 5 Sup. Ct., Suffolk Co. (Lifson, J.)

Comment:Wife's contributions rendered valueless by her alienation of children and communications to husbands superiors calculated to destroy his career and enhanced earning capacity as police officer.

Years Married:13

Ages/Income:Husband-44 \$74,000; Wife-44 \$10,000

Child Support:Wife to pay \$50/wk [2 ch]

Maintenance:none

Exclusive Occupancy:n/a

Health & Medical Insurance:none

Dental Insurance:none

Life Insurance:none

Counsel Fees:none

Property Distribution to Wife:50% of each parties pension and 50% of net proceeds of sale of house; 0% of husbands enhanced earning capacity (worth \$158,378)

Number:698

Case:Bann v Bann, NYLJ, 8-15-96, P. 25, Col. 6, Sup. Ct., Queens Co. (Gartenstein, JHO.)

Comment:Where evidence insufficient to value business, court may substitute one years annual earnings; parties to bid for marital residence where husband has his office there

Years Married:38

Ages/Income:Husband-66;

Child Support:n/a

Maintenance:none

Exclusive Occupancy:title to wife

Health & Medical Insurance:none

Dental Insurance:none

Life Insurance:none

Counsel Fees:\$10,000

Property Distribution to Wife:50% of marital assets

Number:699

Case:Blankenship v. Kerr, 225 A.D.2d 645, 639 N.Y.S.2d 841 (2d Dep't 1996)

Comment:Not abuse of discretion to refuse to apply statutory child support percentage to total parental income in excess of \$80,000

Years Married:3

Ages/Income:?

Child Support:\$25,000/yr (1 ch) + medical expenses + reasonable private school expenses through college

Maintenance:\$850/mo “permanent”

Exclusive Occupancy:ordered sold

Health & Medical Insurance:for wife for 3 years

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:700

Case:Brennan v. Brennan, 230 A.D.2d 700, 645 N.Y.S.2d 876 (2d Dep’t 1996)

Comment:improper to direct husband to sign note securing payment to wife of half of mortgage owed by third party from sale of a marital asset. He should be directed to assign half of proceeds from mortgage to wife, so he is not a guarantor of mortgage

Years Married:?

Ages/Income:?

Child Support:Husband to pay 85% of children’s education, tuition, room and board expenses at private school and college

Maintenance:?

Exclusive Occupancy:title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Title to home worth \$340,000; 50% of third party mortgage

Number:701

Case:Brown v Brown, NYLJ, 3-18-96, P. 29, Col. 7, Sup. Ct., Kings Co.(Harkavey, J.)

Comment:none

Years Married:7

Ages/Income:?

Child Support:\$140/wk (1 ch) + parties to share cost of private school & summer camp

Maintenance:none

Exclusive Occupancy:no

Health & Medical Insurance:wife to provide for child; parties to split uninsured expenses

Dental Insurance:no

Life Insurance:no

Counsel Fees:none

Property Distribution to Wife:divided by parties

Number:702

Case:Bullaro v. Bullaro, 231 A.D.2d 666, 648 N.Y.S.2d 46 (2d Dep't 1996)

Comment:Equitable distribution of marital residence denied to husband under "clean hands doctrine" considered as "any other" factor under DRL 236[B][5][d]; he testified that on advice of "lawyer friend" he transferred it to wife in 1983 in order to protect it from his judgment creditors

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of the value of her pension and the entire marital residence

Number:703

Case:Cadet v Cadet, NYLJ,12-11-96, P. 31, Col. 6, Sup. Ct., Rockland Co.(Miller, J.)

Comment:Wife's law license valued at \$77,877 subtracted from husbands enhanced earnings of \$348,331 for 3 yrs of residency and board certification (3/7th) and after maintenance deducted - no distributive award; CSSA guidelines amount only applied to first \$125,000 of husbands income but his proportionate share of 86% based on his actual income

Years Married:7

Ages/Income:Husband-38 \$176,900; Wife-35 \$30,000

Child Support:\$2498/mo +86% of unreimbursed medical & dental, + 86% of child care while looking for employment[3 Ch]

Maintenance:\$400/wk for 7 yrs from decision + child care

Exclusive Occupancy:ordered sold

Health & Medical Insurance:for children if available through employer

Dental Insurance:\$500,000 for wife for 7 yrs; then for 3 children

Life Insurance:?

Counsel Fees:50% of marital assets; marital debt to be paid 2/3 by husband and 1/3 by wife

Property Distribution to Wife:

Number:704

Case:Cerretani v. Cerretani, 221 A.D.2d 814, 634 N.Y.S.2d 228

Comment:“marital property” is liberally construed; no credit for “capital loss carry forward” because not the type of property addressed in DRL 236[B][5][d][10] which only relates to consequences of distribution

Years Married:26

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:remitted for findings

Property Distribution to Wife:50% of all marital property; remitted to address value of one business

Number:705

Case:Ciaffone v. Ciaffone, 228 A.D.2d 949, 645 N.Y.S.2d 549 (3d Dep’t 1996)

Comment:proper to value business by “discounted cash flow method”; error to direct child support & carrying charges on home. Must subtract annual carrying charges from parties gross income before applying statutory percentages; must reduce “income” by amount of maintenance awarded for purposes fixing child support; purpose of DRL 236[B][5][g] is to prevent arbitrary exercise of discretion and to provide basis for appellate review where discretion improvidently exercised; where titled spouse engages in active efforts with respect to a nonpassive asset, even to a small degree, the proportionate appreciation in that asset is, to a proportionate degree, marital property

Years Married:8

Ages/Income:Husband \$110,378

Child Support:remitted

Maintenance:\$200/wk for 3 years

Exclusive Occupancy:to wife for 3 years

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:40% (\$258,603)of marital property

Number:706

Case:Cohen v. Cohen, 228 A.D.2d 961, 644 N.Y.S.2d 831 (3d Dep’t 1996)

Comment:order of preclusion granted against husband; not error to curtail cross exam of expert where necessary financial information to answer questions was included in records husband failed to disclose; no authority to add penalty of 20% to value of business due to failure to disclose records relative to its value

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:marital home

Number:707

Case:Costantino v Costantino (2d Dept., 1996) NYLJ, 3-26-96, P. 33, Col. 6

Comment:highly unlikely that wife out of labor force 20 yrs would be able to support self and enjoy marital standard of living

Years Married:29

Ages/Income:Wife-51

Child Support:?

Maintenance:\$5341/mo non-durational

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:to wife

Property Distribution to Wife:distribution per agreement

Number:708

Case:Creighton v. Creighton, 222 A.D.2d 740, 634 N.Y.S.2d 870

Comment:legal fee not to be disturbed unless clearly an abuse of discretion; appropriate to abate child support where no voluntary attempt to reduce income

Years Married:?

Ages/Income:Husband \$35,000; Wife Public Assistance

Child Support:\$100/wk to husband (abated 11/89-9/92 & 6/93-2/95)

Maintenance:\$100/wk from trial (12/93) to anticipated college graduation date (2/95)

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$1000 to wife

Property Distribution to Wife:?

Number:709

Case:DeRaffele v. DeRaffele, 234 A.D.2d 500, 651 N.Y.S.2d 912

Comment:?

Years Married:?

Ages/Income:?
Child Support:\$196/wk
Maintenance:\$200/wk for 2 yrs
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:710
Case:Dunn v. Dunn, 224 A.D.2d 888, 638 N.Y.S.2d 238 (3d Dep't 1996)
Comment:Wasteful dissipation issue remitted for specific findings
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:remitted

Number:711
Case:ES v AS, NYLJ, 8-9-96, P. 22, Col. 3, Sup. Ct.,NY Co. (Silberman, J.)
Comment:child support calculated on combined parental income limited to \$150,000
Years Married:26
Ages/Income:Husband-58 \$300,000; Wife-52 \$68,000
Child Support:\$2500/mo [2ch] + 75% of unreimbursed medical costs, including psychiatric/therapy; 75% of all school expenses, including college and camp for older child; \$200/mo for child care for 2 years; 75% of bar mitzvah for son not to exceed \$10,000; UGMA account to be used for daughters college
Maintenance:\$2400/mo for 7 years
Exclusive Occupancy:?

Health & Medical Insurance:no

Dental Insurance:no

Life Insurance:\$300,000 for children; \$175,000 for wife

Counsel Fees:\$25,000 to wife; 75% of Law Guardians fee & all of forensic fee

Property Distribution to Wife:distributed per stipulation

Number:712

Case:Falco v Falco, NYLJ, 12-4-95, P. 31, Col. 1, Sup. Ct., Co.

Comment:tax exemption to husband; business valued based on "income approach", ie, three times annual income; In event of husbands default, referee appointed to take possession of and sell his real property to effect payment provisions

Years Married:23

Ages/Income:Husband-47 \$152,000/yr net; Wife-44 \$15,288/ yr

Child Support:\$325/wk to wife (1 child with each parent) + payment of older child' s college tuition

Maintenance:\$500/wk for 2 yrs

Exclusive Occupancy:title to wife

Health & Medical Insurance:for wife and children

Dental Insurance:no

Life Insurance:\$150,000 for wife & children

Counsel Fees:\$10,000 to wife

Property Distribution to Wife:property valued at \$560,999 & cash of \$279,000; husband awarded property valued at \$840,000 but charged with \$279,000 due to wife; Marital property = \$1,121,999

Number:713

Case:Ferrugiari v. Ferrugiari, 226 A.D.2d 498, 641 N.Y.S.2d 116 (2d Dep't 1996)

Comment:Where pension in payout and value known, no need for proof of value

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?**Property Distribution to Wife:**share of husband's pension**Number:**714**Case:**Fiedler v. Fiedler, 230 A.D.2d 822, 646 N.Y.S.2d 839 (2d Dep't 1996)**Comment:**Husband solely liable for \$177,000 tax liability for questionable investments in tax shelters without input from wife (wasteful dissipation)**Years Married:**25**Ages/Income:?****Child Support:?****Maintenance:?****Exclusive Occupancy:**to wife until youngest child 18**Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:**50% of value of 6 diamonds and 60% of proceeds of sale of home**Number:**715**Case:**Finkelson v Finkelson, NYLJ, 7-10-96, P. 30, Col. 4, Sup. Ct., NY Co. (Andrias, J.)**Comment:**In valuing law practice proper to total capital and withdrawal accounts and to discount withdrawal/ retirement account to present value, but the 10 year payout should not be "tax effected" because calculation is for valuation rather than actual distribution**Years Married:**17**Ages/Income:**Husband-49 \$1,600,000; Wife-50 \$25,000**Child Support:**\$13,000/mo. + tuition, summer camp, extra-curricular, unreimbursed medical, dental and Orthodonture [2ch]**Maintenance:**\$13,000/mo for 15 yrs**Exclusive Occupancy:**title to wife**Health & Medical Insurance:**for wife and children**Dental Insurance:**for children**Life Insurance:**no**Counsel Fees:**\$348,789 + \$66,789 accounting fee + \$11,089 appraiser fee

Property Distribution to Wife:50% (\$3,802,861) of marital estate

Number:716

Case:Fleitz v. Fleitz, 223 A.D.2d 946, 636 N.Y.S.2d 911 (3d Dep't 1996)

Comment:not error to fail to hold second evidentiary hearing on remittal; maintenance reduced when husband's tax-free disability payments are reduced

Years Married:20

Ages/Income:Husband-48 \$6000/mo to 65; Wife-42

Child Support:(2 ch)

Maintenance:\$1500/mo until husband reaches 65, then \$1000/mo when Husband's income reduced to \$4400/mo

Exclusive Occupancy:ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:62% to wife (38% to H) including 50% (\$34,252) of net proceeds of sale of marital residence and fidelity account (\$213,944)

Number:717

Case:Forzano v. Scuderi, 224 A.D.2d 385, 637 N.Y.S.2d 767 (2d Dep't 1996)

Comment:disparity in parties incomes does not always warrant award of maintenance

Years Married:5

Ages/Income:?

Child Support:?

Maintenance:husband's request denied

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:husband's request denied

Property Distribution to Wife:?

Number:718

Case:Furnia v. Furnia, 227 A.D.2d 967, 643 N.Y.S.2d 859 (4th Dep't 1996)

Comment:court considered each spouses separate property contributions in achieving equitable distribution

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:40% of proceeds of sale of marital residence

Number:719

Case:Gann v. Gann, 233 A.D.2d 188, 649 N.Y.S.2d 154 (1st Dep't 1996)

Comment:disability ins policies, whose premiums paid from separate funds is separate property; proper to attribute ins policy application values of dissipated or secreted jewelry/furs in computing wife's distributive award; wife, in brief, childless marriage failed to explain inability to procure employment or retrain during pendency of action

Years Married:?

Ages/Income:?

Child Support:n/a

Maintenance:\$2500/mo retro to commencement for 1 year after entry of judgment

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:720

Case:Garvey v. Garvey, 223 A.D.2d 968, 636 N.Y.S.2d 893 (3d Dep't 1996)

Comment:duration of maintenance increased where inadequate

Years Married:27**Ages/Income:**Husband-50 \$110,000; Wife-50 \$0**Child Support:**husband to pay**Maintenance:**\$400/wk for 10 years**Exclusive Occupancy:**ordered sold**Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:**Wife awarded \$225,000 as her share of business & real estate (worth \$475,410) paid over 10 years with interest at 9% and 47% of net proceeds of sale of marital residence

Number:721**Case:**Geisel v Geisel, NYLJ, 1-17-96, P. 36, Col. 1, Sup. Ct., Rockland Co. (Weiner, J.)**Comment:**deposit of inherited funds into joint bank account with spouse does not automatically transmute funds into marital property; depositor may show deposit was for convenience only**Years Married:**31**Ages/Income:**Husband-53 \$62,000; Wife-51 \$0**Child Support:**n/a**Maintenance:**\$350/wk until husband retires**Exclusive Occupancy:**ordered sold**Health & Medical Insurance:**no**Dental Insurance:**no**Life Insurance:**no**Counsel Fees:**to be determined**Property Distribution to Wife:**50% of net proceeds of sale of marital residence; 50% of marital portion of husbands pension; 50% of husbands NY Deferred Compensation Plan; 50% of balance of marital property

Number:722**Case:**Gilmartin v. Gilmartin, 234 A.D.2d 129, 651 N.Y.S.2d 43 (1st Dep't 1996)**Comment:**none**Years Married:?****Ages/Income:?****Child Support:?**

Maintenance:\$100/wk for 2 yrs
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:\$10,800

Number:723

Case:Greenfield v. Greenfield, 650 N.Y.S.2d 698 (Dec. 10, 1996)

Comment:residency & certification in internal medicine enhanced husbands earning capacity but loans for education prior to marriage should not be subtracted from future enhancement; coverture fraction should not take into account the 12 years to become an internist; only the last 36 months during which husband received specialty training is relevant. Fraction is 32/36

Years Married:32 mos

Ages/Income:Husband \$3961/mo net; Wife \$0

Child Support:\$207/wk + summer camp, child care and nursery for 2 years, then 75% of such expenses [1 ch]

Maintenance:\$150/wk + all non-reimbursed non-elective medical and dental for 2 years

Exclusive Occupancy:?

Health & Medical Insurance:for wife for 2 yrs

Dental Insurance:for wife

Life Insurance:no

Counsel Fees:\$7500 to wife

Property Distribution to Wife:\$66,042 (20% of value) of enhancement (\$330,213) of husbands professional earnings

Number:724

Case:Grossman v. Grossman, 224 A.D.2d 489, 638 N.Y.S.2d 130 (2d Dep't 1996)

Comment:Improper to attribute income without explaining how figure arrived at; must prorate "reasonable" health care expenses; wife should indemnify husband in event mortgage foreclosed and deficiency judgment against husband

Years Married:?

Ages/Income:?

Child Support:remitted for new determination

Maintenance:remitted for new determination
Exclusive Occupancy:title to wife
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:\$25,000 to wife for share of husbands dental practice

Number:725

Case:Gundlach v. Gundlach, 223 A.D.2d 942, 636 N.Y.S.2d 914 (3d Dep't 1996)

Comment:Where spouse deposits compensation for personal injury in joint account he has to establish by clear & convincing evidence that account for convenience; No authority to grant ED in favor of children; not a "shelter" duplication to credit wife for her reduction of mortgage principal

Years Married:16

Ages/Income:?

Child Support:\$201.48 biweekly (3 ch)

Maintenance:?

Exclusive Occupancy:to wife until youngest child emancipated

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$7229 to wife

Property Distribution to Wife:?

Number:726

Case:Hapeman v. Hapeman, 229 A.D.2d 807, 646 N.Y.S.2d 583 (3d Dep't 1996)

Comment:Must calculate c/s based on gross income as it "should have been or should be reported in the most recent federal income tax return"; must deduct maintenance payments from income; waiver of right to counsel fee hearing by not objecting to trial request to submit on the issue

Years Married:20

Ages/Income:Husband \$45,312; Wife \$40/wk

Child Support:\$178.16/ wk until termination of maintenance, then \$201.18/wk

Maintenance:\$100/wk for 5 yrs from judgment

Exclusive Occupancy:ordered sold
Health & Medical Insurance:no
Dental Insurance:no
Life Insurance:no
Counsel Fees:\$5710
Property Distribution to Wife:?

Number:727
Case:Harbour v. Harbour, 227 A.D.2d 882, 643 N.Y.S.2d 969 (3d Dep't 1996)
Comment:Wife penalized \$35,985 for excessive clothing purchase with marital funds; in valuing engineering partnership interest proper to include amount of capital account, amount of capital note & amount of salary continuation plan, but not "amount of guaranteed payments on account of capital"
Years Married:32
Ages/Income:Husband-54
Child Support:n/a
Maintenance:remitted
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:remitted

Number:728
Case:Harris-Logan v. Logan, 228 A.D.2d 557, 645 N.Y.S.2d 43 (2d Dep't 1996)
Comment:date of application for child support is date of filing of summons with notice with request for child support
Years Married:?
Ages/Income:?
Child Support:remitted
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?

Property Distribution to Wife:?

Number:729**Case:**Hart v. Hart, 227 A.D.2d 698, 641 N.Y.S.2d 459 (3d Dep't 1996)**Comment:**premature to direct contribution for child's college where child had not decided on a college and no evidence about his academic ability, interests or future expenses.**Years Married:**27**Ages/Income:**Husband \$985/wk; Wife \$157/wk**Child Support:**\$165/wk (4 ch) + proportionate share of unreimbursed medical & dental + payment of mortgage,taxes & homeowners insurance**Maintenance:**\$30/wk**Exclusive Occupancy:**to wife until youngest child emancipated**Health & Medical Insurance:**for children**Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:?**

Number:730**Case:**Hogue v. Hogue, 225 A.D.2d 731, 640 N.Y.S.2d 198 (2d Dep't 1996)**Comment:**durational support where wife capable of being self-supporting but not yet readily employable**Years Married:**20**Ages/Income:**Wife-46**Child Support:?****Maintenance:**\$250/wk durational**Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:**to wife**Property Distribution to Wife:?**

Number:731

Case:Huber v. Huber, 229 A.D.2d 904, 645 N.Y.S.2d 211 (4th Dep't 1996), appeal and reargument denied, 649 N.Y.S.2d 310 (App. Div. 4th Dep't 1996)

Comment:no authority in CSSA to add future maintenance award to recipients income for purpose of calculating child support; Maintenance is not "gross(total income)"; improper to subtract maintenance from payors income where there is no automatic adjustment of child support on termination of maintenance;no affirmative relief without cross appeal

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:to wife until age 59 1/2 or husbands full retirement, whichever later

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$37,000

Property Distribution to Wife:?

Number:732

Case:Iwahara v. Iwahara, 226 A.D.2d 346, 640 N.Y.S.2d 217 (2d Dep't 1996)

Comment:Burden on non-titled spouse to prove value of asset; court must show how it fixed value,an unsupported conclusion can not stand; husband permitted to take children as dependents for income tax purposes

Years Married:?

Ages/Income:?

Child Support:\$20,000/ yr (2 Ch); [an adjustment should be made when maintenance done] and 78% of reasonable health care not covered by ins

Maintenance:\$20,000/yr for 10 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:wife awarded entire value (\$153,000) of husbands medical license

Number:733**Case:**Jermakian v. Jermakian, 231 A.D.2d 677, 647 N.Y.S.2d 838**Comment:**inequitable for wife to pay most of parties marital expenses in “relatively short marriage”; Dist award to wife of \$4000/yr for each of the years of the marriage, being 50% of the marital expenses each year**Years Married:**14**Ages/Income:?****Child Support:**n/a**Maintenance:?****Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:**\$20,000

Number:734**Case:**Jussen v Jussen, NYLJ, 10-7-96, P. 37, Col. 6, Sup. Ct., Nassau Co. (Franco, J)**Comment:**2d marriage case; wife and attorney sanctioned for misuse of income execution for support enforcement; matter referred to IRS and District Attorney regarding possible violations of tax law and eavesdropping law**Years Married:**17**Ages/Income:**Husband-52 \$3646/mo; Wife-44 \$18,500/ yr**Child Support:**\$527/mo per stipulation [1 Ch] + 50% of uninsured medical expenses**Maintenance:**waived**Exclusive Occupancy:**ordered sold**Health & Medical Insurance:**for child**Dental Insurance:**for child**Life Insurance:**no**Counsel Fees:**denied**Property Distribution to Wife:**50% of marital property

Number:735**Case:**Kelly v. Kelly, 223 A.D.2d 625, 636 N.Y.S.2d 840 (2d Dep’t 1996)

Comment:difficulty in valuing family business was result of husbands failure to provide adequate documentation

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$1000/mo or 25% of husbands adjusted gross income, non-durational

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:remitted to determine amount to be paid

Property Distribution to Wife:?

Number:736

Case:Kerzner v. Kerzner, 170 Misc. 2d 1006, 653 N.Y.S.2d 219 (Sup. Ct. 1996)

Comment:Distribute value of pension at commencement, not trial date; Receiver of husbands business appointed because of pattern of non-disclosure of assets and wilful non-payment; maintenance designed to protect distributive award from husbands threatened bankruptcy and non-payment; evidence of large amounts of cash

Years Married:17

Ages/Income:?

Child Support:\$4350/mo [2Ch], then \$3750/mo for 1 Ch + private school, college, tutoring, transportation, unreimbursed non-elective medical, dental & psychotherapy

Maintenance:\$21,000/mo for 8 yrs or until distributive award paid; then \$9000/mo

Exclusive Occupancy:title to wife

Health & Medical Insurance:for children

Dental Insurance:no

Life Insurance:no

Counsel Fees:no

Property Distribution to Wife:50% (\$3,830,741) of marital assets

Number:737

Case:Lekutanaj v. Lekutanaj, 234 A.D.2d 429, 651 N.Y.S.2d 154 (2d Dep't 1996)

Comment:Child support should be adjusted pursuant to CSSA, not CPI; Proper to award maintenance with cost of living adjustments; deduct half of expense to liquidate property to satisfy distributive award; adjust child support when maintenance terminates; receiver appointed where husband dissipated assets, was less than forthcoming regarding his finances and disregarded orders

Years Married:?

Ages/Income:Husband \$170,000/ yr

Child Support:\$577/wk [4 Ch] to be adjusted after distributive award is paid

Maintenance:\$750/wk (plus cost of living adj) for 10 yrs

Exclusive Occupancy:ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:to wife

Property Distribution to Wife:\$968,502 less half of taxes and expenses of husband selling real property to satisfy distributive award

Number:738

Case:Lucci v. Lucci, 227 A.D.2d 387, 642 N.Y.S.2d 326 (2d Dep't 1996)

Comment:Retroactive payments of temporary maintenance should be made only if the award is in excess of any temporary award, rather than as credits for overpayment of temporary maintenance

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$300/wk for 4 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:739

Case:MacDonald v. MacDonald, 226 A.D.2d 596, 641 N.Y.S.2d 349 (2d Dep't 1996)

Comment:not error to include death benefit provision of partnership agreement in valuing interest in law partnership for equitable distribution purposes

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$200/wk non-durational

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:remitted for redistribution

Number:740

Case:Main v Main, NYLJ, 8-14-96, P. 25, Col. 6, Sup. Ct., Nassau Co.(McCaffrey, J.)

Comment:Application of statutory formula to combined parental income over \$80,000 would be unjust and inappropriate

Years Married:21

Ages/Income:Husband \$73,744; Wife \$46,000

Child Support:\$277/wk [3 ch] + \$125/wk [62%] of child care

Maintenance:n/a

Exclusive Occupancy:n/a

Health & Medical Insurance:none

Dental Insurance:none

Life Insurance:none

Counsel Fees:?

Property Distribution to Wife:?

Number:741

Case:Maraham v Maraham, NYLJ, 7-22-96, P. 25, Col. 2, Sup. Ct., NY Co.(Andrias, J.)

Comment:wife awarded 55% of marital estate as of date of separation (7/25/83) because husband had concealed assets not disclosed to the court; estate valued at date of commencement so wife not responsible for husbands \$1.2 million investment loss

Years Married:31

Ages/Income:?
Child Support:n/a
Maintenance:none
Exclusive Occupancy:no
Health & Medical Insurance:no
Dental Insurance:no
Life Insurance:no
Counsel Fees:referred for hearing
Property Distribution to Wife:55% (\$1,225,599) of net marital estate

Number:742
Case:Marino v. Marino, 229 A.D.2d 971, 645 N.Y.S.2d 252 (4th Dep't 1996)
Comment:Error to impute unreported cash income absent proof of nature or amount of cash received; improper to impute additional income where no evidence husband used company vehicle for personal needs
Years Married:?
Ages/Income:Husband \$34,900
Child Support:\$135/wk; then \$160/wk on termination of maintenance
Maintenance:\$100/wk for 3 yrs
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:743
Case:McCarthy v McCarthy, NYLJ, 8-12-96, P. 30, Col. 4, Sup. Ct., Kings Co.(Leventhal, J.)
Comment:tax consequences of pension liquidation by husband considered; judicial notice of tax laws taken by court which calculated tax; wife wasted marital assets by removing furnishings, appliances, tools and clothing from the marital residence to prevent husband from using them
Years Married:20
Ages/Income:Husband-57 \$1142/mo disability; Wife-51
Child Support:n/a

Maintenance:none
Exclusive Occupancy:ordered sold
Health & Medical Insurance:none
Dental Insurance:none
Life Insurance:none
Counsel Fees:none
Property Distribution to Wife:50% of proceeds of sale of residence; 50% of marital portion of pension, after taxes, that was liquidated

Number:744
Case:McComish v. McComish, 227 A.D.2d 454, 642 N.Y.S.2d 921 (2d Dep't 1996)
Comment:withdrawal of joint funds by wife is dissipation of marital assets
Years Married:?
Ages/Income:?
Child Support:\$700/mo to wife; husband to share medical, insurance and college expenses of youngest child in proportion to parties incomes
Maintenance:?
Exclusive Occupancy:title to wife
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:745
Case:Miness v. Miness, 229 A.D.2d 520, 645 N.Y.S.2d 838 (2d Dep't 1996)
Comment:wife failed to meet her burden of showing direct or indirect contributions to appreciation of separate property
Years Married:?
Ages/Income:?
Child Support:n/a
Maintenance:\$2000/wk for 5 yrs, then \$1000/wk non-durational
Exclusive Occupancy:?
Health & Medical Insurance:for wife until she obtains an employment related policy

Dental Insurance:no

Life Insurance:for wife

Counsel Fees:each to pay own

Property Distribution to Wife:50% of value of husbands nursing home

Number:746

Case:Mitchell v Mitchell, NYLJ, 9-16-96, P. 31, Col. 5, Sup. Ct., Suffolk Co., (Friedenberg, JHO)

Comment:wife failed to sustain burden of proof as to “deferred compensation aspect” of husbands accidental disability pension; “tax-free’ maintenance award; award of child support may be based on earning potential; inappropriate to apply CSSA to gross income where husbands disability pension is net of tax; proper to attribute additional funds to husband to produce the net income he receives

Years Married:18

Ages/Income:Husband-38 \$42,156/ yr net; Wife-38 \$23,776/ yr

Child Support:\$650/mo for child in wife’s custody + 50% of uninsured medical expenses [2 ch-split custody]

Maintenance:\$200/wk for 5 yrs (tax-free)

Exclusive Occupancy:title to wife per stipulation

Health & Medical Insurance:husband to provide for both children

Dental Insurance:no

Life Insurance:\$100,000 for child in wife’s custody

Counsel Fees:\$10,000 to wife

Property Distribution to Wife:distributed as per stipulation

Number:747

Case:Morales v. Morales, 230 A.D.2d 895, 646 N.Y.S.2d 884 (2d Dep’t 1996)

Comment:Not required to pay for child’s private school absent agreement or special circumstances; value nursing license by comparing avg lifetime income of nurse with high school graduate working in clerical field and reducing difference to present value

Years Married:?

Ages/Income:?

Child Support:\$150/wk + 68% of private parochial school

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of husbands pension and savings and security plan; Husband awarded 10% (\$9800) of value of enhanced earning capacity of wife's practical nurse license

Number:748

Case:Moses v. Moses, 231 A.D.2d 850, 647 N.Y.S.2d 318 (4th Dep't 1996)

Comment:credit to wife for her separate property contribution to down payment on marital home off top of proceeds of sale

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:to wife

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:remitted for redetermination

Property Distribution to Wife:?

Number:749

Case:Nappi v. Nappi, 234 A.D.2d 276, 651 N.Y.S.2d 51 (2d Dep't 1996)

Comment:error to direct wife to place money inherited from brother in trust for nephew; wife suffering major depressive disorder awarded maintenance

Years Married:36

Ages/Income:Husband-61 \$97,500; Wife-56 \$0

Child Support:n/a

Maintenance:\$250/wk until age 65 or collects share of husbands pension

Exclusive Occupancy:ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:remitted for further proceedings

Number:750

Case:Nowik v. Nowik, 228 A.D.2d 421, 643 N.Y.S.2d 223 (2d Dep't 1996)

Comment:Credit to husband for contribution of labor and expenditures for improvements in the wife's residence

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:\$6000 to husband

Number:751

Case:Orlando v. Orlando, 222 A.D.2d 906, 635 N.Y.S.2d 752 (3d Dep't 1995), leave to appeal dismissed in part, denied in part, 87 N.Y.2d 1052, 644 N.Y.S.2d 141, 666 N.E.2d 1055 (1996)

Comment:Child support not necessarily determined by current financial condition; court has discretion to attribute/impute income based on ability to earn; child support based on needs/standard of living where both parents took 5th Amendment re tax return

Years Married:?

Ages/Income:?

Child Support:\$200/wk + all of children's unreimbursed medical expenses

Maintenance:\$200/wk for 3 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:752**Case:**Parnes v Parnes, NYLJ, 1-26-96, P. 32, Col. 2, Sup. Ct, Kings Co. (Rigler, J.)**Comment:?****Years Married:**21**Ages/Income:**Husband \$26,000; Wife \$24,000**Child Support:**\$76.50/wk [1 ch] + 52% of unreimbursed medical expenses (wife to pay 48%)**Maintenance:**none**Exclusive Occupancy:**n/a**Health & Medical Insurance:**for child**Dental Insurance:**no**Life Insurance:**husband to provide for child**Counsel Fees:**denied**Property Distribution to Wife:**50% of marital portion of husbands pension

Number:753**Case:**Pauk v. Pauk, 232 A.D.2d 386, 648 N.Y.S.2d 621 (2d Dep't 1996)**Comment:**error to value pension at date of judgment; error to refuse to distribute marital property; where judgment and decision are inconsistent, the decision controls, and inconsistency may be corrected on appeal**Years Married:?****Ages/Income:?****Child Support:**remitted for reasons**Maintenance:?****Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:**for children**Counsel Fees:**\$30,615**Property Distribution to Wife:**remitted

Number:754**Case:**Polychronopoulos v. Polychronopoulos, 226 A.D.2d 354, 640 N.Y.S.2d 256 (2d Dep't 1996)

Comment:improper to direct open-ended payment of charges on marital residence; where expert needed because of husbands lack of candor expert fee is warranted; in fixing child support must reduce income by maintenance award,and order concomitant increase in child support on termination of maintenance; reduce child support by shelter costs; must take into account need of parent to maintain separate household and have money to live on

Years Married:?

Ages/Income:?

Child Support:remitted to fix (2 Ch) ; husband to pay medical expenses

Maintenance:\$100/wk until 11-22-98 + mortgage and carrying charges[to be fixed on remittal

Exclusive Occupancy:to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$20,000 to wife;remitted to fix expert fee

Property Distribution to Wife:50% of increased value of husbands restaurant; 50% of house

Number:755

Case:Posson v. Posson, 229 A.D.2d 690, 645 N.Y.S.2d 155 (3d Dep't 1996)

Comment:maintenance award may be based on earning capacity; Error to continue interim child support award in divorce judgment without finding award based upon fathers annual income unjust or inappropriate

Years Married:?

Ages/Income:?

Child Support:remitted

Maintenance:\$100/wk for 5 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:756

Case:Presworsky v. Presworsky, 224 A.D.2d 506, 637 N.Y.S.2d 487 (2d Dep't 1996)

Comment:improper to direct husband to pay child support (which includes shelter) and maintenance on marital residence

Years Married:18

Ages/Income:Husband \$47,940/ net; Wife \$29,781/ net

Child Support:remitted to recalculate

Maintenance:?

Exclusive Occupancy:to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:757

Case:Principe v. Principe, 229 A.D.2d 522, 644 N.Y.S.2d 1005

Comment:social Security benefits are not a pension and preempted by Federal law from EDL; settlement in age discrimination action should not be summarily included in marital property

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:remitted

Number:758

Case:Ramsey v. Ramsey, 226 A.D.2d 989, 641 N.Y.S.2d 194 (3d Dep't 1996)

Comment:Where parties "charted their own course" they can not complain about outcome

Years Married:23

Ages/Income:?

Child Support:?

Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:759

Case:Rauch v. Rauch, 226 A.D.2d 1141, 641 N.Y.S.2d 212 (4th Dep't 1996)

Comment:Wife contributed 75% of the \$250,00 the parties brought into the marriage

Years Married:8

Ages/Income:Husband \$36,000; Wife \$0

Child Support:n/a

Maintenance:none

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:65% of marital assets

Number:760

Case:Reinisch v. Reinisch, 226 A.D.2d 615, 641 N.Y.S.2d 393 (2d Dep't 1996)

Comment:Can not grant affirmative relief to third party who does not submit to jurisdiction; improper to direct husband to pay child support & contribute to college costs without provision for reduction of level of support or credit to father for amounts contributed while children live away while attending college

Years Married:?

Ages/Income:?

Child Support:\$2250/mo (2ch) + prorata share of college expenses; Obligation to pay college costs to be credited for payments of child support

Maintenance:\$2000/mo for 10 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?**Life Insurance:**for wife and ch**Counsel Fees:**\$30,000. to wife & \$1500 expert fee**Property Distribution to Wife:**25% of bonuses received by husband in 1994-1998;50% of proceeds from exercise of stock options; husband to pay loans due to wife's parents & 80% of parties credit card debt

Number:761**Case:**Rochelle G. v. Harold M.G., 170 Misc. 2d 808, 649 N.Y.S.2d 632 (Sup. Ct. 1996)**Comment:**Law practice valued by "excess earnings" method, with weighted average of earnings (value = \$2,581,760); Law license valued at \$1,547,000, by valuing license plus "enhanced earnings"; value of maintenance must be compared with earning differential used in license valuation**Years Married:**25**Ages/Income:**Husband-47 \$1,200,000; Wife-47 \$10000**Child Support:**\$2000/mo [2 Ch] + Husband agreed to pay college expenses,car etc**Maintenance:**\$15,000/mo until sale of house [not retro] then \$8500/mo"permanent"**Exclusive Occupancy:**to wife until 1 year after 14 year old begins college**Health & Medical Insurance:**no**Dental Insurance:**no**Life Insurance:**no**Counsel Fees:**\$125,000**Property Distribution to Wife:**50% (\$500,000) of home; 50% (\$415,000) of other assets plus 50% of \$2,581,760 value of husbands law firm

Number:762**Case:**Seidman v. Seidman, 226 A.D.2d 1011, 641 N.Y.S.2d 431 (3d Dep't 1996)**Comment:**Property acquired during marriage presumed to be "marital"; no credit for separate property contribution without proof of value/tracing of funds**Years Married:**18**Ages/Income:?****Child Support:?****Maintenance:?**

Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:763

Case:Selinger v. Selinger, 232 A.D.2d 471, 648 N.Y.S.2d 470 (2d Dep't 1996)

Comment:Interest is not a penalty. Where marital assets valued at date of commencement wife entitled to pre-judgment interest from that date. Distribution of \$16 million in assets not equitable where 2/3 to husband and 1/3 to wife. Where wife argued in post trial memo that assets should be valued at date of commencement she cant complain about date on appeal

Years Married:20

Ages/Income:Wife-51 \$0

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:\$6,608,459 representing 1/3 of husbands stock and options in business and 50% of remaining marital property plus prejudgment interest from date of commencement. [husband awarded \$9,371,053]

Number:764

Case:Sergeon v. Sergeant, 228 A.D.2d 354, 644 N.Y.S.2d 264 (1st Dep't 1996)

Comment:level and duration of support based on husbands earning capacity rather than actual earnings; wife not able to become self-supporting at level commensurate with marital standard of living

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:lifetime maintenance

Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:765
Case:Silbowitz v. Silbowitz, 226 A.D.2d 699, 641 N.Y.S.2d 866 (2d Dep't 1996)
Comment:non-party appellant appealed part of judgment that affected him
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:766
Case:Silver v. Akerson, 223 A.D.2d 499, 637 N.Y.S.2d 378 (1st Dep't 1996)
Comment:?
Years Married:?
Ages/Income:?
Child Support:\$1500/mo to wife
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$42,500 to wife
Property Distribution to Wife:?

Number:767

Case:Small v. Small, 227 A.D.2d 949, 643 N.Y.S.2d 842 (4th Dep't 1996)

Comment:Proper to refuse to award share of wife's enhanced earning capacity (nursing degree) where husband failed to show a substantial contribution

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:768

Case:Smith v. Smith, 227 A.D.2d 891, 643 N.Y.S.2d 274 (4th Dep't 1996)

Comment:Wife awarded 50% of husbands future enhanced earnings (computer science degree) valued by multiple of annual earnings

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:\$159,282.50 to wife + 9%

Number:769

Case:Sorrell v. Sorrell, 233 A.D.2d 387, 650 N.Y.S.2d 237 (2d Dep't 1996)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?**Exclusive Occupancy:**ordered sold**Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:**50% of marital residence

Number:770**Case:**Spencer v. Spencer, 230 A.D.2d 645, 646 N.Y.S.2d 674 (1st Dep't 1996)**Comment:**App Div can alter distributive award based on concession of error at oral argument, where no cross-appeal**Years Married:**16**Ages/Income:**Husband-81 \$75,260; Wife-68 \$13,762+**Child Support:**n/a**Maintenance:**\$350/mo "permanent"**Exclusive Occupancy:**no**Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:**\$40,939**Property Distribution to Wife:**%0% of marital property (remitted)

Number:771**Case:**Strang v. Strang, 222 A.D.2d 975, 635 N.Y.S.2d 786 (3d Dep't 1995)**Comment:**gift to husband & wife from parents of one party is "marital property"; wasteful dissipation of assets must be charged against a parties' share**Years Married:**23**Ages/Income:**Husband \$52,000; Wife \$35/wk**Child Support:**husband responsible**Maintenance:**\$100/wk to 6/30/95 or if sooner employed**Exclusive Occupancy:**title to wife**Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:**denied to wife

Property Distribution to Wife:title to marital home to wife in exchange for (\$14,120) 50% of is equity; cars distributed

Number:772

Case:Tesler v. Tesler, 228 A.D.2d 491, 644 N.Y.S.2d 316 (2d Dep't 1996)

Comment:proper to attribute and impute to husband money received from his parents

Years Married:?

Ages/Income:?

Child Support:61% of child's unreimbursed medical expenses

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:773

Case:Tumminello v. Tumminello, 234 A.D.2d 448, 651 N.Y.S.2d 166 (2d Dep't 1996)

Comment:error to rely on husbands accountants' 1982 report to determine his net worth at that date where it was admitted in evidence for limited purpose of serving as a foundation for wife's accountants testimony as to husbands stock holdings at that date

Years Married:13

Ages/Income:?

Child Support:\$350/wk

Maintenance:\$600/wk

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:remitted for new determination

Number:774

Case:Vainchenker v Vainchenker, NYLJ, 2-5-96, P. 31, Col. 2, Sup. Ct., Kings Co. (Rigler, J.)

Comment:enhanced earning capacity attributable to NY doctors license obtained by Russian doctor after undergoing training in NY is marital property

Years Married:17

Ages/Income:Husband-47 \$110,072; Wife-44 \$26,500

Child Support:\$512.42/wk [3 ch] + 79% of unreimbursed medical expenses and 79% of college expenses (wife to pay 21%)

Maintenance:\$150/wk for 3 yrs

Exclusive Occupancy:no

Health & Medical Insurance:for children

Dental Insurance:no

Life Insurance:\$200,000 for children

Counsel Fees:to be determined

Property Distribution to Wife:50% (\$126,823) of marital property

Number:775

Case:Verdrager v. Verdrager, 230 A.D.2d 786, 646 N.Y.S.2d 185 (2d Dep't 1996)

Comment:Improper to award interest at "prime rate"; improper to grant credit for overpayment of maintenance & child support pendente lite in excess of retroactive support; proper to modify judgment on appeal to correct scrivener's errors; decision controls where inconsistency between decision and judgment. May be corrected by resettlement or on appeal

Years Married:?

Ages/Income:?

Child Support:Husband directed to pay for college and law school expenses

Maintenance:for 17 years, to age 63 when wife gets social security

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:for wife to insure maintenance and child support

Counsel Fees:\$35,000

Property Distribution to Wife:?

Number:776**Case:**Votta v. Votta, 230 A.D.2d 789, 646 N.Y.S.2d 619 (2d Dep't 1996)**Comment:**"Equitable distribution presents matters of fact to be resolved by the trial court, and its distribution... should not be disturbed unless it can be shown that the court improvidently exercised its discretion."**Years Married:?****Ages/Income:?****Child Support:?****Maintenance:?****Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:?**

Number:777**Case:**Wadsworth v. Wadsworth, 219 A.D.2d 410, 641 N.Y.S.2d 779 (4th Dep't 1996)**Comment:**proper to value the husbands law partnership interest using the death benefit provision; there is no uniform method; proper to value law license by a more realistic method based upon husbands actual participation in an ongoing business enterprise rather than a method based on fictional death; improper to provide for termination of maintenance upon receipt of future event [inheritance]**Years Married:30****Ages/Income:**Husband \$228,000; Wife \$15,000?**Child Support:n/a****Maintenance:remitted****Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:remitted**

Number:778

Case:Waldmann v. Waldmann, 231 A.D.2d 710, 647 N.Y.S.2d 827 (2d Dep't 1996)

Comment:Husband failed to establish immediate need for proceeds of sale of home, that comparable housing available in same area at lower cost, or parties financially incapable of maintaining residence

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:until youngest child 18 or emancipated

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:for wife

Counsel Fees:\$3774

Property Distribution to Wife:\$?

Number:779

Case:Walker v Walker, NYLJ, 10-8-96, P. 32, Col. 1, Sup. Ct., West. Co. (Slobod,J.)

Comment:standard of living was "lavish"

Years Married:32

Ages/Income:Husband-52 \$3.5 million/ yr; Wife-52 \$0

Child Support:n/a

Maintenance:\$60,000./mo non-durational

Exclusive Occupancy:title to wife per stipulation

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:for wife to cover maintenance award [no less than \$4 million]

Counsel Fees:\$100,000 to wife

Property Distribution to Wife:50% of property not disposed of by stipulation

Number:780

Case:Walls v. Walls, 221 A.D.2d 925, 633 N.Y.S.2d 905 (4th Dep't 1995)

Comment:?

Years Married:25

Ages/Income:Husband \$50,000; Wife \$25,000

Child Support:?
Maintenance:\$50/wk
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:781
Case:Walsh v. Walsh, 226 A.D.2d 707, 641 N.Y.S.2d 704 (2d Dep't 1996)
Comment:Improper to direct payment of all carrying charges on residence until its sale without specifying the amount of each charge
Years Married:15
Ages/Income:?
Child Support:n/a
Maintenance:\$200/wk until house sold, then \$375/wk non-durational
Exclusive Occupancy:ordered sold
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$5000 to wife
Property Distribution to Wife:?

Number:782
Case:Welch v. Welch, 233 A.D.2d 921, 649 N.Y.S.2d 560 (4th Dep't 1996)
Comment:improper to give both tax exemptions to wife where both parties earning same income
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?

Counsel Fees:?
Property Distribution to Wife:?

Number:783

Case:Wilcox v. Wilcox, 233 A.D.2d 565, 649 N.Y.S.2d 222 (3d Dep't 1996)

Comment:not abuse of discretion to deny counsel fee where parties income approximately equal and marital debt exceeds marital assets

Years Married:13

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:denied

Property Distribution to Wife:?

Number:784

Case:Wilson v. Wilson, 226 A.D.2d 711, 641 N.Y.S.2d 703 (2d Dep't 1996)

Comment:Where child support not awarded until sometime after commencement of action, retroactive support should be based on the parties income for each year that support is awarded

Years Married:?

Ages/Income:?

Child Support:\$155/wk (1 ch) retroactive to date of commencement

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$2000 to wife

Property Distribution to Wife:?

Number:785

Case:Winnie v. Winnie, 229 A.D.2d 677, 645 N.Y.S.2d 167 (3d Dep't 1996)

Comment:all assets acquired after Husband abandoned home 18 years before action awarded husband, except wife awarded 40% of pension and increased maintenance for being sole homemaker and child rearer

Years Married:32

Ages/Income:Husband-55 \$50,000; Wife-55 \$42.10/mo

Child Support:n/a

Maintenance:\$200/wk

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:40% of husband's pension

Number:786

Case:Allsopp v. Allsopp, NYLJ, 12-12-97, p.32, col. 4, (Sup,Ct, Kings Co., Harkavy, J.)

Comment:parties to share child's educational costs

Years Married:19

Ages/Income:Husband \$47,500; Wife \$43,500.00

Child Support:\$260/wk (3 ch); each parent to pay 50% of children's private

Maintenance:none

Exclusive Occupancy:to wife until youngest child completes elementary school

Health & Medical Insurance:none

Dental Insurance:none

Life Insurance:none

Counsel Fees:denied

Property Distribution to Wife:none

Number:787

Case:Amara v. Amara, 243 A.D.2d 433, 662 N.Y.S.2d 595 (2d Dep't 1997)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:to wife
Property Distribution to Wife:pension to wife

Number:788
Case:Baker v. Baker, 240 A.D.2d 911, 659 N.Y.S.2d 123 (3d Dep't 1997)
Comment:plaintiff permanently and totally disabled
Years Married:25
Ages/Income:Husband \$64,500; Wife \$1,300
Child Support:n/a
Maintenance:\$1,350/mo permanent terminable on death, remarriage or receipt of share of husband's pension
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$3000 pendente lite
Property Distribution to Wife:?

Number:789
Case:Basos v. Basos, 243 A.D.2d 932, 663 N.Y.S.2d 387 (3d Dep't 1997)
Comment:generally, absent unusual circumstances, the marital residence should be sold following the judgment of divorce
Years Married:41
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:equal distribution

Number:790

Case:Boughton v. Boughton, 239 A.D.2d 935, 659 N.Y.S.2d 607 (4th Dep't 1997)

Comment:improper to calculate maintenance based solely on pre-divorce standard of living; must consider all of the factors in DRL 236(B)(6)(a)(1) to (11)

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$80 a week "lifetime" maintenance

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:791

Case:Brown v. Brown, 239 A.D.2d 535, 657 N.Y.S.2d 764 (2d Dep't 1997)

Comment:proper to impute income of \$100,000 to husband based on his testimony as to his earnings during the 3 years prior to the commencement of the action of \$107,000, \$143,000 and \$146,000

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:792

Case:Cameron v. Cameron, 238 A.D.2d 925, 661 N.Y.S.2d 113 (4th Dep't 1997)

Comment:trial court did not err in failing to include wife's receipt of either Social Security benefits or disability payments through Social Security Supplemental Income as events that would automatically terminate maintenance, but husband was entitled to credit, to be paid from proceeds of sale of marital residence, for withdrawal made by wife from joint line of credit without husband's knowledge or consent

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:to wife

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:to wife

Property Distribution to Wife:?

Number:793

Case:Carney v. Carney, 236 A.D.2d 574, 653 N.Y.S.2d 696 (2d Dep't 1997)

Comment:Proper to determine pension is marital property where defendant fails to present expert evidence as to disability portion of pension; proper exercise of discretion to permit husband to move to reopen trial on this issue; error not to make child support retroactive

Years Married:?

Ages/Income:Husband ?; Wife \$35,000

Child Support:\$210 bi-weekly to husband retroactive to date of application (date of amended answer requesting child support)

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of husband's police disability pension

Number:794

Case: Chiafari v Chiafari, NYLJ, 5-22-97, p.34, col.1, (Sup.Ct. Kings Co., Harkavy, J.)

Comment:?

Years Married: 21

Ages/Income: Husband-59 \$3000/yr; Wife-52

Child Support: n/a

Maintenance: husband's request denied

Exclusive Occupancy: n/a

Health & Medical Insurance: no

Dental Insurance: no

Life Insurance: no

Counsel Fees: none

Property Distribution to Wife: \$401,052

Number: 795

Case: Ciulla v. Ciulla, 237 A.D.2d 556, 655 N.Y.S.2d 632 (2d Dep't 1997)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife: 50% of net proceeds of sale of marital residence after each party obtains separate property contributions

Number: 796

Case: Coccetti v. Coccetti, 236 A.D.2d 506, 654 N.Y.S.2d 620 (2d Dep't 1997)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?

Maintenance: \$200/wk for six years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:denied

Property Distribution to Wife:remitted for further proceedings with regard to the distribution of the wife's pension

Number:797

Case:Cook v. Cook, 237 A.D.2d 891, 656 N.Y.S.2d 1000 (4th Dep't 1997)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$2500/mo for 4 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of marital property

Number:798

Case:Cymes v. Cymes, 235 A.D.2d 312, 653 N.Y.S.2d 4 (1st Dep't 1997)

Comment:proper to impute income to wife based upon her failure to disclose required financial information

Years Married:?

Ages/Income:?

Child Support:wife to pay

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:wife to pay

Property Distribution to Wife:?

Number:799

Case:Daniels v. Daniels, 243 A.D.2d 254, 663 N.Y.S.2d 141 (1st Dep't 1997)

Comment:credit for \$231,563 for voluntary support payments during litigation exceeded support award

Years Married:10 mo.

Ages/Income:?

Child Support:n/a

Maintenance:\$10,000/mo for 20 months retroactive to date of motion for pendente lite relief

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:to wife

Property Distribution to Wife:?

Number:800

Case:De Marco v. De Marco, 235 A.D.2d 1014, 652 N.Y.S.2d 898 (3d Dep't 1997)

Comment:unrealistic to expect wife will be able to maintain pre-divorce standard of living without financial assistance from husband

Years Married:24

Ages/Income:Husband-49 \$72,200; Wife-47 \$0

Child Support:n/a

Maintenance:\$1000/mo until 10/1/97, then \$750/mo for 2 yrs, then \$500/mo until husband reaches age 65, or the wifes death or remarriage

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:801

Case:Dempster v. Dempster, 236 A.D.2d 582, 654 N.Y.S.2d 653 (2d Dep't 1997)

Comment:There is no uniform rule for fixing value of going business for equitable distribution purposes; Determinations of 4th Department in Dempster v Dempster, 204 AD2d 1070, is law of the case; Distributive award is sufficient to enable wife to pay her attorney and expert fees

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:for wife (lifetime)

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:None

Property Distribution to Wife:\$2,092,000 + interest at 9% (for 50% of husbands business); \$75,000 representing 50% of loan from husbands business he used to buy condominium

Number:802

Case:Donohue v. Donohue, 239 A.D.2d 543, 658 N.Y.S.2d 975 (2d Dep't 1997)

Comment:error not to require each party to pay share of reasonable health care expenses for the children

Years Married:?

Ages/Income:?

Child Support:\$126.00/wk and 73% of future reasonable health care expenses of the children not covered by insurance

Maintenance:denied

Exclusive Occupancy:?

Health & Medical Insurance:denied to wife

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:803

Case:Dugan v. Dugan, 238 A.D.2d 741, 656 N.Y.S.2d 769 (3d Dep't 1997)

Comment:purchase price of realty close to commencement of action can support a finding of value; each party to retain individually titled assets; 66% of pooled assets to wife

Years Married:10
Ages/Income:?
Child Support:n/a
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:not warranted
Property Distribution to Wife:66% of “pooled assets” (marital residence and vacant lot)

Number:804
Case:Ellis v. Ellis, 235 A.D.2d 1002, 653 N.Y.S.2d 180 (3d Dep’t 1997)
Comment:correct method to compute appreciated value of stock
Years Married:11
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:awarded to wife
Property Distribution to Wife:\$5088

Number:805
Case:Ellman v. Ellman, NYLJ, 12-12-97, p.34. col 2, (Sup. Ct, Nassau Co., Joseph, J.)
Comment:3rd marriage for each
Years Married:14
Ages/Income:?
Child Support:n/a
Maintenance:none
Exclusive Occupancy:no
Health & Medical Insurance:none
Dental Insurance:none
Life Insurance:none

Counsel Fees:none

Property Distribution to Wife:equal division of marital property

Number:806

Case:Fasano v. Fasano, 237 A.D.2d 558, 655 N.Y.S.2d 987 (2d Dep't 1997)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:9000

Property Distribution to Wife:?

Number:807

Case:Feeney v. Feeney, 241 A.D.2d 510, 661 N.Y.S.2d 26 (2d Dep't 1997)

Comment:80% of marital property awarded to husband

Years Married:29

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$1500 to wife

Property Distribution to Wife:\$52,311

Number:808

Case:Ferdinando v. Ferdinando, 236 A.D.2d 585, 654 N.Y.S.2d 652 (2d Dep't 1997)

Comment:wife awarded 75% of value of former marital residence in view of wasteful dissipation of marital assets by husband

Years Married:?
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:809

Case:Finkelson v. Finkelson, 239 A.D.2d 174, 657 N.Y.S.2d 629
(1st Dep't 1997)

Comment:?

Years Married:17

Ages/Income:?

Child Support:to wife (2 ch)

Maintenance:to wife

Exclusive Occupancy:title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:to wife

Property Distribution to Wife:marital property divided
equally

Number:810

Case:Fraley v. Fraley, 235 A.D.2d 997, 652 N.Y.S.2d 889 (3d
Dep't 1997)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$100/wk for 7 yrs

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:denied
Property Distribution to Wife:?

Number:811

Case:Frei v. Pearson, 244 A.D.2d 454, 664 N.Y.S.2d 349 (2d Dep't 1997)

Comment:no appeal lies from Findings of Fact and Conclusions of law; error to fix child support without considering deductions for NYC tax, FICA and spousal maintenance; must pro-rate uninsured health care expenses; in making award for educational or college expenses, must consider need of parent to maintain a separate household and have money to live on after child support and maintenance paid

Years Married:?

Ages/Income:?

Child Support:remitted for new determination (3 ch)

Maintenance:\$1400/mo from 3/8/98 to 12/31/2000; then \$500/mo for six years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:812

Case:Gearns v Gearns, NYLJ, 2-5-97, p.26, col.3, (Sup.Ct.,NY Co., Saxe,J.)

Comment:?

Years Married:41

Ages/Income:Husband-69; Wife-65

Child Support:n/a

Maintenance:none

Exclusive Occupancy:title to wife

Health & Medical Insurance:no

Dental Insurance:no

Life Insurance:no

Counsel Fees:no

Property Distribution to Wife:50% of marital estate worth \$2,541,063

Number:813

Case:Geisel v. Geisel, 241 A.D.2d 442, 659 N.Y.S.2d 511 (2d Dep't 1997)

Comment:although H was able to trace Vanguard account and GM stock, by placing assets in both parties names as joint tenants with right of survivorship H evinced on intent to transform the character of the property from separate to martial

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:to wife

Property Distribution to Wife:?

Number:814

Case:George v. George, 237 A.D.2d 894, 656 N.Y.S.2d 1016 (4th Dep't 1997)

Comment:farm valued at date of commencement of action

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:to wife

Property Distribution to Wife:?

Number:815

Case:Gittelsohn v. Gittelsohn, 236 A.D.2d 588, 654 N.Y.S.2d 683 (2d Dep't 1997)

Comment:appeal held in abeyance; remanded to trial court for further findings and expanded decision; court given permission to take further proof

Years Married:?

Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:816

Case:Gustard v Gustard, NYLJ, 8-1-97, p. 25, col. 5, (Sup.Ct., Kings Co., Douglass,J.)

Comment:parties were separated since 1980; wife awarded entire proceeds of sale of house when husband never contributed to the house, the mortgage or child support

Years Married:27

Ages/Income:Husband \$31,000/YR; Wife \$1500/MO

Child Support:\$135/WK (2 ch)

Maintenance:none

Exclusive Occupancy:n/a

Health & Medical Insurance:no

Dental Insurance:no

Life Insurance:no

Counsel Fees:no

Property Distribution to Wife:entire proceeds of sale of house

Number:817

Case:Harris v. Harris, 242 A.D.2d 558, 662 N.Y.S.2d 532 (2d Dep't 1997)

Comment:While a judge who did not preside over a trial may not render a decision thereon, the parties may stipulate that another judge can do so based on the trial transcripts and records; wife awarded 10% of value of husband's dental practice based on short duration of marriage and wife's minimal contribution to practice; improper to exclude \$1,000 for car lease payments deducted by the husband as a business expense from his income for the purpose of determining child support

Years Married:8

Ages/Income:?

Child Support:\$225.07/week (1 ch)

Maintenance:to wife
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:\$300,000.00 for child
Counsel Fees:?
Property Distribution to Wife:?

Number:818
Case:Junkins v. Junkins, 238 A.D.2d 480, 656 N.Y.S.2d 650 (2d Dep't 1997)
Comment:error to fail to include rental income in calculating child support; error to fail to add reasonable child care expenses to "BCSO"; tax exemption for two children should be split evenly; proper to impute \$40,000 of income to wife; BCSO = Basic child support obligation
Years Married:?
Ages/Income:?
Child Support:remitted for new determination; husband to pay pro rata share of reasonable health care expenses not covered by insurance
Maintenance:denied
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:819
Case:Justino v. Justino, 238 A.D.2d 549, 657 N.Y.S.2d 79 (2d Dep't 1997)
Comment:child support to be reduced and credited toward college costs when child[ren] living away from home while attending college; error not to do so)
Years Married:7
Ages/Income:?
Child Support:\$440/wk per stipulation plus proportionate share of college expenses
Maintenance:\$200/wk for six years and supplemental maintenance of \$50/wk

Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:820

Case:Kaprelian v. Kaprelian, 236 A.D.2d 369, 653 N.Y.S.2d 634 (2d Dep't 1997)

Comment:testimony of actuarial expert as to valuation of husband's annuity precluded where wife never responded to CPLR 3101(d) demand and did not inform husband until after trial began that she would proffer expert. Counsel represented that valuation would not be contested. No reasonable excuse for delay. Experts fees for actuary vacated

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$300/wk lifetime

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:remitted for new determination

Property Distribution to Wife:?

Number:821

Case:Lee v. Chan, 245 A.D.2d 270, 664 N.Y.S.2d 828 (2d Dep't 1997)

Comment:counsel fees are "nonetheless to be controlled by the equities of the case and the financial situation of the parties"

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:denied to husband
Property Distribution to Wife:50% of marital property

Number:822

Case:Laino v. Laino, 236 A.D.2d 247, 654 N.Y.S.2d 292 (1st Dep't 1997)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:to plaintiff wife

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:823

Case:Lapham v. Ruffin, 241 A.D.2d 969, 661 N.Y.S.2d 373 (4th Dep't 1997)

Comment:husband receiving unemployment insurance; teaching certification in mathematics is a marital asset; error not to award child support retroactive to date of application(answer); credit card incentive that was redeemable only in form of discount on purchase or lease of specific manufacturer's vehicle could not be divided equally between parties

Years Married:12

Ages/Income:Husband \$300/wk; Wife \$80,000/yr

Child Support:remitted for determination

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:equal distribution of marital property

Number:824

Case:Lawton v. Lawton, 239 A.D.2d 866, 659 N.Y.S.2d 644 (4th Dep't 1997)

Comment:Appellate Division directs that husband pay counsel fee's generated by the Appeal; good cause established under 22 NYCRR 202.48(b) for 17 day delay in submitting divorce judgment; arguments raised for the first time on appeal and contrary to arguments raised before trial court are not properly before Appellate Division

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:825

Case:Lazarus v. Lazarus, 240 A.D.2d 544, 659 N.Y.S.2d 59 (2d Dep't 1997)

Comment:judgment of divorce did not make equitable distribution, and subsequent judgment made equitable distribution but no divorce. They are not defective: Busa, 196 AD2d 267; Sullivan, 174 AD2d 862 (3rd Dept)

Years Married:18

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:826

Case:L'Esperance v. L'Esperance, 243 A.D.2d 446, 663 N.Y.S.2d 95 (2d Dep't 1997)

Comment:determination of factfinder as to value of a going business, if within the range of testimony presented will not be disturbed on appeal if it rests primarily on the credibility of expert witnesses and their valuation techniques

Years Married:19

Ages/Income:?

Child Support:?

Maintenance:\$1500/mo for 10 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:40% of business worth \$1,950,000

Number:827

Case:Lester v. Lester, 237 A.D.2d 872, 654 N.Y.S.2d 528 (4th Dep't 1997)

Comment:error to fail to make support awards retroactive to date of defendant's application; subject to credit for voluntary payments; interest of 1% over prime awarded on pay-out of distributive award; abuse of discretion to impose a 4 hour time limit on cross examination of husband; such error doesn't require reversal

Years Married:?

Ages/Income:Husband-?; Wife-38

Child Support:remitted for factors considered and reasons for the determination

Maintenance:for 3 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:for children

Counsel Fees:?

Property Distribution to Wife:25% of value of her total interest in a business and 25% of value of husbands interest in a real estate partnership, paid out over 10 yrs

Number:828

Case:Lester v. Lester, 237 A.D.2d 872, 654 N.Y.S.2d 528 (4th Dep't 1997)

Comment:father authorized to declare all 3 children as his dependents for income tax purposes. Improper to direct payment of child support and contribution to college expenses without reducing level of child support or give credit to father for amount contributed to college costs when children away from home

Years Married:?

Ages/Income:?

Child Support:\$2900 mo + pro-rata share of twins college expense less credit for one half of child support for each child away from home at college

Maintenance:\$100/wk for five years

Exclusive Occupancy:to wife until twins 18 or emancipated

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:829

Case:Lukacs v. Lukacs, 238 A.D.2d 483, 657 N.Y.S.2d 191 (2d Dep't 1997)

Comment:proper to award wife portion of appreciation in value of husbands one-third interest in a building and direct that he purchase it at Fair market value to be established by appraisal or agreement within 90 days after date of judgment and that his interest be sold and the wife receive her share from proceeds; parties failed to offer any evidence of current value of business

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:830

Case:Magnotta v. Magnotta, 239 A.D.2d 320, 657 N.Y.S.2d 992
(2d Dep't 1997)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of marital residence and
25% of the remaining marital assets

Number:831

Case:Magnus v Magnus, NYLJ, 8-21-97, p.27, col.4, (Sup. Ct.,
Suffolk Co., Gazzillo, J.)

Comment:credit to husband for 40% of mortgage and utilities
he voluntarily paid during pendency of action

Years Married:28

Ages/Income:Husband-50; Wife-47 \$747/WK

Child Support:n/a

Maintenance:\$250/wk for 3 yrs. from date of divorce judgment

Exclusive Occupancy:to be sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:832

Case:Maraham v Maraham, NYLJ 12-15-97, P.26, Col 2 (1st
Dept, 1997)

Comment:Penalizing party in division of property is appropriate where his egregious economic misconduct has prevented the court from making an equitable distribution (by secreting assets and squandering money); interest on judgment from date of entry is for use of another's money, not a penalty. Date of commencement is appropriate valuation date notwithstanding another judges pre-trial ruling; App Div not bound by law of the case and no request for same at trial

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:833

Case:Matisoff v. Dobi, 242 A.D.2d 495, 663 N.Y.S.2d 526 (1st Dep't 1997)

Comment:?

Years Married:?

Ages/Income:?

Child Support:n/a

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:40% to wife

Property Distribution to Wife:40% of husbands entire earning potential of \$2,827,812

Number:834

Case:McCallum v. McCallum, 237 A.D.2d 891, 654 N.Y.S.2d 522 (4th Dep't 1997)

Comment:error to refuse to apportion repayment of debt incurred for payment of marital expenses

Years Married:10

Ages/Income: Husband \$37,000/yr; Wife ?
Child Support:?
Maintenance: \$200/mo for 2 years
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife: each party directed to pay one-half of marital debt

Number: 835
Case: Morgan v. Allen, NYLJ, 8-7-97, p.33, Col.2, (Sup. Ct., Rockland Co., Miller, J.)
Comment: void marriage does not preclude equitable distribution of marital property acquired during period of void marriage; no distribution of assets acquired after parties separation 13 years ago
Years Married:?
Ages/Income: Husband \$500,000; Wife \$57,000
Child Support: n/a
Maintenance: none
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife: \$56764 (40% of 13% of value of husband's business) and her teacher's license

Number: 836
Case: Musacchio v. Musacchio, NYLJ, 7-31-97, p.25, col. 4 (Sup Ct., Kings Co., Harkavy, J.)
Comment: equal distribution of marital property
Years Married: 26
Ages/Income: Husband-50; Wife-49
Child Support:?
Maintenance: \$200/week for 4 yrs, then \$100/ week for 4 years
Exclusive Occupancy: to wife
Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of marital property

Number:837

Case:Mutt v. Mutt, 242 A.D.2d 612, 662 N.Y.S.2d 133 (2d Dep't 1997)

Comment:not error to distribute 100% of the parties' interest in residence to plaintiff, where second marriage for both parties, both owned homes before they wed, entire down payment, which represented a substantial share of the purchase price, came from plaintiff's separate property

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:husband to pay 1/2 of fee for valuing marital assets

Property Distribution to Wife:50% of value of business started after marriage by husband

Number:838

Case:Nee v. Nee, 240 A.D.2d 478, 658 N.Y.S.2d 440 (2d Dep't 1997)

Comment:Maintenance reduced where husband was paying \$9,137.84 per year in child support and wife received considerable assets from the distributive award. Not improvident exercise of discretion to value defendant's pension as of date of commencement of his divorce action as opposed to date previous, discontinued divorce action between the parties was commenced. Considering disparity in the incomes of the parties and defendant's tactics, which unnecessarily prolonged litigation, it was appropriate to require defendant to pay plaintiff's counsel fees

Years Married:?

Ages/Income:Husband \$72,000; Wife ?

Child Support:\$9137/year

Maintenance:\$500/month for 5 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:remitted for hearing

Property Distribution to Wife:?

Number:839

Case:O'Shea v. O'Shea, 237 A.D.2d 499, 655 N.Y.S.2d 982 (2d Dep't 1997)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$2500/mo until wife age 65, dies or remarries

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:yes—to secure maintenance

Counsel Fees:to wife

Property Distribution to Wife:?

Number:840

Case:Palazzolo v. Palazzolo, 242 A.D.2d 688, 663 N.Y.S.2d 58 (2d Dep't 1997)

Comment:until the contrary is established, the entire disability pension is marital property

Years Married:13

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of marital portion of husband's disability pension

Number:841

Case:Parker v. Parker, 240 A.D.2d 554, 659 N.Y.S.2d 790 (2d Dep't 1997)

Comment:Husband's claims for his separate property contributions were not established by clear and convincing evidence

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$1,000/mo for 8 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$22,500

Property Distribution to Wife:?

Number:842

Case:Petek v. Petek, 239 A.D.2d 327, 657 N.Y.S.2d 738 (2d Dep't 1997)

Comment:Error to calculate child support based on imputed income of \$30,000 per year, as the calculation of the party's earning potential must have some basis in law and fact. Error to award defendant retroactive credits as a result of a downward modification of his pendente lite maintenance and child support obligations. A downward modification may operate only prospectively

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:843

Case:Pelletier v. Pelletier, 662 N.Y.S.2d 64 (App. Div. 2d Dep't 1997)

Comment:pension established during the marriage is marital property

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of marital portion of husband's pension

Number:844

Case:Petek v. Petek, 239 A.D.2d 327, 657 N.Y.S.2d 738 (2d Dep't 1997)

Comment:In computing income on the basis of a parties earning potential, the calculation must have some basis in law or in fact; downward modification of pendente lite support may only operate prospectively; not entitled to credit for overpayment; no basis to award law guardian a future retainer

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:remitted for hearing

Property Distribution to Wife:?

Number:845

Case:Philippou v. Philippou, NYLJ, 11-18-97, p.30, col 2, (Sup Ct, Nassau Co., O'Connell, J.)

Comment:Husband's medical practice as an independent contractor at a hospital is a marital asset; court used income of \$200,000 to fix child support reducing earnings in excess of \$210,000 to current asset value

Years Married:14

Ages/Income:Husband \$400,000; Wife ?

Child Support:\$75,000.00 (2 ch.)

Maintenance:none

Exclusive Occupancy:to be determined

Health & Medical Insurance:no

Dental Insurance:no

Life Insurance:none

Counsel Fees:?

Property Distribution to Wife:wife awarded \$135,000.00 in eight payments for her share of medical practice and 50% (\$127,938) of marital assets

Number:846

Case:Reczek v. Reczek, 239 A.D.2d 867, 659 N.Y.S.2d 641 (4th Dep't 1997)

Comment:Where there is an award of maintenance, the court is obligated to reduce the value of the enhanced earnings by the amount awarded in maintenance. Not to do so would involve a double counting of the same income; interest from judgment on payout of distributive award over 7 years

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:\$42,178.70 representing her 35% equitable share of husband's enhanced earnings by virtue of his doctoral degree as reduced by his enhanced maintenance award of \$100,800.00 and the husband's 25% equitable share of his earnings attributed to the wife's degree in Nursing

Number:847

Case:Rheinheimer v. Rheinheimer, 235 A.D.2d 742, 652 N.Y.S.2d 410 (3d Dep't 1997)

Comment:No requirement that “equitable be equal”; Proper to attribute \$300/wk income to husband for business he voluntarily discontinued at time action commenced and rental income he could have earned had he rented an apartment he claimed was vacant

Years Married:?

Ages/Income:?

Child Support:awarded

Maintenance:\$200/wk non-durational

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:60% of the marital property

Number:848

Case:Sangiorgio v. Sangiorgio, 173 Misc. 2d 625, 662 N.Y.S.2d 220 (Sup. Ct. 1997)

Comment:veterinarian practice valued by value to another professional; wife awarded 1/2 of value; wife is prohibited by law from being a partner in husband’s professional service corporation

Years Married:17

Ages/Income:?

Child Support:\$1,588/mo and (2 ch.) provide health insurance for the children and pay for the elementary school tuition of his daughter, as well as his pro-rata share of the unreimbursed medical expenses. The father was also directed to pay pro-rata college tuition for the two daughters, limited by the tuition then charged by the State or City Universities of New York

Maintenance:\$200/wk non-durational

Exclusive Occupancy:no

Health & Medical Insurance:for children

Dental Insurance:no

Life Insurance:no

Counsel Fees:none

Property Distribution to Wife:\$163,958 which represented 1/3 of the assets at the date of commencement (1997) and payable over 15 years at 9%

Number:849

Case:Schadoff v. Schadoff, 244 A.D.2d 473, 665 N.Y.S.2d 917 (2d Dep't 1997)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$200/wk for 600 weeks then \$300 week permanent

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:denied

Property Distribution to Wife:?

Number:850

Case:Schwartz v. Schwartz, 235 A.D.2d 468, 652 N.Y.S.2d 616 (2d Dep't 1997)

Comment:determination that husband forfeited right to distributive award by his conduct involving granting of get does not constitute impermissible interference with religion

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:851

Case:Tissot v. Tissot, 243 A.D.2d 462, 662 N.Y.S.2d 599 (2d Dep't 1997)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$150/mo to husband
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:852

Case:Vail-Beserini v. Beserini, 237 A.D.2d 658, 654 N.Y.S.2d 471 (3d Dep't 1997)

Comment:App.Div. determined value of medical practice do novo; must add in salaries and pension contribution; marital funds used to pay off the debt on separate property are to be credited to the marital estate only where the indebtedness was the result of expenditure for improvement or reimbursement to the separate property

Years Married:10

Ages/Income:?

Child Support:n/a

Maintenance:\$4500/mo for 4 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$85,000 and \$24,194 expert witness fees

Property Distribution to Wife:40% of increased value of husbands medical practice totalling \$292,000; IRA worth \$104,000. horse farm worth \$182,000; 40% (\$29,110) of value of annuity policy; 40% (\$57,382) of limited partnership and real estate interests

Number:853

Case:Vainchenker v. Vainchenker, 242 A.D.2d 620, 662 N.Y.S.2d 545, 121 Ed. Law Rep. 288 (2d Dep't 1997)

Comment:enhanced earning capacity attributed to Russian doctors New York medical license is marital property; husband to pay pro rata share of eldest child's college expenses, with provision for reduction of child support

Years Married:19

Ages/Income:?

Child Support:\$554/wk, except when older child away at college and husband is paying child support 1/3 to be credited towards his contribution for the college costs. Husband obligated for pro-rata share of oldest child's college expenses. (3 ch.)

Maintenance:no

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of marital property

Number:854

Case:Weisfelner v. Weisfelner, 244 A.D.2d 480, 665 N.Y.S.2d 916 (2d Dep't 1997)

Comment:?

Years Married:?

Ages/Income:?

Child Support:\$207/wk

Maintenance:\$257/wk for seven years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:855

Case:Zaremba v. Zaremba, 237 A.D.2d 351, 654 N.Y.S.2d 176 (2d Dep't 1997)

Comment:trial court justified in imputing income to husband; court permitted to draw inferences favorable to wife by reason of husband's failure to disclose information critical to assessment of his finances; children are entitled to share in standard of living parents are capable of providing; proper to base child support on income in excess of \$80,000 where no extraordinary circumstances are present

Years Married:?

Ages/Income:Husband \$152,254/yr; Wife ?

Child Support:\$3097/mo

Maintenance:\$2000/mo for 9 yrs

Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:856

Case:Almond v. Almond, 247 A.D.2d 862, 668 N.Y.S.2d 299 (4th Dep't 1998)

Comment:not error to direct husband to convey real property to wife where she carried costs of maintaining it and attempted to prevent it's foreclosure, while defendant exploited it

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:857

Case:Amisson v. Amisson, 251 A.D.2d 274, 672 N.Y.S.2d 801 (2d Dep't 1998)

Comment:proper to refuse to distribute value of social work license and practice where defendant failed to prove the assets value to afford the court a sufficient basis upon which to make a distributive award. Proper to reduce "income" by maintenance obligation in computing child support obligation.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?
Property Distribution to Wife:?

Number:858
Case:Anonymous v. Anonymous, NYLJ, 1-27-98, P.26, Col.6, Sup Ct, NY County (Diamond, J.)
Comment:requires party seeking Equitable Distribution to establish "contributions" to marriage; husband failed to prove value of wife's business
Years Married:16
Ages/Income:Husband-54; Wife-65
Child Support:N/A
Maintenance:Husband's request denied
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:859
Case:Avramis v. Avramis, 245 A.D.2d 585, 664 N.Y.S.2d 885 (3d Dep't 1997)
Comment:marital estate \$9.4 million
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:none
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:\$4 million

Number:860
Case:Baiera v. Baiera, 248 A.D.2d 341, 669 N.Y.S.2d 846 (2d Dep't 1998)
Comment:wife entitled to credit for separate non-marital funds she spent for home improvements]

Years Married:?
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:861

Case:Granade-Bastuck v. Bastuck, 249 A.D.2d 444, 671 N.Y.S.2d 512 (2d Dep't 1998)

Comment:error to fail to direct wife to pay her share of child's unreimbursed future reasonable health care expenses; premature to direct husband to set up account for child's college education where college 10 yrs away; distributive share of law practice reduced where wives' role in husband's career is minimal

Years Married:11

Ages/Income:?

Child Support:remitted for new determination

Maintenance:\$5000 a month for 4 yrs.

Exclusive Occupancy:?

Health & Medical Insurance:for child

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:25% of husband's law practice; 50% of other marital property

Number:862

Case:Bistran v. Bistran, 176 Misc. 2d 556, 672 N.Y.S.2d 976 (Sup. Ct. 1998)

Comment:\$7500 automobile expense imputed as income where husband had frequent use of employers pickup truck; court refused to impute income where both parties were subsidized by largess of their respective parents

Years Married:9

Ages/Income:Husband \$981/wk;Wife ?

Child Support:332/wk [2 children] until maintenance ends than 57/wk

Maintenance:\$100/wk for 3 years

Exclusive Occupancy:no

Health & Medical Insurance:yes

Dental Insurance:no

Life Insurance:yes

Counsel Fees:no

Property Distribution to Wife:50% of IRA and cash in safe deposit box

Number:863

Case:Boyle v Boyle, __AD2d__, __NYS2d__, NYLJ, 11-20-98, P. 27, Col 4

Comment:an appeal from only part of judgment constitutes a waiver of the right to appeal from other parts of the judgment

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:15% of the marital assets

Number:864

Case:Brugge v. Brugge, 245 A.D.2d 1113, 667 N.Y.S.2d 180 (4th Dep't 1997)

Comment:Interspousal gifts made during the marriage constitute marital property subject to Equitable Distribution; by establishing that joint bank account was used only as a conduit wife rebutted presumption that by depositing funds into joint account separate property was transmuted into marital property

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:865
Case:Campise v. Campise, 250 A.D.2d 565, 671 N.Y.S.2d 980 (2d Dep't 1998)
Comment:child support should have been awarded as of date of entry of judgment
Years Married:?
Ages/Income:?
Child Support:\$50 wk (2 ch) custody to husband
Maintenance:none
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:866
Case:Carney v. Carney, 248 A.D.2d 163, 669 N.Y.S.2d 577 (1st Dep't 1998)
Comment:award made in proceeding to modify judgment of divorce; non-disability portion of pension available for equitable distribution
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:20% of defendant's military retirement benefits retroactive to date of original judgment of divorce in 1982

Number:867

Case:Chitayat v. Chitayat, 247 A.D.2d 573, 669 N.Y.S.2d 223 (2d Dep't 1998)

Comment:Premature to direct payment of college expenses where oldest child is 11 years old at time of trial

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$800/wk for 5 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:one third of appreciation of value during marriage of husband's closely held separate property corporation

Number:868

Case:Cowles v. Stahmer, 255 A.D.2d 103, 679 N.Y.S.2d 607 (1st Dep't 1998)

Comment:25% of appreciation of defendant's separate assets was marital property; wife awarded pre-judgment interest from valuation date

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:500/month until age 65

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$115,000 -

Property Distribution to Wife:\$924,216 -

Number:869

Case:Dean v. Dean, NYLJ, 7-31-98, P.24, Col.1 Sup Ct, Kings Co

Comment:constructive trust imposed on former marital home whose title was held by mother in law

Years Married:?**Ages/Income:**Husband \$50,350/yr; Wife5,300/yr**Child Support:**97.44 (2 ch) bi-weekly plus 66% of uncovered health insurance**Maintenance:?****Exclusive Occupancy:**to wife until youngest child 21 or emancipated**Health & Medical Insurance:**for children**Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:**50% of net proceeds of sale of marital home

Number:870**Case:**Deutch v Deutch, NYLJ, 10-5-98, P. 26. Col. 3 (1st Dept, 1998)**Comment:?****Years Married:?****Ages/Income:?****Child Support:?****Maintenance:**\$750/wk for 5 years plus payment of rent and utilities for the marital apartment.**Exclusive Occupancy:**to wife**Health & Medical Insurance:**no**Dental Insurance:**no**Life Insurance:**no**Counsel Fees:**\$75000 to wife**Property Distribution to Wife:**husbands pension worth \$190,000 (QDRO)

Number:871**Case:**Ehlinger v. Ehlinger, 174 Misc. 2d 344, 664 N.Y.S.2d 401 (Sup. Ct. 1997)**Comment:**constructive trust on wife's residence where husband paid off mortgage and she remortgaged it**Years Married:?****Ages/Income:**Husband-51 \$125,000/yr; Wife-41 ?**Child Support:?****Maintenance:?**

Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:872
Case:Fierman v. Fierman, NYLJ, 1-5-98, P.26, Col.4, Sup Ct, West Co, (Barone, J.)
Comment:wife unwilling to become employed or vocationally rehabilitated
Years Married:?
Ages/Income:Husband 70,000/yr; Wife-39 ?
Child Support:\$24,116/ child to be reduced by 50% when child away at college
Maintenance:\$1000/mo for 8 years
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:25% (25,000) of appreciation of husband's separate business; 50% (\$163,000) of marital portion of residence; 50% of other marital property

Number:873
Case:Flynn v. Flynn, 244 A.D.2d 993, 664 N.Y.S.2d 966 (4th Dep't 1997)
Comment:where maintenance is not retroactive to date of application, no credit to husband for payments of temporary maintenance]
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:\$120/wk for 4 years from Judgment
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?

Counsel Fees:?**Property Distribution to Wife:\$18000**

Number:874**Case:**Gadonski v. Gadonski, 664 NYS2d 885 (3rd Dept, 1997)**Comment:**wasteful dissipation of marital assets by investing in highly speculative stock and refusing to sell, despite evidence value was declining; no basis to support argument that experts conclusions were based on incomplete factual information where the husband failed to provide information**Years Married:?****Ages/Income:?****Child Support:?****Maintenance:**\$200/wk for 5 years**Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:****Life Insurance:?****Counsel Fees:**remitted for hearing**Property Distribution to Wife:**\$600,000 paid over 10 years; 5,000 for husband's waste of assets

Number:875**Case:**Gina v. Gina, 248 A.D.2d 353, 669 N.Y.S.2d 831 (2d Dep't 1998)**Comment:**error to make maintenance award, which was less than amount of prior spousal support order, retroactive to date of commencement of action**Years Married:?****Ages/Income:?****Child Support:?****Maintenance:**\$20/mo**Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:?**

Number:876

Case:Goldman v. Goldman, 248 A.D.2d 590, 670 N.Y.S.2d 521 (2d Dep't 1998)

Comment:remitted for redetermination of child support where court failed to make findings as to income over \$80,000.00

Years Married:?

Ages/Income:?

Child Support:remitted for redetermination

Maintenance:\$80 wk for 6 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:877

Case:Goldman v. Goldman, NYLJ, 4-24-98, P.26, Col.2, (Tolub, J.)

Comment:Wife awarded 5,500,000

Years Married:33

Ages/Income:?

Child Support:N/A

Maintenance:None

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:878

Case:Greene v. Greene, 250 A.D.2d 572, 672 N.Y.S.2d 746 (2d Dep't 1998)

Comment:minimal contribution to 5 year marriage justified distributive award of only 500 to husband

Years Married:5

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:879

Case:Hamza v. Hamza, 247 A.D.2d 444, 668 N.Y.S.2d 677 (2d Dep't 1998)

Comment:premature to direct payment of college expenses where entry years away and no evidence of abilities, college or expenses

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:

Counsel Fees:

Property Distribution to Wife:?

Number:880

Case:Harrison v. Harrison, 255 A.D.2d 490, 680 N.Y.S.2d 624 (2d Dep't 1998)

Comment:error to include arrears of retroactive maintenance in "gross income" when calculating wife's child support obligation based on prior year's income; should consider contributions to support of children in determining retroactive child support obligation of spouse

Years Married:?

Ages/Income:?

Child Support:remitted for recomputation

Maintenance:\$100/wk for 3 years to wife

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:denied

Property Distribution to Wife:?

Number:881**Case:**Hewitt v. Hewitt, 247 A.D.2d 751, 669 N.Y.S.2d 397 (3d Dep't 1998)**Comment:**wife awarded her separate property contribution to marital home and balance of sale proceeds divided 50/50. Court directed payment of Catholic School tuition and expenses**Years Married:**18**Ages/Income:**Husband \$63,105.98/yr; Wife \$20,000/yr**Child Support:**\$543.75/mo [3 ch] plus wife directed to pay 26.3% of Catholic school tuition and expenses**Maintenance:**none**Exclusive Occupancy:**shared**Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:**none**Counsel Fees:**denied**Property Distribution to Wife:**see below

Number:882**Case:**Hickey v. Hickey, 256 A.D.2d 383, 681 N.Y.S.2d 601 (2d Dep't 1998)**Comment:**where nursing license was a result, in part, of an educational process, which began before marriage, it may not in its entirety be distributed as marital property**Years Married:?****Ages/Income:?****Child Support:?****Maintenance:?****Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:****Counsel Fees:****Property Distribution to Wife:**remitted for recalculation with regard to value and distribution of wife's nursing license and husband's pension

Number:883

Case:Iaquinto v. Iaquinto, 248 A.D.2d 676, 670 N.Y.S.2d 572 (2d Dep't 1998)

Comment:plaintiff's annual share of nondisability portion of defendant's pension benefits and unemployment insurance benefits should be included in computation of "gross income" for child support award

Years Married:?

Ages/Income:Husband \$50,000/yr; Wife ?

Child Support:remitted for new determination (1 ch) as to amount wife to pay Unemployment insurance

Maintenance:\$175/wk for 5 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:\$150,000 until he reaches age 76

Counsel Fees:\$21,172 to wife

Property Distribution to Wife:?

Number:884

Case:Isaacs v. Isaacs, 246 A.D.2d 428, 667 N.Y.S.2d 740 (1st Dep't 1998)

Comment:proper to impute \$170,000 income to husband based on cash and perks received from his company; proper to find that shares of stock from family company was compensation earned during marriage, rather than gifts, in absence of documents and evidence of gift to other sibling

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:885

Case:Jafri v. Jafri, 176 Misc. 2d 246, 671 N.Y.S.2d 589 (Sup. Ct. 1997)

Comment:award of portion of wife's U.S. medical license and certification; court used retirement age of 65 and percent rate of 7%

Years Married:17

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:

Counsel Fees:

Property Distribution to Wife:?

Number:886

Case:Judson v. Judson, 255 A.D.2d 656, 679 N.Y.S.2d 465 (3d Dep't 1998)

Comment:commingling of separate assets with marital assets transforms them into marital property; plaintiff entitled to credit for separate property contribution to marital property; property acquired during marriage is presumed to be marital property and the party seeking to overcome that presumption has the burden of proof

Years Married:12

Ages/Income:?

Child Support:?

Maintenance:\$80/month for 3 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:40% (\$69,807) of marital property

Number:887

Case:Aw v. Aw, 254 A.D.2d 239, 678 N.Y.S.2d 266 (2d Dep't 1998)

Comment:award of counsel fees should not have included fees related to services rendered in related action to recover damages for personal injuries

Years Married:?
Ages/Income:?
Child Support:\$580.83/mo
Maintenance:\$1000/mo
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$27,213
Property Distribution to Wife:?

Number:888
Case:Kiprilova v. Kiprilov, 255 A.D.2d 362, 679 N.Y.S.2d 687 (2d Dep't 1998)
Comment:error to award attorneys fees without a hearing]
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:\$1000/mo for 60 months
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:apartment to wife

Number:889
Case:Krishnasastry v. Krishnasastry, NYLJ, 11-27-98, P. 31, Col. 6, Sup. Ct, Nassau Co. (Kohn, J.)
Comment:guardian ad litem appointed for plaintiff who decided not to cooperate
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:none; (w/o prejudice to future application by wife)
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:\$500,000 decreasing term for wife

Counsel Fees:?

Property Distribution to Wife:50% (\$680,000) of husband's medical practice and enhanced earning capacity payable at the rate of \$750/wk and 40% of other marital assets.

Number:890

Case:La Barre v. La Barre, 251 A.D.2d 1008, 674 N.Y.S.2d 235 (4th Dep't 1998)

Comment:proper not to value business at date of commencement where it lost a major client at that time; party seeking interest in business has burden to establish its value. Antoan, 215 AD2d 421); not error to refuse to distribute personal property where no evidence of value; court abdicated its responsibility by continuing temporary child support order until wife petitioned for modification; credit card debt incurred for normal living expenses is a marital debt

Years Married:?

Ages/Income:?

Child Support:remitted for findings and further testimony, if necessary, to award child support and to provide for future health care expenses of the children

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:891

Case:Lee v. Chan, 245 A.D.2d 270, 664 N.Y.S.2d 828 (2d Dep't 1997)

Comment:abuse of discretion to award counsel fees to husband because they were far in excess of wife's ability to pay and his earning capacity was greater than hers

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?
Life Insurance:?
Counsel Fees:none
Property Distribution to Wife:50%

Number:892

Case:Lipovsky v. Lipovsky, NYLJ, 2-27-98, P.31, Col.6, Sup Ct, Kings Co, (Harkavy, J.)

Comment:In keeping with the mandate of McSparron distributive award to wife of share of husband's medical practice and enhanced earnings paid in the form of maintenance. For purpose of fixing child support income of \$80,000 imputed to wife.

Years Married:20

Ages/Income:Husband-54; Wife-47

Child Support:\$6,800/yr (1 ch)

Maintenance:\$1205/70 for 100 months

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:denied

Property Distribution to Wife:?

Number:893

Case:Love v. Love, 251 A.D.2d 631, 676 N.Y.S.2d 208 (2d Dep't 1998)

Comment:maintenance reduced by Appellate Division where wife only 39, received substantial distributive award, had post high school job training, enjoyed good health and younger child was 10 years old; error to fail to credit husband for half of loan made to his business from martial funds.

Years Married:?

Ages/Income:Husband-?; Wife-39

Child Support:?

Maintenance:50/week for 5 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:denied

Property Distribution to Wife:?

Number:894

Case:Love v. Love, 250 A.D.2d 739, 673 N.Y.S.2d 175 (2d Dep't 1998)

Comment:limited duration of maintenance where wife is 43 years old, has 3 years of college education, enjoys good health and has no child care responsibilities

Years Married:?

Ages/Income:Husband-?; Wife-43

Child Support:custody to husband

Maintenance:\$4200/mo for 4 years then \$4000/mo for one year

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:895

Case:Lovece v. Lovece, 245 A.D.2d 345, 665 N.Y.S.2d 436 (2d Dep't 1997)

Comment:permanent maintenance award where wife never employed outside home, parties had lavish standard of living during marriage and husband's substantial income

Years Married:43

Ages/Income:Husband \$300,000/yr; Wife ?

Child Support:N/A

Maintenance:\$1000/wk permanent

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:896

Case:Maczek v. Maczek, 248 A.D.2d 835, 669 N.Y.S.2d 749 (3d Dep't 1998)

Comment:error to fail to credit husband for separate property contribution to marital residence. A party is entitled to a credit for half of marital funds spent for legitimate marital purposes such as taxes, maintenance of house and expenses of upkeep

Years Married:34

Ages/Income:Husband 7,000/yr; Wife 2,255/yr

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:one half of all jointly held stocks, bank accounts and marital residence; one half value of deferred compensation plan

Number:897

Case:Mallet v. Mallet, 246 A.D.2d 904, 667 N.Y.S.2d 826 (3d Dep't 1998)

Comment:husband not entitled to any share of value of wife's BA degree in accounting, which she acquired during the marriage, because he did not demonstrate that he made a substantial contribution to her attainment of it, which was earned solely due to her Herculean effort, and none of the factors in DRL 236 [B][5][d] [1 to 13] supported the award; the husbands overall contribution was negative

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:898

Case:Mann v. Mann, 244 A.D.2d 928, 665 N.Y.S.2d 238 (4th Dep't 1997)

Comment:record suggested husband's income was considerably higher; wife sacrificed her career

Years Married:28

Ages/Income:Husband \$96,000/yr; Wife \$13,000/yr

Child Support:?

Maintenance:500/mo for 65 months

Exclusive Occupancy:to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:remitted

Number:899

Case:McNally v. Yarnall, 764 F. Supp. 853 (S.D.N.Y. 1991)

Comment:husband awarded 50% of wife's enhanced earning capacity attributable to master's degree; maintenance and child support should be retroactive to date of wife's pendente lite application; husband should have been ordered to maintain health ins. for children and pay proportionate share of unreimbursed expense; improper to calculate child support solely on salary

Years Married:?

Ages/Income:?

Child Support:remitted

Maintenance:remitted

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:denied

Property Distribution to Wife:?

Number:900

Case:Micelli v. Micelli, —AD2d—, 688 NYS2d 936 (2nd Dept, 1998)

Comment: equitable distribution of enhanced earning capacity attributable to chiropractic license

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:Wife awarded 25% of value of husband's chiropractic license.

Number:901

Case:Miyake v Miyake, NYLJ, 10-5-98, P. 29, Col 2, Supreme Court, N.Y. Co. (Lobis. J)

Comment:court used a 3% present value discount rate and a retirement age of 63.2 to value husband's MBA; husband's income capped at \$200,000 for child support

Years Married:15

Ages/Income:Husband-40 \$561,000/yr; Wife-37 ?

Child Support:\$50,000 a year; husband to maintain health insurance and pay all unreimbursed medical expenses.

Maintenance:\$5000 a month for 3 years than \$4000 a month for 2 years.

Exclusive Occupancy:no

Health & Medical Insurance:yes

Dental Insurance:no

Life Insurance:no

Counsel Fees:\$50,000

Property Distribution to Wife:50% (87,871 plus \$1,509,840 for 50% of MBA)

Number:902

Case:Munson v. Munson, 250 A.D.2d 1004, 672 N.Y.S.2d 968 (3d Dep't 1998)

Comment:award to ex-wife of 60% of ex-husband's pension with survivorship rights was not an abuse of discretion

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:903

Case:Murtari v. Murtari, 249 A.D.2d 960, 673 N.Y.S.2d 278 (4th Dep't 1998), appeal dismissed, 92 N.Y.2d 919, 680 N.Y.S.2d 459, 703 N.E.2d 271 (1998) and cert. denied, 119 S. Ct. 805, 142 L. Ed. 2d 665 (U.S. 1999)

Comment:\$40,000 income imputed to husband for child support purposes; proper to decline to make a distributive award of value of plaintiff's enhanced earning capacity attributable to the master's degree earned during the marriage because defendant failed to offer proof of its value or that he made a substantial contribution to it; husband directed by Appellate Division to pay counsel fees generated by the appeals

Years Married:8
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:904

Case:Myers v. Myers, 247 A.D.2d 902, 668 N.Y.S.2d 529 (4th Dep't 1998)

Comment:distributive award to be paid over 12 years

Years Married:?
Ages/Income:?
Child Support:?
Maintenance:500/mo non-durational
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?

Counsel Fees:\$48,592

Property Distribution to Wife:1/3 of \$801,000 interest in 3 corporations and 1/2 of interest in trucking business

Number:905

Case:Newton v. Newton, 246 A.D.2d 765, 667 N.Y.S.2d 778 (3d Dep't 1998)

Comment:cost overruns were not a wasteful dissipation of assets; predivorce standard of living supported maintenance award; award for future education expenses supported by expert testimony that degree would enhance wife's limited earning capacity; award of maintenance need not be tax deductible as NY law contains no such requirement; error not to provide for termination of maintenance on death or remarriage; substantial distributive award of liquid assets to wife precluded award of counsel fees.

Years Married:14

Ages/Income:Husband \$340,000/yr; Wife \$30,000/yr

Child Support:N/A

Maintenance:\$25,000 tax free for 2 years, then \$45,000 for third year, plus up to \$20,000 a year for two years for educational expenses

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:None

Property Distribution to Wife:25% (\$66,018) of value of appreciation of husbands medical practice; Assets of \$1,153,014 divided equally.

Number:906

Case:Noskova v Noskova, NYLJ, 11-3-98, P. 29, Col 2, Sup Ct, Kings Co. (Garson, J.)

Comment:diploma received in programming with 1500 hrs of English as a second language did not enhance husband's earning capacity.

Years Married:28

Ages/Income:Husband 4,000/yr; Wife ?

Child Support:N/A

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:none

Property Distribution to Wife:50% of marital assets worth 8,519

Number:907

Case:O'Sullivan v. O'Sullivan, 247 A.D.2d 597, 670 N.Y.S.2d 38 (2d Dep't 1998)

Comment:wasteful dissipation of assets by either spouse is a factor in equitable distribution; maintenance award to husband

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$100/wk to husband to date of judgment

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:908

Case:Prince v. Prince, 247 A.D.2d 457, 668 N.Y.S.2d 670 (2d Dep't 1998)

Comment:expenses incurred after commencement of action are the responsibility of the party who incurred them; Court can not grant affirmative relief to a non-party

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:909**Case:**Recuppio v. Recuppio, 246 A.D.2d 342, 667 N.Y.S.2d 365 (1st Dep't 1998)**Comment:**Health care is mandated by DRL 240(1); wife given option to take house; maintenance should be permanent where record devoid of basis for assuming wife will be financially self sufficient in future**Years Married:25****Ages/Income:**Husband \$72,574.00/yr; Wife ?**Child Support:**12/wk, reimburse medical deductibles and reasonable uninsured medical expenses [1 ch]**Maintenance:**50/wk non-durational**Exclusive Occupancy:**to wife**Health & Medical Insurance:**for child**Dental Insurance:?****Life Insurance:**for wife and child**Counsel Fees:**\$3,500**Property Distribution to Wife:**50% of marital assets

Number:910**Case:**Riechers v. Riechers, 178 Misc. 2d 170, 679 N.Y.S.2d 233 (Sup. Ct. 1998)**Comment:**distribution of Cook Island irrevocable Family Trust funded by husband with marital property. Husband's pension and parties' IRA valued as of date of trial; use of Coverture fraction rejected in fixing value of enhanced earning capacity and medical practice; maintenance award fixed in light of McSparron.**Years Married:31****Ages/Income:**Husband-55; Wife-53 5,000/yr**Child Support:**N/A**Maintenance:**\$5,000/mo until age 65**Exclusive Occupancy:**Ordered sold**Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:**Denied**Property Distribution to Wife:**50% (\$3,500,000+) of marital property

Number:911

Case:Rizzuto v. Rizzuto, 250 A.D.2d 829, 673 N.Y.S.2d 200 (2d Dep't 1998)

Comment:not an improvident exercise of discretion to award wife 50% of post-separation appreciation of marital assets where wife took care of home maintenance during separation

Years Married:31

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:912

Case:Rocanello v. Rocanello, 254 A.D.2d 269, 678 N.Y.S.2d 385 (2d Dep't 1998)

Comment:In determining a party's maintenance or child support obligation a court need not rely upon a party's account of his or her finances, but may impute income based upon the party's past income or demonstrated earning potential

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$100/wk for 4 years.

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:913

Case:Sade v. Sade, 251 A.D.2d 646, 675 N.Y.S.2d 119 (2d Dep't 1998)

Comment:wife was sole wage earner and performed usual household duties. Husband did not make significant contributions to the marriage; husband's earning capacity warranted vacatur of maintenance award to him.

Years Married:?
Ages/Income:?
Child Support:no children
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:\$8070 to husband - 80% of total marital assets.

Number:914
Case:Sagarin v. Sagarin, 251 A.D.2d 396, 674 N.Y.S.2d 127 (2d Dep't 1998)
Comment:not error to use trial date to value husband's corporation where adverse economic forces outside his control caused decline in it's value; loans to corporation are marital property]
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:denied
Property Distribution to Wife:?

Number:915
Case:Schadoff v. Schadoff, 244 A.D.2d 473, 665 N.Y.S.2d 917, 2 (2d Dep't 1997)
Comment:?
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:\$200/wk for 600 wks then \$300/wk
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?

Life Insurance:?
Counsel Fees:denied
Property Distribution to Wife:?

Number:916
Case:Schneider v. Schneider, 256 A.D.2d 401, 682 N.Y.S.2d 617 (2d Dep't 1998)
Comment:equitable distribution presents matters of fact to be resolved by the trial court, and its resolution of such factual issues and its distribution of property should not be disturbed unless it can be shown that the court erred in doing so
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:917
Case:Sitler v. Sitler, 251 A.D.2d 319, 673 N.Y.S.2d 1008 (2d Dep't 1998)
Comment:?
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:\$500/mo for 5 years, then \$300 mo for 5 years.
Exclusive Occupancy:?
Health & Medical Insurance:for wife for 5 years
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:918
Case:Smith v. Smith, 249 A.D.2d 813, 671 N.Y.S.2d 829 (3d Dep't 1998)

Comment:limited maintenance duration where wife is employable and she has failed to make real efforts to obtain same

Years Married:27

Ages/Income:Husband 8,474/yr; Wife \$5,752/yr

Child Support:?

Maintenance:50/wk for 4 years, then \$150/wk for 5 years or until husband retires or his employment is terminated.

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:919

Case:Soule v. Soule, 252 A.D.2d 768, 676 N.Y.S.2d 701 (3d Dep't 1998)

Comment:counsel fee proper taking into consideration the distributive award, arrears awarded and maintenance; proper to value stock options at date of commencement; permanent maintenance not warranted where defendant demonstrates capacity to be self-supporting as she had obtained employment as a teachers aid and obtained a certification as a personal trainer

Years Married:14

Ages/Income:Husband-?; Wife-37

Child Support:\$361/wk [2 children]

Maintenance:\$400/wk for 10 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$3000

Property Distribution to Wife:?

Number:920

Case:Strickler v. Marsh, 247 A.D.2d 288, 668 N.Y.S.2d 621 (1st Dep't 1998)

Comment:husband entitled to reimbursement for contribution of his separate assets to wife's property

Years Married:?

Ages/Income:?

Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:denied
Property Distribution to Wife:?

Number:921

Case:Tayar v. Tayar, 250 A.D.2d 757, 673 N.Y.S.2d 179 (2d Dep't 1998)

Comment:Preclusion order did not require court to accept wife's expert's value valuation of husband's business. The determination of the fact finder as to the value of a business, if it is with the range of testimony presented, will not be disturbed on appeal where the valuation rested primarily on the credibility of the expert witnesses and their valuation techniques

Years Married:?
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$33000
Property Distribution to Wife:?

Number:922

Case:Termini v. Termini, NYLJ, 6-8-98, P.33 Col.3 Sup Ct, Richmond Co (Harkavy, J.)

Comment:wife on social security disability

Years Married:?
Ages/Income:Husband ?; Wife \$13,824/yr
Child Support:115.55/wk (1 ch) + tuition for private school
Maintenance:\$75/wk
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?

Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:923

Case:Toffler v. Toffler, 252 A.D.2d 580, 675 N.Y.S.2d 309 (2d Dep't 1998)

Comment:proper exercise of discretion not to direct wife to pay a share of marital debt; award of maintenance gives wife opportunity to complete her college degree and become self supporting

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$125/wk for 2 1/2 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:924

Case:Treffiletti v. Treffiletti, 252 A.D.2d 635, 675 N.Y.S.2d 192 (3d Dep't 1998)

Comment:error to limit maintenance award to eight years when wife has reached limit of her earning capacity and found to be unable to meet expenses or maintain pre-separation standard of living; proper to deny counsel fee to wife where husband responsible support of children and their educational expenses

Years Married:25

Ages/Income:Husband \$174,000/yr; Wife \$19,428/yr

Child Support:\$1250/mo (2 ch)

Maintenance:\$1500/mo until eligible for social security, death, remarriage or "regularly cohabiting with another in a spousal type relationship".

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:denied

Property Distribution to Wife:?

Number:925

Case:Walker v. Walker, 680 N.Y.S.2d 114 (App. Div. 2d Dep't 1998)

Comment:to the extent possible payee is entitled to award of maintenance to maintain pre-separation standard of living; life insurance must terminate on death or remarriage of wife

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:to wife

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:for wife's benefit

Counsel Fees:?

Property Distribution to Wife:?

Number:926

Case:Walters v. Walters, 252 A.D.2d 775, 676 N.Y.S.2d 268 (3d Dep't 1998)

Comment:husband given credit against retroactive maintenance award for 50% of principal and all of interest payments for marital residence he made voluntarily during pendency of action

Years Married:28

Ages/Income:?

Child Support:?

Maintenance:\$100/wk until age 65 increasing to \$125/wk when wife ineligible for health insurance, retroactive to date of commencement.

Exclusive Occupancy:ordered sold

Health & Medical Insurance:none

Dental Insurance:none

Life Insurance:none

Counsel Fees:224

Property Distribution to Wife:50% of marital property

Number:927

Case:Weisfelner v. Weisfelner, 244 A.D.2d 480, 665 N.Y.S.2d 916 (2d Dep't 1997)

Comment:?

Years Married:?

Ages/Income:?

Child Support:\$207/wk

Maintenance:\$257/wk for 7 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:928

Case:Willets v. Willets, 247 A.D.2d 288, 668 N.Y.S.2d 623 (1st Dep't 1998)

Comment:no retroactive credit for re-payment of temporary maintenance attributable to wife's return to work during pendency of action

Years Married:4

Ages/Income:?

Child Support:?

Maintenance:none

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$75,000 to wife

Property Distribution to Wife:?

Number:929

Case:Williams v. Williams, 245 A.D.2d 49, 665 N.Y.S.2d 86 (1st Dep't 1997)

Comment:marriage of long duration

Years Married:24

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of net proceeds of marital residence and timeshare

Number:930

Case:Zeitlin v. Zeitlin, 250 A.D.2d 607, 672 N.Y.S.2d 379 (2d Dep't 1998)

Comment:error to include in charges for counsel fees for divorce action services in related partition action and in family court proceedings

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:931

Case:Allen v. Allen, 263 A.D.2d 691, 693 N.Y.S.2d 708 (3d Dep't 1999)

Comment:Where adverse party stipulates to introduction of expert report into evidence and does not offer proof at trial concerning increase in value of husband's business nor object to inflation adjustment used by expert, figures contained in report may not be challenged as inaccurate; property acquired by one spouse as a gift or inheritance during a marriage, and retained separately, is not marital property.

Years Married:12

Ages/Income:H: 54 \$46,869; W: 53 \$18,485

Child Support:N/A

Maintenance:\$125/wk for 6 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?**Counsel Fees:?**

Property Distribution to Wife:\$5700 (including half of value of appreciation of husband's business.

Number:932

Case:Barnaby v. Barnaby, 259 A.D.2d 870, 686 N.Y.S.2d 230 (3d Dep't 1999)

Comment:Income of \$53000/yr imputed to husband; child support is predicated on parents ability to provide support and not necessarily his/her current financial plight.

Years Married:?

Ages/Income:H: \$400/wk W: \$16,000/yr

Child Support:?

Maintenance:\$500/mo for 10 yrs

Exclusive Occupancy:?**Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?**

Counsel Fees:remitted for hearing

Property Distribution to Wife:?

Number:933

Case:Block v. Block, 258 A.D.2d 324, 685 N.Y.S.2d 443 (1st Dep't 1999)

Comment:capitalization of earnings approach to value of law practice goodwill was proper, as was application of a weighted average and a capitalization factor of 33 1/3%; abuse of discretion to award arbitrary 25% of the net fees to be recovered by husband in contingency fee cases he commenced prior to the action; value of such cases to be determined by comparing percentage of time spent by husband during the marriage with the total time he spent in reaching each ultimate recovery.

Years Married:?**Ages/Income:?**

Child Support:\$2145/mo + unreimbursed medical, dental & optical expenses

Maintenance:\$2500/mo until youngest child in kindergarten

Exclusive Occupancy:?

Health & Medical Insurance:parties children

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$60,000

Property Distribution to Wife:50% of value of law practice and 50% of proceeds of sale of marital home

Number:934

Case:Bogdan v. Bogdan, 260 A.D.2d 521, 688 N.Y.S.2d 255 (2d Dep't 1999)

Comment:Expenses incurred prior to the commencement of the action constitute marital debt and should be equally shared by the parties

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:935

Case:Boyle v. Taylor, 255 A.D.2d 411, 680 N.Y.S.2d 605 (2d Dep't 1998)

Comment:15% of marital assets to wife in short childless marriage; appeal from only part of judgment is waiver of right to appeal from other parts of it.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:15% of the marital assets

Number:936

Case:Brennan v. Brennan, NYLJ, 10-15-99, P.35, col.4 Sup Ct, Richmond Co (Harkavy, J.)

Comment:wife addicted to cocaine and Tylenol with codeine taken for MS; wife's testimony devoid of credibility; wife's lack of credibility and failure to comply with court orders consider under factor 13; wife's responsibility for 100% for law guardians fees

Years Married:19

Ages/Income:W: \$65,000

Child Support:\$1415/mo (3) to husband

Maintenance:none

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:none

Property Distribution to Wife:50% of her answering service business and 50% of all marital assets;

Number:937

Case:Butler v. Butler, 256 A.D.2d 1041, 683 N.Y.S.2d 603 (3d Dep't 1998)

Comment:valuation of assets at trial date is justified when using date of commencement would be inequitable; Factors in DRL 236 (B)(5)(d) do not have to be specifically cited in decision where evident they were considered and reasons for decision articulated; value of furnishings listed in a loan application is inadequate proof of value in light of parties incomes and standard of living

Years Married:24

Ages/Income:H: 47/\$132/wk; W: 63/\$1,156/mo

Child Support:N/A

Maintenance:denied

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:all of her pension benefits; furnishings in marital residence

Number:938

Case:Carlson-Subik v. Subik, 257 A.D.2d 859, 684 N.Y.S.2d 65
(3d Dep't 1999)

Comment:proper to attribute or impute income in fixing child support (2,000) based upon a prior employment experience * * * as well as a parents future earning capacity in light of his educational background; proper to impute as income monies received from aunt and parents; 75% of marital property to wife where husband secreted and wrongfully dissipated marital assets

Years Married:21

Ages/Income:?

Child Support:?

Maintenance:\$300/wk personal

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:remitted for a hearing

Property Distribution to Wife:75% to wife

Number:939

Case:Castiglione v. Castiglione, 259 A.D.2d 582, 686 N.Y.S.2d 486 (2d Dep't 1999)

Comment:where parties stipulated that each would receive half of husbands pension payments when distributed, error to direct that maintenance payment be reduced in future by amount of that payment

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$300/wk personal

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:denied

Counsel Fees:none

Property Distribution to Wife:?

Number:940

Case:Chadwick v. Chadwick, 256 A.D.2d 1211, 684 N.Y.S.2d 119 (4th Dep't 1998)

Comment:proper to preclude defendant from presenting evidence tracing origin of jointly held stocks to his separate property because he claimed no separate property in response to wife's discovery demand; error to award counsel fee on stipulation for submission on affidavits if no affidavit is submitted

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:remitted

Property Distribution to Wife:?

Number:941

Case:Chambers v. Chambers, 259 A.D.2d 807, 686 N.Y.S.2d 199 (3d Dep't 1999)

Comment:Error to direct each party to elect a pension option which provides that if your beneficiary survives you, your total monthly allowance will be paid to him. her for life, where this reduces his payment during life by 19% and is greater than under Majauskas formula; deferred distribution of pension appropriate where no present ability to pay; no credit for separate fund placed into joint account and then back in spouse's name where he fails to establish that the account was created only as a matter of convenience.

Years Married:38

Ages/Income:H: \$51,178; W: \$18,836

Child Support:N/A

Maintenance:\$250/wk until husband retires and begins drawing a pension.

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:942

Case:Chervin v. Chervin, 264 A.D.2d 680, 695 N.Y.S.2d 565 (1st Dep't 1999)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:"permanent maintenance" to wife

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:to wife

Property Distribution to Wife:?

Number:943

Case:Crane v. Crane, 264 A.D.2d 749, 694 N.Y.S.2d 763 (2d Dep't 1999)

Comment:Where need of custodial parent to occupy marital home outweighs father's need for his share of sale proceeds exclusive occupancy of marital home should be awarded; a downward modification of pendente lite child support by trial court may only operate prospectively.

Years Married:19

Ages/Income:?

Child Support:2 ch

Maintenance:?

Exclusive Occupancy:to wife until youngest child 18

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:944

Case:DeLuca v DeLuca, NYLJ, 7-6-99, P.32, Col.1 Sup Ct, Queens Co(Geller, J.H.O.)

Comment: parties lived apart for approximately 20 years; variable supplement fund of retired police officer is marital property; obstructenistic taches current counsel fee

Years Married:33

Ages/Income:H: 56; W: 56

Child Support:\$150/wk “lifetime maintenance”

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:for wife (50% to be paid by Husband)

Dental Insurance:?

Life Insurance:for wife

Counsel Fees:\$20,000

Property Distribution to Wife:50% of marital property

Number:945

Case:Dieckman v. Dieckman, 8/13/99 N.Y.L.J. 26, (col. 3) Supreme Court, Kings County, (Garson, J.)

Comment: appreciation of marital residence due to inflation of marital forces is not marital property; court considered under factor 13; wife’s failure to failure to disclose ownership interest in a business and failure to place proceeds of sale of property into escrow account per court order; wife responsible for loss of all of parties liquid assets

Years Married:14

Ages/Income:H: 54/\$50,8000; W: 58/?

Child Support:N/A

Maintenance:denied

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$20,000 to husband

Property Distribution to Wife:50% of marital real property and 75% of her liquid assets and 25% of marital portion of husband’s pension

Number:946

Case:Di Filippo v. Di Filippo, 262 A.D.2d 1070, 692 N.Y.S.2d 259 (4th Dep’t 1999)

Comment:?

Years Married:35
Ages/Income:W: 59
Child Support:?
Maintenance:\$750/wk non-durational
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:To wife
Property Distribution to Wife:?

Number:947
Case:Dougherty v. Dougherty, 256 A.D.2d 714, 680 N.Y.S.2d 759 (3d Dep't 1998)
Comment:artwork to be sold if parties can't agree to its division; husband personally constructed marital home
Years Married:22
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:40% of value of marital residence and 50% of other marital assets.

Number:948
Case:Dunнан v. Dunнан, 261 A.D.2d 195, 690 N.Y.S.2d 46 (1st Dep't 1999)
Comment:severance package is marital property; wife who is completely unable to earn income, requires maintenance to approach the pre-divorce standard living wife who is unable to work, should not be required to deplete her assets to pay all of her attorneys fees
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:\$5,000/mo "permanent lifetime maintenance"

Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$75,000
Property Distribution to Wife:50% of marital property

Number:949
Case:Ferraro v. Ferraro, 257 A.D.2d 596, 684 N.Y.S.2d 274 (2d Dep't 1999)
Comment:transfer of husbands interest in corporation to trust two months before commencement of action, was made in contemplation of a matrimonial action and half was awarded to wife
Years Married:?
Ages/Income:W: 40
Child Support:?
Maintenance:\$13,000/mo for 5 years from judgment retroactive to date of commencement
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$212,000
Property Distribution to Wife:\$450,000

Number:950
Case:Francis v. Francis, 262 A.D.2d 1065, 692 N.Y.S.2d 263 (4th Dep't 1999)
Comment:Error to admit in evidence portion of hospital record containing plaintiff's account of how defendant allegedly caused her injury; valuation of marital residence was proper because it was "within the framework of the evidence"
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:for 15 months
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?

Counsel Fees:?
Property Distribution to Wife:?

Number:951

Case:Galachiuk v. Galachiuk, 262 A.D.2d 1026, 691 N.Y.S.2d 828 (4th Dep't 1999)

Comment:Property acquired during marriage is presumed to be marital property; proper to include in marital property accounts closed by husband within 6 months of commencement of action where he failed to account for proceeds

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:952

Case:Galakis v. Galakis, 260 A.D.2d 431, 686 N.Y.S.2d 718 (2d Dep't 1999)

Comment:?

Years Married:?

Ages/Income:?

Child Support:\$476.00 every 2 weeks

Maintenance:\$200/bi-weekly for 6 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:\$100,000 for wife; \$100,000 for son

Counsel Fees:\$4,500 to wife

Property Distribution to Wife:?

Number:953

Case:Gittelson v. Gittelson, 263 A.D.2d 527, 693 N.Y.S.2d 212 (2d Dep't 1999)

Comment:Where Appellate Division remits matter to trial court to make detailed findings to supplement its determination so that it will have a basis for its review, it is improper for the trial court to consider the issues de novo.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:954

Case:Goddard v. Goddard, 256 A.D.2d 545, 682 N.Y.S.2d 423 (2d Dep't 1998)

Comment:proper to impute \$20,800 in income to husband because child support is based upon a parents ability to provide for their child rather than their current economic situation

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:none

Number:955

Case:Grossman v. Grossman, 260 A.D.2d 602, 688 N.Y.S.2d 664 (2d Dep't 1999)

Comment:?

Years Married:?

Ages/Income:?

Child Support:husband to pay college expenses

Maintenance:to wife for 15 years

Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$50,000 to wife
Property Distribution to Wife:?

Number:956

Case:Grunfeld v. Grunfeld, 255 A.D.2d 12, 688 N.Y.S.2d 77 (1st Dep't 1999), aff'd as modified and remanded, 94 N.Y.2d 696, 709 N.Y.S.2d 486, 731 N.E.2d 142 (2000)

Comment:proper, under circumstances, not to make maintenance retroactive; McSparron permits court to grant a distributive award based on enhanced earnings capacity and then adjust payors other obligations, rather than reduce maintenance award, when it distributes value of professional license and professional practice. Explains valuation methodology

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$15,000/mo to be reduced to \$8,500/mo when distributive award payments start

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:957

Case:Haas v. Haas, 265 A.D.2d 887, 695 N.Y.S.2d 644 (4th Dep't 1999)

Comment:where parent is self employed income for CSSA is his "gross income less allowable business expenses", depreciation that did "not officer disallowed deductions for telephone and truck expenses used or personal, as well as business reasons; proper to deduct all self-employment tax. Appellate Division declined to construe notice of appeal liberally

Years Married:?

Ages/Income:H: \$30,417; W: \$23,087

Child Support:\$136/wk plus 55% of uninsured medical and dental, and day care

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:958

Case:Imhof v. Imhof, 259 A.D.2d 666, 686 N.Y.S.2d 825 (2d Dep't 1999)

Comment:separate property can be transmuted into marital property when the actions of the titled spouse demonstrate his intent to transform the character of the property from separate to marital; error not to credit husband for college payments

Years Married:?

Ages/Income:?

Child Support:\$210.50/wk retroactive

Maintenance:?

Exclusive Occupancy:sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of net proceeds of sale of marital residence

Number:959

Case:Johnson v. Johnson, 261 A.D.2d 439, 690 N.Y.S.2d 92 (2d Dep't 1999)

Comment:equitable distribution presents matters of fact to be resolved by the trial court, and its distribution of the parties marital property should not be disturbed unless it can be shown that the court improvidently exercised its direction in so doing

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:remitted for new determination

Exclusive Occupancy:?

Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:960

Case:Kelley-Milone v. Milone, 256 A.D.2d 554, 682 N.Y.S.2d 435 (2d Dep't 1998)

Comment:overtime earnings are part of gross income for purposes of the child support obligation

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:\$1000

Number:961

Case:Kennedy v. Kennedy, 256 A.D.2d 1048, 683 N.Y.S.2d 608 (3d Dep't 1998)

Comment:testimony as to value of furnishings by spouse, where credible, established value for purposes of a distribution; DRL 236 (B)(5) and (6) recognizes that maintenance and property distribution should not be treated as 2 separate items but each should be set with a view toward the other. It is error to utilize an "offset" in place of separate awards for maintenance and property distribution and to reduce maintenance in recognition of fact that the wife would receive most of the marital assets and had no liquid assets to pay distributive award to husband

Years Married:18

Ages/Income:H: \$45,000; W: unemployed

Child Support:\$131.00/wk per stipulation (2 children)

Maintenance:\$175.00/wk for 10 years

Exclusive Occupancy:to wife

Health & Medical Insurance:?

Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:title to marital residence;50%
of marital property

Number:962
Case:Kerzner v. Kerzner, 264 A.D.2d 338, 694 N.Y.S.2d 49 (1st
Dep't 1999)
Comment:?
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:50% of business appreciation
and pension plan

Number:963
Case:King v. King, 258 A.D.2d 717, 684 N.Y.S.2d 684 (3d Dep't
1999)
Comment:?
Years Married:?
Ages/Income:H: \$46,727; W: \$34,451
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:964
Case:Kirschenbaum v. Kirschenbaum, 264 A.D.2d 344, 693
N.Y.S.2d 149 (1st Dep't 1999)

Comment:Lifetime maintenance is appropriate where payee spouse is incapable of becoming self-supporting at a level roughly commensurate with the pre-divorce standard of living.” Fact that payee spouse has ability to become self supporting with respect to some standard of living does not preclude an award of lifetime maintenance.

Years Married:18

Ages/Income:W: 48

Child Support:?

Maintenance:\$4,000/mo for 10 years then \$2000/mo

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:965

Case:Knight v. Knight, 258 A.D.2d 955, 685 N.Y.S.2d 560 (4th Dep’t 1999)

Comment:proper to commence wife’s share of husband’s pension payment as of date of commencement of the action; proper to value automobile based on value in husband’s affidavit, which was consistent with NADA used car guide, rather than his testimony at hearing

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$200 per week

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:equal distribution of marital assets; 50% of monthly pension income of husband to wife

Number:966

Case:Koehler v. Koehler, NYLJ, 10-18-99, P.30, Col.5, Sup Ct, Suffolk Co (Lifson,J.)

Comment:second marriage for both parties; real property, title to which was taken as JWROS prior to marriage, is marital property, where husband not in sale contract and made no formal contribution and taken in contemplation of marriage

Years Married:11

Ages/Income:H: 61; W: 55

Child Support:?

Maintenance:?

Exclusive Occupancy:ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:wife reimbursed for purchase of house plus 50% of any increase in value; all of joint checking account

Number:967

Case:Kosovsky v. Zahl, 257 A.D.2d 522, 684 N.Y.S.2d 524 (1st Dep't 1999)

Comment: funds in joint account presumed to be marital property absent proof that source of funds was separate property or account was a convenience account; proper to value pension as of trial date where increase in value due to passive appreciation; proper to impute \$400,000 to husband where he manipulated his corporations finances to reduce his income and had unreported cash; proper to impute \$150,000 investment income to wife

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:\$750,000 for benefit of child

Counsel Fees:?

Property Distribution to Wife:31.8% of defendant's pension

Number:968

Case:Krigsman v Krigsman, NYLJ, 6-14-99, P.34 col.6 Sup Ct, Kings Co (Yancy J.)

Comment:Income of \$50,000/yr imputed to wife who was a RN; income of \$120,000 a year impuled to husband for purpose of valuing enhanced earnings as a pediatric gastroenterologist; wife to receive reduced share of husband's enhanced earning capacity because of short marriage, use of non-marital funds to pay for education and role of husband as major income earner, wife acted reasonably in refusing to sign joint income tax return.

Years Married:11

Ages/Income:H: 36; W: 33

Child Support:\$587/wk [3 ch] + 70% of unreimbursed medical and dental expenses, and 70% of reasonable child care, 70% of childrens Yeshiva and 70% of summer camp if it is a component of child care.

Maintenance:denied

Exclusive Occupancy:title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:\$500,000 decreasing term for wife

Counsel Fees:\$25,000

Property Distribution to Wife:50% of marital residence; 25% of enhancing earning capacity of husband

Number:969

Case:Kysor v. Kysor, 256 A.D.2d 1185, 684 N.Y.S.2d 388 (4th Dep't 1998)

Comment:If monthly payment is based on DRL 240 (1-b)(d) health and child care expenses cannot be ordered in addition; failure to set forth factors considered and reasons for decision on maintenance and properly distribution warrants reversal and remitted for hearing. See DRL 236 (B)(5)(g) and (B)(6)(b).

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:970**Case:**Lenigan v. Lenigan, NYLJ, 11-15-99, P.31 col.1 Sup Ct, Suffolk Co (Austin, J.)**Comment:**pro se plaintiff not entitled to any inference or benefit from the court; wasteful consumption assets (liquor bottles) by husband; wife awarded 75% of marital residence in recognition of her contribution to husband's career; husband directed to choose pension option wife surviving benefits; catch all factor is used for "best interest of child to retain child's furniture"**Years Married:?****Ages/Income:**H: 52/\$98,000; W: 51/\$0**Child Support:**\$200/wk (1 ch) plus 100% of extra curricular and uninsured medical expenses**Maintenance:**\$300/wk until pension in pay status, then \$100/wk**Exclusive Occupancy:**title to wife**Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:**No**Counsel Fees:**\$739,313 (in addition to 50,00 pendente lite) and 13,761 expert**Property Distribution to Wife:**fees 40% (\$18,829,124) of marital property worth 7,072,810.00

Number:971**Case:**Leroy v Leroy, NYLJ, 7-15-99, P.26, Col.2 Sup Ct New York Co (Tulub, J)**Comment:**counsel fee award in excess of \$1,150,000**Years Married:**29**Ages/Income:**H: 63; W: 54**Child Support:**N/A**Maintenance:**\$61,183 per month to be reduced by imputing a 5% annual return on cash portion of wife's distributive award as received**Exclusive Occupancy:**N/A**Health & Medical Insurance:**No**Dental Insurance:**No**Life Insurance:**No**Counsel Fees:**\$739,313 (in addition to \$450,00 pendente lite) and \$413,761 expert

Property Distribution to Wife: fees 40% (\$18,829,124) of marital property worth \$47,072,810.00

Number:972

Case:Levy v. Levy, 260 A.D.2d 324, 689 N.Y.S.2d 62 (1st Dep't 1999)

Comment:Award of maintenance in increasing amounts over a period of 7 yrs. before terminating, is proper to enable wife to maintain pre-separation standard living

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:973

Case:Lombardo v. Lombardo, 255 A.D.2d 653, 680 N.Y.S.2d 270 (3d Dep't 1998)

Comment:guardian ad litem appointed to protect wife; maintenance award to enable wife to meet pre divorce standard of living

Years Married:20

Ages/Income:?

Child Support:?

Maintenance:\$1500/mo. until April 2005; then \$800/mo. non-durational

Exclusive Occupancy:?

Health & Medical Insurance:to be paid for by wife under employers COBRA

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:974

Case:Lopez v. Lopez, 266 A.D.2d 71, 698 N.Y.S.2d 464 (1st Dep't 1999)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$500/mo for 7 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:975

Case:Madonna v. Madonna, 265 A.D.2d 455, 697 N.Y.S.2d 119 (2d Dep't 1999)

Comment:Supreme Court has board discretion in accepting or rejecting all or part of any expert testimony; authorizing to award interest at 9% pursuant to CPLR 5004 is not mandatory; proper to award interest at 4-½% on wife's share of increase in value of marital residence

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of increase in value of marital residence and 50% of husband's pension earned during marriage.

Number:976

Case:Matwijczuk v. Matwijczuk, 261 A.D.2d 784, 690 N.Y.S.2d 343 (3d Dep't 1999)

Comment:Use of marital funds plus wife's contributions of her separate funds, time and labor in furtherance of the marital partnership were sufficient to transform the marital residence and land (purchased by husband before marriage and constructed before and during marriage) into marital property; transfer in contemplation of a matrimonial action with fair consideration remains marital property, where a lump sum distribution of the marital portion of a pension is not requested. Evidence of present value of pension is not needed to establish an interest, but spouse may employ the "Majauskas" formula to calculate the equitable share marriage is presumed to be marital property

Years Married:28

Ages/Income:H: \$10,000; W: \$45,000

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:none

Property Distribution to Wife:all of her pension; 58% of marital residence No counsel fee to wife considering the parties income and the assets available to her as a result of the equitable distribution

Number:977

Case:McGrath v. McGrath, 261 A.D.2d 369, 689 N.Y.S.2d 200 (2d Dep't 1999)

Comment:Proper to impute annual income to husband of \$69,000 annual income to husband to complete maintenance and child support; a court may impute income based upon a parties past income or [a court is not bound by a parties account of his finances, and when a parties account of his finances is not believable, the court is justified in finding an actual or potential income greater than claimed. Proper to consider money received from parents in fixing child support

Years Married:?

Ages/Income:?

Child Support:\$204 /weekly (Ch 2) then 16/weekly when main. terminates

Maintenance:\$250.wk for 3 years

Exclusive Occupancy:?

Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:50% of marital property

Number:978

Case:Mellen v. Mellen, 260 A.D.2d 609, 688 N.Y.S.2d 674 (2d Dep't 1999)

Comment:a court is not bound by a parties account of his finances, and when a parties account of his finances is not believable, the court is justified in finding an actual or potential income greater then claimed. Proper to consider money received from parents in fixing child support finding an actual or potential income granted then claimed. Proper to consider money received from parents in fixing child support

Years Married:?

Ages/Income:?

Child Support:\$533/wk

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:979

Case:Myers v. Myers, 255 A.D.2d 711, 680 N.Y.S.2d 690 (3d Dep't 1998)

Comment:marketability discount of 25% should be applied to valuation of husbands heating oil business as the risk associated with illiquidity of stores should be considered; marital fault is a relevant factor in awarding maintenance, but it does not preclude it

Years Married:19

Ages/Income:?

Child Support:?

Maintenance:\$125/wk for 7 years, than \$100/wk until wife reaches 62

Exclusive Occupancy:?

Health & Medical Insurance:?**Dental Insurance:?****Life Insurance:?****Counsel Fees:**remitted**Property Distribution to Wife:?**

Number:980**Case:**Michelle S. v. Charles S., 257 A.D.2d 405, 683 N.Y.S.2d 89 (1st Dep't 1999)**Comment:**a time limitation on maintenance should be imposed solely to enable a dependent spouse to obtain training to become financially independent, or to allow a restoration of his earning capacity to its previous level. Such limits are inappropriate when such spouse is unlikely to become completely self supporting**Years Married:?****Ages/Income:?****Child Support:?****Maintenance:**remitted**Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:**remitted**Property Distribution to Wife:?**

Number:981**Case:**Mitnick v. Rosenthal, 260 A.D.2d 238, 688 N.Y.S.2d 150 (1st Dep't 1999)**Comment:**Application of statutory child support formula to any amount over \$150,000 is unjust and inappropriate because both parties earn significantly more than \$80,000/yr. and its application is unnecessary to assure that both children enjoy the same lifestyle as before the separation; award of "open-ended" child support for medical expenses, camp, tutoring, school tuition, recreation and transportation, to be fixed on basis of annual accountings by wife, not to exceed \$6,000 per month, was proper.**Years Married:?****Ages/Income:?****Child Support:?****Maintenance:?**

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:Reference directed

Property Distribution to Wife:25% of appreciation of husband's medical practice

Number:982

Case:Mogollon v. Mogollon, 259 A.D.2d 678, 686 N.Y.S.2d 849 (2d Dep't 1999)

Comment:Where trial courts decision did not address request for payment of certain college expenses by defendant, and judgment appealed from does not contain decretal paragraph either granting or denying this relief, the requests not before the appellate division, and remains pending and undecided before Supreme Court.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of net proceeds of sale of marital residence

Number:983

Case:Morrissey v. Morrissey, 259 A.D.2d 472, 686 N.Y.S.2d 71 (2d Dep't 1999)

Comment:court may impute income, in fixing child support, based upon a parties ability to provide support, rather than current economic situation. "An imputed income amount is based, in part, upon a parents past earnings actual earning capacity and educational background." Counsel fee proper where defendant guilty of stonewalling

Years Married:?

Ages/Income:?

Child Support:remitted for new determination

Maintenance:for 7 years
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:to wife
Property Distribution to Wife:?

Number:984
Case:Murphy v. Murphy, 263 A.D.2d 737, 693 N.Y.S.2d 699 (3d Dep't 1999)
Comment:Award of 60% of pension to a wife, who was unemployed and suffered debilitating disease and was responsible for funding her own health and/or life insurance.
Years Married:32
Ages/Income:?
Child Support:?
Maintenance:Waived
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:60% of marital portion of pension

Number:985
Case:Murtha v. Murtha, 264 A.D.2d 552, 694 N.Y.S.2d 382 (1st Dep't 1999)
Comment:60% of marital estate awarded to wife in view of parties income potential, loss of wife's career potential and her fragile emotional state; husband directed to return \$100,000, that he used to pay taxes, attorney and expert fees, to marital estate; he violated interim court order and should have moved for permission; CFA certification is an asset.
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:5 years from entry of judgment
Exclusive Occupancy:?
Health & Medical Insurance:?

Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:60% of marital assets

Number:986

Case:Nielsen v. Nielsen, 256 A.D.2d 1173, 682 N.Y.S.2d 502 (4th Dep't 1998)

Comment:error to conclude that severance payment received after commencement of action is separate property, where it constituted compensation for past services rather than an incentive for future services

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:denied

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:denied

Property Distribution to Wife:?

Number:987

Case:Papandrea v. Papandrea, 264 A.D.2d 767, 695 N.Y.S.2d 377 (2d Dep't 1999)

Comment:?

Years Married:?

Ages/Income:?

Child Support:\$100/wk

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:988

Case:Pearl v. Pearl, 266 A.D.2d 366, 698 N.Y.S.2d 160 (2d Dep't 1999)

Comment:husband's willful failure to disclose was proper basis for preclusion order against him

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:title to marital residence and 10% of husband's accounting business

Number:989

Case:Pinto v. Pinto, 260 A.D.2d 622, 688 N.Y.S.2d 701 (2d Dep't 1999)

Comment:Not an abuse of discretion to award wife 100% of all assets listed on both parties net worth statements if husband did not deliver a Jewish divorce to wife within a specified period of time.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$100,000 to wife

Property Distribution to Wife:?

Number:990

Case:Plotnick v. Plotnick, 266 A.D.2d 108, 698 N.Y.S.2d 468 (1st Dep't 1999)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$36,000 paid in monthly increments of \$1500 for 2 years

Exclusive Occupancy:?**Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?**

Counsel Fees:\$17,000 to wife

Property Distribution to Wife:?

Number:991

Case:Pollack v. Pollack, NYLJ, 10-25-99, P.40, col.3 Sup Ct, Nassau Co (Jonas J.)

Comment:husband, who attempted to murder wife (an attorney) by stabbing her many times denied share of her law practice/license for egregious misconduct; mentally ill husbands assets seized by execution on \$750,000 personal injury judgment in wife's first; they are her separate property; sheriffs execution sale extinguished husband's title. Equitable distribution of all assets except Fidelity Account granted on summary judgment motion

Years Married:9

Ages/Income:?

Child Support:N/A

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:title to marital residence and 10% of husband's accounting business

Number:992

Case:Pompa v. Pompa, 259 A.D.2d 338, 687 N.Y.S.2d 25 (1st Dep't 1999)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$300/mo until death or remarriage

Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$25,000
Property Distribution to Wife:?

Number:993
Case:Rindos v. Rindos, 264 A.D.2d 722, 694 N.Y.S.2d 735 (2d Dep't 1999)
Comment:husband not entitled to credit for half of income taxes paid by him where parties executed a tax indemnification letter which provided he would be responsible for that amount
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:\$5,000/month for 10 years
Exclusive Occupancy:until youngest child emancipated
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:50% of net proceeds of sale of marital residence

Number:994
Case:Robinson v. Robinson, 256 A.D.2d 1011, 682 N.Y.S.2d 292 (3d Dep't 1998)
Comment:not abuse of discretion to decline maintenance award in view of modest pre-separation standard of living, wife's ability to earn as a licensed practical nurse, and the substantial benefit she received from the property distribution
Years Married:26
Ages/Income:H: 49/\$40,400; W: 56/?
Child Support:N/A
Maintenance:denied
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?

Counsel Fees:\$1500

Property Distribution to Wife:all of marital residence (worth \$44,000). Husband kept IRA worth \$21,000 but was obligated to pay all marital debt of \$20,000

Number:995

Case:Sammarco v Sammarco, NYLJ, 6-10-99, P.33, col.3 Sup Ct, Kings Co. (Harcavy, J.)

Comment:Social Security Benefits pre-empted by Federal Law from being subject to equitable distribution; court may not allow an offset for social security benefits of one spouse against federal pension of other spouse; wife given option to purchase husband's share of marital residence; wife awarded 50% of husband's CSRS persons by COBRA; husband required to elect survivor benefits on pension or obtain life insurance for wife.

Years Married:29

Ages/Income:H: 52/\$61,000; W: 50/\$35,000

Child Support:N/A

Maintenance:N/A

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:none

Property Distribution to Wife:50% of marital assets

Number:996

Case:Shattuck v. Shattuck, 255 A.D.2d 999, 679 N.Y.S.2d 781 (4th Dep't 1998)

Comment:pursuant to DRL 236 [B][6](c) maintenance must terminate upon the wifes death or remarriage

Years Married:30

Ages/Income:?

Child Support:?

Maintenance:to wife until husbands death, or retirement at or after age 62

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:997

Case:Stricos v. Stricos, 263 A.D.2d 659, 692 N.Y.S.2d 801 (3d Dep't 1999)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$1000/mo until wife reaches 62, remarriage or cohabitation with an unrelated adult, or either party's death

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:998

Case:Tan v. Tan, 260 A.D.2d 543, 688 N.Y.S.2d 597 (2d Dep't 1999)

Comment:Error of law to direct spouse to contribute to future college expenses of 11 year old child,award was prematured where no evidence of child's academic interest, ability, possible choice of college or what child's expenses might be

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:999

Case:Turk v Turk, NYLJ, 6-7-99, P 32 Col 6, Sup Ct, Kings Co (Ambrosio, J.)

Comment:wife failed to rebut presumption that joint accounts with her mother were open solely as a matter of convenience; husband who was disabled from mental illness, denied maintenance, where income sufficient to meet reasonable needs

Years Married:?

Ages/Income:H: 56/?; W: 54/\$58,000

Child Support:N/A

Maintenance:husband's request denied

Exclusive Occupancy:?

Health & Medical Insurance:none

Dental Insurance:none

Life Insurance:none

Counsel Fees:to be determined

Property Distribution to Wife:equal division of marital property

Number:1000

Case:Wittig v. Wittig, 258 A.D.2d 883, 685 N.Y.S.2d 342 (4th Dep't 1999)

Comment:agreement in nature of severance and settlement contract is marital property; not abuse of discretion to rely on formula of closely held corporation for valuation of its stock; as a general rule value of marital residence should be fixed at time of trial; defendant sanctioned for failure, as appellant, to include in appendix parts of record necessary for respondent

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% (\$731,652) of marital property

Number:1001

Case:Wood v. Wood, 256 A.D.2d 1242, 682 N.Y.S.2d 788 (4th Dep't 1998)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$400 bi-weekly until husbands retirement retro-active to date of application therefor

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1002

Case:Yunis v. Yunis, 255 A.D.2d 992, 680 N.Y.S.2d 339 (4th Dep't 1998), aff'd, 94 N.Y.2d 787, 699 N.Y.S.2d 702, 721 N.E.2d 952 (1999)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:10 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:denied

Property Distribution to Wife:?

Number:1003

Case:Zurek v. Zurek, 255 A.D.2d 922, 680 N.Y.S.2d 384 (4th Dep't 1998)

Comment:error to award counsel fees without proof regarding the nature and extent of the services provided, and without a hearing to determine whether the fees charged were reasonable

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$100/wk for 3 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?
Life Insurance:?
Counsel Fees:\$500
Property Distribution to Wife:?

Number:1004
Case:Abramovitz v. Bercovici, 278 A.D.2d 175, 718 N.Y.S.2d 64 (1st Dep't 2000)
Comment:Proper to calculate husband's child support obligation based on the wife's income shown in net worth statement submitted 7 years earlier where she repeatedly failed to produce current financial income necessary to make the calculation.
Years Married:?
Ages/Income:?
Child Support:\$5,858/yr.
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:1005
Case:Allwell v. Allwell, 277 A.D.2d 789, 716 N.Y.S.2d 741 (3d Dep't 2000)
Comment:Party claiming that a part of a pension reflects compensation for personal injuries has burden of demonstrating what portion is such compensation, and upon failure to do so the entire pension amount will be treated as marital property.
Years Married:?
Ages/Income:?
Child Support:\$25 per month
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:1006

Case:Alvares-Correa v. Alvares-Correa, 285 A.D.2d 123, 726 NYS2d 668 (1st Dep't 2001)

Comment:Interest in trusts can be taken into account when making maintenance and child support awards; consideration of pre-divorce standard of living is an essential component of evaluating and properly determining the duration and the amount of the maintenance award.

Years Married:11

Ages/Income:?

Child Support:\$3500/mo [2Ch]

Maintenance:\$9000/mo until 2005, then \$5500/mo until remarriage

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$408,439

Property Distribution to Wife:N/A

Number:1007

Case:Anonymous v. Anonymous, 283 A.D.2d 266, 724 NYS2d 315 (1st Dep't 2001)

Comment:Maintenance and child support award did not permit wife and so to enjoy lavish lifestyle they lived during marriage

Years Married:?

Ages/Income:H. \$1,000,000 W. \$0

Child Support:\$7,000 per month plus all educational, summer recreational and medical expenses of the child

Maintenance:\$12,000/mo lifetime

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:for wife and son

Counsel Fees:\$441,487

Property Distribution to Wife:?

Number:1008

Case:Anonymous v. Anonymous, 289 A.D.2d 106, 735 N.Y.S.2d 26(1st Dep't 2001)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$4300/mo. for 10 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of value of husband's law practice and 50% of other marital property

Number:1009

Case:Atweh v. Hashem, 284 A.D.2d 216, 726 N.Y.S.2d 424 (1st Dep't 2001)

Comment:Proper to deduct maintenance to be paid from husbands income for purpose of computing his child support obligation but judgment must provide for upward adjustment of child support on termination of maintenance; not reasonable to conclude wife will be able to support self at pre-marital standard of living in just 3 years; given disparity in parties earning power wife should not be required to spend down a substantial portion of her limited assets in order to qualify for an award of legal fees. Not proper to make a new argument in reply brief

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$4500/mo for 5 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:remanded for determination

Property Distribution to Wife:?

Number:1010

Case:Barbuto v. Barbuto, 286 A.D.2d 741, 730 N.Y.S.2d 532 (2d Dep't 2001)

Comment:Husband awarded 30% of wives enhanced earning capacity attributable to associates degree as an assistant physical therapist; wife entitled to 50% of husbands pension where they lived together during 15 of the 20 years it accrued, and she raised the children and maintained the home; assets which appreciate passively should be valued as of date of trial.

Years Married:30

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:denied

Property Distribution to Wife:?

Number:1011

Case:Beece v. Beece, 289 A.D.2d 352, 734 N.Y.S.2d 606 (2d Dep't 2001)

Comment:Husband entitled to credit for 50% of amount he paid to reduce principal of mortgage while parties were separated; must deduct FICA and maintenance from gross income before calculating child support

Years Married:?

Ages/Income:?

Child Support:remitted for new determination

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1012

Case:Beshara v. Beshara, 281 A.D.2d 577, 722 N.Y.S.2d 573 (2d Dep't 2001)

Comment:That part of pension which is attributable to disability is separate property.

Years Married:?

Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:1013

Case:Brough v. Brough, 285 A.D.2d 913, 727 N.Y.S.2d 555 (3d Dep't 2001)

Comment:It is incumbent upon non-titled spouse seeking a distributive share of other spouses enhanced earning capacity to demonstrate that they made a substantial contribution to the titled party's acquisition of that marital asset; Husband entitled to 10% of wife's enhanced earning capacity where it was obtained through her own ability and Herculean efforts; a parent can be directed to pay for college in the absence of special circumstances

Years Married:22

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:90% (00,000) of her enhanced earning capacity attributable to teaching degree and license

Number:1014

Case:Callen v. Callen, 287 A.D.2d 818, 731 N.Y.S.2d 772 (3d Dep't 2001)

Comment: Proper to deviate from CSSA where strict application of formula is unjust and inappropriate; it is only appropriate to pro-rate parties reasonable shares of children's reasonable health care expenses not covered by insurance or reasonable child care expenses, where the basic child support obligation is determined under DRL 240(1-b)(c)

Years Married:13

Ages/Income:?

Child Support:?

Maintenance:\$100/wk for 5 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1015

Case:Campbell v. Campbell, 280 A.D.2d 837, 720 N.Y.S.2d 628 (3d Dep't 2001)

Comment: Where increases to a pension are passive, that is, affected by outside market influences rather than actions of titled spouse, the pension should, as a general rule, be valued as closely as possible to date of trial. Wife's refusal to move to Florida was not egregious marital fault justifying denial of maintenance.

Years Married:?

Ages/Income:W. \$24,000/year

Child Support:?

Maintenance:\$500 per month for 57 months

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$13,243

Property Distribution to Wife:50% (\$55,150) of husbands pension.

Number:1016

Case:Campbell v. Campbell, 286 A.D.2d 467, 729 N.Y.S.2d 531 (2d Dep't 2001)

Comment:Exclusive occupancy awarded to wife as custodial parent where no evidence that comparable housing is available in the area at a lower cost and that the sale will alleviate the parties financial difficulties; wife to receive credit for expenses incurred by her for repairs and improvements in excess of \$500 and for amortization payments made by her

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$150/wk for 5 years, remarriage, of death of either party

Exclusive Occupancy:to wife until youngest child 18

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of net proceeds from sale of home

Number:1017

Case:Casey v. Casey, 289 A.D.2d 361, 734 N.Y.S.2d 228 (2d Dep't 2001)

Comment:Husband entitled to greater portion of net proceeds of sale of marital residence where he and his mother purchased the property and he "substantially completed construction of the house"; judgment should not provide that income imputed to husband shall never fall below \$70,000

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1018

Case:Castaldo v. Castaldo, 289 A.D.2d 189, 734 N.Y.S.2d 182 (2d Dep't 2001)

Comment:Proper not to award child support arrears where plaintiff paid \$300 per week voluntarily since separation, which was more than child support award.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1019

Case:Castaldo v. Castaldo, 289 A.D.2d 189, 734 N.Y.S.2d 182 (2d Dep't 2001)

Comment:DRL 236B5d does not require the court to analyze each of the factors and give reasons as to each; only to set forth the relevant factors it considered

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1020

Case:Cerretani v. Cerretani, 289 A.D.2d 753, 734 N.Y.S.2d 324 (3d Dep't 2001)

Comment:The restriction upon the transfer of stock in a closely held corporation is a factor which should be considered in valuing a closely held corporation

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:1021

Case:Cohen v. Cohen, 279 A.D.2d 599, 719 N.Y.S.2d 700 (2d Dep't 2001)

Comment:The discount for lack of marketability should only be applied to the portion of the value of the corporation that is attributable to good will; proper not to apply it to real property.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1022

Case:Coleman v. Coleman, 284 A.D.2d 426, 726 N.Y.S.2d 566) (2d Dep't 2001)

Comment:award to husband of less than 50% of marital assets was proper given his economic misconduct

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1023

Case:Crawford v. Crawford, 279 A.D.2d 281, 719 N.Y.S.2d 40
(1st Dep't 2001)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of value of husbands
medical practice and enhanced earning capacity.

Number:1024

Case:DeNapoli v. DeNapoli, 282 A.D.2d 494, 722 N.Y.S.2d 747
(2d Dep't 2001)

Comment:Maintenance award should be tailored to provide an
incentive to the recipient to become financially independent.
However unrealistic assumptions should not be made regarding
the ability of non-working spouse in a long term marriage to
become self supporting and due consideration should be given to
the marital standard of living in making the maintenance
award; interest awarded on payment of distributive award
where husbands business not encumbered by debt.

Years Married:?

Ages/Income:?

Child Support:\$2,290/month

Maintenance:\$2,000/month for 7 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:E: \$50,000 and 60% of expert fee

Counsel Fees:?

Property Distribution to Wife:

Number:1025

Case:Dewell v. Dewell, 288 A.D.2d 252, 733 N.Y.S.2d 114 (2d Dep't 2001)

Comment:Wife was entitled to award of 50% of the marital funds used to reduce the husbands debt incurred before marriage to acquire his medical license, which constituted separate property; premature in 6 year marriage to make direction regarding future higher educational costs of the children

Years Married:?

Ages/Income:?

Child Support:husband to pay 90% of Day care and private education

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$21,000

Property Distribution to Wife:30% of value of husbands medical practice

Number:1026

Case:Diacio v. Diaco, 278 A.D.2d 358, 717 N.Y.S.2d 635 (2d Dep't 2000)

Comment:Marital home, placed in names of husband and wife, by husband, distributed so as to reflect husbands contribution to that asset. Each item of marital property need not be distributed on an equal basis.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1027

Case:Douglas v. Douglas, 281 A.D.2d 709, 722 N.Y.S.2d 87 (3d Dep't 2001)

Comment:All judges are required to conduct trials in a patient, dignified and courteous manner, that can keep the parties focused upon a succinct presentation of evidence relevant to the issues; the valuation of a marital asset must be founded upon economic reality; proper to use excess earnings method to value interest in law partnership; non-funded unqualified retirement plan is a marital asset; a lump sum payment discounted for present value may be made to effectuate a distribution of pension benefits; there is no double counting to the extent that maintenance is based upon spousal income which is not capitalized and then converted into and distributed as marital property.

Years Married:15

Ages/Income:?

Child Support:2 Children

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:for wife and children

Counsel Fees:?

Property Distribution to Wife:50% of value of appreciation of law practice and 50% of future unfunded retirement benefits.

Number:1028

Case:Epstein v. Epstein, 289 A.D.2d 78, 734 N.Y.S.2d 144 (1st Dep't 2001)

Comment:Engagement ring is a gift which is separate property; proper to refuse to value or distribute wife's stock options without evidence of their value from husband; proper to value wife's profit sharing plan at date of commencement based upon her active engagement in its management

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:Husbands request denied

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1029

Case:Erickson v. Erickson, 281 A.D.2d 862, 723 N.Y.S.2d 521 (3d Dep't 2001)

Comment:Trial court is authorized to award maintenance based upon income stream represented by husbands earning capacity without his license, inasmuch as those moneys were not capitalized, converted into marital property and distributed; income stream attributable to undistributed portion of licence education completed before marriage is available for purposes of maintenance; improper to direct spouse, as part of distributive award, to select joint allowance full retirement benefit where under that option part of pension received by wife will constitute non-marital property, because husband continues to work

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1030

Case:Ferina v. Ferina, 286 A.D.2d 472, 729 N.Y.S.2d 533 (2d Dep't 2001)

Comment:Maintenance denied where wife's distributive award is substantial, she is employed and has additional rental income; interspousal gifts made during the marriage are marital property subject to equitable distribution; proper to award counsel fees where husband tried to conceal his assets

Years Married:20

Ages/Income:H. \$285/wk W. 130/wk

Child Support:?

Maintenance:award vacated on appeal

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$6000

Property Distribution to Wife:?

Number:1031

Case:Fogarty v. Fogarty, 284 A.D.2d 300, 725 N.Y.S.2d 673 (2d Dep't 2001)

Comment:Husband entitled to credit for separate property contribution to marital residence; and creditor pendente lite house payments against arrears of retroactive maintenance and child support obligations; life insurance which is reduced each year is difficult to administer and should be modified to reflect a fixed amount of insurance

Years Married:?

Ages/Income:?

Child Support:remitted for recalculation of proportionate share of educational expenses, child care and health care not covered by insurance, as well as recalculation of support payment and for fixed amount of life insurance.

Maintenance:\$350/wk for 6 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:for children

Counsel Fees:?

Property Distribution to Wife:?

Number:1032

Case:Francis v. Francis, 286 A.D.2d 749, 730 N.Y.S.2d 354 (2d Dep't 2001)

Comment:Where parties separated 37 years at date of commencement of action and had no assets at time of their separation, determination that each was to retain assets in his/her dominion and control, was equitable

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1033**Case:**Frankel v. Frankel, 287 A.D.2d 686, 732 N.Y.S.2d 103 (2d Dep't 2001)**Comment:**Error to fail to deduct maintenance payments and FICA from gross income in calculating child support**Years Married:?****Ages/Income:?****Child Support:**\$476/mo.**Maintenance:**\$2500 per month for 2 years and \$2000 per month for 4 years**Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:?**

Number:1034**Case:**Fruchter v. Fruchter, 288 A.D.2d 942, 732 N.Y.S.2d 810 (4th Dep't 2001)**Comment:?****Years Married:?****Ages/Income:?****Child Support:?****Maintenance:**remitted for new determination of amount for period of 12 years**Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:**\$15,000**Property Distribution to Wife:?**

Number:1035**Case:**Gandhi v. Gandhi, 283 A.D.2d 782, 724 N.Y.S.2d 541 (3d Dep't 2001)

Comment:Inequitable to make any distribution of marital portion of CPA license (or paralegal degree) to wife considering the extent of the husbands pre-marriage education and experience, lack of evidence that the wife contributed in a meaningful way to the husbands efforts during marriage to obtain the license; similar analysis was applied to the wife's paralegal degree

Years Married:7

Ages/Income:H. \$54,900/yr W. ?

Child Support:\$5200/yr Daycare 2Ch

Maintenance:denied

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$6500

Property Distribution to Wife:?

Number:1036

Case:Gezelter v. Shoshani, 283 A.D.2d 455, 724 N.Y.S.2d 481 (2d Dep't 2001)

Comment:Child support retroactive to date of answer containing first request for child support, the date of application therefor; improper to impute income where calculation of earning potential has no basis in law and in fact. Amount of retroactive child support should be calculated based on payors income for each year that the child support is ordered.

Years Married:3

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1037

Case:Gindi v. Gindi, NYLJ 5-7-01, P.31, Col 3, Sup.Ct., Kings Co. (Garson, J.)

Comment:Parties separated after 4 months; wife awarded 75% of marital assets where husband refused to give wife a Jewish divorce and \$500/wk non-durational maintenance in 9 months marriage.

Years Married:9mo

Ages/Income:H. 32 W. 22

Child Support:?

Maintenance:\$500/wk non-durational

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$30,000

Property Distribution to Wife:75% (\$25,425) of marital property

Number:1038

Case:Goudreau v. Goudreau, 283 A.D.2d 684, 724 N.Y.S.2d 123 (3d Dep't 2001)

Comment:Wife had partial disability; court may impute income to a party based upon prior employment experience and the earning capacity reflected by her educational background.

Years Married:21

Ages/Income:H. 41 W. 41/\$54/wk Disability

Child Support:\$133/wk 2Ch

Maintenance:remitted for new trial on maintenance issue

Exclusive Occupancy:title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% (\$102,000) of marital property

Number:1039

Case:Graziano v. Graziano, 285 A.D.2d 488, 727 N.Y.S.2d 473 (2d Dep't 2001)

Comment: Proper to award exclusive occupancy of house which is husband's separate property, to wife until youngest child 18, where due to wife's limited income she would be unable to obtain suitable alternative housing for her and parties 2 children in same school district in which parties agreed children should remain.

Years Married:?

Ages/Income:?

Child Support: remitted to recompute child support after hearing to determine proper amount of income to impute to husband

Maintenance:?

Exclusive Occupancy: to wife until youngest child 18

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number: 1040

Case: Greenfield v. Greenfield, 287 A.D.2d 332, 731 N.Y.S.2d 34 (1st Dep't 2001)

Comment: Wife's discretionary spending averaged \$30,000/mo

Years Married:?

Ages/Income: H. \$700,000/yr

Child Support: \$5588/mo.

Maintenance: \$17,000/mo. "permanent maintenance" & payment of mortgage by husband

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees: remanded for determination

Property Distribution to Wife:?

Number: 1041

Case: Grunfeld v. Grunfeld, 281 A.D.2d 338, 722 N.Y.S.2d 513 (1st Dep't 2001)

Comment: Husband's claim that two accounts were separate property rejected in absence of evidence satisfying his burden of identifying the sources of his contributions thereto.

Years Married:?

Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:1042

Case:Halaby v. Halaby, 289 A.D.2d 657, 734 N.Y.S.2d 271 (3d Dep't 2001)

Comment:Post-doctoral fellowship is not an extension of doctoral degree program which enhances husbands earning capacity where no evidence is proffered that completion of fellowship was necessary in that it enhanced his earning capacity by enabling him to secure the position he held; wife denied share of husbands Ph.D. degree where she did not make any contributions to its attainment; wife not entitled to share of husbands premarital pension where no proof offered as to contributions made during marriage

Years Married:2

Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:1043

Case:Havell v. Islam, 288 A.D.2d 160, 734 N.Y.S.2d 841

Comment:Where one spouse attempts to murder the other spouse, there need be no showing of adverse economic impact on the victim in order to reduce the offending spouses equitable distribution; marital assets awarded to wife

Years Married:?

Ages/Income:W. \$765,000

Child Support:\$25/mo
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:1044

Case:Katzman v. Katzman, 284 A.D.2d 160, 725 N.Y.S.2d 849
(1st Dep't 2001)

Comment:Court had discretion to award counsel fees for legal services performed in or incurred in prior dismissed action; App div rejected husband argument that wife's experts testimony was incredible, where claimed differences were due to husbands failure to produce documents relating to experts calculations

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:to wife for 2 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1045

Case:Krigsman v. Krigsman, 288 A.D.2d 189, 732 N.Y.S.2d 438
(2d Dep't 2001)

Comment:Court imputed income of \$170,000 to husband and 6,325 to wife

Years Married:12

Ages/Income:H. \$170,000 W \$26,325

Child Support:?

Maintenance:\$200/wk for 3 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?**Counsel Fees:**\$70,000**Property Distribution to Wife:**50% of husband's enhanced earning capacity

Number:1046**Case:**Krutansky v. Krutansky, NYLJ, 12-18-01, P.22, Col. 2 (2d Dep't 2001)**Comment:**Proper to reduce maintenance upon receipt of distributive award; husband should pay wife's expert and counsel fees in light of the disparity in the income of the parties and his tactics which unnecessarily prolonged the litigation; evaluation of real estate based on experts' credibility and valuation technique should not be disturbed on appeal**Years Married:**34**Ages/Income:?****Child Support:?****Maintenance:**\$4000 per month until payment of distributive award, then \$2000/mo**Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:**\$47,418 plus \$62,500 for appraisals**Property Distribution to Wife:**50% of marital property

Number:1047**Case:**Kumar v. Dudani, 281 A.D.2d 178, 721 N.Y.S.2d 629 (1st Dep't 2000)**Comment:**Wife awarded 0% of husband's enhanced earning capacity, as a result of the medical training he received in this country during the marriage, in view of short duration of parties' sporadic cohabitation and lack of support. Counsel fees proper in view of wife's dilatory tactics and many unnecessary motions.**Years Married:?****Ages/Income:?****Child Support:**\$851.00 bi-weekly**Maintenance:?****Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?**

Life Insurance:?

Counsel Fees:\$850.00 to husband

Property Distribution to Wife:\$12,695.00

Number:1048

Case:Lange v. Lange, 187 Misc.2d 416, 723 N.Y.S.2d 335 (N.Y. Sup. 2001)

Comment:Wife who satisfied marital debt of the parties, with inheritance, and withdrew her bankruptcy petition not entitled to reimbursement from husband, who did not withdraw his petition and was discharged.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1049

Case:Lawson v. Lawson, 288 A.D.2d 795, 732 N.Y.S.2d 753 (2d Dep't 2001)

Comment:?

Years Married:21

Ages/Income:H. 47 W. 49

Child Support:\$810 bi-weekly 2Ch

Maintenance:\$100/mo. for 5 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1050

Case:Leeds v. Leeds, 281 A.D.2d 601, 722 N.Y.S.2d 582 (2d Dep't 2001)

Comment:Husband not entitled to credit for one half of mortgage payments he made during pendency of action which included real estate taxes where wife paid for substantially all of the household expenses while they resided together during the pendency of the action.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1051

Case:Levy v. Levy, 289 A.D.2d 379, 734 N.Y.S.2d 247 (2d Dep't 2001)

Comment:Husbands contention that he was entitled to a portion of the value of wife's real estate brokers license was not preserved for appellate review as he never raised the issue before the Supreme Court; Counsel fee award was proper where husband tried to conceal his assets

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$18,000

Property Distribution to Wife:?

Number:1052

Case:Liepman v. Liepman, 279 A.D.2d 686, 717 N.Y.S.2d 790 (3d Dep't 2001)

Comment: Proper to impute income based on father's assessment of his ability to provide support despite no indication income was reduced to avoid a support obligation. Outstanding financial obligations incurred during the marriage, which are not solely the responsibility of the spouse who incurred them may be offset against the total assets to be divided; proper to award counsel fees based on husband's deception in hiding marital assets.

Years Married:9

Ages/Income:H. \$34,516 W. 7,639

Child Support:Remitted

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:Husband to pay 75%

Property Distribution to Wife:?

Number:1053

Case:Litman v. Litman, 280 A.D.2d 520, 721 N.Y.S.2d 84 (2d Dep't 2001)

Comment: Proper to determine the marital value of defined benefit plan using actuarial present value as of date of commencement of action, rather than date of trial; proper to award prejudgment interest on portions of distributive award representing assets valued at date of commencement.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$28,944.00

Property Distribution to Wife:?

Number:1054

Case:Lynch v. Lynch, NYLJ, 6-11-2002, P.29, Col.6 (2d Dep't 2001)

Comment:Husband entitled to a credit for his separate property contribution to the marital residence

Years Married:13

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:\$137,500

Number:1055

Case:McManus v. McManus, 282 A.D.2d 213, 723 N.Y.S.2d 165 (1st Dep't 2001)

Comment:Valuation of husbands 70% interest in business properly based upon purchase price per share paid by husband to his brother when he purchased brothers 30% interest in the firm 8 months earlier.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1056

Case:McPheeters v. McPheeters, 284 A.D.2d 968, 726 N.Y.S.2d 530 (4th Dep't 2001)

Comment:Not abuse of discretion to award counsel fees to defendant based on findings that plaintiff is "moneyed spouse" and that his failure to pay maintenance as ordered resulted in protracted litigation. DRL 244 does not require either notice or a hearing.

Years Married:?

Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:1057
Case:Melnitzky v. Melnitzky, 284 A.D.2d 240, 726 N.Y.S.2d 649 (1st Dep't 2001)
Comment:award of attorneys fees proper where husband insisted on litigating matters in which the merit of his position was dubious at best and disparity of parties resources was great
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$19,400
Property Distribution to Wife:50% of marital assets

Number:1058
Case:Militana v. Militana, 280 A.D.2d 529, 720 N.Y.S.2d 188 (2d Dep't 2001)
Comment:Improper to award maintenance under facts of case; proper to impute \$40,000 per year income to wife; in calculating Pendente Lite child support it is error to fail to deduct from income the award of Pendente Lite maintenance; court must give reason for departing from CSSA guidelines.
Years Married:14
Ages/Income:H. 45/ \$653,201 W. 42/ \$40,000 per year imputed
Child Support:Remitted for recomputation de novo
Maintenance:Denied
Exclusive Occupancy:?

Health & Medical Insurance:?**Dental Insurance:?****Life Insurance:?****Counsel Fees:**\$85,000 (including appraisal fees)**Property Distribution to Wife:**\$1,504,782 with 9% interest

Number:1059**Case:**Milteer v. Milteer, 280 A.D.2d 530, 720 N.Y.S.2d 194 (2d Dep't 2001)**Comment:**Promotion to the position of sergeant (corrections officer) is not a marital asset subject to equitable distribution.**Years Married:?****Ages/Income:?****Child Support:?****Maintenance:?****Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:**Remitted for new determination as to value of wife's nursing license and husband's pension and equitable distribution.

Number:1060**Case:**Mollon v. Mollon, 282 A.D.2d 659, 723 N.Y.S.2d 686 (2d Dep't 2001)**Comment:**Income of \$25,000 imputed to wife based on her past income and earning potential.**Years Married:?****Ages/Income:?****Child Support:**\$500/wk and 91% of child care, private school and unreimbursed medical expenses**Maintenance:**\$450/wk for 3 years**Exclusive Occupancy:?****Health & Medical Insurance:**Health ins. for wife for 5 years or until employer provides it.**Dental Insurance:?****Life Insurance:?****Counsel Fees:?**

Property Distribution to Wife:?

Number:1061

Case:Morell v. Morell, 277 A.D.2d 780, 716 N.Y.S.2d 736 (3d Dep't 2000)

Comment:Equitable distribution presents issues of fact to be resolved by the trial court, and its judgment should be upheld absent an abuse of discretion.

Years Married:16

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1062

Case:Moschetti v. Moschetti, 277 A.D.2d 838, 716 N.Y.S.2d 802 (3d Dep't 2000)

Comment:Court must state reasons for deviating or not deviating on child support on amount in excess of \$80,000.

Years Married:11

Ages/Income:H. \$250,000/yr W. 37/ \$6000/yr

Child Support:\$904.16 per week 2 CH

Maintenance:\$20,000 per year for 3 years, then \$15,000 per year for 4 years.

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:\$1,000,000 for wife

Counsel Fees:?

Property Distribution to Wife:50% of marital residence and IRA account

Number:1063

Case:Needham v. Needham, 283 A.D.2d 254, 724 N.Y.S.2d 609 (1st Dep't 2001)

Comment:Increase in value of husbands stock, which was separate property, was properly increased from \$0 where he failed to offer any evidence of its value at the times of acquisition, constituted marital property subject to equitable distribution; counsel fees awarded for willful obstruction of discovery.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:\$25,000

Number:1064

Case:O'Dwyer v. O'Dwyer, NYLJ 5-3-01, P.25, Col.4, Sup.Ct, West. Co. (LaCava, J.)

Comment:Wife suffering from Multiple Sclerosis was permanently disabled; wife entitled to credit for reduction of principal of mortgage; value of auto provided by employer and legal referral fees imputed as income to husband.

Years Married:?

Ages/Income:H. 42/ \$123,240 W. 39

Child Support:\$1,794/Month 2 children + 69% of uninsured health costs and academic tutoring.

Maintenance:\$3,300 per month.

Exclusive Occupancy:to wife until youngest child emancipated.

Health & Medical Insurance:for wife for life, and for children.

Dental Insurance:?

Life Insurance:for children.

Counsel Fees:\$52,000 for wife.

Property Distribution to Wife:50% of net proceeds of sale of home and other assets.

Number:1065

Case:O'Sullivan v. O'Sullivan, 282 A.D.2d 586, 723 N.Y.S.2d 397 (2d Dep't 2001)

Comment:Award of additional maintenance directing former husband to pay the difference between income received by the plaintiff from renting apartments in the marital residence and the mortgage payment is open ended and improper. Maintenance proper if wife's earning capacity reduced due to her care of disabled son

Years Married:9

Ages/Income:?

Child Support:\$261.54/Week

Maintenance:\$175/week until the parties son reaches age 18.

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1066

Case:Ovental v. Ovental, NYLJ, 12-13-01, P.28, Col.2 (Sup. 2001)

Comment:Court discusses factors considered on counsel fee award

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$11,129

Property Distribution to Wife:?

Number:1067

Case:Poli v. Poli, 286 A.D.2d 720, 730 N.Y.S.2d 168 (2d Dep't 2001)

Comment:A parent is not liable for college expenses of child who reaches 21 unless there is an express agreement to pay such support; Proper to decline to award counsel fee where wife never made a formal application for such award and submitted no supporting documentation regarding the legal services rendered.

Years Married:14

Ages/Income:?

Child Support:\$5000/mo. 3Ch

Maintenance:\$5000/mo. for 4 yrs

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:denied

Property Distribution to Wife:?

Number:1068

Case:Schenfeld v. Schenfeld, 289 A.D.2d 219, 734 N.Y.S.2d 465 (2d Dep't 2001)

Comment:Maintenance is designed to give spouse economic independence and should continue only as long as is required to render the recipient self-supporting; lifetime maintenance awarded reduced on appeal; proper to award wife attorney fee to redress economic disparity between the parties

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$200/wk until wife age 65 (12 years)

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$15,000

Property Distribution to Wife:?

Number:1069

Case:Siegel v. Siegel, 284 A.D.2d 389, 726 N.Y.S.2d 288 (2d Dep't 2001)

Comment:Once a court converts a specific stream of income into an asset that income may no longer be calculated into the maintenance formula and payout; inadequate appendix prevents appellate court from making determination on the merits.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:Remitted for new calculation

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:For wife as beneficiary

Counsel Fees:to wife

Property Distribution to Wife:40% of value of husbands accounting practice and CPA license

Number:1070

Case:Sodaro v. Sodaro, 286 A.D.2d 434, 729 N.Y.S.2d 731 (2d Dep't 2001)

Comment:\$225,000 income imputed to husband for purposes of fixing child support and maintenance; court double counted in valuing husbands psychiatry practice and in awarding maintenance; Once a court converts a specific income stream into an asset, that income may no longer be calculated into the maintenance formula and payout

Years Married:?

Ages/Income:?

Child Support:1

Maintenance:remitted

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:remitted

Number:1071

Case:Solomon v. Solomon, 282 A.D.2d 666, 723 N.Y.S.2d 709 (2d Dep't 2001)

Comment:Court properly declined to award wife a share of value of husbands MBA degree. The parties separated their financial affairs and the plaintiff failed to adduce any evidence that she made a non-economic contribution to further the defendants studies; error to fail to award a retroactive support.

Years Married:?

Ages/Income:?

Child Support:\$1,735/Month

Maintenance:\$1,200/month for 6 months

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$17,750 to Wife

Property Distribution to Wife:?

Number:1072

Case:Sterling v. Sterling, NYLJ, 8-6-01, P.25, Col.4,Sup.Ct., N.Y. Co.(Diamond, J.)

Comment:Maintenance award to husband; soap opera actress is not a celebrity

Years Married:7

Ages/Income:H. \$57,5000 W. \$199,500

Child Support:?

Maintenance:\$18,000 for 1 year

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:None

Property Distribution to Wife:?

Number:1073

Case:Stuart v. Stuart, 275 A.D.2d 533, 712 N.Y.S.2d 190 (3d Dep't 2000)

Comment:Distributive award to be paid upon sale of residence or when youngest child attains 21, whichever comes first.

Years Married:?

Ages/Income:H. \$54,000 W. \$35,000

Child Support:?

Maintenance:Denied
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:50%

Number:1074
Case:Sutka v. Sutka, 281 A.D.2d 470, 722 N.Y.S.2d 52 (2d Dep't 2001)
Comment:Improvident exercise of discretion to deny wife an adjournment to retain a new expert after her expert could not testify because of a conflict of interest and she was unable to retain a new expert on short notice.
Years Married:?
Ages/Income:?
Child Support:Remitted
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:Remitted

Number:1075
Case:Teague v. Teague, 281 A.D.2d 473, 721 N.Y.S.2d 774 (2d Dep't 2001)
Comment:Error to direct husband to transfer interest in marital residence to wife in the absence of any evidence establishing its fair market value.
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?

Counsel Fees:?
Property Distribution to Wife:?

Number:1076

Case:Unterreiner v. Unterreiner, 288 A.D.2d 463, 733 N.Y.S.2d 239 (2d Dep't 2001)

Comment:Amount and duration of maintenance will permit wife, who received a considerable distributive award, to become self supporting, and when combined with the distributive award, will permit her to maintain a standard of living comparable to that she enjoyed during the marriage

Years Married:26

Ages/Income:?

Child Support:?

Maintenance:\$50,000/yr for 3 years, then \$40,000/yr for 3 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1077

Case:Wahl v. Wahl, 277 A.D.2d 445, 716 N.Y.S.2d 696 (2d Dep't 2000)

Comment:Error to value stock at date two months prior to commencement of action; Husband entitled to credit against retroactive maintenance.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$500.00 per week until 6/23/03, then 50.00 per week until wife reaches age 62.

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$15,000

Property Distribution to Wife:?

Number:1078

Case:Alessi v. Alessi, 289 A.D.2d 782, 734 N.Y.S.2d 665 (3d Dep't 2001)

Comment:Appellate Division may treat premature notice of appeal as valid; legal representation at an end at the end of trial for purposes of serving notice of appeal; improper to impute income of \$34, 534 to defendant who was a full time "house husband" since 1976, where there was no evidence he could obtain employment as a full time teacher

Years Married:3

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$8500

Property Distribution to Wife:equitable share (480) of marital funds applied toward repayment of mortgage on house that was husbands separate property, having been acquired before marriage

Number:1079

Case:Anonymous v. Anonymous, 289 A.D.2d 106, 735 N.Y.S.2d 26 (1st Dep't 2001)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$4300/mo for 10 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of value of husbands law practice

Number:1080

Case:Aregano v. Aregano, 289 A.D.2d 1081, 735 N.Y.S.2d 325 (4th Dep't 2001)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1081

Case:Atkinson v. Atkinson, 289 A.D.2d 907, 735 N.Y.S.2d 241 (3d Dep't 2001)

Comment:Husband awarded maintenance

Years Married:20

Ages/Income:?

Child Support:\$200/wk [4Ch] paid by H; W responsible for all child care expenses and uninsured medical and dental

Maintenance:\$500/mo. for one year to Husband

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1082

Case:Atwell v. Atwell, 292 A.D.2d 479, 739 N.Y.S.2d 284 (2d Dep't 2002)

Comment:A decision is sufficient when it sets forth the factors considered and the reasons for the decision

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$4000 per month for 6 years

Exclusive Occupancy:?

Health & Medical Insurance:?**Dental Insurance:?****Life Insurance:?****Counsel Fees:**\$25,000**Property Distribution to Wife:?**

Number:1083**Case:**Barone v. Barone, 292 A.D.2d 481, 740 N.Y.S.2d 350 (2d Dep't 2002)**Comment:**Income of \$65,000 properly imputed to husband; When fixing the basic child support obligation the court should take into consideration the amount awarded for carrying charges on the house where the children reside. An award of duplicative carrying charges can be remedied by deducting the amount from the payers income before determining child support**Years Married:?****Ages/Income:?****Child Support:**\$329.17 [2Ch]**Maintenance:**\$200 per week for 3 years**Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:**\$30,000**Property Distribution to Wife:?**

Number:1084**Case:**Bittner v. Bittner, 296 A.D.2d 516, 745 N.Y.S.2d 559 (2d Dep't 2002)**Comment:**The court is not required to find that a party has deliberately reduced his income to avoid his support obligations in order to impute income; it may consider his past employment history and earning capacity. Appropriate to offset support arrears against title to house. Proper to deny maintenance where wife employed, receiving child support and title to house.**Years Married:**13**Ages/Income:?****Child Support:**\$203/wk (based on imputed income of \$700/wk [3 Ch])**Maintenance:**denied**Exclusive Occupancy:**Title to wife

Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:1085

Case:Buchsbaum v. Buchsbaum, 292 A.D.2d 553, 740 N.Y.S.2d 359 (2d Dep't 2002)

Comment:Proper to conclude that wife would no longer need maintenance when she would start to draw \$67,500 per year from her retirement funds; husbands familial gifts and charitable transfers were made in contemplation of matrimonial action

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$6000/month until wife 70 1/2 years old

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1086

Case:Carniol v. Carniol, 297 A.D.2d 697, 747 N.Y.S.2d 539 (2d Dep't 2002), opinion recalled and vacated on reargument, 2002 WL 114462 (N.Y. App. Div. 2d Dep't 2003)

Comment:Error to include increase in appreciation of separate home in marital property without proof of increase attributable to efforts of either party; error to award counsel fee without full evidentiary hearing

Years Married:?

Ages/Income:?

Child Support:\$650/wk

Maintenance:\$600/wk for 2 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:\$321,654

Number:1087

Case:Carr v. Carr, 291 A.D.2d 672, 738 N.Y.S.2d 415 (3d Dep't 2002)

Comment:Where money expended on marital residence during marriage exceeded its value, no claim could be made that any part of residence could be considered marital property by virtue of wife's active efforts, but she could recoup her equitable share of the marital funds used to reduce the indebtedness and pay for improvements to the property

Years Married:15

Ages/Income:H: 55/\$44620 W ?

Child Support:\$490/mo [1 Ch]

Maintenance:\$400/mo for one year

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:denied

Counsel Fees:?

Property Distribution to Wife:40% of assets (worth \$1.1 million) plus her jewelry, the household furniture and her automobile, plus \$227,000 for her share of marital residence

Number:1088

Case:Casey v. Casey, 289 A.D.2d 361, 734 N.Y.S.2d 228 (2d Dep't 2001)

Comment:improper to direct that income imputed to husband for purposes of child support shall never be less than \$70,000; husband entitled to credit for his separate property contribution to marital property

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?**Property Distribution to Wife:**35% of marital residence

Number:1089**Case:**Castaldo v. Castaldo, 289 A.D.2d 189, 734 N.Y.S.2d 182 (2d Dep't 2001)**Comment:**Proper to refuse to award child support arrears where husband paid voluntary support which exceeded amount in judgment**Years Married:?****Ages/Income:?****Child Support:?****Maintenance:?****Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:?**

Number:1090**Case:**Cerretani v. Cerretani, 289 A.D.2d 753, 734 N.Y.S.2d 324 (3d Dep't 2001)**Comment:**A determination to accept a witness as an expert will not be disturbed in the absence of serious mistake, an error of law or an abuse of discretion; proper to apply a 30% discount to close corporation value for stock transfer restriction**Years Married:?****Ages/Income:?****Child Support:?****Maintenance:?****Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:?**

Number:1091

Case:Corasanti v. Corasanti, 296 A.D.2d 831, 744 N.Y.S.2d 614 (4th Dep't 2002)

Comment:Proper to fix child support based on \$215,000 of husbands \$250,000 income. Not error to award wife 30% of value of husbands EEC from medical degree where his achievements were accomplished primarily through his own ability and Herculean effort as well as his own capacity for hard work. Formula used in Reczek to avoid double counting of income stream should no longer be used. To avoid double counting court used \$192,500 or 77% of the husbands total income stream. The court deducted \$195,195, which is 77% of the total maintenance award of \$253,500, from the distributive award of \$305,978, which resulted in a distributive award of \$110,783 and a maintenance award of \$253,500.

Years Married:20

Ages/Income:?

Child Support:?

Maintenance:for three years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:30% of husbands enhanced earning capacity (EEC) of \$1,019,928.

Number:1092

Case:Cozza v. Colangelo, 298 A.D.2d 914, 747 N.Y.S.2d 641 (4th Dep't 2002)

Comment:App Div exercises discretion to make distributive award where record sufficient where lower court fails to make necessary findings; prior dismissed divorce action does not constitute a matrimonial action for purposes of DRL 236 [B] because it neither ended the marriage nor resulted in an equitable distribution; must deduct loans for school during marriage in calculating enhanced earning capacity; husband made no contribution to wife's residency where parties were separated and not entitled to share of enhanced earnings for that one year period; inequitable to distribute portion of residence purchased after parties separated and no longer had an economic partnership

Years Married:?

Ages/Income:?

Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:Husband entitled to 30% of value of wife's college degree, 10% of value of medical degree and 0% of value of anesthesiology training

Number:1093
Case:People v. Curry, 276 A.D.2d 709, 714 N.Y.S.2d 349 (2d Dep't 2000)
Comment:husband entitled to be reimbursed for one-half of pension loan payments he made subsequent to date of judgment where payments made with loans he took for which wife was not responsible.
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:1094
Case:DeLuca v. DeLuca, 290 A.D.2d 410, 736 N.Y.S.2d 601 (2d Dep't 2002)
Comment:On remand after Court of Appeals held that VSF benefits are marital property
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of marital property

Number:1095

Case:Epstein v. Epstein, 289 A.D.2d 78, 734 N.Y.S.2d 144 (1st Dep't 2001)

Comment:Proper to refuse to distribute wife's stock options without evidence of their value from husband

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:Husband's request denied

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1096

Case:Garruto v. Garruto, 290 A.D.2d 872, 736 N.Y.S.2d 527 (3d Dep't 2002)

Comment:Supreme Court has discretion in the manner in which it avoids double counting of income when one spouse has earned an advanced degree during the marriage

Years Married:31

Ages/Income:H: \$107,000 W: \$30,000

Child Support:?

Maintenance:\$1100/mo until husband retires

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1097

Case:Gentner v. Gentner, 289 A.D.2d 886, 736 N.Y.S.2d 431 (3d Dep't 2001)

Comment:add-ons for medical expenses and child care are appropriate only when the basic child support obligation is calculated pursuant to DRL 240(1-b)(c); a court has discretion to direct a parent to pay a percentage other than his pro-rata share even when basic child support obligation is appropriate

Years Married:?

Ages/Income:?

Child Support:remitted for de novo determination

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:\$121,034

Number:1098

Case:Gonzalez v. Gonzalez, 291 A.D.2d 373, 737 N.Y.S.2d 111 (2d Dep't 2002)

Comment:Wife entitled to credit for separate property contribution to marital residence; use of joint funds to pay legitimate expenses is not waste or dissipation of marital assets.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1099

Case:Hamersky v. Hamersky, 290 A.D.2d 414, 736 N.Y.S.2d 603 (2d Dep't 2002)

Comment:?

Years Married:?

Ages/Income:?
Child Support:\$153/Week
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:\$6500

Number:1100
Case:Hasegawa v. Hasegawa, 290 A.D.2d 488, 736 N.Y.S.2d 398 (2d Dep't 2002)
Comment:Settlement of cause of action against third parties to set aside fraudulent conveyance of husband's business and marital home transferred in violation of TRO occurred after the commencement of divorce action and is wife's separate property; husband, who admitted that purpose of transfer was to prevent wife from obtaining equitable distribution not entitled to equitable relief with unclean hands; economic fault in the form of dissipation or secretion of assets under factor 11 is a proper consideration for the court

Years Married:?
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:1101
Case:Haymes v. Haymes, 298 A.D.2d 117, 748 N.Y.S.2d 542 (1st Dep't 2002)
Comment:pre-judgment interest on distributive award of share of business is not appropriate where business property is valued by income capitalization approach; wife entitled to interest from the date of the decision to entry of judgment; appropriate to discount value of minority partnership interest

Years Married:20
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:50% of marital property

Number:1102

Case:Heilbut v. Heilbut, 297 A.D.2d 233, 746 N.Y.S.2d 294 (1st Dep't 2002), leave to appeal dismissed in part, denied in part, 99 N.Y.2d 643, 760 N.Y.S.2d 93, 790 N.E.2d 266 (2003)

Comment:Proper to deny husband maintenance where he did not ask for it until 10 years after commencement and did not demonstrate any change in his income or standard of living; Counsel fee awarded to husband to enable him to obtain representation where wife in superior financial position.

Years Married:30
Ages/Income:?
Child Support:?
Maintenance:Husbands request denied
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$41,932 to husband
Property Distribution to Wife:?

Number:1103

Case:Hendershott v. Hendershott, 299 A.D.2d 880, 750 N.Y.S.2d 210 (4th Dep't 2002)

Comment:Wife entitled to credit for her interest in automobile based on the use of her separate property to obtain that marital asset; husband entitled to credit for his proportionate share of capital gains tax resulting from gains on wife's separately owned mutual fund

Years Married:?
Ages/Income:?

Child Support:?
Maintenance:denied
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:1104
Case:Johnson v. Johnson, 297 A.D.2d 279, 746 N.Y.S.2d 302 (2d Dep't 2002)
Comment:Proper to award wife share of husbands pension benefits retroactive to the date of commencement of the action.
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:not requested
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:1105
Case:Johnson v. Johnson, 297 A.D.2d 279, 746 N.Y.S.2d 302 (2d Dep't 2002)
Comment:Proper exercise of discretion to award wife retroactive equitable share of pension in pay-out status
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:1106

Case:Jones v. Jones, 289 A.D.2d 983, 734 N.Y.S.2d 796 (4th Dep't 2001)

Comment:Defendant failed to trace source of funds used for down payment on marital residence and failed to rebut presumption that they were marital property; if defendant paid mortgage with non-marital funds after the commencement of the action, he is entitled to a credit for a portion of those payments

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1107

Case:Kent v. Kent, 291 A.D.2d 258, 738 N.Y.S.2d 31 (1st Dep't 2002)

Comment:failure to articulate basis for calculations under CSSA requires that child support award be vacated and remanded; remitted for findings and reasons for method used in determining child support award as required by DRL 240(1-b) and 240(1-b)(c)(4)

Years Married:?

Ages/Income:?

Child Support:40% of unreimbursed medical expenses

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:\$100,000 for child

Counsel Fees:?

Property Distribution to Wife:?

Number:1108

Case:Klein v. Klein, 296 A.D.2d 533, 745 N.Y.S.2d 569 (2d Dep't 2002)

Comment:In light of learning disabilities and emotional disturbances of parties 3 children and evidence that wife took active role in their schooling, homework and after school activities maintenance award increased from 5 years to 15 years (when children reach 18). Entitled to credit for pendente lite payments to the extent they can be allocated to child support or maintenance. counsel fee award was proper in light of disparity in parties income and defendants delaying tactics which unnecessarily prolonged litigation; wife entitled to interest on award.

Years Married:16

Ages/Income:?

Child Support:?

Maintenance:\$1000 /wk for 15 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$75,000 to wife

Property Distribution to Wife:distributive award of \$750,000

Number:1109

Case:Kushman v. Kushman, 297 A.D.2d 333, 746 N.Y.S.2d 319 (2d Dep't 2002)

Comment:Error to fail to limit obligation to maintain life insurance to duration of maintenance payments. Proper to find that spouse dissipate marital assets where money was used for personal and business expenses and not to liquidate marital debt. Date of projected retirement is not a proper date to value pension and 401K. No basis in law for 10% interest rate.

Years Married:?

Ages/Income:H INC: \$77,000/yr

Child Support:?

Maintenance:\$400/wk until wife reaches age 62, retires or remarries

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:for wife

Counsel Fees:?

Property Distribution to Wife:?

Number:1110**Case:**Levy v. Levy, 289 A.D.2d 379, 734 N.Y.S.2d 247 (2d Dep't 2001)**Comment:**Counsel fee award proper where husband tried to conceal his assets**Years Married:?****Ages/Income:?****Child Support:?****Maintenance:?****Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:**\$18,000 to wife**Property Distribution to Wife:?**

Number:1111**Case:**Lew v. Lew, 289 A.D.2d 538, 735 N.Y.S.2d 192 (2d Dep't 2001)**Comment:**Maintenance increased from \$200 week for 2 years to \$500 a week for 6 years where wife has custody of parties 2 children and her income potential is modest; in determining increase in value of medical practice proper to adopt average increase in value determined by "excess earnings method" and capitalization of earnings method**Years Married:**8**Ages/Income:?****Child Support:?****Maintenance:**\$500 per week for 6 years**Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:?**

Number:1112**Case:**Matwijczuk v. Matwijczuk, 290 A.D.2d 854, 736 N.Y.S.2d 520 (3d Dep't 2002)

Comment:Where there is an inconsistency between a judgment and the decision, the decision controls; the inconsistency may be corrected either on motion or by appeal; court may order the sale of marital property by a referee; DRL 238 does not require a court to consider the circumstances of the case or of the parties in fashioning an award of counsel fees.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1113

Case:Mayer v. Mayer, 291 A.D.2d 384, 736 N.Y.S.2d 887 (2d Dep't 2002)

Comment:Proper to award child support pursuant to DRL 240(1-b)(k) based on "needs" and "standard of living" of the children, where plaintiff presented insufficient evidence to determine his gross income.

Years Married:?

Ages/Income:?

Child Support:\$3900/mo plus 100% of unreimbursed medical, pharmaceutical, optical, dental, orthodontic, therapeutic and child care expenses

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1114

Case:Mayle v. Mayle, 299 A.D.2d 869, 750 N.Y.S.2d 256 (4th Dep't 2002)

Comment:Error to impute income to husband based on living expenses provided to him by his girlfriend

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of net proceeds of sale of house

Number:1115

Case:Mazzone v. Mazzone, 290 A.D.2d 495, 736 N.Y.S.2d 683 (2d Dep't 2002)

Comment:37 year old wife who is disabled to the extent she receives social security disability and is unable to sit or stand for long periods of time established that she was incapable of returning to her profession as legal secretary in the foreseeable future and entitled to non-durational maintenance; proper to award exclusive occupancy where husband failed to establish he was in immediate need of proceeds of sale of former residence, that comparable housing was available for wife in the same area at a lower cost, or that the parties were financially incapable of maintaining the residence

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$550/wk non-durational

Exclusive Occupancy:to wife until youngest daughter 18 or emancipated

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:reversed for failure of proof

Property Distribution to Wife:?

Number:1116

Case:McAteer v. McAteer, 294 A.D.2d 783, 742 N.Y.S.2d 718 (3d Dep't 2002)

Comment:Error not to award maintenance as of date of application for it; error to fix marital portion of pension as of date of commencement of failed divorce action; it is the date of the successful action that controls

Years Married:25

Ages/Income:H: \$55,000/yr W: \$21,000/yr

Child Support:N/A

Maintenance:\$400 per month until defendant receives retirement benefits

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1117

Case:McManus v. McManus, 298 A.D.2d 189, 748 N.Y.S.2d 139 (1st Dep't 2002)

Comment:Defendant not entitled to credit for family business he inherited because he so commingled marital funds with sale proceeds to lose any separate character they may have originally had

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1118

Case:Meza v. Meza, 294 A.D.2d 414, 743 N.Y.S.2d 122 (2d Dep't 2002)

Comment:The division of marital assets in a marriage of long duration in which the parties each contributed equally should be as equal as possible

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$3850 to wife

Property Distribution to Wife:50% of all marital property (\$166,064 net distributive award)

Number:1119

Case:Miller v. Xiao Mei, 295 A.D.2d 144, 743 N.Y.S.2d 103 (1st Dep't 2002)

Comment:proper to preclude wife from presenting evidence on financial issues upon her unexplained failure to comply with her disclosure obligations; 25% of marital property to wife where marriage relatively short and her contributions nominal; marriage "viable" only 2 1/2 years

Years Married:?

Ages/Income:?

Child Support:Custody to husband

Maintenance:\$7000/year for 5 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:25% (\$1,712,273) of marital property

Number:1120

Case:Nichols v. Nichols, 291 A.D.2d 875, 737 N.Y.S.2d 449 (4th Dep't 2002)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?
Maintenance:\$4000/wk
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:1121

Case:Niland v. Niland, 291 A.D.2d 876, 737 N.Y.S.2d 214 (4th Dep't 2002)

Comment:Trial court properly charged husband for improper transfer of assets in contemplation of the matrimonial action without fair consideration by considering the sum withdrawn as a marital asset; the court has great flexibility in fashioning an equitable distribution and its judgment should be upheld absent an abuse of discretion

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:60% of marital property

Number:1122

Case:O'Connell v. O'Connell, 290 A.D.2d 774, 736 N.Y.S.2d 728 (3d Dep't 2002)

Comment:Where divorce obtained in 1994 in Vermont, after plaintiffs 1982 NY action dismissed for failure of proof, proper to use date of commencement of this action for equitable distribution following a foreign judgment of divorce, as cut-off date for marital property; proper to also consider the parties conduct with respect to their property in the time between the actions

Years Married:35

Ages/Income:H: 62/ ? W: 62/ \$54,000/yr

Child Support:?

Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$5000
Property Distribution to Wife:50% of marital assets

Number:1123
Case:Owens v. Owens, 288 A.D.2d 782, 734 N.Y.S.2d 646 (3d Dep't 2001)
Comment:A courts written decision will control in the event of a conflict between it and the order or judgment subsequently entered upon it
Years Married:28
Ages/Income:H: \$70,000/yr W: \$18,500/yr
Child Support:?
Maintenance:\$250/wk for 7 years
Exclusive Occupancy:?
Health & Medical Insurance:for wife for 36 months
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:1124
Case:Parkinson v. Parkinson, 295 A.D.2d 909, 744 N.Y.S.2d 101 (4th Dep't 2002)
Comment:Property acquired during marriage is presumed to be marital property
Years Married:35
Ages/Income:?
Child Support:?
Maintenance:denied
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:denied both parties
Property Distribution to Wife:?

Number:1125

Case:Pellino v. Pellino, 295 A.D.2d 330, 743 N.Y.S.2d 888 (2d Dep't 2002)

Comment:Appellate Division reduced distributive award of share of appreciated value of husbands separate property interest in two closely-held corporations

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:\$100,000

Number:1126

Case:Rado v. Rado, 298 A.D.2d 887, 747 N.Y.S.2d 870 (4th Dep't 2002)

Comment:Error to award wife share of husbands pension in pay-out status payable when she retires rather than at time of judgment

Years Married:30

Ages/Income:H 62/ \$25,000 W 54/ \$30,000

Child Support:?

Maintenance:?

Exclusive Occupancy:Option to Husband to buy out wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of marital residence

Number:1127

Case:Rohrs v. Rohrs, 297 A.D.2d 317, 746 N.Y.S.2d 305 (2d Dep't 2002)

Comment:Where a party's account of his finances is not believable the court is justified in finding a true or potential income higher than claimed; error to direct payment of proportionate share of children's educational expenses without reducing level of basic child support for that child, by amount for room and board he contributes, while she is away from home and at college. Must reduce income by amount of maintenance paid before determining child support and direct concomitant increase in child support when maintenance terminates. Must deduct NYC income tax in calculating income.

Years Married:?

Ages/Income:?

Child Support:remitted for new determination

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1128

Case:Rohrs v. Rohrs, 297 A.D.2d 317, 746 N.Y.S.2d 305 (2d Dep't 2002)

Comment:Proper to impute income where testimony is incredible; proper to direct payment of college expenses where child support reduced by room and board contribution

Years Married:?

Ages/Income:?

Child Support:remitted for new determination

Maintenance:\$250 per week for 6 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1129

Case:Rosenkranse v. Rosenkranse, 290 A.D.2d 685, 736 N.Y.S.2d 453 (3d Dep't 2002)

Comment:transfer of an inheritance into a joint account during marriage raises a presumption that the funds are marital property to be distributed according to the principals of equitable distribution. This presumption casts the burden on the transferor to establish by clear and convincing evidence, that the joint account was created for convenience only. Proper to award maintenance where 62 year old payee spouse is incapable of being self-supporting at a level roughly commensurate with the pre-separation standard of living

Years Married:42

Ages/Income:H: 63 W: 64

Child Support:?

Maintenance:\$200/wk for 2 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1130

Case:Sebag v. Sebag, 294 A.D.2d 560, 743 N.Y.S.2d 276 (2d Dep't 2002)

Comment:Equitable distribution presents matters of fact to be resolved by the trial court, and its distribution of the parties marital property should not be disturbed unless it can be shown that the court improvidently exercised its discretion in so doing

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:57.4% interest in marital residence and 100% interest in cooperative apartment

Number:1131

Case:Spencer v. Spencer, 298 A.D.2d 680, 748 N.Y.S.2d 809 (3d Dep't 2002)

Comment:Proper to provide in divorce judgment that either party may apply for modification of amount and duration of maintenance upon unemployed spouse's resumption of employment, which constitutes a substantial change of circumstances

Years Married:20

Ages/Income:W INCOME: \$24,750

Child Support:\$68 per week plus 47% of unreimbursed health costs

Maintenance:denied

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1132

Case:Tanzman v. Tanzman, 191 Misc. 2d 215, 740 N.Y.S.2d 584 (Sup 2002)

Comment:Court discusses method of valuing and distributing personal injury cases of husbands law practice

Years Married:24

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1133

Case:Wagner v. Dunetz, 299 A.D.2d 347, 749 N.Y.S.2d 545 (2d Dep't 2002)

Comment:Neither party made significant direct or indirect contributions to acquisition of other's professional certification and neither entitled to share of other's enhanced earning capacity; proper to refuse to discount interest in private medical practice for lack of marketability since that discount only applies to portion of value of corporation that is attributable to good will

Years Married:?

Ages/Income:?

Child Support:remitted for new determination

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:25% of husbands interest in medical practice; and 50% of other marital assets

Number:1134

Case:Weisbard v. Missett, 289 A.D.2d 482, 735 N.Y.S.2d 153 (2d Dep't 2001)

Comment:Life insurance may be used as a means to secure child support

Years Married:?

Ages/Income:?

Child Support:\$954.83 per month

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:\$250,000 to secure child support

Counsel Fees:?

Property Distribution to Wife:?

Number:1135

Case:Zielinski v. Zielinski, 289 A.D.2d 1017, 735 N.Y.S.2d 302 (4th Dep't 2001)

Comment:income imputed to wife

Years Married:?

Ages/Income:H INC: \$121,000 W INC: \$17,000

Child Support:?**Maintenance:**\$275/wk for 3 years**Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:**\$35,685 as share of appreciation of husbands business interests

Number:1136**Case:**Acosta v. Acosta, 301 A.D.2d 467, 753 N.Y.S.2d 506 (1st Dep't 2003), leave to appeal denied, 100 N.Y.2d 504, 762 N.Y.S.2d 874, 793 N.E.2d 411 (2003)**Comment:**Wife made direct contribution to appreciation of separate property by labor and assisting husband; wife awarded occupancy of entire building in marital residence located where husband left other apartments in building empty, she is custodial parent and husband did attempt to meet his burden of proof; part of justification for maintenance award is husbands lack of candor with respect to his income and his lack of cooperation in discovery and appraisal of assets; proper to award child support based on needs or standard of living for same reason; counsel fee proper considering disparity of economic positions**Years Married:**6**Ages/Income:?****Child Support:?****Maintenance:**rehabilitative award to wife**Exclusive Occupancy:**to wife**Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:**to wife**Property Distribution to Wife:**50% of appreciation of husbands separate property

Number:1137**Case:**Altomer v. Altomer, 300 A.D.2d 927, 753 N.Y.S.2d 174 (3d Dep't 2002)

Comment:While the JHO made remarks during trial that would be better off unsaid, his exasperation was often justified (by counsels conduct) and he was simply attempting to isolate the relevant issues and move the case to conclusion so new trial not warranted; maintenance warranted where wife on public assistance and had health problem but award (00) excessive where it was 39% of husbands gross income

Years Married:24

Ages/Income:H Inc: \$27,000

Child Support:?

Maintenance:\$100/week for 8 years or until wife's death, remarriage or obtaining SSI or Social Security disability benefits.

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$2500 to wife

Property Distribution to Wife:?

Number:1138

Case:Antes v. Antes, 304 A.D.2d 597, 758 N.Y.S.2d 163 (2d Dep't 2003)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$15,000 for 3 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of marital residence

Number:1139

Case:Bemis v. Bemis, 305 A.D.2d 739, 758 N.Y.S.2d 218 (3d Dep't 2003)

Comment:Improper to award child support which leaves husband with \$121 less than self-support reserve and 4 less than poverty income guidelines; his child support should be the difference between his income and the self support reserve; defendant's living with parents rent free is considered income

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$75/week for 1 year

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1140

Case:Boardman v. Boardman, 300 A.D.2d 1110, 752 N.Y.S.2d 777 (4th Dep't 2002)

Comment:?

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:wife's request denied

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:wife's request denied

Property Distribution to Wife:unequal distribution to wife

Number:1141

Case:Boyajian v. Boyajian, 194 Misc. 2d 756, 755 N.Y.S.2d 571 (Sup 2003)

Comment:maintenance award is effective as of date of judgment because wife's needs were met by pendente lite order

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$350 per week until 11-30-06

Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:50% of marital property

Number:1142
Case:Calandra v. Calandra, 303 A.D.2d 704, 757 N.Y.S.2d 574 (2d Dep't 2003)
Comment:maintenance award inappropriate where parties lived separate since 1986 and wife self-supporting at all times, at trial she acknowledged unreported income, the court imputed income to her of \$9600 and she was concealing substantial assets
Years Married:?
Ages/Income:H INC: \$242,000 W INC: \$23,364
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$25,000
Property Distribution to Wife:\$79,523 (distributive share of marital residence) and 50% of husbands pension

Number:1143
Case:Campbell v. Campbell, 302 A.D.2d 345, 754 N.Y.S.2d 651 (2d Dep't 2003)
Comment:Error for trial court to fail to adhere to the terms of Appellate Division remittitur on prior appeal
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?

Property Distribution to Wife:?

Number:1144**Case:**Carniol v. Carniol, 306 A.D.2d 366, 762 N.Y.S.2d 619 (2d Dep't 2003)**Comment:**Counsel fee of \$94,500 reduced on appeal where wife capable of being self-supporting and in view of distributive award; Abuse of discretion to direct husband to place \$180,000 in escrow with wife's attorney as security**Years Married:?****Ages/Income:?****Child Support:**\$650 per week**Maintenance:**\$600 per week for 2 years**Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:**for wife and child**Counsel Fees:**\$50,000 to wife**Property Distribution to Wife:**\$321,654

Number:1145**Case:**Chalif v. Chalif, 298 A.D.2d 348, 751 N.Y.S.2d 197 (2d Dep't 2002)**Comment:**A pre-separation "high-life" standard of living does not guarantee a per se entitlement to an award of lifetime maintenance; although in a marriage of long duration, where both parties have made significant contributions to the marriage, a division of marital assets should be made as equal as possible, there is no requirement that the distribution of each item of marital property be on an equal basis; counsel fee award to wife was reasonable in light of substantial distributive award and Supreme Courts determination that the counsel fees were excessive; award of additional child support for summer camp and college expenses was appropriate; proper to award wife 25% of husbands interest in medical practice and enhanced earning capacity where wife made no direct contribution to the practice and only a modest indirect contribution**Years Married:?****Ages/Income:?****Child Support:**\$4614/month plus 70% of child's college tuition, 50% of room, board and travel; additional child support for summer camp up to \$7000/year [3Ch]

Maintenance:\$100,000/year for 6 years
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$25,000
Property Distribution to Wife:\$2,500,000+

Number:1146
Case:Coburn v. Coburn, 300 A.D.2d 212, 752 N.Y.S.2d 319 (1st Dep't 2002)
Comment:Wife awarded tax-free maintenance
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:\$20,000/mo for 10 years
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:1147
Case:Comstock v. Comstock, 1 A.D.3d 307, 766 N.Y.S.2d 220 (App. Div. 2d Dep't 2003)
Comment:An award of attorneys fees is not intended to address a party's decision to proceed to trial rather than to agree to a settlement; Proper to award credit against child support obligation for payment of child's college expenses from separate property
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:\$15,00 per month for years 7 months
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:to secure maintenance obligation
Counsel Fees:?

Property Distribution to Wife:\$273,884

Number:1148**Case:**Costello v. Costello, 304 A.D.2d 517, 757 N.Y.S.2d 588 (2d Dep't 2003)**Comment:**improper to impute income to husband where no credible evidence that he was wrongfully terminated from his employment as opposed to him having voluntarily sought retirement; proper to direct husband to contribute to daughter's college education by directing him to reimburse wife for loans taken for college; proper to direct husband to pay taxes due for late filing of joint income tax return where he earned all of the income**Years Married:?****Ages/Income:?****Child Support:?****Maintenance:**\$200/week until wife 65**Exclusive Occupancy:**ordered sold**Health & Medical Insurance:**for wife until 65**Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:**50% of net proceeds of marital residence

Number:1149**Case:**David v. Pillai, 303 A.D.2d 708, 757 N.Y.S.2d 326 (2d Dep't 2003)**Comment:**Further equitable distribution denied to husband because of his bad faith; marriage declared void ab initio where husband had first wife living in India at time of marriage**Years Married:?****Ages/Income:?****Child Support:?****Maintenance:?****Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:**\$20,800 to husband

Number:1150

Case:Farrell v. Cleary-Farrell, 306 A.D.2d 597, 761 N.Y.S.2d 357 (3d Dep't 2003)

Comment:Husband entitled to 7 1/2% of enhanced earning capacity of wife's license and earning capacity as part time dental hygienist because Department of Commerce defines full time employment as 35 or more weeks per year out of 50 weeks per year

Years Married:19

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1151

Case:Fessenden v. Fessenden, 307 A.D.2d 444, 761 N.Y.S.2d 725 (3d Dep't 2003)

Comment:Supreme court properly disregarded parties child support stipulation where it failed to comply with child support standards act by omitting the amount of the basic child support obligation and failing to indicate the reasons for deviating from the formula amount

Years Married:17

Ages/Income:?

Child Support:?

Maintenance:\$100 per week for 3 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of marital property

Number:1152

Case:Filkins v. Filkins, 303 A.D.2d 934, 757 N.Y.S.2d 665 (4th Dep't 2003)

Comment:Wife not entitled to counsel fees where she has sufficient funds to pay her own counsel as a result of distributive award

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:to wife

Property Distribution to Wife:?

Number:1153

Case:Gaglio v. Molnar-Gaglio, 300 A.D.2d 934, 753 N.Y.S.2d 185 (3d Dep't 2002)

Comment:Compliance with CPLR 4213(b) may be found where the record suggests that the court conducted an independent evaluation and analysis of the record; husbands business valued by "discretionary cash flow method"; If a version of one's finances is patently unbelievable, a court may find the income to be higher than claimed; Constructive trust imposed on premarital assets; obligation listed in decision prevails over judgment; not error for trial court to determine marriage to be 13 years duration calculated until issuance of divorce judgment; where party diverted funds, hid assets, understated his income or took improper business deductions, there can be no error in failing to calculate retroactive child support on a year by year basis

Years Married:9

Ages/Income:H INC: \$75,000 W INC: \$30,000

Child Support:remitted

Maintenance:\$850/month for 6 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of marital assets, and 50% of all business assets acquired before marriage (Constructive trust).

Number:1154

Case:Garner v. Garner, 307 A.D.2d 510, 761 N.Y.S.2d 414 (3d Dep't 2003), leave to appeal denied, 100 N.Y.2d 516, 769 N.Y.S.2d 203, 801 N.E.2d 424 (2003)

Comment:Not proper to consider marital fault in awarding maintenance where parties had not lived together for 5 years prior to commencement of action; personal injury recovery deposited into a joint account of the parties is presumed to be marital property

Years Married:37

Ages/Income:?

Child Support:?

Maintenance:denied

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1155

Case:Goldblum v. Goldblum, 301 A.D.2d 567, 754 N.Y.S.2d 32 (2d Dep't 2003)

Comment:Proper to award of exclusive occupancy of home, which is husbands separate property, to wife, where neither party has financial ability to obtain equivalent and no suitable alternative housing for wife and children, and it would not be in best interest of children to move from the home; wife to pay carrying charges, utilities and upkeep while occupying house

Years Married:14

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:to wife until youngest child 18

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?
Property Distribution to Wife:?

Number:1156

Case:Gorelik v. Gorelik, 303 A.D.2d 553, 757 N.Y.S.2d 67 (2d Dep't 2003)

Comment:denial of counsel fee appropriate considering relative merit of parties positions and failure of wife's attorney to substantially comply with 22 NYCRR 1400.3

Years Married:4 mo.

Ages/Income:?

Child Support:?

Maintenance:\$800/month for 12 months or wife remarries, whichever sooner

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:denied

Property Distribution to Wife:?

Number:1157

Case:Harrington v. Harrington, 300 A.D.2d 861, 752 N.Y.S.2d 430 (3d Dep't 2002)

Comment:Wife entitled to credit for cost of repairs made to marital residence after commencement of action; error to include child support in calculating income for purposes of awarding maintenance; husbands conduct in prolonging the litigation warranted counsel fee award

Years Married:33

Ages/Income:?

Child Support:?

Maintenance:Remitted to fix amount & duration

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:to wife

Property Distribution to Wife:?

Number:1158

Case:Havell v. Islam, 301 A.D.2d 339, 751 N.Y.S.2d 449 (1st Dep't 2002), leave to appeal denied, 100 N.Y.2d 505, 763 N.Y.S.2d 811, 795 N.E.2d 37 (2003)

Comment:All marital assets (\$13 million) except \$377,500, awarded to wife where husbands attempted murder of wife was so egregious as to shock the conscience; while fault should not be considered in determining equitable distribution it may be considered where it is so egregious or uncivilized as to bespeak of a blatant disregard of the marital relationship

Years Married:21

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:Husbands request denied

Property Distribution to Wife:?

Number:1159

Case:Holterman v. Holterman, 307 A.D.2d 442, 762 N.Y.S.2d 152 (3d Dep't 2003), leave to appeal granted, 100 N.Y.2d 514, 769 N.Y.S.2d 200, 801 N.E.2d 421 (2003) and order aff'd, 2004 WL 1263742 (N.Y. 2004)

Comment:Objective of maintenance award is to provide support while recipient gains necessary skills and employment to be self-supporting; improper to award open ended life insurance where it could provide windfall for plaintiff near end of lifetime in excess of remaining maintenance obligation; no controlling case law supports argument that Equitable Distribution payment based on enhanced earnings is a deduction in computing income for child support

Years Married:19

Ages/Income:?

Child Support:?

Maintenance:lifetime

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:\$800,000

Counsel Fees:?
Property Distribution to Wife:?

Number:1160

Case:Ivani v. Ivani, 303 A.D.2d 639, 757 N.Y.S.2d 89 (2d Dep't 2003)

Comment:proper to impute income of \$130,000 to husband for purpose of calculating child support where his reported income on tax return is suspect

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:to wife

Property Distribution to Wife:?

Number:1161

Case:Jensen v. Jensen, 299 A.D.2d 959, 750 N.Y.S.2d 710 (4th Dep't 2002)

Comment:Wife's argument that in light of pre-divorce standard of living she was entitled to higher maintenance rejected where record established that parties were living beyond their means; error to award retroactive maintenance where amount of permanent maintenance is less than amount awarded pendente lite

Years Married:31

Ages/Income:H AGE: 59 H INC: \$100,000 W AGE: 54 W INC: disabled

Child Support:?

Maintenance:\$425/week until husband retires

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:denied

Property Distribution to Wife:?

Number:1162

Case:Kay v. Kay, 302 A.D.2d 711, 754 N.Y.S.2d 766 (3d Dep't 2003)

Comment:Award of non-durational maintenance proper in 28 year marriage where it is unlikely that wife will become self-supporting in the lifestyle to which she had become accustomed during marriage; award of assets by way of equitable distribution will not bar this type of award

Years Married:28.6

Ages/Income:H AGE: 50s W AGE: 50s

Child Support:N/A

Maintenance:\$4500/month until age 65, then \$2500/month

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1163

Case:Koeth v. Koeth, 309 A.D.2d 786, 765 N.Y.S.2d 640 (2d Dep't 2003)

Comment:Since the defendant was not directed to immediately pay the plaintiff's share of his pension to her in a lump sum the court was not required to make findings as to it's value

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:denied

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:\$150,000 for child support

Counsel Fees:\$15,000

Property Distribution to Wife:?

Number:1164

Case:Kurtz v. Kurtz, 1 A.D.3d 214, 767 N.Y.S.2d 104 (App. Div. 1st Dep't 2003)

Comment:Husband's defunct law practice, with uncollected receivables, properly considered a marital asset where he failed to disclose and attempted to conceal marital assets; proper to award wife 40% of her counsel fees since the husband, a former matrimonial practitioner, not only acted frivolously in the conduct of the litigation but failed to provide discovery in an attempt to secrete assets

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:husband's request denied

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:to wife

Property Distribution to Wife:?

Number:1165

Case:Majekodunmi v. Majekodunmi, 309 A.D.2d 1024, 765 N.Y.S.2d 680 (3d Dep't 2003)

Comment:error to fail to award child support because of finding that "it would be nonsensical to require plaintiff to pay her \$32.24 weekly pro rata share due to her outstanding debt."

Years Married:30

Ages/Income:?

Child Support:\$32.24 per week

Maintenance:\$420 per month for two years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$2000

Property Distribution to Wife:?

Number:1166

Case:Marion v. Marion, 300 A.D.2d 369, 751 N.Y.S.2d 516 (2d Dep't 2002)

Comment:Wife awarded limited maintenance where licensed as a registered nurse, employed last 10 years and children emancipated

Years Married:30
Ages/Income:W AGE: 56
Child Support:?
Maintenance:\$1500/month until wife reaches 65
Exclusive Occupancy:sold
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:50% of proceeds of sale of home

Number:1167
Case:Nasca v. Nasca, 302 A.D.2d 906, 754 N.Y.S.2d 502 (4th Dep't 2003)
Comment:Proper to value ring based on 1987 appraisal which was not disputed; engagement ring that wife returned to husband because of sentimental value was her separate property
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:1168
Case:Palestra v. Palestra, 300 A.D.2d 288, 751 N.Y.S.2d 509 (2d Dep't 2002)
Comment:Maintenance should continue only as long as is required to render the recipient self-supporting; although wife received social security benefits there was evidence that she "works and receives off-the-books compensation"
Years Married:?
Ages/Income:W AGE: 35
Child Support:?
Maintenance:\$300/week for 3 years
Exclusive Occupancy:?

Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:\$10,000
Property Distribution to Wife:?

Number:1169

Case:Pascoe v. Pascoe, 309 A.D.2d 1210, 765 N.Y.S.2d 408 (4th Dep't 2003)

Comment:Interest of wife in marital residence which is husbands separate property is her "equitable share of any marital funds used to pay the mortgage on the property"

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1170

Case:Schultz v. Schultz, 309 A.D.2d 1020, 765 N.Y.S.2d 676 (3d Dep't 2003)

Comment:Marital residence conveyed to wife pursuant to 1982 separation agreement that was later abrogated by resumption of cohabitation remained her separate property; error to award counsel fee where wife failed to provide any documentation as to nature of the legal services, the time spent or their reasonable value

Years Married:30

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees: vacated on appeal
Property Distribution to Wife:?

Number: 1171

Case: Shai v. Shai, 301 A.D.2d 461, 754 N.Y.S.2d 17 (1st Dep't 2003)

Comment: Wife's registration of separate CD in joint names turned it into marital property, and she failed to establish by clear and convincing evidence that the joint account was opened as a matter of convenience only; counsel fee justified by large discrepancy in parties disposable incomes and assets

Years Married:?

Ages/Income:?

Child Support:?

Maintenance: \$300/month non-durational to husband

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees: \$5000 to husband

Property Distribution to Wife: \$45,435 awarded to husband

Number: 1172

Case: Sherman v. Sherman, 304 A.D.2d 744, 758 N.Y.S.2d 667 (2d Dep't 2003)

Comment: Separate property can be transmuted into marital property when actions of titled spouse demonstrate her intent to transform character of the property from separate to marital; although account was opened with wife's separate money it was inferred that she intended it to be marital by leaving it in the joint account for over 9 years and commingling it with money she earned during the marriage; wife entitled to retroactive child support by virtue of DRL 236[B][7][a]

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?
Property Distribution to Wife:?

Number:1173

Case:Silverman v. Silverman, 304 A.D.2d 41, 756 N.Y.S.2d 14 (1st Dep't 2003)

Comment:Pendente lite arrears are not waived by counsel's unexplained failure to submit a post trial brief; award of attorneys fees to monied spouse does not comport with the policies of DRL 237; Stipulation requiring parties to be "equally responsible for capital gains tax due" does not mean each will declare 50% of the capital gain as income

Years Married:27

Ages/Income:H AGE: 60 W AGE: 54

Child Support:?

Maintenance:\$3500 per month

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$50,000 award to husband reversed on appeal

Property Distribution to Wife:?

Number:1174

Case:Solomon v. Solomon, 307 A.D.2d 558, 763 N.Y.S.2d 141 (3d Dep't 2003), leave to appeal dismissed, 1 N.Y.3d 546, 775 N.Y.S.2d 242, 807 N.E.2d 292 (2003)

Comment:Wife's separate property transmuted to marital property but she is entitled to credit for original value of the separate property; breach of fiduciary duty is not a statutory factor to be considered in equitable distribution

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1175

Case:Sterling v. Sterling, 303 A.D.2d 290, 757 N.Y.S.2d 530 (1st Dep't 2003)

Comment:Wife's supporting role in daytime soap opera did not result in enhanced or exceptional earnings in accordance with Elkus (169 AD2d 134); she did not have a proven record of obtaining lucrative roles, had not risen to the top of her field and was not an exceptional wage earner

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$18,000 per year for 3 years (to husband)

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$25,000 to husband

Property Distribution to Wife:?

Number:1176

Case:Sutka v. Sutka, 299 A.D.2d 540, 751 N.Y.S.2d 499 (2d Dep't 2002), leave to appeal denied, 99 N.Y.2d 510, 760 N.Y.S.2d 101, 790 N.E.2d 275 (2003)

Comment:Husband not entitled to share of wife's consulting business formed 10 months before the parties separated, where his contributions were de minimus, and he did not work there

Years Married:?

Ages/Income:?

Child Support:\$223/week

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1177

Case:Taylor v. Taylor, 300 A.D.2d 298, 751 N.Y.S.2d 282 (2d Dep't 2002)

Comment:Parties stipulated that wife's medical condition precluded gainful employment

Years Married:27

Ages/Income:?

Child Support:

Maintenance:\$600/week until husband retires or wife reaches 65, whichever occurs

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1178

Case:Tolosky v. Tolosky, 304 A.D.2d 876, 757 N.Y.S.2d 629 (3d Dep't 2003)

Comment:payment of wife's share of husbands pension benefit (in pay status) in monthly installments, as opposed to a percentage installment, although unorthodox, was proper

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$2500

Property Distribution to Wife:50% of marital property

Number:1179

Case:Valenti v. Valenti, 303 A.D.2d 747, 758 N.Y.S.2d 107 (2d Dep't 2003)

Comment:Error to direct COBRA Medical Coverage for wife where there was no prior medical coverage for her

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$250 per week until wife is 65

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$7274

Property Distribution to Wife:?

Number:1180

Case:Wojewodzc v. Wojewodzc, 300 A.D.2d 985, 753 N.Y.S.2d 160 (3d Dep't 2002)

Comment:Wife had limited earning capacity and inability to improve her financial status due to her age, lack of a higher education and work experience so maintenance award proper in marriage of long duration

Years Married:20

Ages/Income:H AGE: 41 H INC: \$67,416 W AGE: 53 W INC: \$18,731

Child Support:?

Maintenance:\$150/week until wife draws social security or reaches age 66

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1181

Case:Wortman v. Wortman, 308 A.D.2d 486, 764 N.Y.S.2d 282 (2d Dep't 2003)

Comment:Proper to direct husband to pay all of child's college expenses, but he should be given credit against child support obligation for amounts he pays " which are not duplicative of basic child support during those periods when his child may live away from home"; no appeal lies from accountants fee award not included in judgment

Years Married:20

Ages/Income:H INC: \$1 million+

Child Support:husband directed to pay college expenses

Maintenance:\$20,000 per month for 5 years, then \$15,000 per month for 4 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1182

Case:Berk v. Berk, 5 A.D.3d 165, 773 N.Y.S.2d 53 (1st Dep't 2004)

Comment:Proper for trial court to preclude husband from offering evidence on financial issues considering that he repeatedly violated orders, his persistent refusal to provide financial disclosure, his failure to pay his share of the fee for the neutral appraiser and his failure to appear for his deposition and a court appearance.

Years Married:?

Ages/Income:?

Child Support:\$7,500 per month

Maintenance:\$5,000 per month for 8 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of marital property

Number:1183

Case:Braun v. Braun, 11 A.D.3d 423, 782 N.Y.S.2d 785 (2d Dep't 2004), leave to appeal denied, 4 N.Y.3d 702, 790 N.Y.S.2d 649, 824 N.E.2d 50 (2005)

Comment:Proper to award business to husband and house to wife where it was virtually impossible to value the husband's business because he was not forthcoming with all the necessary documents to make that evaluation.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$30,000 for 1 year; then \$25,000 yr until H age 62

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1184

Case:Caffrey v. Caffrey, 2 A.D.3d 309, 770 N.Y.S.2d 33 (1st Dep't 2003)

Comment:Appreciation in IRA which is actively managed is marital property. Tax consequences of distribution of IRA should have been considered where tax returns were in record and court was able to reach conclusion as to tax consequences; proper to award husband 20% of assets in wife's name where parties, except for contribution of small portion of their incomes to payment of expenses, kept their finances separate; marital property portion of stock options determined by the numerator of which was the period from the date of the grant to the end of the marriage, and the denominator of which is the period of time from the date of the grant until the stock option matured

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1185

Case:Cahen-Vorburger v. Vorburger, 12 A.D.3d 275, 785 N.Y.S.2d 435 (1st Dep't 2004), leave to appeal denied, 4 N.Y.3d 706, 795 N.Y.S.2d 517, 828 N.E.2d 620 (2005)

Comment:Preclusion order and default judgment was supported by ample evidence of husband's contumacious failure to provide disclosure. Proper in valuing husband's business interest at \$9.75 million for courts expert to formulate a fair indirect methodology because of inadequate documentation. Proper to value increase in value of business from zero where defendant failed to offer evidence of its value at time of marriage and did not deny that wife contributed to appreciation in value of this separate property by being a homemaker and caregiver.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:To wife until children reach majority.

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1186

Case:Chiotti v. Chiotti, 12 A.D.3d 995, 785 N.Y.S.2d 157 (3d Dep't 2004)

Comment:Separate property which is commingled with marital property or subsequently titled in both names is presumed to be marital property. Once converted the property does not resume its status as separate, even if all the marital funds are removed from the account. Inability to produce a complete paper trail from a gift or inheritance does not require a contrary finding where not evidence suggesting other possible sources of the funds and no contradictory evidence offered. Proper to calculate child support based on preretirement income. No life insurance where not requested and short duration of child support. Wife entitled to credit for 50% of joint obligations paid during the pendency of divorce action.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:1187

Case:Dashnaw v. Dashnaw, 11 A.D.3d 732, 783 N.Y.S.2d 93 (3d Dep't 2004)

Comment:Wife made significant economic and noneconomic contributions sufficient to render rental properties given to husband by his father and brother marital assets. Proper to use purchase price of the rental properties, rather than their fair market value, in valuing husband's gift equity in them. Proper to value certain personalty as of date of purchase, rather than date of commencement or trial, where only evidence was wife's testimony and no opposing proof from husband about fair market value. Defendant responsible for his student loans during marriage as his degree did not confer an economic benefit upon the marriage.

Years Married:15

Ages/Income:?

Child Support:?

Maintenance:None

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1188

Case:Farag v. Farag, 4 A.D.3d 502, 772 N.Y.S.2d 368 (2d Dep't 2004)

Comment:Husband's liquid assets were unknown and he was less than forthcoming with evidence as to his monthly obligations or earnings

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$100 per week for 6 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% (\$114,000) of marital residence less her share (\$3,000) of marital debt

Number:1189

Case:Gober v. Gober, 4 A.D.3d 175, 772 N.Y.S.2d 32 (1st Dep't 2004)

Comment:Husband should pay interest on distributive award because he is availing himself of the wife's money inasmuch as it is a present award—not a future award. The Domestic Relations Law does not authorize recalculation of the marital estate and redistribution of assets when market forces cause a posttrial increase or decrease in the value of distributed property.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1190

Case:Hiatt v. Hiatt, 6 A.D.3d 1014, 776 N.Y.S.2d 112 (3d Dep't 2004)

Comment:Where court's opinion as to value of business falls within the range of expert's testimony it will be upheld; husband awarded 15% of value of wife's title insurance business where he did not sacrifice employment or educational opportunities, did not work in the company, and did not alter his daily schedule.

Years Married:18

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:1191

Case:K. v. B., 13 A.D.3d 12, 784 N.Y.S.2d 76 (1st Dep't 2004), appeal dismissed, 4 N.Y.3d 776, 792 N.Y.S.2d 895, 825 N.E.2d 1090 (2005)

Comment:Not error to distribute marital property 65% / 35% in wife's favor based on husband's indifference to the marriage; it was a factually supported reflection of the contributions each spouse made to the marriage; parties had an unconventional marriage, living separate during the week; wife was principal wage earner; husband guilty of economic fault; husband failed to prove that wife's law firm had value. Proper to impute \$60,000 income to husband for child support purposes where he had a real estate broker and architect's license.

Years Married:20

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1192

Case:Kenney v. Lureman, 8 A.D.3d 1099, 778 N.Y.S.2d 821 (4th Dep't 2004)

Comment:Wife sustained her burden of establishing that stockholdings were her separate property based upon her uncontroverted testimony that she either inherited them or purchased them with inherited funds

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:1193

Case:Konigsberg v. Konigsberg, 3 A.D.3d 330, 770 N.Y.S.2d 322 (1st Dep't 2004)

Comment:Lifetime maintenance appropriate where wife worked throughout marriage, where she was incapable of becoming self supporting at level roughly commensurate with marital standard; proper to reduce life insurance when maintenance reduced.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$1,200 per month until 2007, then \$4,000 per month

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$120,000 to wife

Property Distribution to Wife:50% of marital assets including husband's law firm

Number:1194

Case:Lewis v. Lewis, 6 A.D.3d 837, 775 N.Y.S.2d 387 (3d Dep't 2004)

Comment:"Marital funds should not be used to pay off separate liabilities and whenever that occurs the inequity may be remedied by permitting the injured spouse to recoup his or her share of the marital funds used."

Years Married:?

Ages/Income:?

Child Support:\$414 per week (3 Children)

Maintenance:\$200/wk until August 2005

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1195

Case:Mercer v. Mercer, 4 A.D.3d 508, 772 N.Y.S.2d 372 (2d Dep't 2004)

Comment:Error to require wife in 1999 divorce action to have burden of establishing change of circumstances after granting of family court support order in 1995. The order terminated when Supreme Court made a pendente lite order.

Years Married:?

Ages/Income:H INC: \$133,000 W INC: \$44,000

Child Support:Remitted for new trial

Maintenance:Remitted for new trial

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1196

Case:Miklos v. Miklos, 9 A.D.3d 397, 780 N.Y.S.2d 622 (2d Dep't 2004)

Comment:Plaintiff was entitled to interest on the distributive award from the date of entry of the judgment of divorce to the date of final payment.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1197

Case:Milteer v. Milteer, 6 A.D.3d 407, 775 N.Y.S.2d 334 (2d Dep't 2004)

Comment:Civil service promotion is not marital property; husband awarded 35% of value of wife's nursing license.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:No

Property Distribution to Wife:50% of husband's pension

Number:1198

Case:Morse v. Morse, 12 A.D.3d 425, 784 N.Y.S.2d 590 (2d Dep't 2004)

Comment:Proper to award wife half of business acquired by husband during marriage.

Years Married:29

Ages/Income:?

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:50% of value of husband's business

Number:1199

Case:Murphy v. Murphy, 6 A.D.3d 678, 775 N.Y.S.2d 370 (2d Dep't 2004)

Comment:Supreme Court impermissibly engaged in double counting of income in valuing husband's business, which was equitably distributed as marital property, and in awarding maintenance to wife. Court rejected defendant's contentions that child support had to be recalculated due to the distribution of his future earnings in the equitable distribution.

Years Married:?

Ages/Income:?

Child Support:\$821 per week; remitted to recalculate child support obligation after maintenance ends

Maintenance:Remitted for recalculation

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$40,000 to wife

Property Distribution to Wife:?

Number:1200

Case:Palumbo v. Palumbo, 10 A.D.3d 680, 782 N.Y.S.2d 106 (2d Dep't 2004), leave to appeal dismissed, 3 N.Y.3d 765, 788 N.Y.S.2d 665, 821 N.E.2d 970 (2004)

Comment:Defendant entitled to credit for his 50% share of the money he paid to reduce the mortgage on the homes which were marital property.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:To wife for 4 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1201

Case:Parise v. Parise, 13 A.D.3d 504, 787 N.Y.S.2d 360 (2d Dep't 2004)

Comment:Proper to impute income to husband from his businesses where his testimony as to his income lacked credibility; proper to include overtime and potential overtime in calculating maintenance and child support. Proper to award wife share of appreciation of husband's separate residential real estate where he failed to satisfy his burden of establishing that the wife's indirect efforts did not contribute, in some degree, to the appreciation.

Years Married:?

Ages/Income:?

Child Support: Remitted for hearing
Maintenance: Remitted for hearing
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number: 1202

Case: Smith v. Smith, 8 A.D.3d 728, 778 N.Y.S.2d 188 (3d Dep't 2004)

Comment: Where both spouses contribute equally to a marriage of long duration a division of marital assets should be made that is as equal as possible. Improper for Supreme Court to ignore husband's noneconomic contributions that in some respects enabled wife to become law firm partner.

Years Married: 14

Ages/Income: W INC: \$94,500/yr

Child Support:?

Maintenance: Denied

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees: Denied

Property Distribution to Wife: 50/50 distribution of marital assets

Number: 1203

Case: Smith v. Smith, 1 A.D.3d 870, 769 N.Y.S.2d 306 (3d Dep't 2003)

Comment: \$160,000 in under reported income properly imputed to husband. Child support percentage properly applied to entire income. Remitted for clarification. Improper to deduct maintenance award from gross income where no provision for adjustment of child support upon termination of maintenance.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance: \$3,000 per month for 6 years

Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:1204
Case:Solomon v. Solomon, 10 A.D.3d 584, 783 N.Y.S.2d 1 (1st Dep't 2004)
Comment:Maintenance award should be retroactive to the date of commencement of the action.
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:\$8,000/month from 4/16/01 to 11/30/06
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:1205
Case:Spilman-Conklin v. Conklin, 11 A.D.3d 798, 783 N.Y.S.2d 114 (3d Dep't 2004)
Comment:Proper to value timeshare based on value listed in net worth statement and included in proposed findings of fact. Proper to use purchase price, rather than market price, to determine value of jewelry where no other proof offered by husband, leaving court free to credit wife's testimony. The value of an asset and its distribution will not be disturbed absent an abuse of discretion. No merit to husband's argument that Supreme Court erred in not computing his income each year from 1997 when the action commenced, through 2000, for purposes of child support, where trial was held in 2001, to account for variations.
Years Married:9
Ages/Income:W INC: \$29,934
Child Support:\$1,093/mo (1 child)
Maintenance:?

Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:?

Number:1206

Case:Wheeler v. Wheeler, 12 A.D.3d 982, 785 N.Y.S.2d 170 (3d Dep't 2004)

Comment:Termination of maintenance award extended from age 65 by Appellate Division, until husband retires or wife reaches age 66, whichever occurs later, because of her contributions to the marriage and family, medical costs, great diversity in the parties incomes and ages.

Years Married:24

Ages/Income:H AGE: 49 H INC: \$138,000 W AGE: 58 W INC: \$12,000

Child Support:?

Maintenance:\$450 per week

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:\$308,000

Number:1207

Case:Bennett v. Bennett, 13 A.D.3d 1080, 790 N.Y.S.2d 334 (4th Dep't 2004), leave to appeal denied, 16 A.D.3d 1182, 792 N.Y.S.2d 368 (4th Dep't 2005) and leave to appeal denied, 6 N.Y.3d 708, 813 N.Y.S.2d 44, 846 N.E.2d 475 (2006)

Comment:Continuing maintenance until wife reached 75 would be onerous for plaintiff who was planning to retire earlier. Proper to decline to consider tax consequences of distributive award from pension, and distribution from dissolution of law firm where neither party presented evidence to support a determination. Wife properly awarded interest on distributive award.

Years Married:32

Ages/Income:?

Child Support:?

Maintenance:\$1,300.00 a week until age 69

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:?

Number:1208

Case:Benzaken v. Benzaken, 21 A.D.3d 391, 799 N.Y.S.2d 579
(2d Dep't 2005)

Comment:Proper to award maintenance for three years where although wife had significant savings, she was unemployed and required training to find employment. One of the purposes of an award of maintenance is to encourage economic independence.

Years Married:

Ages/Income:

Child Support:?

Maintenance:\$350.00 for three years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$4,000.00

Property Distribution to Wife:

Number:1209

Case:Bernstein v. Bernstein, 18 A.D.3d 683, 795 N.Y.S.2d 733
(2d Dep't 2005)

Comment:Where jointly-held property is transferred for the purpose of defrauding creditors, the transferor may not then share in the value of the transferred asset for purposes of equitable distribution. Nevertheless, where the wife expressly acknowledged that she knowingly encouraged and benefited from the husband's transfer, the asset properly was subject to equitable distribution to the husband.

Years Married:

Ages/Income:

Child Support:?

Maintenance:?

Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:

Number:1210

Case:Booth v. Booth, 24 A.D.3d 1238, 807 N.Y.S.2d 259 (4th Dep't 2005)

Comment:The amount and duration of maintenance are matters committed to the sound discretion of the trial court. Equitable distribute presents issues of fact to be resolved by the trial court, and its judgment should be upheld absence an abuse of discretion.

Years Married:

Ages/Income:

Child Support:?

Maintenance:awarded to wife

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:30% of marital assets

Number:1211

Case:Cameron v. Cameron, 22 A.D.3d 911, 802 N.Y.S.2d 542 (3d Dep't 2005)

Comment:Counsel fee award was proper in light of husband's contumacious conduct and obstructionist tactics. As defendant did not meet her burden of proving what portion of her pension constituted compensation for personal injuries, it was error to determine that it was her separate property.

Years Married:45

Ages/Income:

Child Support:?

Maintenance:\$200.00 per month permanent

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:Remitted to distribute pension

Number:1212

Case:Carman v. Carman, 22 A.D.3d 1004, 802 N.Y.S.2d 558 (3d Dep't 2005)

Comment:Proper to calculate child support using half of the combined income over \$80,000. based on the modest predivorce standard of living, lack of any special needs of the children, plaintiff's ability to return to work, and substantial assets available to her through distributive awards. Wife entitled only 20% of the value of the husband's CPA license where she made modest contributions to its acquisition as trial court did not consider all the tax.

Attachment:Impacts on the parties and did not address the tax consequences associated with the distribution of defendant's business, despite statements in the experts report that it may be appropriate to discount its value due to taxes the matter was remitted for the court to consider the tax impact of its awards.

Years Married:23

Ages/Income:

Child Support:(2 Ch)

Maintenance:\$1000.00 a month for 30 months

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$4,105.00 toward joint litigation expenses

Property Distribution to Wife:20% of value of husband's CPA license and 50% of remaining assets

Number:1213

Case:Chamberlain v. Chamberlain, 24 A.D.3d 589, 808 N.Y.S.2d 352 (2d Dep't 2005)

Comment: Proceeds of husband's personal injury recovery was his separate property even though placed in a joint investment account, where he overcame presumption of joint property by establishing he was sole beneficiary of the funds and the account was managed by him. Husband entitled to 30% of wife's enhanced earning capacity based upon his contributions to it by paying family expenses and caring for child, and husband responsible for 30% of student loan.

Attachment: Maintenance and child support are determined based on earning capacity, not actual earnings. Report of financial expert supported court's determination to impute income. A party who has engaged in conduct resulting in unnecessary litigation may be properly denied an award of an attorneys' fee and a party who was thereby caused to incur legal fees that would otherwise have been unnecessary may recover such fees.

Years Married:

Ages/Income:

Child Support:?

Maintenance:remitted

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:Awarded to Husband

Property Distribution to Wife:

Number:1214

Case:Cohen v. Cohen, 21 A.D.3d 341, 800 N.Y.S.2d 435 (2d Dep't 2005)

Comment: Proper to direct husband to contribute to tuition for religious school where parties led a religious life during the marriage, including the enrollment of the children in full-time religious school. Inasmuch as the wife was attending evening college classes to become a certified teacher the three-year award of maintenance was proper.

Years Married:

Ages/Income:

Child Support:Husband to pay 64% of religious school tuition, maintain medical insurance for the children, and contribute pro rata to unreimbursed medical expenses.

Maintenance:\$250.00 per week for three years.

Exclusive Occupancy:?

Health & Medical Insurance:?**Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:**

Number:1215**Case:**Corless v. Corless, 18 A.D.3d 493, 795 N.Y.S.2d 273 (2d Dep't 2005)**Comment:**Defendant's use of his income to pay legitimate household expenses did not constitute a dissipation of marital assets. A financial obligation incurred by one party in pursuit of his or separate interests should remain that party's separate liability. The Wife's graduate school education was not treated as marital property, and thus, her student loan was incurred for her sole benefit and was properly allocated as her separate responsibility.**Years Married:****Ages/Income:****Child Support:**\$3,000.00 per month (not retroactive)**Maintenance:**\$4,000.00 per month until age 65, then \$3,000 per month**Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:**\$400,000 for wife until age 65**Counsel Fees:**\$17,768 to wife**Property Distribution to Wife:**

Number:1216**Case:**D'Angelo v. D'Angelo, 14 A.D.3d 476, 788 N.Y.S.2d 154 (2d Dep't 2005)**Comment:**Valuation date for marital assets must be between the date of commencement and the date of trial. Where the appraisal of the marital residence was conducted 3 years before the trial and the appraiser testified that property values had changed, the court should have ordered a new appraisal. Failure to respond to a notice to admit that a debt is marital is a concession that it is a marital debt.**Years Married:****Ages/Income:****Child Support:?**

Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:

Number:1217

Case:Daniel v. Friedman, 22 A.D.3d 707, 803 N.Y.S.2d 129 (2d Dep't 2005)

Comment:While defendant's obstructionist tactics substantially contributed to the protracted nature of the litigation, award was reduced by Appellate Division in light of pendente lite award of \$25,000, husband's payment of \$78,000 in expert fees, and the plaintiff's ability to pay some of her own fees. Award reduced to amount actually due and owing by wife at the time of her application for fees.

Years Married:

Ages/Income:

Child Support:\$4,000.00 per month (2 Ch) until emancipation of one child, then \$3,317.00 per month

Maintenance:\$2,500.00 per month for 3 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:\$70,089.00

Number:1218

Case:D'Elia v. D'Elia, 14 A.D.3d 477, 788 N.Y.S.2d 156 (2d Dep't 2005)

Comment:Cannot cure defective acknowledgment of antenuptial agreement by submitting duly executed certificate of acknowledgment at trial. However, deed from husband to wife of undivided half interest in property changed its character from separate to marital.

Years Married:

Ages/Income:

Child Support:?

Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:

Number:1219

Case:Falgoust v Falgoust, 15 A.D.3d 612, 790 N.Y.S.2d 532 (2d Dep't 2005)

Comment:Federal and State taxes are not deducted from a parent's income for purposes of calculating child support. Maintenance for 2 years proper where wife received a considerable distributive award and was capable of being self-supporting. Wife entitled to 1/3 of appreciation of value of husband's separate residence where he maintained and improved the property with his earnings during the marriage and she took care of the children and did household chores.

Years Married:8

Ages/Income:

Child Support:?

Maintenance:\$500 per week for two years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:

Number:1220

Case:Ferro v. Ferro, 19 A.D.3d 363, 796 N.Y.S.2d 165 (2d Dep't 2005)

Comment:Where wife, an attorney, failed to demonstrate that her disability prevented her from earning a living as an attorney, and her husband was awarded custody of the children, Supreme Court properly denied her an award of maintenance.

Years Married:

Ages/Income:

Child Support:wife to pay

Maintenance:denied

Exclusive Occupancy:Ordered sold
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:marital residence divided equally

Number:1221
Case:Flanigen-Roat v. Roat, 17 A.D.3d 1093, 794 N.Y.S.2d 264 (4th Dep't 2005)
Comment:Husband entitled to 20% of value of wife's enhanced earnings attributable to her one-year internship and three-year residency, where he made economic and noneconomic contributions while she attained her medical license.
Years Married:19
Ages/Income:
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:

Number:1222
Case:Flores v. Flores, 22 A.D.3d 372, 803 N.Y.S.2d 47 (1st Dep't 2005), leave to appeal denied, 6 N.Y.3d 706, 812 N.Y.S.2d 35, 845 N.E.2d 467 (2006)
Comment:Variable supplement fund is marital property. SOSVSF benefits are marital property. Plaintiff's share of defendant's pension not limited to portion of the value of those benefits as of the date on which the action was commenced.
Years Married:
Ages/Income:
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?

Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:

Number:1223

Case:Galvin v. Francis, 20 A.D.3d 550, 799 N.Y.S.2d 547 (2d Dep't 2005), as amended, (Dec. 15, 2005)

Comment:Error to award husband share of assets titled solely in wife's name where, except for the martial home, the parties kept their finances separate and conducted themselves during the marriage in a manner inconsistent with the typical "economic partnership". The husband played an extremely limited role in the marriage and failed to provide any significant financial resources to the marriage.

Years Married:
Ages/Income:
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:

Number:1224

Case:Golub v. Ganz, 22 A.D.3d 919, 802 N.Y.S.2d 526 (3d Dep't 2005)

Comment:Husband failed to establish that wife's separate property stock in family corporation had appreciated due to her active efforts; where it was nonvoting preferred stock; she was a mid-level manager in marketing; she had no role in corporate policy making or procedures; had not been consulted by the board or management other than with regard to her position; and none of her positions had affected profitability of the corporation.

Years Married:
Ages/Income:
Child Support:?
Maintenance:?

Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:

Number:1225

Case:Gubiotti v. Gubiotti, 19 A.D.3d 893, 798 N.Y.S.2d 747 (3d Dep't 2005)

Comment:Nondurational maintenance may be appropriate where plaintiff's energies during the marriage were devoted primarily to homemaking and child rearing to the detriment of her ability to become self sufficient and maintain the predivorce standard of living.

Years Married:33

Ages/Income:H AGE: 53 H INCOME: \$165,000 W AGE: 50 W INCOME: \$18,901

Child Support:?

Maintenance:remitted for findings

Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:

Number:1226

Case:Guskin v. Guskin, 18 A.D.3d 814, 796 N.Y.S.2d 642 (2d Dep't 2005)

Comment:Error for Supreme Court to value the enhanced earning capacity attributable to the husband's license to practice pediatric on the estimated earnings of a hypothetical license holder, rather than on his actual prior earnings. Error to limit husband's testimony to his noneconomic contributions to the household where there is separate property which may have appreciated during the marriage.

Years Married:

Ages/Income:

Child Support:?

Maintenance:?

Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:

Number:1227

Case:Hale v. Hale, 16 A.D.3d 231, 792 N.Y.S.2d 27 (1st Dep't 2005)

Comment:Although a distributive award and equitable distribution are different elements of relief, and maintenance differs from both, Husband was permitted to appeal even though his notice of appeal was limited. Since Wife played some role in upkeep and maintenance of condo (which appeared to be Husband's separate property) it was not an abuse of discretion to award her a share of its appreciated value. Even though Wife did not produce witnesses to refute Husband's testimony that his employer loaned him substantial sums of money, the burden remained on him to prove that traveler's checks and other sums were loans and not salary, and he failed to sustain burden. Husband entitled to share of Wife's frequent flyer miles. Husband should not have been given credit for all mortgage, principal and interest payments on co-op but since wife awarded 50% of the co-op, credit should be for only 50% of principal payments. Boat should be valued at commencement date at value Husband estimated at \$450,000. Husband responsible for any drop in boat's value in light of his witness testimony that increased engine use would hasten depreciation.

Years Married:6

Ages/Income:

Child Support:?

Maintenance:to wife for four years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:

Number:1228

Case:Hammack v. Hammack, 20 A.D.3d 700, 800 N.Y.S.2d 770 (3d Dep't 2005), leave to appeal dismissed, 6 N.Y.3d 807, 812 N.Y.S.2d 445, 845 N.E.2d 1276 (2006)

Comment:Distributive awards are not deductible from income in calculating income for child support purposes. \$30,000 child support obligation for four children is unjust and inappropriate where husband earns in excess of \$300,000 a year. Home equity loan obtained during marriage and used for purchase of jointly-owned property was a marital debt to be equally borne by the parties

Years Married:27

Ages/Income:H INCOME: \$333,191 W INCOME: \$33,934

Child Support:\$4,475 per month (4 children) plus proportionate share (91%) of up to \$23,000 a year for college of oldest child and share for other children up to State University Costs, and share of health insurance and unreimbursed health-related expenses of the children.

Maintenance:awarded to wife

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:25% of value of radiology practice

Number:1229

Case:Hathaway v. Hathaway, 16 A.D.3d 458, 791 N.Y.S.2d 631 (2d Dep't 2005), leave to appeal denied, 6 N.Y.3d 703, 811 N.Y.S.2d 335, 844 N.E.2d 790 (2006)

Comment:Distributive award of 70% of marital assets to wife of 33 years was appropriate where husband refused to work, despite being skilled and gainfully employable. Not error to award durational maintenance to husband where he had the skills for gainful employment. Error to direct that counsel fees paid from the Wife' separate property be reimbursed to her from the marital assets prior to distribution, as it had the effect of requiring the nonmonied spouse to pay a substantial portion of the counsel fees of the monied spouse, in violation of DRL 237. Plaintiff was worth over \$1 million.

Years Married:

Ages/Income:

Child Support:?

Maintenance:\$1,000 per month until July 2003 to husband
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:

Number:1230
Case:Hendricks v. Hendricks, 13 A.D.3d 928, 788 N.Y.S.2d 190 (3d Dep't 2004)
Comment:Remitted to determine issues of health insurance and life insurance
Years Married:35
Ages/Income:H AGE: 59 H INCOME: \$73,500 W AGE: 58 W INCOME: \$450/mo Soc. Sec.
Child Support:?
Maintenance:\$1,275 per month until husband retires
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:

Number:1231
Case:Herzog v. Herzog, 18 A.D.3d 707, 795 N.Y.S.2d 749 (2d Dep't 2005), leave to appeal denied, 5 N.Y.3d 711, 806 N.Y.S.2d 161, 840 N.E.2d 130 (2005)
Comment:Proper to deny husband a share of marital residence where wife paid the down payment of \$125,000 from her separate property; where the husband completely failed to substantiate any of his assertions regarding contributions to the former marital residence or the marriage. Wife was properly awarded the return of her separate property contribution to the jointly owned marital residence.
Years Married:
Ages/Income:
Child Support:?
Maintenance:\$400 per month for four years
Exclusive Occupancy:title awarded to wife

Health & Medical Insurance:?**Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:**50% of marital portion of husband's pension and the marital residence

Number:1232**Case:**Hlinka v. Hlinka, 22 A.D.3d 524, 801 N.Y.S.2d 768 (2d Dep't 2005), leave to appeal denied, 6 N.Y.3d 703, 811 N.Y.S.2d 335, 844 N.E.2d 790 (2006)**Comment:**Wife awarded share of enhanced earnings of husband as a license master electrician.**Years Married:****Ages/Income:****Child Support:?****Maintenance:**\$2,500 per month for five years, then \$1,500 per month for five years**Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:**\$898.00 a month for 14 years and 10 months

Number:1233**Case:**Kaplan v. Kaplan, 21 A.D.3d 993, 801 N.Y.S.2d 391 (2d Dep't 2005)**Comment:**Proper to calculate child support capping father's annual income at \$300,000 per year. Maintenance award was proper considering, inter alia, mother's role as primary caretaker of a special needs child.**Years Married:****Ages/Income:**H INCOME: \$400,000 W INCOME: \$0.00**Child Support:**\$2,386.00 per month (1 child) to be increased to \$4,112.00 a month on termination of maintenance**Maintenance:**\$7,500.00 per month for 5 years**Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?**

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:

Number:1234

Case:Kelly v. Kelly, 19 A.D.3d 1104, 797 N.Y.S.2d 666 (4th Dep't 2005), appeal and reargument denied, 21 A.D.3d 1442, 801 N.Y.S.2d 555 (4th Dep't 2005) and appeal dismissed, 5 N.Y.3d 847, 805 N.Y.S.2d 547, 839 N.E.2d 901 (2005) and leave to appeal dismissed in part, denied in part, 6 N.Y.3d 803, 812 N.Y.S.2d 440, 845 N.E.2d 1270 (2006)

Comment:DRL 236(B)(3) affects stipulations which effect the distribution of martial property. A trial stipulation as to custody was binding pursuant to CPLR 2104 and was valid.

Years Married:

Ages/Income:

Child Support:Husband directed to pay

Maintenance:awarded to wife

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:during period of maintenance and child support payments

Counsel Fees:?

Property Distribution to Wife:

Number:1235

Case:Kohl v. Kohl, 24 A.D.3d 219, 806 N.Y.S.2d 35 (1st Dep't 2005)

Comment:Money given by husband to his former wife and children was not a waste of assets in relation to his income and were consistent with the type of gift giving he engaged in throughout the marriage. The parties' lavish standard of living was given appropriate consideration in determining maintenance. The wife's expenditure for attorneys was excessive.

Years Married:

Ages/Income:

Child Support:?

Maintenance:\$12,000 per month for 1 year; \$7,000 per month until Husband 70

Exclusive Occupancy:?

Health & Medical Insurance:?**Dental Insurance:?****Life Insurance:?****Counsel Fees:?**

Property Distribution to Wife:In excess of \$ 8 million including 35% of value of husband's business

Number:1236

Case:Lee v. Lee, 18 A.D.3d 508, 795 N.Y.S.2d 283 (2d Dep't 2005)

Comment:Court should provide for method of reducing overall child support obligation as each child is 21 or emancipated, based on diminishing statutory percentages. College expenses paid on behalf of a child could properly serve as a credit only with respect to so much of the overall child support obligation as relates to the particular child. The credit should be based solely on those expenses associated with the cost of room and board, or other similar expenses that child support is intended to defray. Such a credit should not be based on the cost of college tuition. Cases which reflect the reduction of a parent's child support obligation based upon the parents' payment of tuition expenses do not reflect the general rule. Life insurance awarded for the wife's benefit where she will be depending on husband for substantial maintenance and child support would be severely prejudiced in the event of his death. Proper to impute \$300,000 income to husband for child support purposes, but improper to calculate child support on a sum in excess of \$200,000.

Years Married:**Ages/Income:**

Child Support:remitted to recalculate, plus 100% of unreimbursed medical and dental

Maintenance:\$5,000 per month nondurational

Exclusive Occupancy:?**Health & Medical Insurance:?****Dental Insurance:?**

Life Insurance:\$1,000,000 for wife's benefit

Counsel Fees:?**Property Distribution to Wife:**

Number:1237

Case:Leichtner v. Leichtner, 18 A.D.3d 446, 794 N.Y.S.2d 440 (2d Dep't 2005)

Comment:Supreme Court properly declined to award wife a share of husband's pension where she failed to request such an award and failed to offer evidence with regard to his pension.

Years Married:

Ages/Income:

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:

Number:1238

Case:Shao Yun Liu v. Ming Jin Chen, 22 A.D.3d 555, 802 N.Y.S.2d 498 (2d Dep't 2005)

Comment:Experts' evaluation based on incorrect assumptions should not have been relied upon by trial court. While some portion of acupuncture license was marital property the evidence did not justify coverture fraction of 100%.

Years Married:

Ages/Income:

Child Support:?

Maintenance:remitted

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:remitted

Number:1239

Case:London v. London, 21 A.D.3d 602, 799 N.Y.S.2d 646 (3d Dep't 2005)

Comment: Nontitled spouse has burden of establishing value, if any, that was added to marital residence (husband's separate property) by her direct/indirect contributions during marriage. As she did not, Supreme Court should not have awarded her any interest in it. Error for Supreme Court to order this separate property sold. Proof of value of husband's pension and profit sharing plans was not necessary, although separate, where he made contributions after marriage, where court does not make a distributive award. Error for trial court to equally divide the accounts by a QDRO without giving husband credit for his contributions. *Majauskas* formula (*Majauskas v. Majauskas*, 61 N.Y.2d 481, 474 N.Y.S.2d 699, 463 N.E.2d 15, 6 Employee Benefits Cas. (BNA) 1053 (1984)) should be applied to distribute these accounts. Even though only six months elapsed between date husband purchased certain real estate and commencement of the action, in a rapidly rising real estate market, evidence of a possible purchase price may not be the equivalent of the actual value of the property at the date of commencement. Proof of value of pension and profit sharing is only necessary where the court makes a distributive award.

Years Married:

Ages/Income:

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:

Number: 1240

Case: *McBride-Head v. Head*, 23 A.D.3d 1010, 804 N.Y.S.2d 170 (4th Dep't 2005)

Comment: Not an abuse of discretion to award counsel fees to wife of \$10,000 in light of the disparity in the parties' incomes and the conduct of the defendant in prolonging the litigation.

Years Married:

Ages/Income:

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?
Life Insurance:?
Counsel Fees:\$10,000.00
Property Distribution to Wife:

Number:1241
Case:McInnis v. McInnis, 23 A.D.3d 241, 804 N.Y.S.2d 70 (1st Dep't 2005)
Comment:Maintenance payments must be made from the payer's income, not money derived from marital property.
Years Married:
Ages/Income:
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:60% to 40% in favor of the husband

Number:1242
Case:McKnight v. McKnight, 18 A.D.3d 288, 795 N.Y.S.2d 199 (1st Dep't 2005)
Comment:Equitable Distribution presents matters of fact to be resolved by the trial court, and its distribution of the parties' marital property should not be disturbed unless it can be shown that the court improvidently exercised its discretion.
Years Married:
Ages/Income:
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:

Number:1243

Case:Miklos v. Miklos, 21 A.D.3d 353, 800 N.Y.S.2d 561 (2d Dep't 2005)

Comment:While it was proper to direct the payment of the attorney's fee in four annual installments of \$21,875.00, it was improper to award compound interest of 1.5% per month, which is twice the statutory rate of 9%, on any untimely installment payments.

Years Married:

Ages/Income:

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$87,500

Property Distribution to Wife:

Number:1244

Case:Milnarik v. Milnarik, 23 A.D.3d 960, 805 N.Y.S.2d 151 (3d Dep't 2005)

Comment:Proper to impute \$211,000 income to husband and \$15,600 to wife. Maintenance award proper in light of fact that parties agree wife would not work once they had children, there was a great disparity in their incomes, and their lifestyle was lavish. Husband entitled to credit for half of value of jewelry given to wife.

Years Married:12

Ages/Income:

Child Support:?

Maintenance:\$3,000 per month for 5 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:

Number:1245

Case:Naimollah v. De Ugarte, 18 A.D.3d 268, 795 N.Y.S.2d 525 (1st Dep't 2005)

Comment:Husband awarded 25% of marital assets where his contributions to the marriage were not equal to those of wife. Even though the Paine Webber account was managed by Plaintiff's broker rather than her, the capital losses must still be considered active rather than passive. The court appointed appraiser could consider postcommencement events that affected plaintiff's business. Where a business suffers from losses due to adverse forces outside the spouse's control, a trial date valuation may be appropriate. Even where the mortgage was paid off during marriage, where the defendant contributed nothing toward the payment, he was not entitled to half of the benefit of this payment. Proper to consider defendant's imminent eligibility for full Social Security in setting maintenance.

Years Married:

Ages/Income:

Child Support:?

Maintenance:to husband

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:to husband

Property Distribution to Wife:

Number:1246

Case:Navin v, Navin, 22 A.D.3d 474, 803 N.Y.S.2d 641 (2d Dep't 2005)

Comment:Error to award child support without reducing defendant's income by amount of maintenance award and by directing concomitant increase in child support on termination of maintenance. Error to direct payment of share of child's educational expenses without provision that amount contributed to room and board expenses while child is at school shall be deducted from child support obligation.

Years Married:

Ages/Income:

Child Support:(1 child)

Maintenance:\$540.00 per week

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:

Number:1247

Case:Nichols v. Nichols, 19 A.D.3d 775, 797 N.Y.S.2d 139 (3d Dep't 2005)

Comment:Maintenance award should be included in calculation of unreimbursed health expenses and college expenses. For an award of counsel fees to be justified there must be a sufficient evidentiary basis for the court to evaluate the value of the services rendered. Same formula is used to calculate each parent's share of unreimbursed health care and children's future educational expenses.

Years Married:

Ages/Income:H INCOME: \$96,910 W INCOME: \$18,056

Child Support:?

Maintenance:\$350 per week until wife 62 (6 Years)

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:

Number:1248

Case:Popelaski v. Popelaski, 22 A.D.3d 735, 803 N.Y.S.2d 108 (2d Dep't 2005)

Comment:Obligation imposed upon husband to pay a home equity loan did not constitute an improper, open-ended payment since it entailed specific monthly payments and had a predetermined duration. When a noncustodial parent meets all or a substantial part of a child's financial needs, a court may determine that a noncustodial parent is entitled to declare the child as a dependant. Counsel fee award vacated given husband's child support and maintenance obligations and considerable debt burden. He lacked the ability to pay the wife's counsel fees.

Years Married:

Ages/Income:

Child Support:?

Maintenance:\$1,300.00 per month for 7 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$15,000.00

Property Distribution to Wife:

Number:1249

Case:Puglisi v. Puglisi, 16 A.D.3d 477, 791 N.Y.S.2d 181 (2d Dep't 2005), leave to appeal denied, 6 N.Y.3d 708, 812 N.Y.S.2d 443, 845 N.E.2d 1274 (2006)6 N.Y.3d 708, 812 N.Y.S.2d 443, 845 N.E.2d 1274 (2006)

Comment:Proper to distribute wife's pension entirely to her considering that the parties led separate economic lives during their marriage.

Years Married:

Ages/Income:

Child Support:?

Maintenance:Denied

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:

Number:1250

Case:Redder v. Redder, 17 A.D.3d 10, 792 N.Y.S.2d 201 (3d Dep't 2005)

Comment:Supreme Court did not have the authority to direct the parties to pay the fees of the Law Guardian. They are limited to compensation from the state (specifically rejecting the First Department view). Father deemed noncustodial parent, where joint custody and equal time sharing, for purposes of child support award where he was greater wage earner.

Years Married:

Ages/Income:H INCOME: \$80,000 W INCOME: \$27,000 imputed

Child Support:\$250 per week

Maintenance:\$1,500 per month for 24 months

Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:denied
Property Distribution to Wife:

Number:1251

Case:Redgrave v. Redgrave, 13 A.D.3d 1015, 788 N.Y.S.2d 200 (3d Dep't 2004)

Comment:Proper to deny wife a share of husband's \$20,623 per year pension where he earned \$34,494 from his other employment and wife earned \$273,551. Proper to award husband 50% of wife's share in title company where he made economic and noneconomic contributions. Improper to direct husband be reimbursed for all pendente lite expenditures he made for marital residence where wife continued to share in payment of mortgage and taxes and he had exclusive occupancy.

Years Married:29

Ages/Income:H AGE: 54 H INCOME: \$34,000 W AGE: 50 W INCOME: \$273,000

Child Support:?

Maintenance:award to husband reversed on appeal

Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:

Number:1252

Case:Ritz v. Ritz, 21 A.D.3d 267, 799 N.Y.S.2d 501 (1st Dep't 2005)

Comment:Enhanced value of husband's separate apartment properly valued from date of acquisition, rather than date of commencement, where court was only provided with the dollar figure for the date of commencement. Since the husband produced no evidence as to the amount of increase due to passive market forces, rather than his direct efforts, it was proper to classify entire increase as marital. Wife's share reduced by Appellate Division because of this most favorable valuation, where she contributed no money to the operation of the apartment, the rent money more than paid its expenses, and she did not directly contribute to its operation or management.

Years Married:

Ages/Income:

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:25% of enhanced value of husband's apartment

Number:1253

Case:Robbins-Johnson v. Johnson, 20 A.D.3d 723, 802 N.Y.S.2d 255 (3d Dep't 2005)

Comment:Counsel fee awarded for opposing repeat motion. Court imputed \$100,000.00 income to husband based upon his admitted salary and augmented by finding that he intentionally withheld information concerning his actual income.

Years Married:10

Ages/Income:H AGE: 58 H INCOME: W AGE: 48 W INCOME: \$0

Child Support:?

Maintenance:\$800.00 per week for 8 years decreasing \$100 per week each year

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:48% of the marital property

Number:1254

Case:Rostropovich v. Guerrand-Hermes, 18 A.D.3d 211, 794 N.Y.S.2d 42 (1st Dep't 2005)

Comment:Proper to impute income to husband based on a pattern of gifts from his father, as compared to the nonimputed sporadic gifts from the wife's father.

Years Married:

Ages/Income:

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:

Number:1255

Case:Schiffer v. Schiffer, 16 A.D.3d 662, 793 N.Y.S.2d 432 (2d Dep't 2005), decision recalled and vacated on other grounds, 21 A.D.3d 889, 800 N.Y.S.2d 752 (2d Dep't 2005)

Comment:While Supreme Court properly deducted the amount of defendant's parental income used in calculating child support, it failed to account for the increase in his income and the concomitant increase in the child support payments upon the termination of maintenance.

Years Married:

Ages/Income:

Child Support:\$8,031.75 per month

Maintenance:\$2,500.00 per month for 8 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$145,000.00

Property Distribution to Wife:

Number:1256

Case:Schiffmacher v. Schiffmacher, 21 A.D.3d 1386, 801 N.Y.S.2d 848 (4th Dep't 2005)

Comment:The value of the degree may be measured by simply comparing the average lifetime income of a college graduate and the average lifetime earnings of a person holding such degree and reducing the difference to its present value. Wife awarded 20% of the value of the enhanced earning capacity attributable to the husband's MBA due to her modest contributions to the degree.

Years Married:

Ages/Income:

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:70% of value of parties' investment and savings accounts and 20% of value of enhanced earning capacity as a result of his Masters of Business Administration

Number:1257

Case:Shen v. Shen, 21 A.D.3d 1078, 803 N.Y.S.2d 579 (2d Dep't 2005)

Comment:Where a Referee's findings are supported by the record, the court should confirm the report and adopt the recommendations made therein.

Years Married:

Ages/Income:

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$22,000 to husband

Property Distribution to Wife:

Number:1258

Case:Sinha v. Sinha, 17 A.D.3d 131, 793 N.Y.S.2d 347 (1st Dep't 2005)

Comment:Payments for basic living expenses, the court appointed accountant, and divorce lawyers did not constitute dissipation, nor did the decline in the stock market, which was out of defendant's control.

Years Married:8

Ages/Income:

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:

Number:1259

Case:Smith v. Smith, 17 A.D.3d 959, 794 N.Y.S.2d 468 (3d Dep't 2005)

Comment:Where, in a prior decision, the Appellate Division remitted the matter to Supreme Court for clarification of certain issues; consideration of other issues on the subsequent appeal is foreclosed where not raised on the prior appeal. The manner in which a distributive award is paid is discretionary.

Years Married:

Ages/Income:

Child Support:?

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:

Number:1260

Case:Smulczeski v. Smulczeski, 18 A.D.3d 734, 797 N.Y.S.2d 97 (2d Dep't 2005)

Comment:

Years Married:

Ages/Income:
Child Support:?
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:40% of marital property

Number:1261
Case:Snow v. Snow, 14 A.D.3d 764, 788 N.Y.S.2d 435 (3d Dep't 2005)
Comment:Supreme Court may not impose a child support obligation that will reduce a noncustodial parent's income below the federal poverty level.
Years Married:25
Ages/Income:H INCOME: \$6,900
Child Support:\$425.00 per month
Maintenance:?
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:?
Property Distribution to Wife:remitted

Number:1262
Case:Spector v. Spector, 18 A.D.3d 380, 797 N.Y.S.2d 437 (1st Dep't 2005)
Comment:Proper to order preclusion where defendant failed and refused to provide documents properly demanded. Proper to direct defendant to cooperate with the plaintiff in any effort to set aside his family trust which contained monies that were marital property.
Years Married:
Ages/Income:
Child Support:?
Maintenance:?
Exclusive Occupancy:?

Health & Medical Insurance:?**Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:**

Number:1263**Case:**Stots v. Daniels, 22 A.D.3d 413, 804 N.Y.S.2d 22 (1st Dep't 2005)**Comment:**Error not to credit husband for closing costs on marital residence that he paid out of separate funds he had obtained from sale of his former apartment.**Years Married:****Ages/Income:****Child Support:?****Maintenance:?****Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:**

Number:1264**Case:**Sygrove v. Sygrove, 15 A.D.3d 292, 791 N.Y.S.2d 73 (1st Dep't 2005)**Comment:**50% of equity in marital residence awarded to husband, valued in the amount of a bona fide offer of \$950,000 made in July 1998 (a year after action commenced) made prior to time wife transferred the property to her mother to eliminate her mortgage and tax obligations. The Husband's expert's testimony, valuing it at \$2.1 million in July 2001, prior to trial, was properly rejected.**Years Married:**19**Ages/Income:****Child Support:?****Maintenance:?****Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?**

Counsel Fees:?**Property Distribution to Wife:**

Number:1265**Case:**Thoma v. Thoma, 21 A.D.3d 1080, 803 N.Y.S.2d 572 (2d Dep't 2005)**Comment:**Award of lifetime maintenance improper where wife was relatively young and capable of working. Conclusory testimony of wife as to her search for a job warranted remittal for new hearing to determine her efforts to seek full-time employment. Error to preclude husband, an architect, from testifying as an expert as to wife's earning capacity in architecture and interior design. A party may testify as an expert. Must prorate unreimbursed medical expenses.**Years Married:****Ages/Income:****Child Support:?****Maintenance:?****Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:?****Property Distribution to Wife:**

Number:1266**Case:**Thomas v. Thomas, 23 A.D.3d 374, 808 N.Y.S.2d 81 (2d Dep't 2005)**Comment:**Husband entitled to credit for his contribution from separate funds to the down payment of the marital residence and to credit for contributions from his separate funds towards the payment of the mortgage and other household expenses during the seven years he and the defendant lived there.**Years Married:****Ages/Income:****Child Support:?****Maintenance:?****Exclusive Occupancy:**Title to wife**Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?**

Counsel Fees:?
Property Distribution to Wife:

Number:1267

Case:Tzanopoulous v. Tzanopoulous, 18 A.D.3d 464, 795 N.Y.S.2d 254 (2d Dep't 2005)

Comment:Proper to refuse to award husband a share of wife's separate property where he failed to establish that he contributed directly or indirectly to its alleged appreciation in value. Proper to impute \$800 per week income to husband for purposes of child support, where the imputed income figure was based on the plaintiff's actual earning history, and was rationally based.

Years Married:

Ages/Income:

Child Support:\$282.00 per week

Maintenance:?

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:?

Property Distribution to Wife:

Number:1268

Case:Wade v. Steinfeld, 15 A.D.3d 390, 790 N.Y.S.2d 64 (2d Dep't 2005)

Comment:Husband not awarded any portion of wife's law license. Wife entitled to credit for her separate property contribution to marital residence where she overcame presumption that she intended to commingle her funds by depositing them for 3 days in parties' joint account.

Years Married:

Ages/Income:

Child Support:?

Maintenance:lifetime award to wife

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$29,092 to wife

Property Distribution to Wife:One-half of marital portion of husband's interest in benefits from NYS Teachers Retirement System

Number:1269

Case:Zagari v. Zagari, 19 A.D.3d 1063, 797 N.Y.S.2d 675 (4th Dep't 2005)

Comment:(comment)

Years Married:

Ages/Income:

Child Support:?

Maintenance:awarded to wife

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$3,000 to wife

Property Distribution to Wife:

SUMMARY OF EQUITABLE DISTRIBUTION DECISIONS
SINCE 2006

Number:1270

Case:Baker v. Baker, 32 A.D.3d 1275, 822 N.Y.S.2d 200 (4th Dep't 2006)

Comment:Defendants \$15,000 was transformed into marital property when he deposited it into a joint checking account and subsequently used it towards the purchase of the home. Defendant was not allowed to recoup that amount as his separate property contribution to the home.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1271**Case:**Brzuszkiewicz v. Brzuszkiewicz, 28 A.D.3d 860, 813 N.Y.S.2d 793 (3d Dep't 2006)**Comment:**Defendant wastefully dissipated virtually all of the marital assets and plaintiff's separate property. Plaintiff's income from her pension and Social Security after retirement would be less than her current earnings, which were already insufficient to meet her modest monthly expenses.**Years Married:**23**Ages/Income:**H \$55,000 W \$22,000**Child Support:?****Maintenance:**\$300 per month permanent maintenance**Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:****Property Distribution to Wife:**Equal division of pensions, all other marital assets to wife and all debts to husband

Number:1272**Case:**Chernoff v. Chernoff, 31 A.D.3d 900, 821 N.Y.S.2d 276 (3d Dep't 2006)**Comment:**Property acquired before marriage remains separate and property acquired in exchange for it, even if during marriage, is separate property. Commingling the corpus with marital funds transmutes the separate property into marital property, but commingling only a portion of the income produced by the corpus does not transmute the corpus which has never been commingled. The lack of a paper trail regarding the source of funds invested in property is not, alone, fatal to the claim that it is separate, where the evidence shows no other source and the other spouse acknowledges that it is separate. The nontitled spouse bears the burden of proof of showing that the appreciation of separate property is marital property.**Years Married:?****Ages/Income:?****Child Support:**remitted for recalculation for failure to follow Cassano v. Cassano, 85 N.Y.2d 649, 628 N.Y.S.2d 10, 651 N.E.2d 878 (1995).

Maintenance:
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:
Property Distribution to Wife:?

Number:1273

Case:Cherry v. Cherry, 34 A.D.3d 1186, 824 N.Y.S.2d 701 (4th Dep't 2006)

Comment:Husband's contentions with respect to retirement benefit not reviewable on appeal where he did not include order, motion papers, or exhibits in record. Defendant submitted the appeal on an incomplete record and must suffer the consequences.

Years Married:?
Ages/Income:?
Child Support:?
Maintenance:
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:
Property Distribution to Wife:?

Number:1274

Case:Cohen v. Cohen, 28 A.D.3d 840, 813 N.Y.S.2d 243 (3d Dep't 2006)

Comment:Where the court opts to apply the full child support percentage to annual income in excess of \$80,000 the courts reasoning must evidence careful consideration of the parties circumstances and reflect a finding that departure from the statutory percentage was not warranted.

Years Married:?
Ages/Income:?
Child Support:remitted for recalculation
Maintenance:remitted
Exclusive Occupancy:?
Health & Medical Insurance:?

Dental Insurance:?
Life Insurance:?
Counsel Fees:
Property Distribution to Wife:?

Number:1275

Case:Conway v. Conway, 29 A.D.3d 725, 815 N.Y.S.2d 233 (2d Dep't 2006)

Comment:Wife properly found liable for half of parties tax obligation arising out of failure to pay proper taxes during the marriage where she shared equally in the benefits derived from the failure to pay.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:Wife to pay 75% of husbands attorney and expert fees

Property Distribution to Wife:\$71,273 for half of husband's business

Number:1276

Case:Crescimanno v. Crescimanno, 33 A.D.3d 649, 822 N.Y.S.2d 310 (2d Dep't 2006)

Comment:Proceeds from settlement of husbands personal injury lawsuit became marital property upon deposit of the check into a joint checking account, where he failed to establish, by clear and convincing evidence, that the account was created for convenience only, without the intention of creating a beneficial interest.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?
Counsel Fees:
Property Distribution to Wife:?

Number:1277

Case:Damon v. Damon, 34 A.D.3d 416, 823 N.Y.S.2d 540 (2d Dep't 2006)

Comment:Not improvident exercise of discretion to give award wife 25% of lottery winnings, as the award was predominately the result of fortuitous circumstances and not the result of either spouses' toil or labor. Error to fail to ascertain and deduct from child support obligation the shelter costs incurred by the defendant in providing housing for the wife and children.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1278

Case:Dermigny v. Dermigny, 23 A.D.3d 429, 805 N.Y.S.2d 577 (2d Dep't 2005)

Comment:Proper to award wife durational maintenance based on great disparity in parties expected earnings, standard of living during marriage and their potential assets.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$3,000 per month for five years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:50% of stock options

Number:1279

Case:Florio v. Florio, 25 A.D.3d 947, 809 N.Y.S.2d 231 (3d Dep't 2006)

Comment:Proper to award husband credit for payment of marital expenses where there was no serious dispute that he paid them, nor proof that wife contributed to them, even though there may have been deficiencies in his paper trail. Supreme Court erred in permitting husband to terminate maintenance payments on proof that wife is cohabiting with an unrelated male. Any attempt to establish a less stringent requirement than DRL 248 would be erroneous. Wife received sufficient assets to pay her own counsel fees.

Years Married:25

Ages/Income:W Age: 47 W Income: \$15,000

Child Support:?

Maintenance:\$700 per week until June 30, 2005, then \$400 per week

Exclusive Occupancy:directed sold by June 30, 2005

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:Wife's request denied

Property Distribution to Wife:All proceeds from sale of house. All assets divided 50/50

Number:1280

Case:Gilbert v. Gilbert, 32 A.D.3d 414, 820 N.Y.S.2d 611 (2d Dep't 2006)

Comment:Supreme Court erred as a matter of law in considering equity from sale of first marital residence as having been contributed towards the second marital residence equally by each party, since equity from the sale of first marital residence was traceable to parties separate property contributions to the first marital residence and it was not placed in a joint account or commingled. Supreme Court required to state factors it consider with respect to child care determination on combined income in excess of \$80,000.

Years Married:12

Ages/Income:?

Child Support:remitted for recalculation

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?**Dental Insurance:?****Life Insurance:?****Counsel Fees:****Property Distribution to Wife:?**

Number:1281**Case:**Hildreth-Henry v. Henry, 27 A.D.3d 419, 811 N.Y.S.2d 110 (2d Dep't 2006)**Comment:**Husband's contention that he did not get credit for mortgage payments was not properly before the Appellate Division since he did not request such relief in the Supreme Court, and it declined to review the issue in the exercise of discretion.**Years Married:?****Ages/Income:?****Child Support:?****Maintenance:**\$20,500 for five years**Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:****Property Distribution to Wife:?**

Number:1282**Case:**Keane v. Keane, 8 N.Y.3d 115, 828 N.Y.S.2d 283, 861 N.E.2d 98 (2006)**Comment:**The principal enunciated in *Grunfeld* (94 NY2d 696) and *McSparron* (87 NY2d 275) that in divorce actions a court should not twice count the income associated with a professional license, an intangible asset, when making distributive and maintenance awards, does not extend to distribution of a tangible, income producing assets and the subsequent award of maintenance from income deriving from that asset.**Years Married:**30**Ages/Income:?****Child Support:?****Maintenance:****Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?**

Life Insurance:?
Counsel Fees:
Property Distribution to Wife:?

Number:1283

Case:Lee v. Solimano, 34 A.D.3d 299, 824 N.Y.S.2d 629 (1st Dep't 2006)

Comment:Defendant, who asserted in the trial court that there was no need to submit to the court the transcript of the hearing before the Special Referee waived the argument that the court should not have confirmed the report without having before it a complete transcript of the underlying hearing.

Years Married:?

Ages/Income:?

Child Support:to wife

Maintenance:\$1,000 a month until April 1, 2007

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1284

Case:Martinson v. Martinson, 32 A.D.3d 1276, 821 N.Y.S.2d 537 (4th Dep't 2006)

Comment:Award to wife of 40% of value of marital portion of husband's enhanced earning capacity arising from obtaining a license to practice as a physicians assistant, during the marriage, reduced to 20% on appeal, based upon defendant's modest contribution to the attainment of the plaintiff's license.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1285

Case:Massimi v. Massimi, 35 A.D.3d 400, 825 N.Y.S.2d 262 (2d Dep't 2006), leave to appeal denied, 9 N.Y.3d 801, 840 N.Y.S.2d 566, 872 N.E.2d 252 (2007)

Comment:Property acquired during marriage is presumed to be marital property and the party seeking to overcome the presumption has the burden of proving that it is separate property rather than marital property.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1286

Case:Mesholam v. Mesholam, 25 A.D.3d 670, 809 N.Y.S.2d 131 (2d Dep't 2006), leave to appeal dismissed, 8 N.Y.3d 995, 838 N.Y.S.2d 835, 870 N.E.2d 154 (2007) and leave to appeal dismissed, 9 N.Y.3d 1011, 850 N.Y.S.2d 388, 880 N.E.2d 874 (2008) and leave to appeal granted, 9 N.Y.3d 817, 851 N.Y.S.2d 126, 881 N.E.2d 222 (2008) and aff'd as modified, 11 N.Y.3d 24, 892 N.E.2d 846 (2008)

Comment:Appropriate date for valuation of husband's pension was September 7, 1994, the date of divorce action previously commenced by the wife which she voluntarily discontinued in 1999. Supreme Court properly credited wife with arrears accumulated in her favor under pendente lite order in prior action. Husband entitled to credit for one-half of principal paid on mortgage. Improvident to award wife counsel fees in view of her abrupt discontinuance of prior action, her significant resources from the equitable distribution award and her award of maintenance.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:
Property Distribution to Wife:?

Number:1287

Case:Miller v. Dugan, 27 A.D.3d 429, 810 N.Y.S.2d 517 (2d Dep't 2006)

Comment:Appellate division directed counsel to show cause why sanctions should not be imposed against plaintiff or her counsel. The purpose of an appellate brief is to assist, not mislead the court. Many of the plaintiff's appellate arguments appeared to be unsupported by, or even contradicted by, the record and completely without merit in law or in fact.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1288

Case:Opperisano v. Opperisano, 35 A.D.3d 686, 827 N.Y.S.2d 226 (2d Dep't 2006)

Comment:Motion for new trial pursuant to CPLR 4404(b) granted by Appellate Division on maintenance and child support issues, where husband had heart attack after the trial, was forced to retire, went on disability and had a significant loss of income. Improvident exercise of discretion to grant wife right of first refusal to purchase husband's interest in marital home based on value as appraised two years earlier. Home should be sold or current value used.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:
Property Distribution to Wife:?

Number:1289

Case:Pachomski v. Pachomski, 32 A.D.3d 1005, 822 N.Y.S.2d 92 (2d Dep't 2006)

Comment:Error not to honor parties' stipulation. Where the noncustodial parent meets all or a substantial portion of the child's financial needs a court may determine that the noncustodial parent is entitled to declare the child as an exemption. To meet licensing requirements for teacher defendant was required to have BA degree and several additional teaching credits. Wife has BA at time of marriage and completed requirements during the marriage. Decision to apply a coverture fraction in determining marital portion of teaching license was therefor error.

Years Married:?
Ages/Income:?
Child Support:?
Maintenance:
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:
Property Distribution to Wife:?

Number:1290

Case:Penna v. Penna, 29 A.D.3d 970, 817 N.Y.S.2d 313 (2d Dep't 2006)

Comment: Appellate Division reduced \$400 nonduration maintenance award to a \$125 per week durational award based upon the plaintiff's current income, her doctor's testimony that she was capable of performing her present employment functions, her reasonable needs, her separate property, and the husband's financial circumstances in this long-term marriage. Insurance policy reduced on appeal to amount of sum of maintenance payments. Attorney's fees were an improvident exercise of discretion where the parties' financial circumstances were about equal.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance: \$125 per week until wife eligible for Social Security

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance: \$52,000 for wife coterminous with maintenance obligation

Counsel Fees: None

Property Distribution to Wife:?

Number: 1291

Case: Pickard v. Pickard, 33 A.D.3d 202, 820 N.Y.S.2d 547 (1st Dep't 2006), appeal dismissed, 7 N.Y.3d 897, 826 N.Y.S.2d 603, 860 N.E.2d 66 (2006)

Comment: Proper to adjust plaintiff's equitable distribution to give defendant credit or excess temporary maintenance payments. Proper to give defendant credit for 50% of home maintenance and insurance payments because they maintained the value of the marital residence. In contrast to an asset consisting of possible future fees, where the asset consists of residential apartments in the name of a holding company there is no impediment to determining and distributing a present value. Distribution of assets should not be left unresolved at the time of the divorce where it can be effectuated at that time.

Years Married: 23

Ages/Income:?

Child Support:?

Maintenance: \$3,500 per month lifetime

Exclusive Occupancy:?

Health & Medical Insurance: for wife during COBRA period

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:50% of husband's nonvested pension and interest in holding company

Number:1292

Case:Ruzicka v. Ruzicka, 31 A.D.3d 862, 817 N.Y.S.2d 770 (3d Dep't 2006)

Comment:Equal Split of all martial property equitable where proceeds of \$240,000 personal injury settlement were commingled with martial funds even though only wife sustained serious injury. The proceeds were spent on marital debt and various assets, and the unallocated recovery was able to exceed the \$100,000 insurance coverage maximum because the husband was in the car.

Years Married:18

Ages/Income:H Income: \$552mo

Child Support:?

Maintenance:\$2,100 per month until age 65

Exclusive Occupancy:?

Health & Medical Insurance:for wife

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1293

Case:Saylor v. Saylor, 32 A.D.3d 1358, 822 N.Y.S.2d 197 (4th Dep't 2006)

Comment:Maintenance award proper where parties were married more than 30 years, the wife stayed at home with the children or worked part time, thereby delaying her career prospects and there was a large disparity in the incomes of the parties.

Years Married:30

Ages/Income:?

Child Support:?

Maintenance:\$950 a month for 9 1/2 years or remarriage

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?
Counsel Fees:\$6,750
Property Distribution to Wife:?

Number:1294
Case:Scarlett v. Scarlett, 35 A.D.3d 710, 830 N.Y.S.2d 156 (2d Dep't 2006)
Comment:
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:\$200 per month for 4 years
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:
Property Distribution to Wife:?

Number:1295
Case:Scartozzi v. Scartozzi, 32 A.D.3d 1008, 822 N.Y.S.2d 89 (2d Dep't 2006), leave to appeal denied, 8 N.Y.3d 812, 836 N.Y.S.2d 552, 868 N.E.2d 235 (2007)
Comment:Where there is an inconsistency between the judgment and the decision the decision prevails. Such an inconsistency may be corrected either by motion for resettlement or on appeal.
Years Married:?
Ages/Income:?
Child Support:?
Maintenance:
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:
Property Distribution to Wife:?

Number:1296

Case:Shapiro v. Shapiro, 35 A.D.3d 585, 829 N.Y.S.2d 114 (2d Dep't 2006), as amended, (June 1, 2007)

Comment:Error to include maintenance award as income in computing wife's basic child support obligation. Requiring wife to pay pro rata share of child support obligation would be unjust and inappropriate since she did not work. Wife awarded 75% of value of marital residence. Contentions raised for first time on appeal in reply brief not considered because improperly argued. Defendant not obligated for pro rata share of additional child support because child support award found to be unjust and inappropriate.

Years Married:15

Ages/Income:?

Child Support:\$25 per month

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1297

Case:Somerville v. Somerville, 26 A.D.3d 647, 809 N.Y.S.2d 642 (3d Dep't 2006), leave to appeal dismissed in part, denied in part, 7 N.Y.3d 859, 824 N.Y.S.2d 598, 857 N.E.2d 1129 (2006)

Comment:Life insurance policy intended to secure plaintiff's child support obligation should be a declining term policy.

Years Married:6

Ages/Income:?

Child Support:\$2,000 per month 1 Child plus 92% of childcare and uncovered health care and 100% of child's educational expenses

Maintenance:\$1,000 per month for 24 months

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:\$1 million for child

Counsel Fees:

Property Distribution to Wife:?

Number:1298

Case:Wexler v. Wexler, 34 A.D.3d 458, 824 N.Y.S.2d 647 (2d Dep't 2006), leave to appeal dismissed, 8 N.Y.3d 1007, 839 N.Y.S.2d 447, 870 N.E.2d 687 (2007)

Comment:Although the judgment was entered on the wife's default, appellate review of the denial of the wife's motion to vacate her default was not precluded since appeal from the judgment brings up for review all matters which were the subject of contest before the Supreme Court. While the wife appeared to be in need of in patient drug treatment for serious substance abuse her dereliction with regard to court appearances and obligations was so extensive that the court did not err in finding her in default during the equitable distribution portion of the trial and in refusing to vacate her default. Proper to award nondurational maintenance considering the wife's age and apparent drug addiction, the duration of the marriage and her lack of employment before the marriage.

Years Married:?

Ages/Income:?

Child Support:none to husband who was awarded custody

Maintenance:\$650 per week until death or remarriage

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1299

Case:Altieri v. Altieri, 35 A.D.3d 1093, 827 N.Y.S.2d 735 (3d Dep't 2006)

Comment:Supreme Court did not err in awarding the wife the marital residence while awarding the husband his 401K plan. Although he will be required to pay income tax on withdrawals he is entitled to make withdrawals without penalty and thus failed to prove the nonliquidity of the asset. Supreme Court did not err in awarding the plaintiff credits for amounts defendant withdrew from marital assets, cash that he secreted and did not claim and money in accounts he closed. The finding of wasteful dissipation was appropriate and logically resulted in the credit. Although Supreme Court should not have made plaintiff's proposed findings into a judgment, the error was harmless. The court did not abdicate its responsibility.

Years Married:33
Ages/Income:?
Child Support:?
Maintenance:
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:
Property Distribution to Wife:?

Number:1300

Case:Arnone v. Arnone, 36 A.D.3d 1170, 828 N.Y.S.2d 677 (3d Dep't 2007)

Comment:Proper to deny maintenance where wife, with limited work history, obtained a college degree while married, and during the years prior to the divorce, while the marriage was deteriorating and she assumed no obligation to provide support to the children while receiving temporary maintenance, made no apparent effort to transition into the work force.

Years Married:23

Ages/Income:H Age: 56 W Age: 53

Child Support:?

Maintenance:denied

Exclusive Occupancy:title to marital residence awarded to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1301

Case:Arrigo v. Arrigo, 38 A.D.3d 807, 834 N.Y.S.2d 534 (2d Dep't 2007)

Comment:Proper to award the husband only 25 % of the marital assets where the marriage was relatively short, both parties were relatively young and healthy, there were no children and the husbands contributions were minimal. For the same reasons he was properly denied maintenance. Although he earned less than the wife he had three college degrees and quit many jobs of his own volition. Maintenance is determined by earning capacity, not by actual earnings.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:75% of marital assets

Number:1302

Case:Bellinger v. Bellinger, 46 A.D.3d 1200, 847 N.Y.S.2d 783 (3d Dep't 2007)

Comment:As no appeal was taken from pre-trial order that vacated child support stipulation this issue was not properly before the Appellate Division. Not error for Supreme Court to use figure actually paid for maintenance, rather than amount to be paid but error not to deduct medicare portion of FICA deduction in computing income for CSSA purposes. Child support stipulation which does not recite presumptive support amount or that it deviates from CSSA is void.

Years Married:?

Ages/Income:?

Child Support:\$468.53 per week

Maintenance:\$9,804 per year

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$15,874

Property Distribution to Wife:?

Number:1303

Case:Bozman v. Bozman, 43 A.D.3d 1345, 843 N.Y.S.2d 481 (4th Dep't 2007)

Comment:Error to award defendant a \$5000 credit from proceeds of sale of business started during marriage in addition to 50% of the value of the business where he received the \$5000 as a gift from his mother to start up the business and he voluntarily contributed it to the business which resulted in the creation of a marital asset. Defendant received an impermissible double recovery.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1304

Case:Burtchaell v. Burtchaell, 42 A.D.3d 783, 840 N.Y.S.2d 449 (3d Dep't 2007)

Comment:Husband not entitled to a portion of increased equity in the marital residence, which was wife's separate property, where rental income produced nearly enough money to pay the mortgage and no proof that marital funds were used to pay mortgage.

Years Married:10

Ages/Income:?

Child Support:\$525 per month

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1305

Case:Calciano v. Calciano, 45 A.D.3d 515, 844 N.Y.S.2d 722 (2d Dep't 2007)

Comment:Proper to impute \$90,000 income to husband for purposes of child support calculation based on his past income and earning potential.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1306

Case:Casey v. Casey, 39 A.D.3d 579, 835 N.Y.S.2d 277 (2d Dep't 2007)

Comment:Supreme Court properly struck the defendants answer and precluded him from presenting any evidence or testimony at trial relating to financial issues. The drastic remedy of striking an answer requires a showing that defendant's failure to comply with a disclosure order was the result of wilful and contumacious conduct, which can be inferred from repeated failures to comply with court ordered discovery, without adequate explanation for the defaults.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1307

Case:Cerami v. Cerami, 44 A.D.3d 815, 845 N.Y.S.2d 67 (2d Dep't 2007)

Comment:Retirement accounts constituted voluntarily deferred income with respect to pension and retirement benefits, pursuant to DRL 240(1-b)(b)(5)(iii)(F)l, for purposes of calculating child support. Denial of wife's application for child support was proper in light of fact that she received a \$300,000 lump sum payment as per prenuptial agreement, as well as a \$3,300 a month tax-free housing allowance until emancipation of 4 year old child.

Years Married:?

Ages/Income:?

Child Support:\$2,134 per month (1 child)

Maintenance:\$1,500 per month until sale of residence or November 30, 2006

Exclusive Occupancy:ordered sold

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1308

Case:Daddino v. Daddino, 37 A.D.3d 518, 830 N.Y.S.2d 278 (2d Dep't 2007)

Comment:Valuation of the husband's business interests, which relied on the yearly valuations made pursuant to the shareholders agreement, and the testimony of the witnesses, was proper.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$500 a week until husband retires or reaches age 66

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$10,000 to wife

Property Distribution to Wife:40% of the value of husband's business

Number:1300

Case:Dellaflora v. Dellaflora, 38 A.D.3d 825, 835 N.Y.S.2d 204 (2d Dep't 2007)

Comment:Court failed to provide for the disposition of two properties. The Appellate Division awarded the wife a 50% interest in each of them and remitted to the trial court to direct the sale or give the husband the right to purchase her interest in them. The wife would only realize her interest in them if they were sold.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:denied

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1310

Case:DeVries v. DeVries, 35 A.D.3d 794, 828 N.Y.S.2d 142 (2d Dep't 2006)

Comment:Proper to award child support based on \$300,000 of plaintiff's imputed income based upon the standard of living the children would have enjoyed had the marriage not dissolved. The evidence showed he earned and spent well in excess of the income reported on his income tax return. Proper to apply the straight percentage to the entire \$300,000.

Years Married:?

Ages/Income:?

Child Support:\$1702.75 per week

Maintenance:\$697 per week for 10 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:denied

Property Distribution to Wife:\$814,100

Number:1311

Case:Dewitt v. Sheiness, 42 A.D.3d 776, 840 N.Y.S.2d 208 (3d Dep't 2007)

Comment:Not an abuse of discretion to provide for payment of equitable distribution award over 3 years without interest where plaintiff lacked liquid assets and had limited income. Failure to request maintenance in Statement of Proposed Disposition is not a waiver.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:denied to wife

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:denied to wife

Property Distribution to Wife:?

Number:1312

Case:Faello v. Faello, 43 A.D.3d 1102, 845 N.Y.S.2d 345 (2d Dep't 2007)

Comment:Husband entitled to credit for \$200,000 of his separate property that he contributed to purchase price of house and furnishing.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$600 a month for 54 months

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1313

Case:Fitzpatrick v. Fitzpatrick, 43 A.D.3d 991, 842 N.Y.S.2d 515 (2d Dep't 2007)

Comment:Proper to award title to marital residence to wife where it had been given to the wife by her parents and the transfer of title to both parties shortly before commencement of the action was effected to secure a marital loan and did not reflect an intent to make the husband a co-owner.

Years Married:?

Ages/Income:?

Child Support:\$1,500 per month

Maintenance:\$3,000 per month until age 65

Exclusive Occupancy:Title to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$21,000 to wife

Property Distribution to Wife:?

Number:1314

Case:Fosdick v. Fosdick, 46 A.D.3d 1138, 847 N.Y.S.2d 750 (3d Dep't 2007)

Comment:Given the disparity in the parties' respective incomes and educations, and the contributions the plaintiff made to the marriage, the amount and duration of the maintenance award which represented the approximate length of time for the plaintiff to complete her education and receive a teaching certificate was appropriate.

Years Married:?

Ages/Income:?

Child Support:(2 children)

Maintenance:\$900 per month for 30 months

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$3,000 to wife

Property Distribution to Wife:?

Number:1315

Case:Fox v. Fox, 44 A.D.3d 998, 844 N.Y.S.2d 433 (2d Dep't 2007)

Comment:Supreme Court correctly precluded testimony by the defendant's expert witnesses because the defendant had not complied with CPLR 3101(d)(I). Child support award reduced on appeal in light of wife's employment situation. Error to allocate half of husband's educational loan to wife where his medical license was earned prior to marriage.

Years Married:?

Ages/Income:?

Child Support:\$75 per week + 10% for add-ons

Maintenance:denied

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1316

Case:Gerteis v. Gerteis, 44 A.D.3d 709, 843 N.Y.S.2d 425 (2d Dep't 2007)

Comment:Since the portion of the judgment directing equitable distribution was entered upon the defendant's default in appearing at the trial on that issue, the appeal from that portion of the judgment must be dismissed.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1317

Case:Grumet v. Grumet, 37 A.D.3d 534, 829 N.Y.S.2d 682 (2d Dep't 2007), leave to appeal denied, 9 N.Y.3d 818, 852 N.Y.S.2d 14, 881 N.E.2d 1201 (2008)

Comment:In fixing maintenance the court erred by focusing almost exclusively on the income and assets of the husband and failed to take into account the large distributive award to the wife, her substantial assets and her ability to become self-supporting. It failed to consider her reasonable needs and the pre-separation standard of living in the context of the other factors. The decision failed to set forth any rationale for a non-taxable award envisioned by IRC provisions. The award of retroactive maintenance was inappropriate particularly where the husband was deprived of his ability to establish his entitlement to potential offsets. Award of \$16,000 a month tax-free was excessive and reduced on appeal. Appellate Division reduced counsel fee to half of the full amount expended by the wife, where she will receive a large distributive award and possesses substantial assets which are sufficient to enable her to pay a significant portion of her litigation expenses.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$9,000 a month

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$130,318 to wife

Property Distribution to Wife:?

Number:1318

Case:Haines v. Haines, 44 A.D.3d 901, 845 N.Y.S.2d 77 (2d Dep't 2007)

Comment:Improvident exercise of discretion to fail to impute income from wife's second job since that income contributed to the predivorce standard of living and was demonstrative of her earning capacity. Unlike the EDL, DRL 236[b][6] contains no express time limitation with respect to calculating income. When considering the "income and property of the respective parties" the trial court should not exclude any property or income increase since the commencement of the action to the time of trial.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$900 per month until May 2019 to wife

Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:
Property Distribution to Wife:?

Number:1319

Case:Hamroff v. Hamroff, 35 A.D.3d 365, 826 N.Y.S.2d 389 (2d Dep't 2006)

Comment:3% postjudgment interest on distributive award was proper. Trial court not required to consider tax consequences of the sale of assets where there was no evidence that a sale of any assets was expected.

Years Married:14

Ages/Income:?

Child Support:?

Maintenance:\$500 a week until wife 65

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:40% of appreciated value of businesses

Number:1320

Case:Homkey-Hawkins v. Hawkins, 42 A.D.3d 725, 839 N.Y.S.2d 849 (3d Dep't 2007)

Comment:Where increase in value of properties is due to market forces, not an abuse of discretion to value them as of date closer to trial. Husband failed to prove by clear and convincing evidence that his transfer of funds into joint account was for convenience and did not rebut presumption of marital property. Husband not entitled to greater share of property on which marital residence situated owing to his "sweat equity" constructing it where wife worked outside the home, had all child-rearing responsibilities and did all daily and weekly chores.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:
Property Distribution to Wife:?

Number:1321

Case:Howard v. Howard, 45 A.D.3d 944, 845 N.Y.S.2d 503 (3d Dep't 2007)

Comment:In view of husband's testimony that he was uninsurable and that he wanted to keep two term policies with face amounts of \$125,000 and \$700,000 and wife's proposal in her statement of proposed disposition that he would retain ownership of these policies, it was an abuse of discretion to award these policies to the wife.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$6,000 per month until December 1, 2008 to wife

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:for wife to cover unpaid maintenance and distributive award until paid

Counsel Fees:

Property Distribution to Wife:\$104,565

Number:1322

Case:Irene v. Irene, 41 A.D.3d 1179, 837 N.Y.S.2d 797 (4th Dep't 2007)

Comment:Proper to impute income to defendant for purposes of establishing his child support obligation based upon his predivorce profit margin, after applying a discount based on defendant's economic distress.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:
Property Distribution to Wife:?

Number:1323

Case:Iwanow v. Iwanow, 39 A.D.3d 471, 834 N.Y.S.2d 247 (2d Dep't 2007)

Comment:Supreme Court did not err in denying plaintiff's motion to establish July 24, 1990, the date of commencement of a prior discontinued divorce action, as the date for identifying, classifying and distributing marital assets. The husband's motion failed to differentiate between the date that marital assets cease to accrue (See *Anglin*, 80 NY2d 553) and the valuation date. Where the first action is discontinued and the parties either reconcile or continue the marital relationship, and continue to receive the benefits of the relationship, the date of commencement of the subsequent action controls the accrual of marital assets. In order to determine whether this standard has been met inquiry must be made into the nature of the relationship.

Years Married:?
Ages/Income:?
Child Support:?
Maintenance:
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:
Property Distribution to Wife:?

Number:1324

Case:Jalowiec v. Jalowiec, 41 A.D.3d 1292, 838 N.Y.S.2d 323 (4th Dep't 2007)

Comment:Error to award retroactive maintenance to date of commencement of action where it was not requested until wife served a statement of proposed disposition.

Years Married:?
Ages/Income:?
Child Support:?
Maintenance:

Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:
Property Distribution to Wife:?

Number:1325

Case:Kammerer v. Kammerer, 38 A.D.3d 846, 835 N.Y.S.2d 206 (2d Dep't 2007)

Comment:The award of maintenance was a provident exercise of discretion considering the assets awarded to her and her ability to become partially self-supporting. Considering the wife's means and ability to secure employment the trial court properly refused to direct the husband to provide health insurance.

Years Married:30

Ages/Income:?

Child Support:?

Maintenance:\$800 per week nondurational

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1326

Case:Kaur v. Singh, 44 A.D.3d 622, 843 N.Y.S.2d 350 (2d Dep't 2007)

Comment:Ample evidence of economic fault on the part of the defendant justified the distribution of assets. Martial fault is not a relevant consideration except in those rare instances in which the misconduct is so egregious and shocking that the court is compelled to invoke its equitable power so that justice may be done.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?
Life Insurance:?
Counsel Fees:
Property Distribution to Wife:?

Number:1327

Case:Wallach v. Wallach, 37 A.D.3d 707, 831 N.Y.S.2d 210 (2d Dep't 2007)

Comment:Plaintiffs proof of inability to work was largely self-serving, unbelievable and belied by the evidence of her prior employment and testimony from her therapist that she would be able to work after the divorce action was over.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$5,000, \$3,500 and \$2,500 a month for successive 3-year periods.

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1328

Case:Levy v. Levy, 39 A.D.3d 487, 835 N.Y.S.2d 228 (2d Dep't 2007)

Comment:Supreme Court improvidently exercised its discretion in awarding child support based solely on the first \$80,000 of combined parental income. This was not a high-income case in which it was appropriate to disregard the parental income because support in excess of the children's documented needs was in issue. The Court applied the 29% percentage to the first \$140,000 of combined parental income.

Years Married:?

Ages/Income:?

Child Support:\$2,368 per month subject to reductions

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?
Counsel Fees:
Property Distribution to Wife:?

Number:1329

Case:Loria v. Loria, 46 A.D.3d 768, 848 N.Y.S.2d 681 (2d Dep't 2007)

Comment:The plaintiff's separate funds used for the improvement of the marital residence or commingled with marital accounts became marital property.

Years Married:4

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:40% of marital assets after credits for separate property

Number:1330

Case:Malloy v. Malloy, 39 A.D.3d 602, 835 N.Y.S.2d 262 (2d Dep't 2007)

Comment:Supreme Court was required to select a valuation date for the parties' assets anytime from the date of the commencement of the action to the date of trial, rather than 1994, the date of the parties' separation. It was improper to value the marital residence as of the date of the parties' separation. Supreme Court improperly valued the wife's pension by reducing it by the amount of a loan that she took, as there was no evidence the loan was for marital purposes.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

**Counsel Fees:
Property Distribution to Wife:?**

Number:1331

Case:Midy v. Midy, 45 A.D.3d 543, 846 N.Y.S.2d 220 (2d Dep't 2007)

Comment:Husband's contributions to wife's attainment of masters degree in speech pathology did not warrant an award of 50% of the wife's enhanced earning capacity where he did not look after their child while she was studying and did not assist her in attaining the degree. Where wife deposited funds in joint account with the specific intention that they should belong to husband in event of her death she evinced intent to create marital property. However, wife entitled to credit for her separate funds that paid off mortgage because funds were in joint account for a short period of time excluding the possibility of significant enhancement due to the economic partnership of the parties.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1332

Case:Miklos v. Miklos, 39 A.D.3d 826, 835 N.Y.S.2d 330 (2d Dep't 2007)

Comment:Improper to award compound interest of 1.5% a month on distributive award payments which are late. Error not to credit spouse for payments of temporary child support listed in his statement of net worth.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?
Counsel Fees:
Property Distribution to Wife:?

Number:1333

Case:Moody v. Sorokina, 40 A.D.3d 14, 830 N.Y.S.2d 399 (4th Dep't 2007), appeal dismissed, 8 N.Y.3d 978, 836 N.Y.S.2d 547, 868 N.E.2d 231 (2007) and leave to appeal dismissed, 9 N.Y.3d 986, 848 N.Y.S.2d 21, 878 N.E.2d 605 (2007) and appeal dismissed, 10 N.Y.3d 757, 853 N.Y.S.2d 539, 883 N.E.2d 366 (2008)

Comment:Defendant entitled to seek enforcement of federal affidavit of support.

Years Married:8

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1334

Case:Mora v. Mora, 39 A.D.3d 829, 835 N.Y.S.2d 626 (2d Dep't 2007)

Comment:Argument that judgment did not accurately reflect parties on the record; stipulation is not preserved for appellate review where husband filed to submit a proposed order within 60 days of the order directing settlement, or to object to the portion of the proposed order submitted by the wife. Proper to limit maintenance award to 3 years where wife had capacity earn a living despite her disability, husband had custody of children and his income was insufficient to provide for his and their needs without assistance from his mother.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:to wife for 3 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?
Life Insurance:?
Counsel Fees:\$2,000 to wife
Property Distribution to Wife:?

Number:1334
Case:Newman v. Newman, 35 A.D.3d 418, 825 N.Y.S.2d 714 (2d Dep't 2006)
Comment:The marital residence is generally considered a passive asset which is valued as of the date of trial. This is especially the case where the dramatic increase in the value is attributable to market forces rather than the contributions of either party. In light of fact that defendant was given a credit for the value of his separated property, the plaintiff was entitled to a credit for the defendant's pre-existing debt on that property which became the marital residence.

Years Married:?
Ages/Income:?
Child Support:?
Maintenance:
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:
Property Distribution to Wife:?

Number:1336
Case:Nimkoff v. Nimkoff, 36 A.D.3d 498, 830 N.Y.S.2d 27 (1st Dep't 2007)
Comment:Depositions are not permitted in custody proceedings. Deposing of expert witnesses is generally discouraged and the direction for production of the file of the expert, for review 3 days prior to trial, was appropriate.

Years Married:?
Ages/Income:?
Child Support:?
Maintenance:
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?

Life Insurance:?
Counsel Fees:
Property Distribution to Wife:?

Number:1337

Case:O'Donnell v. O'Donnell, 41 A.D.3d 447, 836 N.Y.S.2d 703 (2d Dep't 2007)

Comment:Error not to distribute marital residence. The wife's limited notice of cross appeal precluded review of issue of timing of the distribution of her share of the husband's retirement plan and the amount of the counsel fee award.

Years Married:?

Ages/Income:?

Child Support:\$2,083 per month plus 60% of tuition, school fees, and extraneous sporting/recreational expenses

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:60% of wife's attorney's fees

Property Distribution to Wife:50% of marital residence and 30% of value of husband's law degree and license

Number:1338

Case:Ponzi v. Ponzi, 45 A.D.3d 1327, 845 N.Y.S.2d 605 (4th Dep't 2007)

Comment:Where spouses separate property appreciates in value during the marriage and spouse fails to offer evidence that the appreciation resulted solely from passive market forces the appreciation is presumptively marital property. Argument raised for first time in reply brief is not properly before the appellate court.

Years Married:10

Ages/Income:?

Child Support:?

Maintenance:\$325 per week for 5 years to wife

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

**Counsel Fees:
Property Distribution to Wife:?**

Number:1339**Case:**Pulver v. Pulver, 40 A.D.3d 1315, 837 N.Y.S.2d 369 (3d Dep't 2007)**Comment:**Supreme Court did not err in valuing IRAs as of the date of trial. So as to avoid a windfall to the tilted spouse and an injustice to the other where increases to a marital asset are passive, affected by outside market resources, rather than actions of the titled spouse, they should be valued as closely as possible to the date of trial. In order to avoid double counting seed money voluntarily contributed from marital funds to start a business should not be reimbursed during distribution if the value of the business is equitably distributed.**Years Married:**10**Ages/Income:**H INCOME: \$90,000 W INCOME: \$90,000**Child Support:**\$2,175 per month**Maintenance:**denied**Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?****Life Insurance:?****Counsel Fees:****Property Distribution to Wife:**50% of husband's business and 70% of value of marital residence

Number:1340**Case:**Reich v. Reich, 36 A.D.3d 506, 830 N.Y.S.2d 29 (1st Dep't 2007)**Comment:**Under the EDL, broad pretrial disclosure which enables both spouse to obtain necessary information regarding the value and nature of marital assets, is critical. The searching exploration is more than justified in the case of close corporations.**Years Married:?****Ages/Income:?****Child Support:?****Maintenance:****Exclusive Occupancy:?****Health & Medical Insurance:?****Dental Insurance:?**

Life Insurance:?
Counsel Fees:
Property Distribution to Wife:?

Number:1341

Case:Reiff v. Reiff, 40 A.D.3d 346, 836 N.Y.S.2d 119 (1st Dep't 2007)

Comment:Where an asset declines in value through no fault of one of the spouses, that spouse should not be held responsible for the loss.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1342

Case:Romano v. Romano, 40 A.D.3d 837, 835 N.Y.S.2d 900 (2d Dep't 2007)

Comment:Proper to calculate the husband's support obligation based upon imputed income including overtime. Proper to grant post trial motion to reopen trial to allow wife to aver by affidavit proof of grounds for divorce where she failed to adduce any proof of grounds at trial after the defendant consented to constructive abandonment as a ground for divorce prior to trial. The court may determine the sequence in which the issues shall be tried.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1343

Case:Rosenberg v. Rosenberg, 44 A.D.3d 1022, 845 N.Y.S.2d 371 (2d Dep't 2007)

Comment:Trial courts are afforded considerable discretion in determining whether to impute income but they must provide a clear record of the source of the imputed income, the reasons for the imputation and the resultant calculations (actual dollar amount).

Years Married:9

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1344

Case:Saleh v. Saleh, 40 A.D.3d 617, 836 N.Y.S.2d 201 (2d Dep't 2007)

Comment:Defendant's failure to comply with court-ordered demands for discovery, his failure to pay for court appointed appraiser to appraise the businesses, and his invocation of the Fifth Amendment in response to questions regarding unreported income and the finances of the businesses warranted the trial court's equitable distribution.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1345

Case:Schwartz v. Schwartz, 46 A.D.3d 540, 847 N.Y.S.2d 212 (2d Dep't 2007), order recalled and vacated, 47 A.D.3d 795, 850 N.Y.S.2d 523 (2d Dep't 2008), order recalled and vacated, 54 A.D.3d 400, 2008 WL 3853507 (2d Dep't 2008)

Comment:Award to wife of 35% of value of husband's interest in law firm appropriate in light of long marriage and her role in early years as primary caretaker which allowed husband to earn high share of profits, and in light of evidence that her conduct in later years harmed his status at firm, and reduced his salary and profits. Not abuse of discretion to refuse to award pre-judgment interest on share of law practice where no evidence of misconduct of husband that deprived wife of her use or share of marital property.

Years Married:30

Ages/Income:?

Child Support:?

Maintenance:to wife for 10 years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$33,838 to wife

Property Distribution to Wife:?

Number:1346

Case:Seckler-Roode v. Roode, 36 A.D.3d 889, 830 N.Y.S.2d 211 (2d Dep't 2007)

Comment:Supreme Court did not err in declining to award the defendant a share of the plaintiff's pension where he failed to meet his burden of proving the value of the pension, offering no proof as to its value.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1347

Case:Sevdinoglou v. Sevdinoglou, 40 A.D.3d 959, 836 N.Y.S.2d 680 (2d Dep't 2007)

Comment:Supreme Court improvidently exercised its discretion in failing to take into account the husbands financial circumstances in fashioning the maintenance award.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:\$1,500 per month for 36 months

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$14,140 to wife

Property Distribution to Wife:?

Number:1348

Case:Sirgant v. Sirgant, 43 A.D.3d 1034, 842 N.Y.S.2d 483 (2d Dep't 2007)

Comment:Nondurational maintenance award modified on appeal where wife had requested an award for five years in Supreme Court and in view of her ability to be self-supporting. Error to compute child support without deducting maintenance award from husband's income.

Years Married:?

Ages/Income:?

Child Support:\$1,171 per month

Maintenance:\$1,250 per month for five years

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1349

Case:Soles v. Soles, 41 A.D.3d 904, 837 N.Y.S.2d 762 (3d Dep't 2007)

Comment:Supreme Court did not abuse its discretion in denying wife's request for reimbursement of carrying costs for the marital residence and other expenses during the pendency of the action. She had exclusive possession pursuant to court order and permitted her paramour and his two children to live there part time two to three weeks each month without financially contributing to household expenses. Moreover, she did not seek support pendente lite.

Years Married:19

Ages/Income:H INCOME: \$6,000 W INCOME: \$50,000

Child Support:?

Maintenance:

Exclusive Occupancy:title awarded to wife

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:50% of marital property

Number:1350

Case:Spreitzer v. Spreitzer, 40 A.D.3d 840, 837 N.Y.S.2d 658 (2d Dep't 2007)

Comment:Proper to calculate wife's enhanced earning capacity conferred by her MS degree and nurse practitioner license by comparing the expected lifetime earnings of a registered nurse with the expected lifetime earning of a licensed nurse practitioner, and reducing the sum to its present value. Although she already embarked on a career and had a history of actual earnings the court properly rejected her testimony that she was unable to secure employment. Proper to impute annual income to wife for purposes of fixing child support. A court may impute income based on a party's pas income or demonstrated earning potential and the record supported the conclusion that her earning potential exceeded her actual income reported on her tax return.

Years Married:25

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:both parties to maintain for children

Dental Insurance:?

Life Insurance:?

Counsel Fees:\$12,600 to wife

Property Distribution to Wife:80% of the value of her degree and license. (20% to husband)

Number:1351

Case:Tedesco v. Tedesco, 41 A.D.3d 1246, 838 N.Y.S.2d 759 (4th Dep't 2007)

Comment:Impermissible to award a share of pension to spouse based upon "double counting where the court had previously considered that income in ordering the defendant to pay, by way of temporary orders, to maintain the marital residence for the benefit of the plaintiff and the parties children and to provide her with funds for household expenses and fuel expenses for her vehicle.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1352

Case:Wallach v. Wallach, 37 A.D.3d 707, 831 N.Y.S.2d 210 (2d Dep't 2007)

Comment:The CSSA does not permit the court to determine a party's income for child support purposes by excluding actual overtime wages or by averaging a party's earnings over several years. Improper to base child support on average of earnings. Improper to include maintenance payments in plaintiff's income for purposes of calculating child support and court should have provided for a corresponding adjustment in child support upon expiration of maintenance award. Supreme Court erred in failing to reduce the value of the defendant's pension for distribution purposes by that portion of that value that is equivalent to social security benefits. As a member of the Federal Employees Civil Service Retirement System he did not contribute to or receive social security benefits and his pension, therefore, constituted, in part, the social security benefits which he would be entitled to were he not a federal employee. Since Social Security benefits are not subject to EDL that portion of the defendant's pension which was a substitute for social security had to be deducted from its value.

Years Married:?

Ages/Income:?

Child Support:?

Maintenance:

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1353

Case:Walter v. Walter, 38 A.D.3d 763, 835 N.Y.S.2d 196 (2d Dep't 2007)

Comment:Not error for Supreme Court to grant a nunc pro tunc order of reference to hear and report. Durational maintenance award extended from 5 years to 8 years by Appellate Division where wife stopped working to become a stay at home mother, and was out of the work force for an extended period of time. Improper to impute income of \$40,000 a year to wife where she was out of work force for an extended period and needed additional time to become self-supporting.

Years Married:?

Ages/Income:?

Child Support:\$3,625 a month

Maintenance:\$4,000 a month for 8 years from date of commencement

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1354

Case:Xikis v. Xikis, 43 A.D.3d 1040, 841 N.Y.S.2d 692 (2d Dep't 2007), leave to appeal denied, 10 N.Y.3d 704, 854 N.Y.S.2d 104, 883 N.E.2d 1011 (2008)

Comment:Nondurational maintenance appropriate where parties lived together 28 years, wife not employed during most of marriage, had limited education and skills and was 60 years old. Transfer of funds by husband at date of commencement of action constituted a dissipation of assets in contemplation of divorce.

Years Married:18

Ages/Income:W AGE: 60

Child Support:?

Maintenance:\$1,500 per month nondurational

Exclusive Occupancy:?

Health & Medical Insurance:?

Dental Insurance:?

Life Insurance:?

Counsel Fees:

Property Distribution to Wife:?

Number:1355

Case:Zwickel v. Szajer, 45 A.D.3d 1222, 846 N.Y.S.2d 737 (3d Dep't 2007)

Comment:Maintenance properly denied because wife could continue as a pilot for 18 years while husband could only work in that capacity 3 years more, the parties actually resided together only 10 years, and for many years their pre-divorce standard of living was based on one income where wife out on disability. Money wife spent on Bat Mitzvah after the commencement of the action did not qualify as a marital debt.

Years Married:14

Ages/Income:H AGE: 57 W AGE: 42

Child Support:?
Maintenance:denied
Exclusive Occupancy:?
Health & Medical Insurance:?
Dental Insurance:?
Life Insurance:?
Counsel Fees:
Property Distribution to Wife:?

Number:1356

Case:Abrams v. Abrams, 57 A.D.3d 809, 870 N.Y.S.2d 401 (2d Dep't 2008)

Comment:The wife's inability to testify with specificity as to how she spent the proceeds of a home equity loan suggested she dissipated marital assets in contemplation of divorce.

Years Married:

Ages/Income:

Child Support:

Maintenance:\$2500 per month for 5 years

Exclusive Occupancy:

Health & Medical Insurance:child beneficiary until age 21 or sooner emancipated

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:?

Number:1357

Case:Appel v. Appel, 54 A.D.3d 786, 864 N.Y.S.2d 92 (2d Dep't 2008)

Comment:Interest awarded on distributive award from date of decision. Proper to award maintenance for 5 years where wife did not work outside of the home during the marriage, dedicated herself to the care of the children and household and had a nursing degree.

Years Married:

Ages/Income:

Child Support:

Maintenance:\$10,000 per month for 5 years

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:**Life Insurance:****Counsel Fees:**\$118,424 to wife**Property Distribution to Wife:**\$414,835 distributive award

Number:1358**Case:**Azizo v. Azizo, 51 A.D.3d 438, 859 N.Y.S.2d 113 (1st Dep't 2008)**Comment:**Proper to impute income to husband based on figure arrived at by taking 20.7% of gross revenue of his business. Where payment of pendente lite support came out of marital assets and amount found excessive on appeal from judgment, husband entitled to a credit of 45% of his overpayment. Error to impose a cost-of-living adjustment on child support award absent agreement of the parties. Where defendant was guilty of some economic fault award of 70% of marital estate to wife was excessive, and award was reduced to 55%. Since pendente lite payments should not be made from marital property the trial court properly required defendant to reimburse the marital estate for assets he liquidated from marital estate to comply with pendente lite order.**Years Married:****Ages/Income:****Child Support:** \$4168 per month plus 100% or reasonable add-on expenses to be reduced to \$2834 per month (17%) when older child is emancipated.**Maintenance:**\$6125 per month for 84 months**Exclusive Occupancy:****Health & Medical Insurance:****Dental Insurance:****Life Insurance:****Counsel Fees:**\$664,538 plus \$57,142 expert fees**Property Distribution to Wife:**55% of marital assets

Number:1359**Case:**Bailey v. Bailey, 48 A.D.3d 1123, 853 N.Y.S.2d 238 (4th Dep't 2008)

Comment:Creation of a joint account vests each tenant a present unconditional property interest in an undivided one half of the money deposited, regardless of who puts the funds on deposit. Appreciation of defendant's Vanguard Account was marital property because plaintiff indirectly contributed to its appreciation by handling the household matters, thus permitting defendant the freedom to devote his energy to his financial endeavors.

Years Married:

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:\$33,000

Number:1360

Case:Bean v. Bean, 53 A.D.3d 718, 860 N.Y.S.2d 683 (3d Dep't 2008)

Comment:Defendant properly found in default pursuant to 22 NYCRR 202.27. Where motion to vacate default denied and no appeal taken, issue cannot be raised on appeal from final judgment. Proper to limit defendant's participation at trial to cross-examination of witnesses. Proper to impute income of \$1 million to husband. Proper to award non durational maintenance where there was no possibility wife could be self-supporting at pre-separation standard of living.

Years Married:13

Ages/Income:

Child Support:\$7083 per month

Maintenance:\$20,000 per month, then \$15,000 per month nondurational

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1361

Case:Bink v. Bink, 55 A.D.3d 1244, 865 N.Y.S.2d 417 (4th Dep't 2008)

Comment:Supreme Court erred in determining that husbands severance payments were marital property where his right to receive them did not exist during the marriage or prior to the commencement of the action, nor did they constitute compensation for past services.

Years Married:

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1362

Case:Blay v. Blay, 51 A.D.3d 1189, 857 N.Y.S.2d 784 (3d Dep't 2008)

Comment:Not error to award wife portions of real estate originally owned by husband and his brother where partnership dissolved and new business structure created as sham to deprive defendant of her interest in marital assets. Proper to impute \$65,000 income to husband. Maintenance reduced where husband supporting parties 3 children and wife's daughter. One time loans or alleged loans from family members should not be included in husband's income. Error to order plaintiff to maintain a \$100,000 life insurance policy and at same time distribute the marital portion of the cash surrender value of the policy. Counsel fee appropriate where partially based on additional work necessary to sort out confusing financial arrangements of husband's family business, his failure to advise of business restructuring and his failure to turn over complete financial documents.

Years Married:13

Ages/Income:W INCOME: \$25,000

Child Support:

Maintenance:\$200 per week for 2 years

Exclusive Occupancy:

Health & Medical Insurance:**Dental Insurance:****Life Insurance:****Counsel Fees:**\$15,000**Property Distribution to Wife:**\$100,000 distributive award

Number:1363**Case:**Brooks v. Brooks, 55 A.D.3d 520, 867 N.Y.S.2d 451 (2d Dep't 2008)**Comment:**Nondurational maintenance should have been awarded where wife totally disabled and improbable that she would find gainful employment due to that disability. In light of wife's poor health and life expectancy it was appropriate to award her portion of the pension and retirement benefits as a lump sum.**Years Married:**12**Ages/Income:****Child Support:****Maintenance:**\$1500 per month nondurational**Exclusive Occupancy:****Health & Medical Insurance:****Dental Insurance:****Life Insurance:****Counsel Fees:****Property Distribution to Wife:**50% of marital portion of parties' pension and retirement benefits

Number:1364**Case:**Cameron v. Cameron, 51 A.D.3d 1165, 857 N.Y.S.2d 793 (3d Dep't 2008), leave to appeal denied, 11 N.Y.3d 702, 864 N.Y.S.2d 389, 894 N.E.2d 653 (2008)**Comment:**On remittitur (see Cameron, 22 A.D.3d 911, 802 N.Y.S.2d 542 (3d Dep't 2005)) for distribution of marital portion of plaintiff's pension, directing court to give appropriate consideration to any tax consequences. Supreme Court properly declined to consider the tax consequences where it directed the parties to submit an analysis of the tax consequences and plaintiff failed to do so.**Years Married:**50**Ages/Income:****Child Support:****Maintenance:**\$300 per month nondurational

Exclusive Occupancy:
Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:
Property Distribution to Wife:

Number:1365

Case:Charles v. Charles, 53 A.D.3d 468, 861 N.Y.S.2d 135 (2d Dep't 2008)

Comment:Supreme Court should have directed husband to maintain life insurance to secure the maintenance obligation and distribution of wife's share of husband's partnership interest. Where there is an inconsistency between a judgment and a decision upon which it is based the decision controls and the inconsistency may be corrected on appeal.

Years Married:

Ages/Income:

Child Support:Husband to pay college expenses for each child

Maintenance:\$12,500 per month for 15 years

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1366

Case:Ciampa v. Ciampa, 47 A.D.3d 745, 850 N.Y.S.2d 190 (2d Dep't 2008)

Comment:Not error to award wife counsels fees up to the amount husband paid for his counsel. Action required expenditure of significant counsel fees to deal with the myriad of legal issues. The wife's expenditure of more than \$484,142 for counsel and expert fees paled in comparison to the plaintiffs.

Years Married:

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:**Life Insurance:****Counsel Fees:**\$201,437 plus \$ 50,000 expert fees**Property Distribution to Wife:**

Number:1367**Case:**Cooper v. Cooper, 52 A.D.3d 429, 862 N.Y.S.2d 32 (1st Dep't 2008)**Comment:**Not a dissipation of assets for plaintiff not to try to make payments on the marital home by using that home's line of credit to avoid foreclosure, where the asset was already burdened with debt and taking on further debt to pay the mortgage would only have put off the inevitable. Where proceeds of mortgage was repaid with marital assets and there was no evidence that any of proceeds were used to enhance the value of the property or that defendant contributed to its value in any way, the record supported the conclusion that the funds were used to support the parties extravagant lifestyle and they did not convert the property into marital property.**Years Married:****Ages/Income:****Child Support:****Maintenance:****Exclusive Occupancy:****Health & Medical Insurance:****Dental Insurance:****Life Insurance:****Counsel Fees:****Property Distribution to Wife:**

Number:1368**Case:**Costa v. Costa, 46 A.D.3d 495, 849 N.Y.S.2d 204 (1st Dep't 2007)**Comment:**Award of college expenses not premature where one of the children was 15 years old and approaching college age and it would contravene principals of judicial economy to require wife to seek upward modification in two years. Title to marital residence properly awarded wife where she needed home for two children.**Years Married:**16**Ages/Income:****Child Support:**

Maintenance:\$5000 per month for 5 years, then \$4000 per month for 2 years

Exclusive Occupancy:Title to wife

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1369

Case:Cukier v. Cukier, 54 A.D.3d 385, 864 N.Y.S.2d 40 (2d Dep't 2008), leave to appeal denied, 11 N.Y.3d 712, 872 N.Y.S.2d 717, 901 N.E.2d 208 (2008)

Comment:Given fact that parties were married more than 16 years, defendant was 47 years old and had minimal employment history, there was a large disparity in parties income and educational credentials, five year duration of maintenance award increased by Appellate Division to 10 years.

Years Married:16

Ages/Income:W AGE: 47

Child Support:

Maintenance:to wife

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1370

Case:Damas v. Damas, 51 A.D.3d 709, 858 N.Y.S.2d 716 (2d Dep't 2008)

Comment:Use of marital assets to pay for "basic living expenses" did not constitute "wasteful dissipation of assets".

Years Married:

Ages/Income:

Child Support:

Maintenance:\$100 a month for 36 months

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:**Counsel Fees:**\$2500 to wife**Property Distribution to Wife:**

Number:1370**Case:**Damas v. Damas, 51 A.D.3d 709, 858 N.Y.S.2d 716 (2d Dep't 2008)**Comment:**Use of marital assets to pay for "basic living expenses" did not constitute "wasteful dissipation of assets".**Years Married:****Ages/Income:****Child Support:****Maintenance:**\$100 a month for 36 months**Exclusive Occupancy:****Health & Medical Insurance:****Dental Insurance:****Life Insurance:****Counsel Fees:**\$2500 to wife**Property Distribution to Wife:**

Number:1371**Case:**DiBlase v. DiBlase, 48 A.D.3d 403, 852 N.Y.S.2d 195 (2d Dep't 2008), leave to appeal denied, 10 N.Y.3d 716, 862 N.Y.S.2d 468, 892 N.E.2d 862 (2008)**Comment:**Maintenance award extended until March 2013 by Appellate Division, until the two youngest boys were college age, to afford the wife a sufficient opportunity to become self-supporting.**Years Married:****Ages/Income:****Child Support:**\$1822 per week plus defendant to pay for college tuition, room and board up to "SUNY Cap" (5 children)**Maintenance:****Exclusive Occupancy:****Health & Medical Insurance:****Dental Insurance:****Life Insurance:**\$2,000,000 term policy**Counsel Fees:**\$100,000**Property Distribution to Wife:**\$43,537 from husband's 401(k)

Number:1372

Case:Donovan v. Szlepcsik, 52 A.D.3d 563, 860 N.Y.S.2d 585 (2d Dep't 2008)

Comment:Because a marital residence is a passive asset, a valuation date as close to the trial date as practicable should be employed. This is especially true where there are dramatic increases in the market rather than contributions from either party.

Years Married:

Ages/Income:

Child Support:\$300 a week remitted for recalculation

Maintenance:

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:90% of former marital residence

Number:1373

Case:Dudla v. Dudla, 50 A.D.3d 1255, 857 N.Y.S.2d 254 (3d Dep't 2008)

Comment:Consent to divorce based on counterclaim precludes review on appeal. Proper to value marital residence based on information contained in plaintiff's testimony, interrogatories and statement of net worth.

Years Married:

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1374

Case:Embury v. Embury, 49 A.D.3d 802, 854 N.Y.S.2d 502 (2d Dep't 2008)

Comment:For appreciation of separate property to be marital spouse must demonstrate manner in which contributions resulted in increase.

Years Married:

Ages/Income:H INCOME: \$60,000 W INCOME: \$30,000

Child Support:\$1557 per month plus 67% pro rata share of child care expenses and children's unreimbursed health care costs.

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1375

Case:Evans v. Evans, 55 A.D.3d 1079, 866 N.Y.S.2d 788 (3d Dep't 2008)

Comment:Defendant's engineering degree found not to have enhanced his earning capacity, and even if it did, wife not entitled to a share of it because she did not make a substantial contribution toward his efforts in obtaining it. Her contributions were overall contributions to the marriage, rather than an additional effort to support him in attaining a career. Error to calculate maintenance based on annual income figure of \$77,520, after a *Grunfeld* duplication analysis where wife not awarded any portion of the value of the husband's degree. Husband should have been directed to contribute to the college expenses of both children where "there was an expectation of higher education in the family" and daughter was in college.

Years Married:19

Ages/Income:H INCOME: \$93,500 W INCOME: \$17,047

Child Support:

Maintenance:\$1,000 per month until wife eligible for Social Security.

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:\$15,835 to wife

Property Distribution to Wife:

Number:1376

Case:Evans v. Evans, 57 A.D.3d 718, 870 N.Y.S.2d 394 (2d Dep't 2008)

Comment:Since husband presented insufficient and incredible evidence to establish his income, Supreme Court properly awarded support based on the needs of the child. In light of evidence that he contributed minimally to the marriage it was proper to award him 15% of the value of the marital residence and 10% of the wife's pension as accrued prior to 1998.

Years Married:

Ages/Income:

Child Support:\$1000 per month

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1377

Case:Faello v. Faello, 43 A.D.3d 1102, 845 N.Y.S.2d 345 (2d Dep't 2007)

Comment:Proper to award the husband \$200,000 from net proceeds of parties' Florida home, with 85% of remaining balance to husband and 15% to wife, where husband used proceeds from sale of his separate property to purchase the residence and its furnishings.

Years Married:

Ages/Income:

Child Support:

Maintenance:\$600 per month for 54 months

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1378

Case:Frost v. Frost, 49 A.D.3d 1150, 854 N.Y.S.2d 621 (4th Dep't 2008)

Comment:The court properly exercised its discretion in awarding defendant, in addition to maintenance, \$50,000 to be paid from defendant's assets to pursue additional education.

Years Married:

Ages/Income:

Child Support:

Maintenance:for wife

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:for wife to secure maintenance obligation

Counsel Fees:

Property Distribution to Wife:

Number:1379

Case:Genatowski v. Genatowski, 43 A.D.3d 1105, 842 N.Y.S.2d 550 (2d Dep't 2007)

Comment:Lifetime maintenance award would be inequitable in light of sizable distributive award and her equal share of retirement assets.

Years Married:

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:\$1,043,923

Number:1380

Case:Gering v. Tavano, 50 A.D.3d 299, 855 N.Y.S.2d 436 (1st Dep't 2008), leave to appeal denied, 11 N.Y.3d 707, 868 N.Y.S.2d 599, 897 N.E.2d 1083 (2008)

Comment:Wife's failure to disclose her bank statements and various transfers of real property among herself, her family members and third parties justified an adverse inference against her. Proper to impute income to husband based on fact he admitted he took money from his business for personal expenses and failed to report it on his income tax returns. Maintenance award properly based on wife's failure to comply with discovery and disclose transactions and pre-divorce standard of living.

Years Married:

Ages/Income:

Child Support:25% of \$150,000 (wife required to contribute 13%, then 14%)

Maintenance:\$2000 per month

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:15% of husband's business

Number:1381

Case:Grasso v. Grasso, 47 A.D.3d 762, 851 N.Y.S.2d 213 (2d Dep't 2008)

Comment:Error to hold husband responsible for 100% of parties' marital debt as well as all the marital debt that was in wife's name. Error to preclude husband from offering evidence in support of his contention that loan was taken against his 401(k) to satisfy marital debt.

Years Married:

Ages/Income:

Child Support:

Maintenance:to wife

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:50% of net proceeds of sale of marital residence after credits for separate property contributions.

Number:1382

Case:Groesbeck v. Groesbeck, 51 A.D.3d 722, 858 N.Y.S.2d 707 (2d Dep't 2008)

Comment:Proper to award wife title to marital residence where she was residing, with young children, and award husband contracting business that was worth less than home. Equitable does not mean equal. Maintenance for 1 1/2 years after the plaintiff completed her studies for a position in the medical field was adequate in amount and duration to allow her to become self-supporting. *Grunfeld* Rule not applicable where husband's business was a tangible, income-producing asset. (*Keane*, 8 N.Y.3d 115, 828 N.Y.S.2d 283, 861 N.E.2d 98 (2006))

Years Married:

Ages/Income:H INCOME: \$83,253

Child Support:\$312 per week

Maintenance:\$1000 per month for 21 months

Exclusive Occupancy:title to wife

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:marital residence

Number:1383

Case:Higgins v. Higgins, 50 A.D.3d 852, 857 N.Y.S.2d 171 (2d Dep't 2008)

Comment:Where modest contributions made by nontitled spouse to other spouse's attainment of degree or professional license and attainment is more directly result of titled spouse's own perseverance and hard work, it is appropriate to limit distribution of that enhanced earning capacity. Consideration of post-trial affidavit alleging a change of circumstance is error. Not an unjust shelter allowance to pay carrying costs of marital residence and child support where children do not live in marital residence.

Years Married:

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:
Property Distribution to Wife:

Number:1384

Case:Johnson v. Chapin, 49 A.D.3d 348, 854 N.Y.S.2d 18 (1st Dep't 2008), aff'd as modified, 12 N.Y.3d 461, 881 N.Y.S.2d 373, 909 N.E.2d 66 (2009)

Comment:Where house that was husband's separate property appreciated due to efforts of both spouses, and appreciated value was less than its value at the time of the marriage plus the cost of the renovations and improvements, couple shared the risk that property's appreciation would not equal their investment. Marital funds should not be used to pay off separate liabilities of husband to former wife. Counsel fee appropriate where husband engaged in obstructive conduct. Husband entitled to "distributive credit" for amount his pendente lite support payments exceeded what he would have been required to pay consistent with the final maintenance award, and credited for 50% of mortgage and maintenance payments for marital residence paid during action.

Years Married:

Ages/Income:

Child Support:

Maintenance:\$6000 per month for 6 years

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:\$800,000 plus \$85,000 expert fees

Property Distribution to Wife:

Number:1384

Case:Johnson v. Chapin, 49 A.D.3d 348, 854 N.Y.S.2d 18 (1st Dep't 2008), aff'd as modified, 12 N.Y.3d 461, 881 N.Y.S.2d 373, 909 N.E.2d 66 (2009)

Comment: Where house that was husband's separate property appreciated due to efforts of both spouses, and appreciated value was less than its value at the time of the marriage plus the cost of the renovations and improvements, couple shared the risk that property's appreciation would not equal their investment. Marital funds should not be used to pay off separate liabilities of husband to former wife. Counsel fee appropriate where husband engaged in obstructive conduct. Husband entitled to "distributive credit" for amount his pendente lite support payments exceeded what he would have been required to pay consistent with the final maintenance award, and credited for 50% of mortgage and maintenance payments for marital residence paid during action.

Years Married:

Ages/Income:

Child Support:

Maintenance: \$6000 per month for 6 years

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees: \$800,000 plus \$85,000 expert fees

Property Distribution to Wife:

Number: 1385

Case: J.S. v. J.S., 19 Misc. 3d 634, 857 N.Y.S.2d 427 (Sup 2008)

Comment: A court must consider, as a factor, the prospective financial circumstances and work life expectancy of the payor spouse. Receipt by wife of Disability Insurance benefits from the Social Security Administration is not binding on the court nor dispositive of the issue of the wife's disability and need for maintenance. Income of \$20,800 imputed to wife.

Years Married: 38

Ages/Income: H AGE: 59 H INCOME: \$101,250 W AGE: 59

Child Support:

Maintenance: \$3000 per month for 10 years, or until remarriage

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance: to secure maintenance and health insurance until wife 65

Counsel Fees: \$20,000

Property Distribution to Wife:

Number:1386**Case:**Judge v. Judge, 48 A.D.3d 424, 851 N.Y.S.2d 639 (2d Dep't 2008)**Comment:**Generally, it is the responsibility of both parties to maintain the marital residence and keep it in good repair during the pendency of a matrimonial action. Husband entitled to half of mortgage and taxes paid after wife departed from residence.**Years Married:****Ages/Income:****Child Support:****Maintenance:****Exclusive Occupancy:****Health & Medical Insurance:****Dental Insurance:****Life Insurance:****Counsel Fees:**\$20,000 to wife**Property Distribution to Wife:**25% (\$141,250) of wife's MBA Degree to husband

Number:1387**Case:**Mahoney-Buntzman v. Buntzman, 51 A.D.3d 732, 858 N.Y.S.2d 698 (2d Dep't 2008), leave to appeal granted, 11 N.Y.3d 706, 866 N.Y.S.2d 609, 896 N.E.2d 95 (2008) and aff'd as modified, 12 N.Y.3d 415, 881 N.Y.S.2d 369, 909 N.E.2d 62 (2009)**Comment:**Error not to credit wife with 50% of husband's pre-marital debts paid with marital funds during marriage. Error to decline to direct husband to pay children's college expenses and tuition on finding they had sufficient resources of their own from trust from grandparents, where husband had significant financial resources and parties had agreed not to use trust funds for that purpose.**Years Married:****Ages/Income:****Child Support:**college tuition and expenses until children 21**Maintenance:**\$2500 for 15 months**Exclusive Occupancy:****Health & Medical Insurance:****Dental Insurance:****Life Insurance:**

Counsel Fees:

Property Distribution to Wife:\$2,467,151 plus 35% of value of stock and options

Number:1388

Case:Kaplan v. Kaplan, 51 A.D.3d 635, 857 N.Y.S.2d 677 (2d Dep't 2008)

Comment:Nondurational maintenance award an abuse of discretion in light of wife's work experience, sizable distributive award, her \$80,000 a year salary and equal share of husband's retirement benefits. Error for Supreme Court to direct the separate distribution of the husband's dental practice and the bank accounts of the dental practice.

Years Married:

Ages/Income:

Child Support:

Maintenance:\$6000 a month for 5 years

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:30% of husband's dental practice and license

Number:1389

Case:Kessler v. Kessler, 47 A.D.3d 892, 850 N.Y.S.2d 596 (2d Dep't 2008), leave to appeal dismissed, 10 N.Y.3d 855, 859 N.Y.S.2d 616, 889 N.E.2d 494 (2008)

Comment:Supreme Court erred in failing to reduce defendant's gross rental income by the amount of the expenses for those properties (real estate taxes, out-of-pocket expenses, insurance) Prenuptial agreement held valid (*Kessler*, 33 A.D.3d 42, 818 N.Y.S.2d 571 (2d Dep't 2006), leave to appeal dismissed, 8 N.Y.3d 968, 836 N.Y.S.2d 540, 868 N.E.2d 221 (2007)) except for counsel fee provisions waiving right to attorney's fee.

Years Married:

Ages/Income:

Child Support:\$3520 per month plus 67% of child care expenses, children's health insurance, unreimbursed medical and children's extracurricular activities.

Maintenance:

Exclusive Occupancy:
Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:
Property Distribution to Wife:\$328,877

Number:1390

Case:Kilkenny v. Kilkenny, 54 A.D.3d 816, 863 N.Y.S.2d 807 (2d Dep't 2008)

Comment:Proper to award the parties equal shares of the increase in the value of the marital residence which was the wife's separate property. Husband entitled to credit in the amount of 50% of the principal remaining on the mortgage in order to account for pendente lite mortgage and real estate taxes he paid pursuant to order with his funds. (See *Grasso*, 47 A.D.3d 762, 851 N.Y.S.2d 213 (2d Dep't 2008)) Supreme Court erred in holding that the unpaid balance of a loan for the college education of his daughter from a prior marriage, should not have been included in the calculation of marital debt. Supreme Court erred in not awarding maintenance retroactive to the date of commencement of the action.

Years Married:

Ages/Income:

Child Support:

Maintenance:\$200 per week until February 1, 2012

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:50% of appreciation of husband's financial accounts valued as of the date of commencement of the action.

Number:1391

Case:Lee v. Lee, 48 A.D.3d 377, 853 N.Y.S.2d 34 (1st Dep't 2008)

Comment:Stocks and an insured money mart account that were jointly titled in defendant and his son were purchased or obtained during the marriage, and were presumptively marital property despite the form of title.

Years Married:

Ages/Income:
Child Support:
Maintenance:
Exclusive Occupancy:
Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:
Property Distribution to Wife:

Number:1392
Case:LeMieux v. LeMieux, 48 A.D.3d 644, 852 N.Y.S.2d 347 (2d Dep't 2008)
Comment:Court may award maintenance upon annulling marriage on ground of fraud.
Years Married:
Ages/Income:
Child Support:
Maintenance:\$300 a week until defendant reaches 66, remarries or cohabits
Exclusive Occupancy:
Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:
Property Distribution to Wife:

Number:1393
Case:Levi v. Levi, 46 A.D.3d 520, 848 N.Y.S.2d 225 (2d Dep't 2007), leave to appeal dismissed, 10 N.Y.3d 882, 860 N.Y.S.2d 478, 890 N.E.2d 240 (2008)
Comment:Attempt to bribe former trial justice constituted egregious marital fault to be factored into the equitable distribution.
Years Married:
Ages/Income:
Child Support:
Maintenance:
Exclusive Occupancy:title to wife
Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:Sole marital asset to wife

Number:1394

Case:Liles v. Liles, 56 A.D.3d 531, 869 N.Y.S.2d 97 (2d Dep't 2008)

Comment:Supreme Court's finding that defendant voluntarily retired for the purpose of decreasing his income and the consequent support obligation supported the imputation of income to him based upon his actual income potential.

Years Married:

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1395

Case:Luongo v. Luongo, 50 A.D.3d 858, 856 N.Y.S.2d 636 (2d Dep't 2008)

Comment:Proper to calculate child support without credit for Social Security benefits children receive due to disability of father.

Years Married:

Ages/Income:

Child Support:\$1057 per month

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:\$6000

Property Distribution to Wife:Share of husband's pension and VSF benefits

Number:1396

Case:Marino v. Marino, 52 A.D.3d 585, 860 N.Y.S.2d 170 (2d Dep't 2008)

Comment:In light of defendant's history of low earning, her age, health, and well as the length of the marriage Supreme Court properly found that it was not likely she would become self-supporting and properly awarded her nondurational maintenance.

Years Married:

Ages/Income:

Child Support:

Maintenance:\$246 per week

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:\$7350 to wife

Property Distribution to Wife:

Number:1397

Case:Mattioli v. Mattioli, 48 A.D.3d 1143, 853 N.Y.S.2d 235 (4th Dep't 2008)

Comment:Property is not marital where neither wife nor husband hold any valuable property rights in it. Defendant not required to list possible future rights to marital property in bankruptcy schedules. Supreme Court erred when it relied on decision in *In re Miller*, 1 A.D.3d 885, 767 N.Y.S.2d 729 (4th Dep't 2003), when it applied doctrine of judicial estoppel to former marital residence where husband filed for bankruptcy twice during the marriage and did not list former marital residence as an asset either time he was discharged.

Years Married:

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1398

Case:Meccariello v. Meccariello, 46 A.D.3d 640, 847 N.Y.S.2d 618 (2d Dep't 2007)

Comment:Not an abuse of discretion to permanently enjoin defendant from mailing any nonfinancial correspondence to the plaintiff, since he demonstrated he would suffer irreparable harm absent the injunction.

Years Married:

Ages/Income:

Child Support:

Maintenance:\$250 per week until age 65

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1399

Case:Mesholam v. Mesholam, 11 N.Y.3d 24, 862 N.Y.S.2d 453, 892 N.E.2d 846 (2008)

Comment:Commencement of a prior discontinued divorce action may not serve as the valuation date for marital property for purposes of equitable distribution in a later divorce action. Courts must use the commencement date of the later successful action as the earliest date for marital property. However, the circumstances surrounding the commencement of the earlier action can be considered as a factor, among other relevant factors, by the court.

Years Married:39

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1400

Case:Michelini v. Michelini, 47 A.D.3d 902, 850 N.Y.S.2d 592 (2d Dep't 2008)

Comment:

Years Married:

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:50% of appreciation of value of marital residence

Number:1401

Case:Milnes v. Milnes, 50 A.D.3d 750, 857 N.Y.S.2d 168 (2d Dep't 2008)

Comment:Proper to credit defendant for child support payments made to support parties' two children who reached majority during pendency of action, and to decline to award child support arrears in absence of proof that the payments made were less than required under the CSSA.

Years Married:

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:Ordered sold

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:50% of net proceeds of sale of marital residence

Number:1402

Case:Mirand v. Mirand, 53 A.D.3d 1149, 861 N.Y.S.2d 917 (4th Dep't 2008)

Comment:Contribution of separate property funds in order to reduce mortgage on the marital residence and to pay off a second mortgage retains its separate character and is not subject to equitable distribution.

Years Married:

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1403

Case:Mohen v. Mohen, 53 A.D.3d 471, 862 N.Y.S.2d 75 (2d Dep't 2008), leave to appeal denied, 11 N.Y.3d 710, 872 N.Y.S.2d 72, 900 N.E.2d 555 (2008)

Comment:Supreme Court erred in failing to include in the judgment a provision that the award of maintenance shall terminate upon the death of either party, or the wife's remarriage, whichever event shall sooner occur.

Years Married:

Ages/Income:

Child Support:

Maintenance:\$3500 per month for 5 years

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1404

Case:Passalacqua v. Passalacqua, 50 A.D.3d 1462, 857 N.Y.S.2d 396 (4th Dep't 2008)

Comment:Where matrimonial referee was unable to negotiate a settlement with the parties and based his determination of the issues on the unsworn statements of the parties during the settlement negotiations which he deemed to be testimony. Record was confusing and incomplete and could not be reviewed. Unsworn testimony is inadmissible in a civil case.

Years Married:

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1405

Case:Pea v. Alves, 50 A.D.3d 336, 855 N.Y.S.2d 444 (1st Dep't 2008)

Comment:Marital property cannot be shielded from equitable distribution by investing it in an educational trust for children.

Years Married:

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1406

Case:Petosa v. Petosa, 56 A.D.3d 1296, 870 N.Y.S.2d 178 (4th Dep't 2008)

Comment:Court was justified in treating husbands business as marital property where he failed to establish its value at the time he acquired it.

Years Married:

Ages/Income:

Child Support:
Maintenance:
Exclusive Occupancy:
Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:
Property Distribution to Wife:

Number:1407

Case:Petosa v. Petosa, 56 A.D.3d 1296, 870 N.Y.S.2d 178 (4th Dep't 2008)

Comment:Error to direct husband to pay one-half of outstanding credit card debt where it failed to make findings as to amount of debt incurred to meet plaintiff's personal rather than marital expenses.

Years Married:29

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1408

Case:Reed v. Reed, 55 A.D.3d 1249, 865 N.Y.S.2d 414 (4th Dep't 2008)

Comment:Error to determine that wife was entitled to portion of separate property Trust based on her contributions to its appreciation where such contributions consisted solely of her presence at annual meetings concerning investments. Absent some evidence that the valuation of plaintiff's business was unreasonable or other credible evidence showing a different value, it should not be disturbed. Error not to provide for reduction in amount of life insurance as child support and maintenance obligations decreased.

Years Married:20

Ages/Income:

Child Support:
Maintenance:
Exclusive Occupancy:
Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:
Property Distribution to Wife:

Number:1409

Case:Ruane v. Ruane, 55 A.D.3d 586, 865 N.Y.S.2d 632 (2d Dep't 2008)

Comment:Voluntary payment of tuition may not be recouped or credited against pendente lite child support order. Proper to characterize life insurance policy and margin accounts as active assets and value them as of date of commencement of action, where defendant depleted these assets during the action to furnish his new home. Maintenance award would enable wife to maintain a semblance of her pre-divorce standard of living and allow her time to become self-supporting.

Years Married:17

Ages/Income:

Child Support:

Maintenance:\$6000 per month for 8 years

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1410

Case:Santana v. Santana, 51 A.D.3d 542, 859 N.Y.S.2d 49 (1st Dep't 2008)

Comment:Plaintiff wife not entitled to permanent maintenance simply by reason of defendant's imputed earnings. Proper to impute income of \$ 118,843 to defendant based on his annual deposits into his checking account. Maintenance extended for additional two years to enable wife sufficient time to complete her Masters Degree.

Years Married:20

Ages/Income:W INCOME: \$ 26,200
Child Support:\$1666 per month
Maintenance:\$2000 per month for five years
Exclusive Occupancy:
Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:
Property Distribution to Wife:50% (\$80,000) of value of defendant's business

Number:1411

Case:Schorr v. Schorr, 46 A.D.3d 351, 848 N.Y.S.2d 614 (1st Dep't 2007)

Comment:Counsel fee award, representing 50% of counsel fees at time of trial, justified by financial disparity between parties' and defendant's discovery misconduct. Defendant properly precluded from offering evidence on financial issues because of failure to timely comply with discovery requests which prevented expert from being unable to submit complete report at trial as to value of his business.

Years Married:

Ages/Income:

Child Support:

Maintenance:\$6500 per month for 5 years

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:\$100,000

Property Distribution to Wife:50% of marital property

Number:1412

Case:Schwalb v. Schwalb, 50 A.D.3d 1206, 854 N.Y.S.2d 802 (3d Dep't 2008)

Comment:Supreme Court's reliance on plaintiff's vocational expert improper where expert's report contained critical flaws. Commingling funds into joint account transmuted it into marital property. Failure to award counsel fee to wife was an abuse of discretion where no evidence that services were unnecessary or unreasonable and no time was charged for travel to New York City.

Years Married:12
Ages/Income:
Child Support:
Maintenance:\$2000 a month for 2 years
Exclusive Occupancy:
Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:\$15,000
Property Distribution to Wife:\$319,250

Number:1413

Case:Schwartz v. Schwartz, 54 A.D.3d 400, 864 N.Y.S.2d 35 (2d Dep't 2008)

Comment:Decision and order dated January 22, 2008, which was substituted for decision and order dated December 4, 2007, recalled and vacated, and new decision and order substituted. The Appellate Division noted that although the pendente lite order directed the husband to pay all carrying charges for the parties' residences in NY and Florida, the wife did not seek relief from that part of the judgment as awarded him full credit for the carrying charges he paid for the marital residence in Oceanside, New York and its determination did not affect his right to that credit.

Years Married:
Ages/Income:
Child Support:
Maintenance:
Exclusive Occupancy:
Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:
Property Distribution to Wife:

Number:1414

Case:Schwartz v. Schwartz, 47 A.D.3d 795, 850 N.Y.S.2d 523 (2d Dep't 2008), order recalled and vacated, 54 A.D.3d 400, 864 N.Y.S.2d 35 (2d Dep't 2008)

Comment:Decision resettled. First decretal paragraph of original decision deleted and substituted with a new paragraph. Identical except deleted the words “all carrying charges” and substituted the words “one-half of the carrying charges”.

Years Married:

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1415

Case:Scully v. Scully, 54 A.D.3d 664, 864 N.Y.S.2d 41 (2d Dep’t 2008)

Comment:Since issues of husband’s loss of employment was before Supreme Court when it entered judgement, its calculation of his maintenance and child support obligations, bused upon a gross annual income of \$114,000 was inconsistent with its granting of his motion for a downward modification of his pendente lite obligations. A de novo determination of those obligations was required.

Years Married:17

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1416

Case:Simon v. Simon, 55 A.D.3d 477, 867 N.Y.S.2d 55 (1st Dep’t 2008)

Comment: Remanded for recalculation of child support where the court improperly included future maintenance payments as part of the defendant's income. Upon recalculation the court should deduct from the plaintiff's income the amount he pays in maintenance, but should not add the amount he pays in maintenance to the defendant's income for purposes of calculating child support.

Years Married:

Ages/Income:

Child Support:

Maintenance: \$10,000 per month plus the cost of private health insurance

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number: 1417

Case: Stacy v. Stacy, 52 A.D.3d 1219, 860 N.Y.S.2d 350 (4th Dep't 2008)

Comment: Error to direct the immediate sale of the marital residence and in failing to award husband exclusive occupancy until youngest child attains 18 where he was awarded custody and there was no evidence that he could have obtained comparable housing at a lower cost in the same area or that he was financially incapable of maintaining the residence, nor was there evidence that the wife was in immediate need of her share of the proceeds of its sale.

Years Married:

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number: 1418

Case:Taverna v. Taverna, 56 A.D.3d 461, 867 N.Y.S.2d 479 (2d Dep't 2008)

Comment:Proper to value parties' investment accounts at date of commencement of action where husband dissipated them during action.

Years Married:

Ages/Income:

Child Support:

Maintenance:\$1250 per month for 5 years

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1419

Case:Van Kipnis v. Van Kipnis, 43 A.D.3d 71, 840 N.Y.S.2d 36 (1st Dep't 2007), leave to appeal granted, 10 N.Y.3d 705, 857 N.Y.S.2d 38, 886 N.E.2d 803 (2008) and aff'd as modified, 11 N.Y.3d 573, 872 N.Y.S.2d 426, 900 N.E.2d 977 (2008)

Comment:Courts erred in precluding recovery of legal fees under DRL 237 for services provided in opposing husbands affirmative defense predicated on prenuptial agreement. Domestic Relations Law contains no requirement that a prenuptial agreement contain an express waiver of equitable distribution. Wife not entitled to counsel fees incurred in challenging the enforceability of a prenuptial agreement.

Years Married:38

Ages/Income:

Child Support:

Maintenance:\$7500 per month nondurational

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:remanded for reconsideration, \$92,779

Property Distribution to Wife:

Number:1420

Case:Wechsler v. Wechsler, 58 A.D.3d 62, 866 N.Y.S.2d 120 (1st Dep't 2008), appeal dismissed, 12 N.Y.3d 883, 2009 WL 1620390 (2009)

Comment:Value of Subchapter C holding company, all shares of which were owned by the husband, was reduced to reflect the federal and state taxes embedded in the securities it owned. Judgment which denied maintenance affirmed because wife would be wealthy in her own right as a result of award of more than \$27 million in assets. Although Supreme Court did not make a permanent maintenance award, husband not entitled to credit against the distributive award for pendente lite he paid (\$3 million) because the mere determination not to award permanent maintenance cannot be equated with a finding that the pendente lite award was excessive.

Years Married:

Ages/Income:

Child Support:

Maintenance:Denied

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1421

Case:Winter v. Winter, 50 A.D.3d 431, 857 N.Y.S.2d 69 (1st Dep't 2008)

Comment:In absence of any evidence as to value of vehicle, the valuation in plaintiff's statement of net worth should have been adopted by the court.

Years Married:

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1422

Case:Albert v. Albert, 60 A.D.3d 979, 876 N.Y.S.2d 442 (2d Dep't 2009), leave to appeal denied, 13 N.Y.3d 701, 885 N.Y.S.2d 715, 914 N.E.2d 364 (2009)

Comment:Error to award husband a portion of the value of wife's hairstyling business, as it was sold prior to the parties marriage and was not marital property.

Years Married:

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:\$181,158 to husband in connection with interim custody hearing

Property Distribution to Wife:

Number:1423

Case:Ansoir v. Ansoir, 61 A.D.3d 536, 878 N.Y.S.2d 17 (1st Dep't 2009)

Comment:Improper to direct that child support be recalculated in the future to include defendants' income from maintenance. Maintenance award was crafted to terminate when children became 12 years old, and the wife would be receiving deferred income from ED settlement; marital lifestyle not lavish, wife who was 44 years old was not forthcoming about her separate property, and had two masters degrees. Income imputed to wife from her interest in a limited partnership which was listed on her federal income tax return as tax exempt.

Years Married:7

Ages/Income:Wife Age: 44

Child Support:\$6,343 per month

Maintenance:\$6,000 per month until receipt of first ED payment in 2010

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:\$80,000 to wife and \$15,000 accountant's fees

Property Distribution to Wife:\$2 million

Number:1424

Case:Blakey v. Blakey, 61 A.D.3d 709, 876 N.Y.S.2d 647 (2d Dep't 2009)

Comment:

Years Married:

Ages/Income:

Child Support:\$29 per week [1 Ch]

Maintenance:\$250 per week for 3 years

Exclusive Occupancy:to wife

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1425

Case:Bogannam v. Bogannam, 60 A.D.3d 985, 877 N.Y.S.2d 336 (2d Dep't 2009)

Comment:Premature to direct husband to pay college expenses for 7-year-old child when college is several years away and no evidence is presented as to child's academic interests and other relevant factors, compelling payment for those expenses is premature and not supported by the evidence.

Years Married:

Ages/Income:

Child Support:

Maintenance:\$3,000 per month for 10 years

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:\$40,000 to wife

Property Distribution to Wife:

Number:1426

Case:Dowd v. Dowd, 58 A.D.3d 1057, 874 N.Y.S.2d 263 (3d Dep't 2009)

Comment:In light of the long separation of the parties the standard of living during marriage was not a consideration in fixing maintenance.

Years Married:31

Ages/Income:Husband: 50/\$60,000 Wife: 59

Child Support:

Maintenance:\$500 a month for 5 years

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:50% of marital residence (\$100,000)

Number:1427

Case:Fehring v. Fehring, 58 A.D.3d 1061, 874 N.Y.S.2d 266 (3d Dep't 2009)

Comment:Transferring assets that were separate property into a joint account raises presumption that they are marital property. Although marital property is generally valued at the time the action is commenced, valuation at the time of trial is justified where valuation on the date of the action would be inequitable.

Years Married:16

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1428

Case:Ferri v. Ferri, 60 A.D.3d 625, 878 N.Y.S.2d 67 (2d Dep't 2009)

Comment:Supreme Court properly permitted the defendant to be treated as a hostile witness at the trial. Where, as here, an adverse party is called as a witness, it may be assumed he is a hostile witness, and, in the discretion of the court, direct examination may assume the nature of cross examination by the use of leading questions. This rule does not preclude a hostile witness from being impeached by prior written or oral statements of the witness.

Years Married:

Ages/Income:

Child Support:\$3,260

Maintenance:\$2,000 per month until Sept 2010

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1429

Case:Fields v. Fields, 65 A.D.3d 297, 882 N.Y.S.2d 67 (1st Dep't 2009)

Comment:The fact that husband used separate property for the down payment and that the property was titled in his and his mother's name did not change the fact that his half interest in the property was bought during the marriage and was a marital asset. These circumstances merely entitled the husband to a credit for his contribution of separate property toward the purchase of the marital residence. Market forces accounted for the greatest increase in its value. The wife maintained the property by vacuuming, raking leaves, cleaning up after workers, as well as by doing many other chores typical of a person living in a marital residence. To deprive the wife of her equitable share of the value of this property was not only contrary to settled precedent, but also against public policy. The husband's half interest in the townhouse was therefore marital property subject to distribution, and the wife was properly entitled to 35% of its value.

Years Married:37

Ages/Income:Wife Age: 67

Child Support:N/A

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:
Life Insurance:
Counsel Fees:
Property Distribution to Wife:

Number:1430

Case:Frey v. Frey, 68 A.D.3d 1052, 892 N.Y.S.2d 159 (2d Dep't 2009)

Comment:Were parties maintained separate finances, and determined from the start of the marriage to file separate tax returns, trial court providently exercised its discretion in directing that defendant, who failed to file tax returns throughout the marriage, bear responsibility for paying income taxes, interest, and penalties. Plaintiff had no role in the operation of the defendant's business, and she did not learn that he failed to file tax returns until after she commenced the action. The husband's conduct constituted economic fault.

Years Married:

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:50% of marital property.

Number:1431

Case:Howe v. Howe, 68 A.D.3d 38, 886 N.Y.S.2d 722 (2d Dep't 2009)

Comment:In *Palazzolo v. Palazzolo* (242 A.D.2d 688, at 689, 663 N.Y.S.2d 58 (2d Dep't 1997)), the Court defined the methodology by which the disability and nondisability portions of a public employee's pension are defined. First, the pensioner's hypothetical nondisability pension is determined by multiplying the pensioner's final average salary by the percentage of that salary to which the pensioner would likely have been entitled upon retirement had the disability not cut short his or her employment. Second, the coverture fraction is applied to determine the marital portion of the hypothetical nondisability pension. Third, the actual nondisability portion of the pension is determined by reducing the hypothetical nondisability pension by the percentage of the years of service that the pensioner actually served. Despite the lack of evidence in the record by which the disability and nondisability portions of the husband's Fireman pension can be distinguished, the disability portion of the plaintiff's pension and, consequently, his separate property interest in that pension, could be determined by the appropriate pension administrator pursuant to a properly-drawn order. Appellate Division also held that \$127,571 of award from the September 11th Victim Compensation Fund, specifically designated as compensation for economic loss, constituted 'compensation for personal injuries' and the separate property of the plaintiff.

Years Married:

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1432

Case:*Jayaram v. Jayaram*, 62 A.D.3d 951, 880 N.Y.S.2d 305 (2d Dep't 2009)

Comment:Wife made substantial indirect contributions by supporting the husband's educational endeavors, working full-time and contributing her earnings to the family, being the primary caretaker of the couple's children, cooking family meals, and participating in housekeeping responsibilities. 7% discount rate applied. Supreme Court should not have awarded the wife prejudgment interest on her distributive award since it was largely comprised of wife's interest in husbands' enhanced earning capacity, which was not fixed until after trial, and was not a tangible asset which the wife was deprived the use of during the pendency of the litigation.

Years Married:

Ages/Income:

Child Support:child support of \$1,654 per week (2 Ch)

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:\$125,000

Property Distribution to Wife:\$514,500 as 35% share of the husband's enhanced earning capacity.

Number:1433

Case:Johnson v. Chapin, 299 A.D.2d 294, 749 N.Y.S.2d 723 (1st Dep't 2002), related reference, 49 A.D.3d 348, 854 N.Y.S.2d 18 (1st Dep't 2008), aff'd as modified, 12 N.Y.3d 461, 881 N.Y.S.2d 373, 909 N.E.2d 66 (2009), reargument denied, 13 N.Y.3d 888, 893 N.Y.S.2d 834, 921 N.E.2d 602 (2009) and related reference, 900 N.Y.S.2d 59 (App. Div. 1st Dep't 2010)

Comment:When a pendente lite maintenance award is found at trial to be excessive or inequitable, the court may make an appropriate adjustment in the equitable distribution award. There is a strong public policy against restitution or recoupment of child support payments. Imposition of legal fees upheld because husband engaged in pattern of obstructionist conduct. Wife not entitled to 50% credit representing money paid during the marriage toward husband's premarital obligations to pay his first wife maintenance and child support.

Years Married:10

Ages/Income:

Child Support:\$10,625 per month [1 Ch]

Maintenance:\$6000 per month

Exclusive Occupancy:**Health & Medical Insurance:****Dental Insurance:****Life Insurance:**

Counsel Fees:\$100,000 interim plus amount to be awarded after hearing

Property Distribution to Wife:25% of an increase in value of separate property.

Number:1434

Case:Johnston v. Johnston, 63 A.D.3d 1555, 881 N.Y.S.2d 560 (4th Dep't 2009)

Comment:The court erred in including the amount of maintenance awarded to the wife in determining her child support obligation. For a party to be entitled to an award of counsel fees there must be sufficient documentation to establish the value of the services performed and the wife failed to provide such documentation.

Years Married:

Ages/Income:

Child Support:\$ 111.54 (paid by wife)

Maintenance:\$1,850 a month for 5 years; then \$1,650 a month for 1 year.

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:Wife's request denied

Property Distribution to Wife:

Number:1435

Case:Jones-Bertrand v. Bertrand, 59 A.D.3d 391, 874 N.Y.S.2d 152 (2d Dep't 2009)

Comment:

Years Married:

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:**Counsel Fees:****Property Distribution to Wife:**\$36,233**Number:**1436**Case:**Juhasz v. Juhasz, 59 A.D.3d 1023, 873 N.Y.S.2d 799 (4th Dep't 2009), leave to appeal dismissed, 12 N.Y.3d 848, 881 N.Y.S.2d 392, 909 N.E.2d 85 (2009)**Comment:**Court did not violate DRL 248 by ordering that maintenance would terminate in the event the wife resided with an unrelated male for more than 30 days. The court did not impose an improper condition. DRL 248 deals with modification, not initial awards. Supreme Court properly imputed income to defendant of \$180,000 a year. Husband entitled to credit for his separate property contribution to marital residence. While defendant did not provide a paper trail documenting the source of the money, nothing in either party's testimony suggested that any other possible source for the money existed.**Years Married:****Ages/Income:****Child Support:** remitted**Maintenance:****Exclusive Occupancy:****Health & Medical Insurance:****Dental Insurance:****Life Insurance:****Counsel Fees:****Property Distribution to Wife:****Number:**1437**Case:**Karl v. Karl, 58 A.D.3d 1036, 874 N.Y.S.2d 269 (3d Dep't 2009)**Comment:**The fact that a portion of income is derived from an asset determined to be separate property (disability income) does not render the income immune from consideration in calculating maintenance award.**Years Married:**33**Ages/Income:**Husband Income: \$2,800/mo Wife Age/Income: 51/\$1,000/mo**Child Support:****Maintenance:**\$800 a month for 10 years reduced by share (\$523 mo) of pension

Exclusive Occupancy:
Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:
Property Distribution to Wife:

Number:1438

Case:Kost v. Kost, 63 A.D.3d 798, 881 N.Y.S.2d 141 (2d Dep't 2009)

Comment:The appreciation of the appreciation in the value of the marital residence was attributable to the joint efforts of the parties. Husband was, thus, entitled to share equitably in that increased value and Supreme Court should have awarded the parties equal shares in the increase in the value of the marital residence. Since Supreme Court determined that the husband was entitled to a credit representing his 50% share of the reduction in the principal of the mortgage obligation referable to the residence, that return of equity should be subtracted from the increased value of the marital residence to arrive at the net increased value. Moreover, the husband was entitled to a return of the total contribution he made toward the purchase of the marital residence from his separate property.

Years Married:
Ages/Income:
Child Support:
Maintenance:
Exclusive Occupancy:
Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:
Property Distribution to Wife:

Number:1439

Case:Kriftcher v. Kriftcher, 59 A.D.3d 392, 874 N.Y.S.2d 153 (2d Dep't 2009)

Comment:It is incumbent upon the nontitled party seeking a share of spouse's enhanced earning capacity attributable to a degree or license to demonstrate that the made a substantial contribution to the titled party's acquisition of that marital asset, and where the attainment is more directly the result of the other spouse's perseverance and hard work it is appropriate to limit the distributed amount of that earning capacity.

Years Married:

Ages/Income: Husband Income: \$500,000 Wife Income: \$10,000

Child Support:\$1,229 per week.

Maintenance:\$1,000 a week for 10 years awarded on appeal

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:\$30,000

Property Distribution to Wife:\$828,699 to wife as her 40% share of husband's enhanced earning capacity attributable to law degree and license, and \$55,575 representing 50% of husband's bonus.

Number:1440

Case:Litvak v. Litvak, 63 A.D.3d 691, 880 N.Y.S.2d 690 (2d Dep't 2009)

Comment:Supreme Court's decision did not address the issue of whether a certain municipal bond was marital property or not, and the judgment did not contain a decretal paragraph regarding this asset. Therefore, the issue remained pending and undecided by Supreme Court and was not before the Appellate Court.

Years Married:

Ages/Income:

Child Support:

Maintenance:\$4,000 per month until wife reaches 65; then \$2,000 a month

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:for wife's benefit

Counsel Fees:remitted for hearing and determination

Property Distribution to Wife:

Number:1441

Case:Lorenz v. Lorenz, 63 A.D.3d 1361, 881 N.Y.S.2d 208 (3d Dep't 2009)

Comment:Supreme Court not required to order that maintenance shall terminate upon the death of either party or plaintiff's valid or invalid marriage. Such language is unnecessary because the Domestic Relations Law, in more than one place, provides for the termination of any order of maintenance "upon the death of either party or upon the recipient's valid or invalid marriage.

Years Married:

Ages/Income: Husband Age: 54/Wife Age: 54

Child Support:

Maintenance:\$500 per week, retroactive, until such time as wife can draw full Social Security benefits.

Exclusive Occupancy:**Health & Medical Insurance:****Dental Insurance:****Life Insurance:****Counsel Fees:****Property Distribution to Wife:**

Number:1442

Case:Mahoney-Buntzman v. Buntzman, 12 N.Y.3d 415, 881 N.Y.S.2d 369, 909 N.E.2d 62 (2009)

Comment:Wife not entitled to credit for portion of marital funds used by husband to pay maintenance to former wife and to pay student loan. Where payments are made before either party is anticipating the end of the marriage, and there is no fraud or concealment, courts should not look back and try to compensate for the fact that the net effect of the payments may have resulted in the reduction of marital assets. Nor should courts try to adjust for the fact that the payments may have benefitted the non-titled spouse exclusively. The parties' choice of how to spend funds during the marriage ordinarily should be respected. The court may not, as a matter of policy, permit parties to assert positions in legal proceedings that are contrary to declarations on income tax returns.

Years Married:10**Ages/Income:****Child Support:****Maintenance:****Exclusive Occupancy:**

Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:
Property Distribution to Wife:

Number:1443

Case:Mairs v. Mairs, 61 A.D.3d 1204, 878 N.Y.S.2d 222 (3d Dep't 2009)

Comment:Wife's contributions to husband's medical license and his medical practice were substantial, warranting an award of 25% thereof. Interest of 4.2% on payout was appropriate.

Years Married:21

Ages/Income: Husband Income: \$300,000/Wife Income: \$50,000

Child Support:\$1,365 per week

Maintenance:\$500 a week for 7 years

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:\$500,000 declining term

Counsel Fees:\$18,000 to wife

Property Distribution to Wife:

Number:1444

Case:Michaelessi v. Michaelessi, 59 A.D.3d 688, 874 N.Y.S.2d 207 (2d Dep't 2009)

Comment:Plaintiff admitted that she did not truthfully fill out her net worth statement, and failed to provide an explanation as how she was able to afford to pay for a significant elective surgical procedure with her claimed level of assets. Secreting assets in order to prevent the trial court from making an equitable distribution of property supports a finding of economic fault.

Years Married:

Ages/Income:

Child Support:

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:25% of husband's pension and 50% of other marital assets.

Number:1445

Case:Mongelli v. Mongelli, 68 A.D.3d 1070, 892 N.Y.S.2d 471 (2d Dep't 2009)

Comment:While a court may depart from a party's reported income and impute income based on the party's past income or demonstrated earning potential the court failed to properly consider that the plaintiff's opportunities to earn overtime compensation at his job had lessened in recent years, and that the home improvement jobs that he performed on the side were for family and friends, with no showing that he profited therefrom. Thus, the plaintiff's child support obligation, as determined by the Supreme Court based upon income imputed to the plaintiff, had to be modified.

Years Married:

Ages/Income:

Child Support:\$1,356.77 per month. (3 children)

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:\$15,000 to wife.

Property Distribution to Wife:

Number:1446

Case:Peritore v. Peritore, 66 A.D.3d 750, 888 N.Y.S.2d 72 (2d Dep't 2009)

Comment:Where plaintiff successfully embarked on her own full-time career and only made indirect contributions to defendant's dental practice, the award of 40% of the practice was reduced to 15%.

Years Married:16

Ages/Income:

Child Support:N/A

Maintenance:

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

**Counsel Fees:
Property Distribution to Wife:**

Number:1447**Case:**Quinn v. Quinn, 61 A.D.3d 1067, 876 N.Y.S.2d 720 (3d Dep't 2009)**Comment:**Having failed to offer proof that \$70,262 wife withdrew from joint account after husband moved out of home were used for bills that were marital expenses, Supreme Court properly charged the expense against her distributive award. Wife given right to take tax exemption for children until such time as husband no longer precluded from the benefit of such exemption. Where a noncustodial parent meets all or a substantial part of a child's financial needs, a court may determine that she may declare the child as a dependant. Parties' lifestyle prior to divorce was lavish. 4% annual increase in maintenance was inappropriate. Supreme Court did not abuse discretion in failing to reduce child support obligation in light of the size of plaintiff's distributive award.**Years Married:**14**Ages/Income:** Husband Age/Income: 50/\$1.1m**Child Support:**[2 Ch] \$8,058 per month**Maintenance:**\$10,000 per month for 8 years**Exclusive Occupancy:****Health & Medical Insurance:****Dental Insurance:****Life Insurance:**\$2 million declining term**Counsel Fees:**\$60,730 to wife**Property Distribution to Wife:**50% of marital assets (except only 30% of husband's medical business)

Number:1448**Case:**Raynor v. Raynor, 68 A.D.3d 835, 890 N.Y.S.2d 601 (2d Dep't 2009)

Comment:Supreme Court improvidently exercised its discretion in failing to direct defendant to pay cost of the plaintiff's health insurance. The wife was not employed outside the home during the marriage, and did not have a college degree. She relied entirely on the husband's income during the marriage and lacked an alternative means of support. Thus, the maintenance award and an award of one-half of the total attorney's fees was appropriate. Where plaintiff demonstrated she used \$14,458.69 she withdrew from the parties' home equity credit line to pay for college expenses of 24-year-old son the year before the action commenced and defendant acknowledged he was aware of plaintiff's practice of paying for the son's expenses, it precluded finding that plaintiff dissipated these assets.

Years Married:40

Ages/Income: Husband Age/Income: 65/\$113,000/Wife Age/Income: 62/\$0

Child Support:

Maintenance:\$600 per week to be reduced to nondurational award of \$200 per week after defendant's retirement from full-time employment or the passage of five years.

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1449

Case:Scala v. Scala, 59 A.D.3d 1042, 873 N.Y.S.2d 787 (4th Dep't 2009)

Comment:The failure to recoup value from an unprofitable business operated during the marriage constitutes wasteful dissipation of that asset.

Years Married:

Ages/Income:

Child Support:

Maintenance:for 12 years from judgment

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1450**Case:**Skladanek v. Skladanek, 60 A.D.3d 1035, 877 N.Y.S.2d 342 (2d Dep't 2009)**Comment:**Supreme Court erred in failing to include a provision in judgment that maintenance would terminate upon death of either party or wife's remarriage, and in failing to give the husband a credit, against arrears, for sums he paid for the carrying costs on the marital home during the pendency of the action. Since both parties were wage earners who contributed to the support of the 2 children the wife was entitled to claim 1 child as a dependant on her income tax returns.**Years Married:****Ages/Income:****Child Support:****Maintenance:**\$690 per week for 4 years, then \$540 per week for 2 years**Exclusive Occupancy:****Health & Medical Insurance:****Dental Insurance:****Life Insurance:****Counsel Fees:**\$41,217 to wife**Property Distribution to Wife:**\$5,280 appreciation of property owned jointly with husband's mother.

Number:1451**Case:**Smith v. Winter, 64 A.D.3d 1218, 883 N.Y.S.2d 412 (4th Dep't 2009), leave to appeal denied, 13 N.Y.3d 709, 890 N.Y.S.2d 446, 918 N.E.2d 961 (2009)**Comment:**Error to fail to award wife interest on her net distributive award at the statutory rate, commencing from the date of the decision. 10% of appreciated value (\$20 million) of husband's business was marital property because wife's contributions as a homemaker were minimal compared to increase attributable to those hired by plaintiff to run the company. Wife entitled to 40% based on her contributions as a homemaker.**Years Married:**13**Ages/Income:****Child Support:****Maintenance:**\$1,700 per week for 17 months.**Exclusive Occupancy:**

Health & Medical Insurance:
Dental Insurance:
Life Insurance:
Counsel Fees:
Property Distribution to Wife:\$556,611

Number:1452

Case:Steinberg v Steinberg, 59 A.D.3d 702, 874 N.Y.S.2d 230 (2d Dep't 2009)

Comment:Given credibility problems that pervaded the defendant's testimony, the court's discretion in valuing Phoenix property should have been exercised in favor of his most recently documented admission that the property was valued at \$ 4 million. Supreme Court properly imputed income of \$300,000 to defendant given his employment history and his current ownership of a successful growing business.

Years Married:23

Ages/Income:

Child Support:

Maintenance:nondurational

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:\$200,000 to wife

Property Distribution to Wife:50% of marital assets

Number:1453

Case:Tarone v. Tarone, 59 A.D.3d 434, 874 N.Y.S.2d 148 (2d Dep't 2009)

Comment:Wife awarded 50% of value of "homestead exemption."

Years Married:

Ages/Income:Husband Income: \$300,000

Child Support:

Maintenance:\$20,000 a year for 3 years

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:\$57,500

Property Distribution to Wife:

Number:1454**Case:**Wasserman v. Wasserman, 66 A.D.3d 880, 888 N.Y.S.2d 90 (2d Dep't 2009)**Comment:**Fact that plaintiff may have made greater economic contributions to the marriage than defendant did not necessarily mean he was entitled to a greater percentage of the marital property. Maintenance award would permit defendant to maintain pre-divorce standard of living while allowing her a reasonably sufficient time to become self-supporting. Supreme Court properly declined to direct the plaintiff to pay wife's health insurance premiums, where she had been awarded a substantial distributive award and maintenance.**Years Married:**29**Ages/Income:**Husband: Age 65/Wife: Age 57**Child Support:****Maintenance:**\$10,000 per month for the 2 years immediately following the judgment of divorce, \$7,500 per month for the next 3 years, and \$5,000 per month for 3 years after that.**Exclusive Occupancy:****Health & Medical Insurance:**Denied**Dental Insurance:****Life Insurance:****Counsel Fees:****Property Distribution to Wife:**50% of value of plaintiff's businesses and 50% of value of marital premises.

Number:1455**Case:**Zaretsky v. Zaretsky, 66 A.D.3d 885, 888 N.Y.S.2d 84 (2d Dep't 2009)**Comment:**The entire distributive award had to be reconsidered because Supreme Court failed to articulate fully its basis for awarding the defendant 40% of the total appreciated value of plaintiff's business. It should have considered the extent and significance of the plaintiff's efforts in relation to the active efforts of others, and any additional passive or active factors, and determine what percentage of the total appreciation was marital property.**Years Married:**14**Ages/Income:****Child Support:**\$677 a week (3 children)

Maintenance:to wife for seven years

Exclusive Occupancy:

Health & Medical Insurance:

Dental Insurance:

Life Insurance:

Counsel Fees:

Property Distribution to Wife:

Number:1456

CASE: Albanese v Albanese

CITATION: Albanese v. Albanese, 69 A.D.3d 1005, 892 N.Y.S.2d 631 (3d Dep't 2010)

YRS MAR: 18

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$385 per week

MAINTENANCE: \$2,400 per month for 6 years, going down to \$1,800 per month upon the sale of the marital residence.

EXCL OCC: ordered sold

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: The only evidence regarding value of defendant's law practice related to the value at the time the divorce action was commenced. Plaintiff presented no proof of a baseline value at the time of the marriage or of an appreciation in the value of the practice during the marriage. While plaintiff's role as homemaker and mother to the parties' children established that she was entitled to a share of any appreciation, there was no evidence offered from which appreciation could be found. Under such circumstances, an award for the value of the law practice was inappropriate.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1457

CASE: Alper v Alper

CITATION: Alper v. Alper, 77 A.D.3d 694, 909 N.Y.S.2d 131 (2d Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: The Appellate Division affirmed a judgment which awarded the wife zero percent of the marital residence and certain other marital assets. The record supported the Supreme Court's determination that, although both parties worked throughout the marriage, the plaintiff contributed little, if any, financial support to the marriage, and did not contribute at all to the purchase, and only minimally to the maintenance, of the marital home. As both parties worked throughout the marriage, there were no children of the marriage, and the parties were separated for 10 of their 20 years of marriage, to award the plaintiff any equitable share in the defendant's cash and securities would provide her with an economic advantage merely by virtue of the fact that she was married to the defendant.

Number:1458

CASE: Armstrong v Armstrong

CITATION: Armstrong v. Armstrong, 72 A.D.3d 1409, 900
N.Y.S.2d 476 (3d Dep't 2010)

YRS MAR: 11

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$963.94 per month (1 ch)

MAINTENANCE: denied

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: to wife

PROP DIST TO W: Wife awarded 70% of marital estate of
\$1,141,683.34

COMMENT: Preclusion is reserved for those instances where the offending party's lack of cooperation with disclosure was willful, deliberate, and contumacious. Court opted to use husband most recent net worth statement to calculate his income rather than the 2006 income tax return since it found that the net worth statement more accurately reflected his actual income (citing Matter of Kellogg v. Kellogg, 300 A.D.2d 996, 996, 752 N.Y.S.2d 462 (4th Dep't 2002) for the proposition that income earned during a tax year not completed at the commencement of trial may, under some circumstances, be weighed by the court]). Commingling only a part of separate property does not necessarily result in other separate property that has not been commingled being transmuted to marital property.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1459

CASE: Baron v Baron

CITATION: Baron v. Baron, 71 A.D.3d 807, 897 N.Y.S.2d 456
(2d Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$5,769.23 per week until plaintiff becomes eligible for full Social Security benefits at the age of 66, remarries, or dies

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$125,000 and \$50,000 expert fee.

PROP DIST TO W: \$4,566,857.90

COMMENT: Due to her sizable distributive award, a lifetime maintenance award was not warranted. Error to focus solely on parties financial circumstances in denying counsel fees. Court should have considered defendant's misconduct and obstructionistic tactics. Appellate Division awarded a \$125,000 attorney's fee and a \$50,000 expert fee, which was one-half of the fees sought. Plaintiff also should have been awarded prejudgment interest on the distributive award of \$4,566,858. The marital assets were valued as of June 30, 2002, and the plaintiff was entitled to interest from that date. Additionally, an award of prejudgment interest is appropriate where the defendant, in failing to provide certain financial documents and falsely claiming to have transferred 49% of his business to a third party, attempted to conceal the valuation of the business and prolonged the litigation.

Number:1460

CASE: Bernholc v Bornstein

CITATION: Bernholc v. Bornstein, 72 A.D.3d 625, 898 N.Y.S.2d 228 (2d Dep't 2010)

YRS MAR: 15

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: 60% of the marital property

COMMENT: Where marital funds are used to pay off the separate debt of the titled spouse on the separate property, the nontitled spouse may be entitled to a credit. The reduction of indebtedness on separate property is not considered appreciation in the value of the separate property; rather, the credit is to remedy the inequity created by the expenditure of marital funds to pay off separate liabilities. The marital funds used to pay off those liabilities are added back into marital property, and the nontitled spouse is awarded his or her equitable share of those recouped marital funds. Financial contributions by a spouse during a marriage are treated as marital property, unless the party making the contributions can trace the source of the contributions to separate property.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1461

CASE: Beroza v Hendler

CITATION: Beroza v. Hendler, 71 A.D.3d 615, 896 N.Y.S.2d 144
(2d Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$4,833.33 per month (3 ch)

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: awarded wife one half of defendant's one half-interest in marital residence after crediting the defendant with certain sums and one half of \$440,000, which the defendant transferred to the children's custodial accounts without the plaintiff's permission, and 25% of appreciated value of the plaintiff's veterinary practice and the related business.

COMMENT: Supreme Court properly imputed income to the plaintiff of \$259,100 based, inter alia, on undisputed evidence that his businesses paid for virtually all of his personal expenses, so that his actual earnings greatly exceeded the amount of income which he reported on his tax returns.

Number:1462

CASE: Bladt v Bladt

CITATION: Bladt v. Bladt, 72 A.D.3d 717, 898 N.Y.S.2d 248 (2d Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$250 per week until earlier of wife's remarriage or until she reaches age 66.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:

Number:1463

CASE: Brevilus v Brevilus

CITATION: Brevilus v. Brevilus, 72 A.D.3d 999, 900 N.Y.S.2d 114 (2d Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: remitted for new determination

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: In calculating the husband's child support obligation under the Child Support Standards Act FICA taxes should be deducted only from income upon which FICA taxes are "actually paid" prior to applying the provisions of Domestic Relations Law s 240(1-b)(c).

Number:1464

CASE: Bricker v Bricker

CITATION: Bricker v. Bricker, 69 A.D.3d 546, 893 N.Y.S.2d 128 (2d Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: 60% of value of husbands business

COMMENT: It was inappropriate for the plaintiff to continue as a joint owner with the defendant of his closely-held corporation. Instead, a distributive award should be made to the plaintiff for her share. There is no uniform rule for fixing the value of a going business and the valuation of a business for equitable distribution purposes is an exercise properly with the fact-finding power of the trial court, guided by expert testimony.

Number:1465

CASE: Burns v Burns

CITATION: Burns v. Burns, 70 A.D.3d 1501, 894 N.Y.S.2d 795
(4th Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$88.92 per week

MAINTENANCE: \$19,500 per year for 3 years after sale of marital residence.,

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court did not abuse its discretion in refusing to award child support on combined income in excess of \$80,000. It properly relied on factors in DRL 240(1-b)(f) including, the fact that the parties' financial resources after the payment of maintenance would be roughly equivalent, that each parent would have one child living with him or her, there would be no change in the children's standard of living, and that the additional parenting responsibilities of defendant following the divorce will likely impact his ability to enhance his salary by working overtime. Supreme Court erred in including maintenance awarded to wife in her income for purpose of calculating parties' respective child support obligations. In split custody situations, the court must "determine the basic child support obligation on a per household basis with the controlling percentage for each such home determined according to how many children are living with the same custodial parent and the court must then prorate the basic child support obligation in proportion to each parent's income.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1466

CASE: Campbell v Campbell

CITATION: Campbell v. Campbell, 72 A.D.3d 556, 899 N.Y.S.2d 48 (1st Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$100 for three years

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: In view of defendant's failure, despite several court orders, to provide full financial disclosure, and the court's consequent inability to fully assess the sources of funds available to her, she may not be heard to complain that the maintenance award was inadequate.

Number:1467

CASE: Costigan v Renner

CITATION: Costigan v. Renner, 76 A.D.3d 1039, 908 N.Y.S.2d 135 (2d Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$303 per week and a pro rata share of the children's private school tuition (Husband awarded custody)

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court did not err in declining to award maintenance. Although the mother argued that the Supreme Court's decision failed to discuss the parties' pre-divorce standard of living, such consideration was of little determinative value, especially in light of the fact that the parties only lived together for less than three years after their marriage in 1999. Taking into account that the mother had the ability to be self-supporting and was not the custodial parent, the record supported the Supreme Court's decision. Supreme Court properly imputed income to both the father and the mother based upon the past income of the father and the earning potential and extrapolated past annual earnings of the mother.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1468

CASE: Davis v O'Brien

CITATION: Davis v. O'Brien, 79 A.D.3d 695, 912 N.Y.S.2d 644
(2d Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: 60% of certain marital assets, 20% of the value of the defendant's share of his law partnership, 60% of the capital gains from the sale of a cooperative apartment held to be marital property, and 60% of a joint bank account that the defendant held with a third party valued at \$25,000.

COMMENT: The Supreme Court's determination to award the plaintiff 60% of certain marital assets was based on the significant decrease in the defendant's contributions to the marriage as a financial, emotional, and supportive partner for more than four years and was not an improvident exercise of discretion. However, it was an improvident exercised of discretion to award the plaintiff a distributive share of 50% of the defendant's law partnership, under the particular circumstances of this case, where the plaintiff successfully embarked on her own full-time career and made only indirect contributions to the defendant's career. The award to the plaintiff of the value of the defendant's law partnership was reduced to 20%. Supreme Court improperly valued a joint bank account the defendant held with a third party at \$53,755, as a significant portion of that account contained some of the capital gains from the sale of the cooperative apartment. Therefore, in order to prevent duplicate distribution, the value of that account was reduced to \$25,000.

Number:1469

CASE: Del Villar v Del Villar

CITATION: Del Villar v. Del Villar, 73 A.D.3d 651, 902 N.Y.S.2d 43 (1st Dep't 2010)

YRS MAR: 30

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: There is a presumption that all property acquired by either spouse during the marriage is marital property. Still, equitable does not necessarily mean equal, and an unequal distribution is appropriate when a party has not contributed to the marital asset in question. Although an unequal distribution of the marital apartment in favor of defendant was appropriate, it was an improvident exercise of discretion to limit plaintiff's distributive share to a mere 1% of its net value of \$553,000 (after credits to the wife which are not in dispute). The Appellate Division plaintiff's distributive share from 1% to 10% and awarded plaintiff the sum of \$55,300.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1470

CASE: DeSouza-Brown v Brown

CITATION: DeSouza-Brown v. Brown, 71 A.D.3d 946, 897
N.Y.S.2d 228 (2d Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$1,923 per month (2 children)

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$20,000.

PROP DIST TO W: 65% interest in the marital residence

COMMENT: Supreme Court is not required to rely upon a party's account of his or her finances. In determining an award of child support, the Supreme Court may depart from a party's reported income and impute income based on the party's past income or demonstrated earning potential. Such a determination must be grounded in law and fact. Here, defendant's expenses listed in his "Statement of Net Worth" far exceeded his income as reported in his tax returns. He lived in a two-bedroom apartment which rented for \$2,340 per month in a luxury apartment building. Under the circumstances presented, Supreme Court correctly imputed annual income of \$100,000 to the defendant. Defendant, who had been employed for 12 years by a major bank when his job was eliminated, failed to satisfy his burden of establishing that he diligently sought to obtain new employment commensurate with his qualifications and experience.

Number:1471

CASE: Eberhardt — Davis v Davis

CITATION: Eberhardt-Davis v. Davis, 71 A.D.3d 1487, 897
N.Y.S.2d 376 (4th Dep't 2010),

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Where the parents' custodial arrangement splits the child's physical custody so that neither can be said to have physical custody of the child for a majority of the time, the parent having the greater pro rata share of the child support obligation should be identified as the noncustodial parent for the purpose of child support regardless of the labels employed by the parties. In calculating the parties' income for child support purposes, a court is not required to use reported income but, rather, may base its determination on the parties actual income and ability to support the child.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1472

CASE: Epstein v Messner

CITATION: Epstein v. Messner, 73 A.D.3d 843, 900 N.Y.S.2d 454 (2d Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

29

\$1600/mo

\$3300/mo

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: remitted to determine amount of funds wastefully dissipated.

COMMENT: Expenses incurred prior to the commencement of an action for a divorce are marital debt to be equally shared by the parties upon an offer of proof that they represent marital expenses. Expenses incurred after the commencement of an action for a divorce are, in general, the responsibility of the party who incurred the debt. Where a party has paid the other party's share of what proves to be marital debt, reimbursement is required. Supreme Court is given broad discretion in allocating the assets and debts of the parties to a marriage, and may consider the entirety of the marital estate in apportioning responsibility therefor. The party alleging that his or her spouse has engaged in wasteful dissipation of marital assets bears the burden of proving such waste by a preponderance of the evidence.

Number:1473

CASE: Filiaci v Filiaci

CITATION: Filiaci v. Filiaci, 68 A.D.3d 1810, 891 N.Y.S.2d 569
(4th Dep't 2009)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$332.09 per week

MAINTENANCE: \$300 per week for six years

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: remitted to determine

PROP DIST TO W: \$26,264

COMMENT:

App. 1

LAW AND THE FAMILY NEW YORK

Number:1474

CASE: Gahagan v Gahagan

CITATION: Gahagan v. Gahagan, 76 A.D.3d 538, 906 N.Y.S.2d 89 (2d Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$24,800 (4 Children) per year

MAINTENANCE: \$4,533 plus carrying costs for residence (\$10,467) reduced on sale of marital residence

EXCL OCC: to wife

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: 60% of marital residence

COMMENT: Improvident exercise of discretion to delay sale of the marital residence until parties' youngest child reaches majority or is sooner emancipated. Instead, marital residence to be sold by December 31st of the year the parties' second oldest daughter, Elaine, graduates from high school. At that time, the two oldest children should have graduated from high school and the two youngest children will have at least graduated from grammar school. A sale at that point would appropriately balance "the need of the custodial parent to occupy the marital residence . . . against the financial need of the parties". Wife awarded 60% of proceeds of sale, if the she "fully cooperates in effectuating the sale", otherwise 50%.

Number:1475

CASE: Geller v Geller

CITATION: Geller v. Geller, 69 A.D.3d 563, 892 N.Y.S.2d 196
(2d Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS: \$200,000 for child

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Appellate Division increased award of maintenance to a period of 12 years. Supreme Court erred in failing to direct defendant to obtain and maintain a life insurance policy to secure his child support obligation.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1476

CASE: Giokas v Giokas

CITATION: Giokas v. Giokas, 73 A.D.3d 688, 900 N.Y.S.2d 370
(2d Dep't 2010)

YRS MAR: 33

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$500 per week, nontaxable, until the earliest of wife's eligibility for full Social Security benefits at age of 66, remarriage, or death of either party

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Where wife made no direct contributions to the husband's businesses and, only a modest, indirect contribution to them, proper to award her only 10% of their value.

Number:1477

CASE: Haspel v Haspel

CITATION: Haspel v. Haspel, 78 A.D.3d 887, 911 N.Y.S.2d 408
(2d Dep't 2010)

YRS MAR: H AGE: 49 H INCOME: W AGE: 52 W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: remitted to fix amount of counsel fee for wife

PROP DIST TO W: 25% of \$484,000, or \$121,000, as her share of the defendant's enhanced earning capacity.

COMMENT: Enhanced earnings from degrees and professional licenses attained where only modest contributions are made by the nontitled spouse toward the other spouse's attainment of a degree or professional license, and the attainment is more directly the result of the titled spouse's own ability, tenacity, perseverance and hard work, it is appropriate for courts to limit the distributed amount of that enhanced earning capacity. Supreme Court improperly calculated the total amount of the defendant's enhanced earning capacity from which her share derived. The plaintiff's expert calculated that the defendant enhanced his earnings by the sum of \$75,000 per year. Supreme Court should have determined the value of the defendant's enhanced earning capacity over the 15-year period preceding his attainment of the age of 65. According to the expert evidence at trial, such sum would equal \$1,125,000, or \$75,000 multiplied by 15 years. The Supreme Court should thereafter have reduced this \$1,125,000 sum to its net present value after taxes (citing *O'Brien v. O'Brien*, 66 N.Y.2d 576, 588, 498 N.Y.S.2d 743, 489 N.E.2d 712 (1985)) which comes to \$484,000. In addition, the amount representing the wife's share of the defendant's yearly enhanced earning capacity should be excluded from his income for the purpose of calculating her yearly award of maintenance. This is so because once "a court converts a specific stream of income into an asset, that income may no longer be calculated into the maintenance formula and payout" (*Grunfeld v. Grunfeld*, 94 N.Y.2d 696, 705, 709 N.Y.S.2d 486, 731 N.E.2d 142 (2000)). Plaintiff's share of the defendant's yearly enhanced earning capacity, which was \$75,000 per year, had to be reduced from 50% to 25% of \$75,000, or \$18,750. Thus, for the purpose of determining the plaintiff's yearly award of maintenance, the defendant's income had to be recalculated in order to exclude 25% (or \$18,750) of his yearly enhanced earning capacity of \$75,000. The defendant's imputed income of \$180,000 had to thus be reduced to a net income of \$161,250.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1478

CASE: Hendry v Pierik

CITATION: Hendry v. Pierik, 78 A.D.3d 784, 911 N.Y.S.2d 140
(2d Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$2,150 per month until later of either the
plaintiff reaching the age of 62 or permanently retiring

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court improvidently exercised its discretion in making the defendant's awards of maintenance and child support retroactive to the date of the commencement of the action. The defendant never requested any pendente lite relief, and the plaintiff voluntarily and adequately provided for the needs of the defendant and the parties' children during the pendency of the action. Under these circumstances, it did not appear that the parties contemplated a retroactive award of maintenance or child support. Supreme Court properly valued the parties' pension and retirement accounts as of the date of commencement of the action, despite their physical separation almost two years prior. In the absence of a separation agreement, the commencement date of a matrimonial action demarcates the termination point for the further accrual of marital property and the valuation date must be between the date of commencement of the action and the date of trial.

Number:1479

CASE: Hughes v Hughes

CITATION: Hughes v. Hughes, 79 A.D.3d 473, 912 N.Y.S.2d 206
(1st Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$544.62 per month for the first 24 months, \$648.91 per month for the second 24 months, and \$730.02 per month thereafter, and unreimbursed expenses of 47% during the first 24 months, 56% during the second 24 months, and 63% thereafter.

MAINTENANCE: \$1100 per month for 24 months, then \$500 per month for 24 months

EXCL OCC:

HEALTH/MED INS:

LIFE INS: \$200,000

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Nonvested pensions are subject to equitable distribution. Appellate Division added to judgment the following paragraph: "The Defendant shall be entitled to and shall be paid a share of the total account balance of the Plaintiff under the pension plan of the New York City Employees' Retirement System equal to fifty percent of the total account balance multiplied by a fraction, the numerator of which shall be the number of years (or fraction thereof) of the marriage of the Plaintiff and the Defendant during which Plaintiff participated in the pension plan, and the denominator of which shall be the number of years of employment by New York City of the Plaintiff pursuant to **Majauskas v. Majauskas, 61 N.Y.2d 481 (1984)**, plus all increases to such amount from the date of commencement to the date of distribution."

App. 1

Number:1480

CASE: Karas-Abraham v Abraham

CITATION: Karas-Abraham v. Abraham, 69 A.D.3d 428, 892 N.Y.S.2d 384 (1st Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Referee should not have awarded plaintiff all of the appreciation of the marital residence, since she failed to carry her burden to demonstrate the amount of the increase in value that was the result of her contributions to the renovations and not of market forces. *Ritz v. Ritz*, 21 A.D.3d 267, 799 N.Y.S.2d 501 (1st Dep't 2005)) does not shift the burden to the party asserting that the property is separate to show the effect of market forces. Maintenance and child support awards properly premised on imputation of income to defendant based on report of neutral forensic accountants and referee's credibility findings. He was the monied spouse who had been hiding income through his family's companies, his own business in which he was the sole shareholder, and illusory undocumented loans that he used to support a standard of living that would have been impossible to maintain on the income he claimed in the divorce proceeding and on his personal income tax returns. Child support award was further justified by defendant's lack of candor with respect to his income.

Number:1481

CASE: Kelly v Kelly

CITATION: Kelly v. Kelly, 69 A.D.3d 577, 892 N.Y.S.2d 185 (2d Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: Maintenance to wife until December 31, 2008.EXCL OCC:

HEALTH/MED INS: Husband directed to pay 60% of the plaintiff's reasonable medical and dental insurance benefit costs, to the extent that such insurance benefits were not available to her through her anticipated future employment, until Medicare becomes effective.

LIFE INS:

COUNSEL FEE: \$7,500 to wife pendente lit

PROP DIST TO W:

COMMENT: Supreme Court providently exercised its discretion in awarding plaintiff 60% of the marital assets. When both spouses equally contribute to a marriage of long duration, the division of marital property should be as equal as possible. However, there is no requirement that the distribution of marital property be made on an equal basis. In making the division of property in this case, the court took into account, among other things, the property held by each party at the commencement of the action, the length of the marriage, the limited award of maintenance to the wife, and the husband's more recent work experience and greater earning potential.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1482

CASE: Kerrigan v Kerrigan

CITATION: Kerrigan v. Kerrigan, 71 A.D.3d 737, 896 N.Y.S.2d 443 (2d Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$1,442.31 per week

MAINTENANCE: \$1,500 per week for five years commencing on January 18, 2008,

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$90,428.41

PROP DIST TO W: \$409,779.95, representing 35% of the value of the appreciation of the plaintiff's interest in his business during the marriage

COMMENT: Plaintiff's contention that the Supreme Court engaged in "double dipping" with respect to award of maintenance was without merit, as plaintiff's business constituted a tangible, income-producing asset, rather than an intangible asset (see *Keane v. Keane*, 8 N.Y.3d 115, 119, 828 N.Y.S.2d 283, 861 N.E.2d 98 (2006)). Supreme Court providently exercised its discretion in awarding attorney's fee of \$90,428.41 in light of the plaintiff's tactics in unnecessarily prolonging the litigation, but erred in awarding her an additional attorney's fee \$26,025.79 without conducting a hearing.

Number:1483

CASE: Landgraf v Neuhaus

CITATION: Landgraf v. Neuhaus, 77 A.D.3d 590, 910 N.Y.S.2d 431 (1st Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: The award of an automatic increase in maintenance "on the occurrence of [one] given fact"—i.e., upon the emancipation of the child—was error, because it ignored the possibility of change in other factors affecting the computation.

Number:1484

CASE: Leuker v Leuker

CITATION:, Lueker v. Lueker, 72 A.D.3d 655, 898 N.Y.S.2d 605 (2d Dep't 2010)

YRS MAR:

H AGE:

H INCOME:
\$304,992

W AGE:

W INCOME:

CHILD SUPPORT: \$1849 per month plus 71% of certain add-on expenses for the children, and pro rata share of the children's private school tuition

MAINTENANCE:\$2,000 per month for a period of 18 months

EXCL OCC:

HEALTH/MED INS:

LIFE INS: for the benefit of the children until the emancipation of each child

COUNSEL FEE:

PROP DIST TO W: \$282,166.40, representing her 50% equitable share of the marital property

COMMENT: Contributions to the plaintiff's retirement plan made after commencement of the matrimonial action are separate property not subject to equitable distribution. However, the defendant was entitled to the equitable distribution of any passive interest earned on the marital portion of the plaintiff's retirement plan. The rent security deposit made for the marital residence constituted marital property. Maintenance payments received and reported on a party's most recently filed income tax return should be included as income for purposes of calculating child support. In a parenting agreement, the parties stated their intention for their children to continue to attend private school. Therefore, the Supreme Court providently exercised its discretion in directing the plaintiff to pay his pro rata share of the children's private school tuition. Since both parties were wage earners who contribute toward the support of their two children, the plaintiff was permitted to claim one of the children as a dependent on his income tax returns. Supreme Court was not required to direct that the life insurance policy have a declining balance.

Number:1485

CASE: Lewis v Lewis

CITATION: Lewis v. Lewis, 70 A.D.3d 1432, 894 N.Y.S.2d 290
(4th Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$6500.00

PROP DIST TO W:

COMMENT: The requirements of Domestic Relations Law 236(B)(3) pertain to stipulations that affect the equitable distribution of marital property, not custody. Since Supreme Court erred in failing to set forth the reasons for its determination to award maintenance to plaintiff intelligent review of the amount and duration of the maintenance award was not possible, and the Appellate Division remitted the matter to Supreme Court for a new determination with respect to maintenance and to set forth the reasons for its determination.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1486

CASE: Louzoun v Montalto

CITATION: Louzoun v. Montalto, 70 A.D.3d 652, 893 N.Y.S.2d 630 (2d Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC: ordered sold

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Under circumstances of this case, directing the defendant to pay for half of the extracurricular expenses of the two younger children through the eighth grade was in those children's best interests and supported by the requirements of justice. Upon the sale of the marital residence, plaintiff should receive credit for 50% of her contributions to the mortgage principal and to capital improvements referable to the marital residence from the date the defendant vacated the marital residence until the date of the sale of the marital residence.

Number:1487

CASE: Massirman v Massirman

CITATION: Massirman v. Massirman, 78 A.D.3d 1021, 911 N.Y.S.2d 462 (2d Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: for five years

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$20,000 to wife

PROP DIST TO W: 25% of the plaintiff's interest in business

COMMENT: The defendant offered no evidence of ill health and there was no evidence that she "reduce[d] or [lost] lifetime earning capacity as a result of having foregone or delayed education, training, employment, or career opportunities during the marriage". Except for several years before and after the parties' son was born, the defendant continuously worked in the field of high-end clothing retail, operating her own businesses for most of the marriage. Supreme Court credited the plaintiff's testimony regarding the declining state of his business, and rejected the defendant's testimony that her business did not yield any profits in light of her failure to provide the requisite documentation. Under all of the circumstances, the maintenance award was proper. The award of 25% of the plaintiff's interest in his business was proper. The evidence adduced demonstrated that the defendant's role in the plaintiff's career was minimal, that she continued her own career, and that she made only indirect contributions to the plaintiff's business.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1488

CASE: McAuliffe v McAuliffe

CITATION:, McAuliffe v. McAuliffe, 70 A.D.3d 1129, 895
N.Y.S.2d 228 (3d Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$570 per week (3 ch)

MAINTENANCE: \$200 per week until 2016

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: There is provision allowing modification of equitable distribution awards. A distributive award, once made, is not subject to change. To be properly admitted, expert opinion evidence must generally be based upon facts either found in the record, personally known to the witness, derived from a 'professionally reliable' source or from a witness subject to cross-examination. Supreme Court erred in awarding a percentage of the value of the wife's degrees earned during the marriage to the husband. The husband was required to show not only that the degrees had enhanced the wife's earning capacity, but also that he, in a meaningful and substantial way, contributed to [her] efforts in obtaining them. The wife's uncontradicted testimony was that she obtained both of her degrees through night and weekend courses while working full time for employers that reimbursed all of her expenses for tuition and books. There was no evidence that any unreimbursed marital funds were expended or that the husband made any efforts to assist the wife in obtaining either degree that went beyond overall contributions to the marriage. Thus, he did not meet his burden to establish that the degrees resulted from anything other than the wife's "own ability, tenacity, perseverance and hard work.

Number:1489

CASE: McCaffrey v McCaffrey

CITATION: McCaffrey v. McCaffrey, 69 A.D.3d 585, 892
N.Y.S.2d 184 (2d Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: The plaintiff claimed, without any documentary proof, that the defendant had two pensions. The plaintiff's statement was insufficient to prove that the defendant had more than one pension, and the court was not required to accept her statement as conclusive proof that the defendant had more than one pension.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1490

CASE: Miceli v Miceli

CITATION: Miceli v. Miceli, 78 A.D.3d 1023, 911 N.Y.S.2d 473
(2d Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$500 per month until the defendant reached
the age of 65.

EXCL OCC:

HEALTH/MED INS:

LIFE INS: for benefit of wife to secure maintenance obligation

COUNSEL FEE: denied

PROP DIST TO W:

COMMENT: Supreme Court's determination that the plaintiff's whole life insurance policy with New York Life was his separate property, was unsupported by the record, since there was no evidence that the policy was not purchased with marital funds. Supreme Court erred in awarding the plaintiff 50% of the defendant's "North Fork savings account," as that account comprised the defendant's Workers' Compensation and Social Security disability benefits, which were her separate property and are not subject to equitable distribution.

Number:1491

CASE: Noble v Noble

CITATION: Noble v. Noble, 78 A.D.3d 1386, 911 N.Y.S.2d 252
(3d Dep't 2010)

YRS MAR: 22

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: to wife (2 ch)

MAINTENANCE: to wife (non-durational)

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: to wife

PROP DIST TO W: Equal division of the marital equity in the marital residence and the value of the real estate owned by defendant's businesses; distributed the debt associated with those businesses to defendant.

COMMENT: The parties submitted nearly 100 pages of proposed findings of fact and conclusions of law, each of which cited to the record for support and was marked "found" or "not found" by Supreme Court. Supreme Court did not abdicate its responsibilities by adopting the parties' findings and conclusions wholesale, but rather edited them by deleting, adding or modifying language and inserting additional reasoning and awards. It's decision sufficiently complied with the requirements of DRL 236(B). While Supreme Court did not violate the statute in this case, the practice of editing and then adopting proposed findings of fact and conclusions of law is not recommended. Supreme Court's finding that defendant wastefully dissipated marital assets was amply supported by evidence that defendant engaged in excessive spending, made various unsecured loans without plaintiff's knowledge and invested in two businesses that resulted in no economic benefit to the parties. Supreme Court did not err in refusing to impute as income to plaintiff the monthly sums of money that she received from her mother during the two years preceding the trial. These funds were given to plaintiff to assist

with her day-to-day needs and payment of bills during the time when defendant left his employment at NBT and, subsequently, the marital home, as well as during the pendency of this action when defendant failed to provide support for plaintiff and the children. Plaintiff testified that there was no agreement that her mother continue to give her such sums of money. Considering the timing and discretionary nature of the gift-giving, the decision not to impute these funds as income was not an abuse of discretion. Plaintiff overcame the presumption that she intended to commingle her funds by depositing them in the parties' joint account. Accordingly, plaintiff was entitled to this credit reflecting the investment of her separate funds into the marital residence.

Number:1492

CASE: Northway v Northway

CITATION: Northway v. Northway, 70 A.D.3d 1347, 894 N.Y.S.2d 808 (4th Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court abused its discretion in ordering that the award of maintenance was retroactive to the date of the commencement of the action. Plaintiff never requested pendente relief, and defendant adequately provided for her needs during the pendency of the action pursuant to an agreement between the parties. Under these circumstances, it did not appear that the parties contemplated a retroactive award of maintenance and it modified the judgment accordingly.

Number:1493

CASE: Oliver v Oliver

CITATION: Oliver v. Oliver, 70 A.D.3d 1428, 894 N.Y.S.2d 287
(4th Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: It was undisputed that the parties agreed that they each would contribute to their children's education, and they arranged to do so by having plaintiff use her credit cards to support the children in college, while defendant cosigned for the children's student loans and made the payments on those loans. Thus, Supreme Court abused its discretion in directing that the proceeds from the liquidation of the parties' real property be applied first to the credit card/vendor debt and then to the educational debt, with any remaining educational debt to be paid solely by defendant. A court's distribution of marital assets may be an abuse of discretion in the event that a court directs that marital assets are to be used to pay debt that was incurred for personal purposes unrelated to the marriage. Where there is a conflict between the court's decision and judgment, the decision controls.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1494

CASE: Philips v Haralick

CITATION: Phillips v. Haralick, 70 A.D.3d 663, 894 N.Y.S.2d 87
(2d Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: 55% of the net proceeds from the sale of the marital home to wife.

COMMENT: As the transfer of title to a marital residence between spouses during the marriage is not determinative of whether the property is separate or marital, the fact that the defendant executed a quitclaim deed conveying his interest in the Seattle home to the plaintiff did not constitute a transfer of 50% of the equity in the Seattle home to the plaintiff, absent proof of consideration.

Number:1495

CASE: Poberesky v Poberesky

CITATION: Poberesky v. Poberesky, 71 A.D.3d 516, 897 N.Y.S.2d 401 (1st Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$4200 a month

EXCL OCC:

HEALTH/MED INS: denied

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Defendant should be reimbursed for any excess temporary maintenance payments from the sums awarded to the plaintiff in equitable distribution (Johnson v. Chapin, 49 A.D.3d 348, 350, 854 N.Y.S.2d 18 (1st Dep't 2008), aff'd as modified, 12 N.Y.3d 461, 881 N.Y.S.2d 373, 909 N.E.2d 66 (2009) ["equity requires that the husband be awarded a distributive credit for . . . the amount that his pendente lite support payments exceeded what he would have been required to pay consistent with the final maintenance award"]. Supreme Court failed to give due consideration to their standard of living during the seven years before commencement of the action.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1496

CASE: Popowich v Korman

CITATION: Popowich v. Korman, 73 A.D.3d 515, 900 N.Y.S.2d 297 (1st Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: Distributive award of \$560,747, plus \$253,751 representing 15% of value of husbands brokerage account, and \$54,000 share of appreciation on townhouse.

COMMENT: Supreme Court erred in concluding that defendant was liable to plaintiff for repayment of certain loans made to California Direct Limited, a corporation he formed and partially owned (parties collectively owned 85% of CDL, with third parties owning the rest). Because it would avail plaintiff nothing if it were to regard the loans as loans to defendant, the court assumed without deciding that the loans were made to CDL. Supreme Court erred in determining that plaintiff's separate property included the right to repayment of the loans, as she "failed to demonstrate that the loans were not made with marital funds. Because the written guaranty required defendant to repay the loans, it was an agreement that makes "provision for the ownership, division or distribution of separate and marital property" (Domestic Relations Law 236[B][3]). The guaranty was executed by defendant during the marriage, but was not "acknowledged or proven in the manner required to entitle a deed to be recorded". Accordingly, the clear terms of the statute rendered it unenforceable (citing *Matisoff v. Dobi*, 90 N.Y.2d 127, 659 N.Y.S.2d 209, 681 N.E.2d 376 (1997)). Equitable principles do not permit the corporate veil to be pierced to hold defendant person-

ally responsible for repayment of the loans where CDL was not a party.

Number:1497

CASE: Post v Post

CITATION: Post v. Post, 68 A.D.3d 741, 890 N.Y.S.2d 581 (2d Dep't 2009)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: \$175,000, representing one-half of value of marital residence after awarding husband a separate property credit of \$140,000, \$43,000 as her share of his business, and 50% of money in various bank accounts after awarding her a separate property credit of \$60,000

COMMENT: In Coffey v. Coffey, 119 A.D.2d 620, 501 N.Y.S.2d 74 (2d Dep't 1986), the Court held that a husband's conveyance of his real property to himself and his wife, as tenants by the entirety, "evidenced an intention that the wife have an ownership interest in [the] assets". It concluded that the assets in issue, which had been placed in the parties' joint names, were properly characterized as marital property. The Court further recognized, that "there is no requirement that the distribution of each item of marital property be on an equal or 50-50 basis". Accordingly, it ruled in Coffey that the husband was entitled to receive a credit for the contribution of his separate property toward the creation of the marital assets. The court erred in awarding the plaintiff a portion of the defendant's business. The plaintiff, as the party seeking an interest in the business, submitted no proof of its value, and failed to identify the business assets. The Supreme

App. 1

LAW AND THE FAMILY NEW YORK

Court did not determine any assets of the business, but awarded the plaintiff \$43,000 based upon the defendant's income. The court's award was not supported by the record as there was no proof of business value or assets.

Number:1498

CASE: Richter v Richter

CITATION: Richter v. Richter, 77 A.D.3d 1470, 908 N.Y.S.2d 518 (4th Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court properly concluded that property located in Vermont was marital property. The funds from defendant's inheritances, which were used to purchase and improve the property, were commingled with marital funds in a joint account, and defendant failed to establish by clear and convincing evidence that the joint account was established solely for the purpose of convenience.

Number:1499

CASE: Ripka v Ripka

CITATION: Ripka v. Ripka, 77 A.D.3d 1384, 908 N.Y.S.2d 510
(4th Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court erred in determining that it would be “double counting” to award a portion of defendant’s businesses to plaintiff where, as here, defendant’s wages had not been capitalized in the valuation of those businesses (citing Grunfeld v. Grunfeld, 94 N.Y.2d 696, 709 N.Y.S.2d 486, 731 N.E.2d 142 (2000)). The court was not required to explain the reasons for its discretionary application of the \$80,000 cap pursuant to DRL 240(1-b)(c) in light of its finding that defendant’s pro rata share of child support was appropriate and plaintiff’s failure to contend that the amount of child support awarded was insufficient. The court was entitled to credit the valuation of defendant’s expert over that of plaintiff’s with respect to the marital residence, using the “as repaired” valuation of the marital residence.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1500

CASE: Rodriguez v Rodriguez

CITATION: Rodriguez v. Rodriguez, 70 A.D.3d 799, 894
N.Y.S.2d 147 (2d Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:69

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$4,000 per month non-durational maintenance

EXCL OCC: ordered sold

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court properly declined to consider plaintiff's eligibility for Social Security when setting maintenance award, as defendant failed to bring proof of her eligibility, or relevant laws pertaining to her eligibility, to the court's attention. It also erred in failing to apply an appropriate "coverture fraction" to the enhanced earning valuation to account for portion of husband's medical education and training completed before the marriage and impermissibly engaged in the "double counting" of income in valuing his medical practice, which was equitably distributed as marital property, and in awarding maintenance to the plaintiff.

Number:1501

CASE: Sember v Sember

CITATION: Sember v. Sember, 72 A.D.3d 1150, 898 N.Y.S.2d 332 (3d Dep't 2010)

YRS MAR: 18

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: (4 children)

MAINTENANCE: no maintenance

EXCL OCC:

HEALTH/MED INS:

LIFE INS: for children

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court did not err in awarding plaintiff exclusive possession. There is a well-established preference for allowing the custodial parent to remain in the marital residence with the minor children of the marriage unless that parent can obtain comparable housing at a lower cost or is financially incapable of maintaining the marital residence, or either spouse is in immediate need of his or her share of the sale proceeds. The annual, fixed carrying charges defendant was required to pay for the home where the children resided should have been subtracted from the parties' gross annual income before computing his share of child support. The obligation to pay for all reasonable maintenance and repairs of the home should not be open ended. The direction to pay for repairs and other maintenance should state a maximum monthly or yearly amount. Supreme Court's direction that defendant pay off the mortgage, the home equity loan and certain credit card debt was proper since the credit card debt accrued only after defendant abandoned the marital residence and left plaintiff unable to pay the normal living expenses of herself and the children. Defendant's income was at least four times greater than plaintiff's, he resided rent free with his paramour

despite testifying that he was paying rent to live elsewhere and he was leasing a luxury automobile for over \$700 per month.

Number:1502

CASE: Sharlow v Sharlow

CITATION: Sharlow v. Sharlow, 77 A.D.3d 1430, 908 N.Y.S.2d 287 (4th Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

44

CHILD SUPPORT: \$825.90 per month

MAINTENANCE: \$650 per month for 36 months

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$1,000

PROP DIST TO W:

COMMENT: Supreme Court did not abuse its discretion in imputing income of \$45,000 to defendant for the purposes of calculating his maintenance and child support obligations. The record established that defendant consistently underreported his income as a plumber, and the testimony of defendant and documentary evidence presented at trial concerning his income was less than credible. For example, defendant failed to list any income on his 2007 Statement of Net Worth, despite the fact that he earned wages and collected employment benefits during that year. The \$45,000 in imputed income was based upon the average salaries of plumbers as reported by the New York State Department of Labor, defendant's history of earnings, and the evidence that defendant worked "under the table." Defendant contended that the court erred in awarding counsel fees without conducting a hearing because the parties did not consent to a determination of that issue upon written submissions. That contention was not preserved for review inasmuch as defendant failed

to request a hearing with respect to the ability of plaintiff to pay her own counsel fees or the extent and value of the legal services rendered to her. In any event, defendant's contention lacked merit. Unlike the case relied upon by defendant (citing *Redgrave v. Redgrave*, 304 A.D.2d 1062, 1066–1067, 759 N.Y.S.2d 233 (3d Dep't 2003)), the court awarded counsel fees in this case after a trial in which the financial condition of the parties was amply explored and documented.

Number:1503

CASE: Spera v Spera

CITATION: Spera v. Spera, 71 A.D.3d 661, 898 N.Y.S.2d 548 (2d Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: When Supreme Court fails to set forth the statutory factors it considered, and it is not evident from the record that the court considered all the relevant factors, the Appellate Division Court may, in the interest of judicial economy, exercise its power to determine the equitable distribution of the parties' marital property where the record upon which the trial court would base such a determination is fully before it. Where, as a party fails to trace sources of money claimed to be separate property, a court may treat it as marital property.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1504

CASE: Wanker v Samitz

CITATION: Wanker v. Samitz, 67 A.D.3d 1135, 889 N.Y.S.2d 705 (3d Dep't 2009)

YRS MAR: 8

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:. Supreme Court did not err in denying the wife maintenance. While there was some general testimony at trial regarding plaintiff's financial situation, defendant did not present evidence of her own income, assets or her ability to be self-supporting. There was a similar lack of proof with respect to the other statutory factors, which precluded the Appellate Division from exercising its factual review power to determine the maintenance issue.

Number:1505

CASE: Wansi v Wansi

CITATION: Wansi v. Wansi, 71 A.D.3d 599, 897 N.Y.S.2d 96
(1st Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court properly rejected the Referee's recommendation that plaintiff be directed to continue to pay temporary maintenance to defendant until the three-family residence is sold. Although defendant was unemployed at the time of the trial, the court properly determined that, given his skills and experience, he was capable of working and earning a salary sufficient for his own support. Defendant failed to substantiate through expert testimony his claim that health conditions prevented him from working. The court properly modified the Referee's recommendation that defendant receive 30% of the value of the three-family residence deeded to plaintiff to reduce his award to 15% of the value. Defendant made little, if any, contribution to the marital asset, and the court was not required to divide the asset equally. The court properly accepted the Referee's recommendation that plaintiff not be required to pay defendant's attorney's fees. Although plaintiff's assets were greater than defendant's, the court properly considered defendant's failure to present evidence at the grounds trial to support his counterclaims for a divorce.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1506

CASE: Weintraub v Weintraub

CITATION: Weintraub v. Weintraub, 79 A.D.3d 856, 912
N.Y.S.2d 674 (2d Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$3,000 per month until the plaintiff retires

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: to wife

PROP DIST TO W:

COMMENT: The prohibition against double counting did not apply to the distribution of the parties' plumbing and fire sprinkler contracting company, which was a tangible, income-producing asset (see Keane v. Keane, 8 N.Y.3d 115, 119, 828 N.Y.S.2d 283, 861 N.E.2d 98 (2006)). Supreme Court properly determined that the plaintiff's contention that he overpaid pendente lite support in a prior action for a divorce which was dismissed, should have been raised and resolved in that action, and therefore, that he was not entitled to a credit for the purported overpayment. Defendant did not wastefully dissipate assets by paying the parties' daughter's graduate school expenses from marital funds (citing Raynor v. Raynor, 68 A.D.3d 835, 890 N.Y.S.2d 601 (2d Dep't 2009)).

Number:1507

CASE: Wesche v Wesche

CITATION:, Wesche v. Wesche, 77 A.D.3d 921, 909 N.Y.S.2d 764 (2d Dep't 2010)

YRS MAR: 20

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$188.91 per week (2 children)

MAINTENANCE: \$1,000 per month from the date of the commencement until November 1, 2010, \$750 per month until November 1, 2012, and \$500 per month until November 1, 2013.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$35,000 and 90% of the fee for the forensic accountant

PROP DIST TO W:

COMMENT: Supreme Court properly imputed an additional \$5,000 per year as income to the defendant for personal car expenses paid by his business, \$18,000 as annual income to the defendant based upon cash received from the business and used for personal expenses and \$19,500 for undistributed earnings of the business. Where a party's account is not believable, the court may impute a true or potential income higher than alleged. Here, the Supreme Court providently exercised its discretion in imputing income to the defendant based on, among other things, the evidence of his attempts to conceal his true income.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1508

CASE: Wyser-Pratte v Wyser-Pratte

CITATION: Wyser-Pratte v. Wyser-Pratte, 68 A.D.3d 624, 892 N.Y.S.2d 334 (1st Dep't 2009)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: 50% of the post-tax value of \$15,896,135 of deferred fees, which equaled \$7,948,067

COMMENT: Although fees, which totaled \$31,020,400, were earned by plaintiff's company for managing a hedge fund during 1996 through 2000, plaintiff caused the company to defer receipt of payment from the fund, and they remained unpaid. Upon their payment to the company, which was a Subchapter S corporation, the fees would be taxable to plaintiff as income. Plaintiff asserted he deferred their receipt to postpone paying personal income tax and also claimed that the deferral was intended to benefit the fund's performance by increasing the amount available for investment. Under the circumstances, where plaintiff chose not to realize profits from his business that were earned years before the commencement of this action, the deferred fees constituted marital property to be divided equally. Supreme Court correctly recognized that defendant's share of the deferred fees must be reduced by 48.77%, which the parties stipulated would be the applicable tax rate for the fees. These incentive fees were not intangible assets whose valuation depended on the occurrence of a contingent event; rather, they constitute earned income in a definite amount whose receipt will lead to certain tax liability. It was reasonable for Supreme Court to deny defendant's request for counsel fees since the equitable distribution would provide her with adequate funds to pay her attorney. The court's denial

of prejudgment interest under CPLR 5001 recognized that plaintiff had been paying pendente lite maintenance totaling more than \$3 million, and was within its discretion. While interest from the decision to the entry of final judgment is mandatory (CPLR 5002), the court continued the pendente lite award in lieu of interest.

Number:1509

CASE: Stahl v Stahl

CITATION: Stahl v. Stahl, 80 A.D.3d 932, 914 N.Y.S.2d 447 (3d Dep't 2011)

YRS MAR: 14

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court adopted the referee's recommendations and incorporated them into the judgment of divorce. The Appellate Division affirmed.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1510

CASE: Bayer v Bayer

CITATION: Bayer v. Bayer, 80 A.D.3d 492, 914 N.Y.S.2d 169
(1st Dep't 2011)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$10,000 per month lifetime maintenance

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court providently exercised its discretion by awarding plaintiff 35% of defendant's enhanced earnings capacity.

Number:1511

CASE: Cohn v Cohn

CITATION: Cohn v. Cohn, 80 A.D.3d 419, 913 N.Y.S.2d 653 (1st Dep't 2011)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Plaintiff was not entitled to a credit for monies paid by defendant during the marriage to satisfy spousal maintenance, child support and other legal obligations to his previous wife and their son, nor was she entitled to recoup spousal maintenance from a previous marriage that was lost by virtue of her marriage to defendant.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1512

CASE: Smith v Smith

CITATION: Smith v. Smith, 79 A.D.3d 1643, 913 N.Y.S.2d 475
(4th Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$900 per week for six years

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court abused its discretion in awarding maintenance to plaintiff of \$900 per week for 16 years. Proper to award exclusive occupancy of marital residence to plaintiff until youngest child turns 18, graduates high school or becomes emancipated. Courts now express a preference for allowing a custodial parent to remain in the marital residence until the youngest child becomes 18 unless such parent can obtain comparable housing at a lower cost or is financially incapable of maintaining the marital residence, or either spouse is in immediate need of his or her share of the sale proceeds.

Number:1513

CASE: Vanyo v Vanyo

CITATION: Vanyo v. Vanyo, 79 A.D.3d 1751, 914 N.Y.S.2d 492
(4th Dep't 2010)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court properly concluded that property purchased by the husband prior to the marriage remained his separate property. Although wife presented evidence establishing that she did contribute to the property, she failed to present the requisite evidence establishing that the property appreciated in value as a result of her contributions. In distributing debt, a court is required to consider the factors set forth in Domestic Relations Law 236(B)(5)(d) and to state the factors that influenced its decision in accordance with section 236(B)(5)(g).

Number:1514

CASE: Girgenti v Girgenti

CITATION: Girgenti v. Girgenti, 81 A.D.3d 886, 917 N.Y.S.2d
258 (2d Dep't 2011)

YRS MAR: 16

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$20,000 per month for seven years, then
\$10,000 per month for four years.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: 50% of proceeds from the sale of marital residence; \$158,223 in cash, retirement accounts, and proceeds from the life insurance policy. 50% of proceeds of the two parcels that were sold by husband, and 50% of appraised value of properties currently owned by the husband; 50% of the amount husband withdrew from home equity line of credit after the commencement of action; 50% of the amount that husband withdrew from his life insurance policy.

COMMENT: The award of maintenance was properly made taxable to the wife and tax deductible for the husband because no rationale exists “for a departure from the norm envisioned by current Internal Revenue Code provisions” (citing *Grumet v. Grumet*, 37 A.D.3d 534, 536, 829 N.Y.S.2d 682 (2d Dep’t 2007); see also *Markopoulos v. Markopoulos*, 274 A.D.2d 457, 459, 710 N.Y.S.2d 636 (2d Dep’t 2000)).

Number:1515

CASE: *Coleman v Coleman*

CITATION: *Coleman v. Coleman*, 82 A.D.3d 1635, 920 N.Y.S.2d 500 (4th Dep’t 2011)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: \$5500.00

COMMENT: A court may properly find a true or potential

income higher than that claimed where the party's account of his or her finances is not credible. No basis to disturb Referee's conclusion that plaintiff had been underreporting his income on his tax returns, especially in light of plaintiff's receipt of various items of personal property for which he "bartered" but he did not report on his tax returns.

Number:1516

CASE: Manning v Manning

CITATION: Manning v. Manning, 82 A.D.3d 1057, 920 N.Y.S.2d 126 (2d Dep't 2011)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court erred in directing the husband to transfer title to certain commercial real property to the plaintiff. The commercial property at issue was owned by a corporation over which the Supreme Court lacked jurisdiction.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1517

CASE: Flangos v Flangos

CITATION: Flangos v. Flangos, 82 A.D.3d 1037, 919 N.Y.S.2d 181 (2d Dep't 2011)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court lacked jurisdiction to impose obligations in judgment upon the nonparty-appellant insurance company. A court has no power to grant relief against an entity not named as a party and not properly summoned before the court (Riverside Capital Advisors, Inc. v. First Secured Capital Corp., 28 A.D.3d 457, 460, 814 N.Y.S.2d 646 (2d Dep't 2006).

Number:1518

CASE: Jendras v Jendras

CITATION: Jendras v. Jendras, 82 A.D.3d 1049, 918 N.Y.S.2d 882 (2d Dep't 2011)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$25,000 annually for a maximum period of four years

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Award of maintenance of \$50,000 annually for four years was excessive and reduced to \$25,000 annually for a maximum period of four years. The order should include a provision that the award of maintenance will terminate upon the death of either party or the plaintiff's remarriage, whichever shall occur sooner.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1519

CASE: Farina v Farina

CITATION: Farina v. Farina, 82 A.D.3d 1517, 919 N.Y.S.2d 595
(3d Dep't 2011)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$193 per week in child support (4 children)

MAINTENANCE: \$500 per month through August 2010 or the
date of her remarriage

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court erred in determining that wife's
child support obligation should increase upon the termination of
defendant's maintenance obligation to her (DRL 240[1-
b][b][5][vii][C]) Thus, it modified the judgment to provide that no
increase in child support occur by reason of the termination of
maintenance.

Number:1520

CASE: Mizrachi v Mizrachi

CITATION: Mizrachi v. Mizrachi, 82 A.D.3d 1178, 919 N.Y.S.2d 392 (2d Dep't 2011)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$157 per week commencing with entry of judgment

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:

Number:1521

CASE: Curry v McTeague

CITATION: Currie v. McTague, 83 A.D.3d 1184, 921 N.Y.S.2d 364 (3d Dep't 2011)

YRS MAR: 5

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Although inherited funds were defendant's separate property at the time of the gift, they were converted into marital property when they were transferred into a joint account. Such a transfer "raises a presumption that the funds are marital property to be disbursed among the parties according to the principles of equitable distribution." As the party seeking to overcome the presumption, defendant bore the burden "to establish, by clear and convincing proof, that [the] joint account was established solely for the purpose of convenience" and "without the intention of creating a beneficial interest." The clear and convincing evidence standard requires the party bearing the burden of proof to "adduce evidence that makes it highly probable that what he or she claims is what actually happened." The Appellate Division found the proof inadequate to satisfy this exacting standard.

Number:1522

CASE: Aloï v Simoni

CITATION: Aloï v. Simoni, 82 A.D.3d 683, 918 N.Y.S.2d 506 (2d Dep't 2011)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$81,103 to wife

PROP DIST TO W:

COMMENT: In exercising its discretionary power to award an attorney's fee, the court may consider "whether either party has

engaged in conduct or taken positions resulting in a delay of the proceedings or unnecessary litigation” Here, there was a significant economic disparity between the defendant and the plaintiff, and the complexity of the defendant’s business endeavors, as well as the defendant’s uncooperativeness with discovery and with sorting out his financial affairs, greatly contributed to the high cost of the litigation. Under these circumstances, it was appropriate to award the plaintiff one half of her total counsel fees.

Number:1523

CASE: Sadaghiani v Ghayoori

CITATION: Sadaghiani v. Ghayoori, 83 A.D.3d 1309, 923 N.Y.S.2d 236 (3d Dep’t 2011)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$650 per week in child support

MAINTENANCE: waived

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: 10% of the marital portion (\$527,667) of defendant’s enhanced earnings

COMMENT: A nontitled spouse seeking a portion of the enhanced earning potential attributable to a professional license or degree of a titled spouse is required to establish that a substantial contribution was made to the acquisition of the degree or license. Where, as here, only modest contributions are made by the nontitled spouse, and the attainment of the degree is more directly the result of the titled spouse’s own hard work, distribution of the enhanced earning capacity should be limited; Real property wife owned which was purchased either prior to the marriage or with funds from the sale of separate property remained her property as defendant offered no evidence that he contributed anything to either the original purchase of the prop-

erties or any increase in their value; Award of portion of Plaintiff's pension and deferred compensation plans ion earned during the marriage must be based on "considerations of fairness and the respective situations of the parties". As there was no evidence of any direct or indirect contribution by defendant to plaintiff's acquisition of either of these assets he was not entitled to any portion of them; Despite defendant's contention that he resigned his \$150,000 position in 2009 to avoid having his hospital privileges revoked, Supreme Court's determination to impute \$198,000 in income to him was supported by his most recent tax return.

Number:1524

CASE: Rich-Wolfe v Wolfe

CITATION: Rich-Wolfe v. Wolfe, 83 A.D.3d 1359, 922 N.Y.S.2d 593 (3d Dep't 2011)

YRS MAR: 17

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: half of the value of the businesses

COMMENT: Supreme Court is vested with broad discretion to set a valuation date anytime between the date of commencement and the date of trial. While not dispositive, the fact that the businesses constitute "active" assets weigh in favor of valuing them as of the date of commencement. The profitability of the parties' businesses had declined after the date of commencement due to deterioration of the broader economy, but defendant did not dispute that the construction industry is a cyclical one that is strongly affected by economic conditions. He also sold one of the businesses and some assets of another for a substantial sum of

money in 2008, and provided nothing to indicate that the remaining businesses would not recover as the economy improved. As such, Supreme Court properly selected the date of commencement as the valuation date. Supreme Court improperly calculated the basic child support obligation using the statutory percentage for two children beyond the older son's 21st birthday. As such, the judgment had to be modified to reduce the basic child support obligation "upon the date that [the older son] reaches the age of 21 or is otherwise emancipated," the actual sum of child support due to be adjusted further based upon the amount of durational maintenance paid.

Number:1525

CASE: Mosso v Mosso

CITATION: Mosso v. Mosso, 84 A.D.3d 757, 924 N.Y.S.2d 394 (2d Dep't 2011)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$1,160 per month in child support retroactive to the date of the commencement of the action.

MAINTENANCE:

EXCL OCC: to plaintiff until last of the parties' children reaches majority.

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: \$13,777 from certain bank accounts

COMMENT: Supreme Court did not improvidently exercise its discretion in it imputing an annual income to the defendant of \$52,000 for the purpose of calculating child support. However, Supreme Court's direction that the defendant pay both child support and half of the carrying charges on the marital residence resulted in an improper double shelter allowance. Supreme Court improperly awarded retroactive child support to date of the commencement of the action, since the plaintiff did not request child

support until she filed an amended complaint on August 27, 2007. Supreme Court's directive that the defendant pay "one-half of the mortgage and real estate charges of the marital residence and half of the cost of any repair to the home in excess of \$750.00" constituted an improper open-ended obligation. The direction to pay for repairs and other maintenance should state a maximum monthly or yearly amount. Expenses incurred prior to the commencement of a divorce action constitute marital debt and should be equally shared by the parties, unless evidence establishes a compelling reason why the defendant should bear the cost of repayment alone. Exclusive possession of the marital residence is usually granted to the spouse who has custody of the minor children of the marriage. The need of the custodial parent to occupy the marital residence is weighed against the financial need of the parties. The evidence at trial established that the parties were capable of maintaining the marital residence and that suitable comparable housing could not be obtained at a lesser cost than the cost to maintain the marital residence. Further, the defendant failed to establish an immediate need for his share of the proceeds of the sale of the marital residence.

Number:1526

CASE: Ungar v Savett

CITATION: Ungar v. Savett, 84 A.D.3d 1460, 922 N.Y.S.2d 601 (3d Dep't 2011)

YRS MAR: 5

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$2000.00 per month

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: one half of value of martial home

COMMENT: The child support award should have been made

retroactive to November 30, 2000, the date of plaintiff's specific demand therefor as set forth in her amended complaint, giving defendant credit for "any amount of temporary child support which has been paid".

Number:1527

CASE: Marcellus-Montrose v Montrose

CITATION: Marcellus-Montrose v. Montrose, 84 A.D.3d 752, 922 N.Y.S.2d 506 (2d Dep't 2011)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: Husband awarded 20% of the net equity in the marital residence, and 20% of a cash payment received by the plaintiff upon refinancing the marital residence.

COMMENT: Defendant's annual income was about 20% of the annual income of the plaintiff. Defendants claim that his nonmonetary contributions to the marriage justified a higher award was rejected. Equitable distribution does not mean equal distribution.

Number:1528

CASE: Scarpace v Scarpace

CITATION: Scarpace v. Scarpace, 84 A.D.3d 1537, 923 N.Y.S.2d 748 (3d Dep't 2011)

YRS MAR: 31

H AGE:

H INCOME:
\$104,000

W AGE:

W INCOME: \$32,000.

CHILD SUPPORT:

MAINTENANCE: nondurational maintenance award of \$200 per week

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: According to stipulation marital property was divided such that each party would retain various liquid assets valued at approximately \$580,000.

COMMENT: An award of lifetime maintenance was appropriate. While it was true that the parties enjoyed a modest standard of living during their marriage and that the wife not only could contribute toward her own support but also had received assets through equitable distribution, one of “the many specific considerations underlying an award of nondurational maintenance . . . is the present and potential future income of the parties”. Given the identified disparity in the parties’ respective incomes and the wife’s reduced earning potential, it found a nondurational maintenance award of \$200 per week to be warranted.

Number:1529

CASE: Huffman v Huffman

CITATION: Huffman v. Huffman, 84 A.D.3d 875, 923 N.Y.S.2d 583 (2d Dep't 2011)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: weekly child support of \$1,281.14.

MAINTENANCE: remitted for recalculation

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: plaintiff entitled to 30% share of the defendant's enhanced earning capacity, and \$90,793.02 in connection with certain bonus money.

COMMENT: While defendant presented some evidence that an MBA degree was not an actual prerequisite to his employment in various finance positions in the cable television industry, there was ample evidence, including expert testimony, to support the Supreme Court's finding that attainment of this degree made the defendant a more attractive candidate for a position in the financial sector of the cable television industry. Supreme Court properly concluded that the MBA degree which the defendant obtained during the course of his employment enhanced his earning capacity; Bonuses earned for work by a spouse during the marriage constitute marital property subject to equitable distribution, even if paid after commencement of the divorce action, and are distributed after taking income taxes into account; Supreme Court providently exercised its discretion in calculating child support against \$300,000 of the defendant's income based upon the standard of living that the parties' children would have enjoyed had the marriage not dissolved and upon the parties' disparate financial circumstances. the parties' disparate financial circumstances.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1530

CASE: Cooper v Cooper

CITATION: Cooper v. Cooper, 84 A.D.3d 854, 923 N.Y.S.2d 596
(2d Dep't 2011)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$1,192.31 per week, based upon a finding that the defendant's "CSSA income is \$250,000 per year." (2 Children)

MAINTENANCE: \$5,000 per month for four years

EXCL OCC:

HEALTH/MED INS:

LIFE INS: for benefit of plaintiff and children in value of \$500,000

COUNSEL FEE: \$50,000.

PROP DIST TO W:

COMMENT: In valuing the defendant's business the expert properly applied a lack of marketability discount of 25% to reflect the risk associated with the illiquidity of a close corporation whose shares cannot be freely traded; The award of interest at the statutory rate of 9% per annum, on the plaintiff's distributive awards, should the defendant elect to pay those awards in installments over a period of five years, was a provident exercise of discretion; Supreme Court properly determined that the wife plaintiff was responsible for one-half of the federal tax liability incurred when the defendant filed amended income tax returns but that she was not responsible for New York State tax liability, or any interest and penalties as a result of the filing of the amended tax returns since the defendant was responsible for the delay in reporting the income declared on those amended returns and, therefore, was properly required to pay all interest and penalties. Under the circumstances, including that fact that, with respect to New York State tax liability, the plaintiff was officially adjudicated an innocent spouse, Supreme Court providently

exercised its discretion in determining that the plaintiff was not responsible for any of the New York State tax liability.

Number:1531

CASE: DeGroat v DeGroat

CITATION: DeGroat v. DeGroat, 84 A.D.3d 1012, 924 N.Y.S.2d 425 (2d Dep't 2011)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: 50% of the value of the parties' nonretirement marital assets;, \$250,000, representing 50% of the sum he withdrew from a certain bank account immediately prior to or after the commencement of the divorce action, plus interest.

COMMENT: Supreme Court did not err in directing the defendant to pay to the plaintiff \$250,000, 50% of the sum he withdrew from a joint bank account immediately prior to or after the commencement of this action, as the record showed that this transaction was performed in contemplation of divorce (Domestic Relations Law 236[B][5][d][12]).

App. 1

LAW AND THE FAMILY NEW YORK

Number:1532

CASE: Charap v Willett

CITATION: Charap v. Willett, 84 A.D.3d 1000, 924 N.Y.S.2d 433
(2d Dep't 2011)

YRS MAR: 21

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$3,859.34 per month in child support, plus direct payments of the children's college expenses and other add-ons. (2 Children)

MAINTENANCE: durational maintenance of \$5,000 per month for two years.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court properly imputed income of \$200,000 to the wife for child support purposes; A purported agreement dated March 19, 2001, which provided that the former wife would not be required to work outside the family home during a divorce, was ambiguous as to duration and, in any event, was not enforceable (see Domestic Relations Law 236[B][3]); Supreme Court providently awarded the wife, an attorney, only 10% of the value of the former husband's law practice, as she made only indirect contributions to the husband's career and was employed as an attorney for most of the marriage; Supreme Court appropriately limited maintenance to \$5,000 per month for a period of two years where wife was an attorney who practiced law for almost 20 years and was capable of earning a significant salary; Supreme Court providently exercised its discretion in denying wife's application for counsel fees, as she received a large distributive award and had a substantial earning capacity.

Number:1533

CASE: Duffy v. Duffy, 84 A.D.3d 1151, 924 N.Y.S.2d 449 (2d Dep't 2011)

CITATION:

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$38,000 per year until the parties' oldest child attained the age of 18, graduated from high school, or ceased to play competitive hockey, whichever is earliest, then reduced to \$36,500 per year until the parties' youngest child attains the age of 18, graduates from high school, or ceases to play competitive hockey, whichever is earliest.

App. 1

LAW AND THE FAMILY NEW YORK

MAINTENANCE: \$400 per week for five years

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$35,000 to wife

PROP DIST TO W: \$4,375 from the parties' bank account as part of the equitable distribution of marital property.

COMMENT:

Number:1534

CASE: Keil v Keil

CITATION: Keil v. Keil, 85 A.D.3d 1233, 926 N.Y.S.2d 173 (3d Dep't 2011)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: nondurational maintenance of \$1,000 per month

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: denied in light of distributive award and maintenance award

PROP DIST TO W: 50% of the farm was marital property, of which plaintiff was entitled to one half; 50 % (\$218,500) of value of Keil's Pools;

COMMENT: Supreme Court improperly reduced value of Pool business by 20% due to the fact that the business was heavily tied to defendant who was 67 years old at the time of the trial and had health concerns, concluding that his ability to continue to run the business was "uncertain", given that plaintiff's expert had already reduced its value based on defendant's key role in

the business, and additionally factored in the downturn in the economy after the date of commencement; Neither plaintiff nor defendant presented any expert testimony to demonstrate the value of the marital residence at the start or at the end of the marriage. The value of improvements to the marital residence, cost approximately \$75,000 during the marriage. Supreme Court did not abuse its discretion in awarding plaintiff \$57,500 or the greater share of the \$75,000 in improvements, given the limited record evidence before it. As no proof was offered by either side as to the value of the furnishings, the Appellate Division could not say that Supreme Court abused its discretion in distributing the bulk of the marital furnishings to defendant in conjunction with its award to him of the marital residence.

Number:1535

CASE: Pankoff v Pankoff

CITATION: Pankoff v. Pankoff, 84 A.D.3d 690, 924 N.Y.S.2d 341 (1st Dep't 2011)

YRS MAR:

H AGE:

H INCOME: W AGE:
\$525,000

W INCOME: \$93,400

CHILD SUPPORT: \$6,625 per month commencing October 1, 2010, and 65% of unreimbursed health, medical, dental, child care, tutoring and school costs to be recalculated upon emancipation of the elder child.

MAINTENANCE: \$9,000 per month for seven years

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: 10% of the value of plaintiff's enhanced earning capacity;

COMMENT: Supreme Court should have utilized defendant's 2009 income as well as the maintenance award in its calculation of the combined parental income and of each party's share of both

the basic child support obligations and unreimbursed expenses; Supreme Courts finding that plaintiff dissipated \$300,000 of marital assets, rested largely on the court's assessment of the credibility of the parties. Plaintiff's financial misconduct, in recklessly engaging in conduct leading to his forced resignation and triggering an obligation to repay a forgivable mortgage, was distinct from his marital fault.

Number:1536

CASE: DiFiore v. DiFiore

CITATION: DiFiore v. DiFiore, 87 A.D.3d 971, 933 N.Y.S.2d 39 (2d Dep't 2011)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: remitted for determination

MAINTENANCE: \$3,000 per month for 4 years from the date of the judgment

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Wife was not entitled to a reduction in the value of her retirement account in the amount of a loan taken by her against her account after the action was commenced, as she failed to demonstrate at trial that the loan funds were used to support the marital household rather than to pay for her personal expenses. Liability for the payment of marital debt need not be equally apportioned but may be distributed in accordance with the equitable distribution factors set forth in Domestic Relations Law 236(B)(5)(d).

Number:1537

CASE: Moyal v Moyal

CITATION: Moyal v. Moyal, 85 A.D.3d 614, 927 N.Y.S.2d 19 (1st Dep't 2011)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$5,000 for 15 years

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$65,000 in counsel fees in addition to a prior award of \$25,000

PROP DIST TO W:

COMMENT: The wife was entitled to post-decision interest on the distributive award, which is mandatory; The marital apartment was properly valued based on the factual testimony of an experienced broker with knowledge of prices in the same building (citing Semple School for Girls v. Boyland, 308 N.Y. 382, 388, 126 N.E.2d 294 (1955)); The wife was properly assessed 50% of the parties' tax liability for underreporting income. She clearly benefitted from the use of the funds and the circumstances of this case were unlike those involving a failure to file returns with an innocent spouse not on notice of any wrongdoing. Supreme Court properly rejected the husband's claim that he was entitled to a credit against the award because the monthly pendente lite maintenance exceeded the amount ultimately awarded, but properly agreed with the husband's claim that he was entitled to such a credit for payments he made during the pendency of the action relating to the marital real estate (i.e., mortgage, maintenance, and real estate taxes) and for tax counsel and accountant fees. Special Referee properly awarded wife substantially less

than the total amount of counsel fee requested (\$161,972.50 where wife “[p]lainly . . . has more liquid assets than the husband,” that numerous motions by the wife were “soundly defeated” and that “certain litigation strategy by the wife’s counsel was nonproductive.” The wife’s counsel failed to comply with 22 NYCRR 1400.2, which entitles the client “to receive a written, itemized bill on a regular basis, at least every 60 days.” Counsel provided a “mere four bills” over a 26- month period of the representation which “lumped together multiple legal services rendered and [a] total amount for . . . all of those services.” One such bill lumped together dozens of separate services counsel provided and stated the total number of hours (136) for all the services.

Number:1538

CASE: Henneberry v Borstein

CITATION: Henneberry v. Borstein, 87 A.D.3d 451, 929 N.Y.S.2d 205 (1st Dep’t 2011)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Wife’s debt to an investment company was marital property subject to equitable distribution. Plaintiff did not act in such a way as to place the debt outside the parties’ “economic partnership”.

Number:1539

CASE: Cabral v Cabral

CITATION: Cabral v. Cabral, 87 A.D.3d 605, 929 N.Y.S.2d 155
(2d Dep't 2011)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: The Appellate Division reversed and remitted **in** Cabral v. Cabral, 35 A.D.3d 779, 826 N.Y.S.2d 443 (2d Dep't 2006). Upon the subsequent appeal the Appellate Division reversed and remitted again. Under the particular circumstances of this case, and in the absence of any evidence demonstrating that the plaintiff had the ability to earn a salary approaching his previous income, the Supreme Court improperly imputed annual income to him of \$85,000 as part of its calculation of child support.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1540

CASE: Myers v Myers

CITATION: Myers v. Myers, 87 A.D.3d 1393, 930 N.Y.S.2d 124
(4th Dep't 2011)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court failed to provide any reason for the amount and duration of maintenance awarded, but merely set forth the ages, health and incomes of the parties. Based on the foregoing, the Appellate Division was unable to determine whether the amount and duration of the maintenance awarded “ ‘reflects an appropriate balancing of [the wife’s] needs and [the husband’s] ability to pay’ ”. It vacated the amount awarded for maintenance, and remitted the matter to Supreme Court to determine the amount and duration of maintenance. Supreme Court erred in awarding the wife retroactive maintenance without providing the husband with a credit for the carrying costs he paid on the marital home during the pendency of the action.

Number:1541

CASE: Marcera v Marcera

CITATION: Marcera v. Marcera, 87 A.D.3d 1276, 929 N.Y.S.2d 908 (4th Dep't 2011)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: remitted

MAINTENANCE: remitted

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Defendant lost his employment approximately four months prior to the commencement of the divorce action and was subsequently incarcerated during the pendency thereof. Supreme Court erred in directing defendant to pay the minimum amount of child support, as well as in awarding plaintiff no maintenance, based solely on defendant's unemployment. To the extent that defendant's financial hardship was the result of his own wrongful conduct, he was not entitled to a reduction in his obligation to pay child support, nor was he entitled to evade his obligation to pay maintenance.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1542

CASE: Felix v Felix

CITATION: Felix v. Felix, 87 A.D.3d 1106, 930 N.Y.S.2d 230 (2d Dep't 2011), leave to appeal denied, 29 N.Y.3d 918, 64 N.Y.S.3d 668, 86 N.E.3d 560 (2017)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: Defendant to contribute towards the cost of parochial school tuition for the parties' youngest child.

MAINTENANCE: \$1,200 per month for six years

EXCL OCC:

HEALTH/MED INS:

LIFE INS: \$300,000 as security for plaintiff's interest in husbands retirement benefits.

COUNSEL FEE:

PROP DIST TO W: 50% of the marital share of defendants retirement benefits

COMMENT: The plaintiff was not seeking an immediate payment of her share of the retirement benefits, so a valuation of them as a lump sum was unnecessary: Premature for Supreme Court to direct the defendant to contribute towards the college costs of the two youngest children because, at the time of trial, those two children were less than 16 and 13 years old, and no evidence was adduced concerning their academic ability, interest in attending college, or choice of college.

Number:1543

CASE: Auriemmo v Auriemmo

CITATION: Auriemmo v. Auriemmo, 87 A.D.3d 1090, 930 N.Y.S.2d 221 (2d Dep't 2011)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$150 in monthly child support

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: 45% of the defendant's pension plans, and \$55,656 from his deferred salary plan

COMMENT: The Appellate Division stated: Generally, "we do not consider an issue on a subsequent appeal which was raised or could have been raised in an earlier appeal which was dismissed for lack of prosecution, although the Court has the inherent jurisdiction to do so". Plaintiff's contention that the Supreme Court erred in failing to direct the defendant to file a Qualified Domestic Relations Order (QDRO) was without merit, as it is the responsibility of the party seeking the QDRO to submit the QDRO to the court on notice.

Number:1544

CASE: Siskind v Siskind

CITATION: Siskind v. Siskind, 89 A.D.3d 832, 933 N.Y.S.2d 60 (2d Dep't 2011)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$34,000 per year and directed that certain

funds retained by the defendant's attorneys in escrow be transferred to custodial accounts to pay for educational expenses for the parties' two college-age children, and that the defendant be responsible for payment of 90% of the college expenses of these two children not covered by the funds in the custodial accounts

MAINTENANCE: \$65,000 per year in maintenance until the earliest of her attainment of her 65th birthday, her remarriage, or her death.

EXCL OCC:

HEALTH/MED INS:

LIFE INS: \$3,000,000 to secure the child support and maintenance payments

COUNSEL FEE: \$340,000

PROP DIST TO W: \$216,109.50

COMMENT: There was insufficient evidence to justify Supreme Court's direction that maintenance be nontaxable to the plaintiff, which is "a departure from the norm envisioned by current Internal Revenue Code provisions" (*Grumet v. Grumet*, 37 A.D.3d 534, 536, 829 N.Y.S.2d 682 (2d Dep't 2007)): Supreme Court did not improvidently exercise its discretion in awarding an attorney's fee of \$340,000 to the plaintiff in view of the relative financial circumstances of the parties, their ability to pay, the nature and extent of the services rendered, the complexity of the defendant's business endeavors, and the fact that the defendant litigated the issue of custody and visitation of the parties' daughter until it was settled by stipulation during the trial.

Number:1545

CASE: Swett v Swett

CITATION: Swett v. Swett, 89 A.D.3d 1560, 934 N.Y.S.2d 280
(4th Dep't 2011),

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: The court erred in failing to award plaintiff a credit for paying off the mortgage on the marital residence with her separate property. It is well settled that a spouse is entitled to a credit for his or her contribution of separate property toward the purchase of the marital residence. Money used to pay off the mortgage on the marital residence shortly after the parties' marriage was defendant's separate property, and thus defendant was entitled to a credit in that amount prior to the equitable distribution of the marital residence. Supreme Court did not abuse its discretion in awarding counsel fees to plaintiff in light of the "dilatatory or obstructionist conduct" by defendant.

App. 1

Number:1546

CASE: Salvato v Salvato,

CITATION: Salvato v. Salvato, 89 A.D.3d 1509, 933 N.Y.S.2d 791 (4th Dep't 2011)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$1,000 a month for four years.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: In determining a parent's income for purposes of child support, the court shall deduct from income any maintenance paid to a spouse "provided the order or agreement provides for a specific adjustment . . . in the amount of child support payable upon the termination of . . . maintenance to such spouse" (Domestic Relations Law 240 [1-b][b][5][vii][C]). Here, there was no provision for an adjustment of child support upon the termination of maintenance, and thus there was no basis for the court to deduct maintenance from defendant's income in determining the amount of child support; Although defendant testified at trial that his current earnings were less than his earnings from the previous year, the court did not abuse its discretion in using his income from the previous year to calculate child support; "It is well settled that a spouse is entitled to a credit for his or her contribution of separate property toward the purchase of the marital residence".

Number:1547

CASE: Roberto v Roberto

CITATION: Roberto v. Roberto, 90 A.D.3d 1373, 936 N.Y.S.2d 337 (3d Dep't 2011)

YRS MAR: 28

H AGE: 49

H INCOME:

W AGE: 47

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$500 weekly until the marital residence was sold and \$100 weekly thereafter until May 31, 2015.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$10,000.

PROP DIST TO W: marital residence and the Florida condominium to be sold and proceeds divided equally; one half of certain IRA accounts and other liquid assets

COMMENT: Loss of business from Home Depot was a result of the husband's abandonment of window installation business from December 2008 to April 2009, and his subsequent exclusion of the wife from its operation, which constituted a wasteful dissipation of marital assets; Supreme Court properly imputed income to the husband of \$80,000 per year; In awarding wife durational maintenance, Supreme Court properly considered the duration of the marriage, the parties' ages, their predivorce standard of living, the disparity between their respective earning capacities, the wife's ability to become self-sufficient through the utilization of her insurance license and her experience in the window installation business, the husband's wasteful dissipation of marital assets, and the parties' income and property, including the award of equitable distribution.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1548

CASE: Caracciolo v Chodkowski

CITATION: Caracciolo v. Chodkowski, 90 A.D.3d 801, 937
N.Y.S.2d 60 (2d Dep't 2011)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: 50% of the value of the marital property,
including the appreciation, during the marriage, of the value of
the Roslyn home and the Montauk property

COMMENT: Supreme Court providently exercised its discretion in making the distributive award, rather than giving each party credit for separate expenditures used to finance the improvements to the properties. The parties' choice of how to spend funds during the course of the marriage should ordinarily be respected, and the courts should not second-guess the economic decisions made during the course of a marriage, but rather should equitably distribute the assets and obligations remaining once the relationship is at an end.

Number:1549

CASE: Medley v Medley

CITATION: Medley v. Medley, 34 Misc. 3d 1208(A), 943
N.Y.S.2d 792 (Sup 2011)

YRS MAR: 10

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: Wifes application deniedl

PROP DIST TO W: Defendant to pay Plaintiff \$11,734.23 for
furnishings in the residence.

COMMENT: The parties began their marriage with an agree-
ment that neither party would pursue legal action to claim the
other party's assets. For the duration of the marriage, the parties
lived in a manner consistent with the terms of that the document
they wrote and signed. Although the parties resided in the same
residence, the parties continued to conduct themselves in a man-
ner consistent with their agreement and in a manner inconsis-
tent with the typical economic partnership and, therefore, equita-
ble distribution of the property was not warranted.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1550

CASE: Marshall v Marshall,

CITATION: Marshall v. Marshall, 91 A.D.3d 610, 937 N.Y.S.2d 253 (2d Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: When an asset is acquired during the marriage, the party's own testimony that the source of the funds used to acquire it are premarital or separate property, without more, is insufficient to overcome the presumption that the property is marital property.

Number:1551

CASE: Saia v Saia

CITATION: Saia v. Saia, 91 A.D.3d 1110, 937 N.Y.S.2d 352 (3d Dep't 2012)

YRS MAR: 9

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: denied

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Plaintiff had a secure source and sufficient amount of income upon which to live and to basically continue the marital standard of living. The marriage was not long, there were no children, plaintiff owned separate real property in Europe, and he was covered by health insurance. The determination not to award maintenance was well within Supreme Court's discretion.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1552

CASE: Shapiro v Shapiro

CITATION: Shapiro v. Shapiro, 91 A.D.3d 1094, 937 N.Y.S.2d 368 (3d Dep't 2012)

YRS MAR: 23

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: 2 children

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: half the marital portion of plaintiff's pension

COMMENT: Where 2000 action for divorce dismissed and second action commenced in 2008 the value of the husbands pension at the time of the earlier unsuccessful action cannot control, but the circumstances surrounding the earlier action can be considered in the overall equitable distribution of marital property. Supreme Court did not abuse its discretion in awarding defendant. Where Plaintiff acknowledged that he had agreed to pay part of the children's college education costs, there was no indication that he intended to limit his payments to the children's first three years in college, and proof established that funds had been previously set up to assist in such costs. it was not error for Supreme Court to direct plaintiff to pay a portion of children's college costs until they reach the age of 22.

Number:1553

CASE: O'Connor v O'Connor

CITATION: O'Connor v. O'Connor, 91 A.D.3d 1107, 937 N.Y.S.2d 355 (3d Dep't 2012)

YRS MAR: 24

H AGE:

H INCOME:

W AGE:

W INCOME:

\$78,854

\$18,000

CHILD SUPPORT:

MAINTENANCE: \$1,000 per month until she was eligible for Social Security retirement benefits in January 2022, subject to earlier termination upon various conditions, including if she remarries or the commencement of her receipt of her share of defendant's pension.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$7,500 in judgment of divorce; \$900 in counsel fees for making motion for appellate counsel fees and \$9,000 for appellate counsel fees.

PROP DIST TO W:

COMMENT: Maintenance is appropriate where the marriage is of long duration, the recipient spouse has been out of the work force for a number of years, has sacrificed her or his own career development or has made substantial noneconomic contributions to the household or to the career of the payor. The fact that a wife has the ability to be self-supporting by some standard of living.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1554

CASE: Maggiore v Maggiore

CITATION: Maggiore v. Maggiore, 91 A.D.3d 1096, 937 N.Y.S.2d 366 (3d Dep't 2012)

YRS MAR: 12

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$182 per week (2 Children).

MAINTENANCE: \$250 per week for six years

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: marital residence (which was characterized by Supreme Court as essentially worthless in light of foreclosure and other judgments), her salon business, and a distributive award of \$14,341.71.

COMMENT: Defendant wastefully dissipated marital assets. During the divorce actions, defendant failed to make mortgage payments resulting in foreclosure on a primary marital asset, and he used money from his retirement account for personal reasons rather than to prevent foreclosure. He permitted vehicles purchased during the marriage to be repossessed and a judgment to be entered for unpaid marital debt. Defendant repeatedly violated court orders resulting in a substantial reduction in marital assets.

Number:1555

CASE: Scher v Scher

CITATION: Scher v. Scher, 91 A.D.3d 842, 938 N.Y.S.2d 317 (2d Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: denied

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: denied

PROP DIST TO W: 20% of appreciated value of Husband's separate property business (\$229,200) and \$170,000 for the appreciated value in the marital residence from the date of marriage; an award of 10% of the value of the parties financial accounts, except a 529 college savings plan account.

COMMENT: Plaintiff made direct or indirect contributions to the appreciation of husbands separate property business, which resulted in the increase in the value of the company, by serving as the company bookkeeper for approximately seven years. Defendant's active participation in expanding the business was aided and facilitated by the plaintiff's indirect contributions as homemaker and occasional caretaker of one of his children from a prior marriage. In addition, plaintiff was entitled to an equitable share of the appreciated value of the marital residence over the course of the marriage, notwithstanding that the residence was the separate property of the defendant until March 2005, when the property was transferred to the plaintiff and defendant as tenants by the entirety. Expenses incurred prior to the commencement of an action for a divorce are marital debt to be equally shared by the parties upon an offer of proof that they represent marital expenses. Where a party has paid the other party's share of what proves to be marital debt, reimbursement is required.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1556

CASE: Nidostiko v Nidositko

CITATION: Nidositko v. Nidositko, 92 A.D.3d 653, 938 N.Y.S.2d 569 (2d Dep't 2012)

YRS MAR: 5

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Where marital funds are used to pay the separate liabilities of one of the parties, the other party may be entitled to a credit. The defendant husband was properly awarded an equitable share of the value of the marital residence (31.6% of the portion of the property's value subject to equitable distribution) and an equitable share (5%) of the value of the plaintiff's enhanced earnings due to her attainment of a college degree and professional license (registered nurse) during the marriage.

Number:1557

CASE: Rooney v Rooney

CITATION: Rooney v. Rooney, 92 A.D.3d 1294, 938 N.Y.S.2d 724 (4th Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$2,500 per month for approximately 11 years.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Appellate Divison rejected defendant's contention in that, in calculating child support, the Referee erred in failing to impute income to plaintiff based on cash gifts that she received from her mother (DRL 240 [1-b][b][5][iv][D]). The evidence supported the Referee's finding that the cash gifts were sporadic in nature, rather than regular and expected (see *Rostropovich v. Guerrand-Hermes*, 18 A.D.3d 211, 794 N.Y.S.2d 42 (1st Dep't 2005)).

Number:1558

CASE: Ashmore v Ashmore

CITATION: Ashmore v. Ashmore, 92 A.D.3d 817, 939 N.Y.S.2d 504 (2d Dep't 2012)

YRS MAR: 10

H AGE:30

H INCOME:

W AGE: 29

W INCOME:

CHILD SUPPORT: \$2,583 per month (3 Children)

MAINTENANCE: \$125 per week for five years

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$30,000

PROP DIST TO W: directed the father to pay the mother \$6,914, representing her share of the couple's 2007 tax refund, directed him to pay \$116,500 of the \$118,000 balance on the couple's student loans, directed him to be responsible for 90% of the remaining marital debt, directed him to pay one half of the cost of updated court-ordered forensic evaluations.

App. 1

LAW AND THE FAMILY NEW YORK

COMMENT: Supreme Court properly imputed to husband an income of \$126,000 per year based on his employment records and properly based its child support and maintenance calculations on this imputation.

Number:1559

CASE: Jones v Jones

CITATION: Jones v. Jones, 92 A.D.3d 845, 939 N.Y.S.2d 510 (2d Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$500 per week for six years

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$20,000

PROP DIST TO W: 40% (\$290,000) of the appreciation in value of the former marital residence during the parties' marriage.

COMMENT: Supreme Court erred in determining that maintenance should commence on the first Friday following the plaintiff vacating the former marital residence. An award of maintenance is effective as of the date of application therefor. Thus, Supreme Court should have directed that defendant's maintenance obligation be effective as of the date of the plaintiff's application for maintenance.

Number:1560

CASE: Halse v Halse

CITATION: Halse v. Halse, 93 A.D.3d 1003, 940 N.Y.S.2d 353
(3d Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$3,000 per month for two years and then
\$2,500 per month for three years.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: While the evidence did indicate that defendant had not maintained the residence in optimal condition, there was also evidence that the real estate market was overburdened with properties in the residence's price range and that market conditions, in general, had declined. As such, there was no definitive proof that the approximately \$200,000 decline in the market value of the house was due solely to defendant's actions. Although defendant filed a statement of net worth with Supreme Court in 2008, it was not proper for the court to take judicial notice of the factual material contained in it.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1561

CASE: Lago v Adrion

CITATION: Lago v. Adrion, 93 A.D.3d 697, 940 N.Y.S.2d 287 (2d Dep't 2012)

YRS MAR:

11 H AGE:

H INCOME:\$475,000 W AGE:

W INCOME: \$0

CHILD SUPPORT: Wife to \$2,041 per month in basic child support (custody to husband)

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court properly imputed \$80,000 in annual income to the plaintiff based upon her education and experience (She had a masters' degree in architecture from Harvard University and performed some doctoral work at the Massachusetts Institute of Technology), and the testimony of the defendant's expert. Imputation of income may be based upon the testimony of an expert regarding a party's ability to earn an income. Supreme Court's imputation of income was supported by unrefuted expert testimony and testimony regarding the plaintiff's education and experience. The provision of the judgment of divorce which stated that, "should the Defendant lose his law license by suspension, revocation, or otherwise, and be unable to sustain his current level of income, such event shall constitute a sufficient change of circumstances warranting application for downward modification" of child support, was improper. The Defendant was properly directed to pay the entire tax liability of \$268,000. A spouse is generally obligated to pay his or her 50% share of income tax liability during the marriage if the spouse benefits from use of the funds or the delay in paying the tax liability. However, if one spouse makes the financial decisions regarding the income tax return, and earned virtually 100% of

the parties' income during the period, the court, in its discretion, may direct that spouse to pay the entire tax liability.

Number:1562

CASE: Rabinovich v Shevchenko

CITATION: Rabinovich v. Shevchenko, 93 A.D.3d 774, 941 N.Y.S.2d 173 (2d Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$5,000 per month non-durational.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Taking into consideration all the relevant factors, including the fact that the defendant was suffering from a medical condition and was unable, for the foreseeable future, to be self-supporting, the award of lifetime maintenance to her of \$5,000 per month was a provident exercise of discretion.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1563

CASE: Gallagher v Gallagher

CITATION: Gallagher v. Gallagher, 93 A.D.3d 1311, 941
N.Y.S.2d 392 (4th Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$40,000

PROP DIST TO W: distributive award to the wife of \$543,227 and 45% of the value of the farm. Husband awarded 15% of the value of the wife's enhanced earnings from teaching based on her attainment of a master's degree.

COMMENT: A court may consider "any transfer or encumbrance made in contemplation of a matrimonial action without fair consideration" when making its equitable distribution determination. Supreme Court properly determined that the value of the real property that was titled in the son's name constituted marital property inasmuch as that property was purchased using farm income. The record supported the court's determination that the purchases of property titled in the name of the son were part of the husband's scheme to divest the wife of her interest in the farm. Supreme Court did not abuse its discretion in denying the husband's motion to retain and offer testimony from different expert witnesses than those he had listed in his expert disclosure. The court properly determined that the husband failed to demonstrate "good cause" for the late disclosure, which was not made until the middle of the trial, and that permitting the late disclosure would be prejudicial to the wife (CPLR 3101[d][1][I]). Supreme Court properly considered the financial circumstances of both parties and the existence of any dilatory or obstructionist conduct in awarding counsel fees. Although the

wife had the financial ability to pay for her own counsel fees, the husband had engaged in some obstructionist conduct during the trial.

Number:1564

CASE: Harrington v Harrington

CITATION: Harrington v. Harrington, 93 A.D.3d 1092, 941 N.Y.S.2d 320 (3d Dep't 2012)

YRS MAR: 17

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: for 15 years

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$10,000

PROP DIST TO W:

COMMENT: Proper to award 15 years maintenance to permanently disabled wife. Supreme Court properly imputed \$30,000 income to husband per year. Despite his claims regarding his limited income, he paid, in addition to other expenses, \$559 per month in child support and \$2,000 each month to his girlfriend to live at her residence and for bookkeeping services she provided his contracting business. He admitted using the business checking account for personal expenses and paying for numerous vacations he had taken with his girlfriend, plus \$950 a month in rent for a residence in which he did not reside. The wife did not waive her right to challenge the husband's claims regarding his annual income simply because she had previously signed joint tax returns that listed his annual income as \$30,000.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1565

CASE: Ropiecki v Ropiecki

CITATION: Ropiecki v. Ropiecki, 94 A.D.3d 734, 941 N.Y.S.2d 650 (2d Dep't 2012)

YRS MAR: 27

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC: Title to wife

HEALTH/MED INS: Defendant to pay 90% of the plaintiff's unreimbursed health care expenses only for as long as he is obligated to pay maintenance.

LIFE INS: \$1,200,000 until the plaintiff reaches the age of 65, and \$600,000 thereafter for as long as the defendant was obligated to pay maintenance.

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Defendant was not entitled to further credit for voluntary payments, as the expenses from his net worth statement included payments made on behalf of himself and his emancipated children, payments for which the wife was not responsible. Supreme Court providently exercised its discretion in awarding the plaintiff 100% of the equity in the marital home and properly required the defendant to pay the remaining mortgage debt before transferring title to the plaintiff where parties were married for 27 years, and plaintiff's limited earning potential was a result of her staying home and taking care of the parties' four children, including their daughter, who suffered from Retts Syndrome and was severely disabled. Bonus plan was adopted by defendant's employer prior to commencement as an incentive for certain employees, including the defendant, to meet certain goals and to ensure the successful sale of the company in the future. Accordingly, the bonus was compensation for future services that were not performed prior to the commencement of the action and, thus, was separate property not subject to equita-

ble distribution. Supreme Court improvidently directed the defendant to pay 90% of the plaintiff's unreimbursed health care expenses, as such open-ended obligations have been consistently disfavored by the Court. It held that Supreme Court should have directed him to pay plaintiff's unreimbursed health care expenses only for as long as he is obligated to pay maintenance.

Number:1566

CASE: Safi v Safi

CITATION: Safi v. Safi, 94 A.D.3d 737, 941 N.Y.S.2d 661 (2d Dep't 2012)

YRS MAR: 25

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$1,500 per month in maintenance from July 3, 2010, until the marital home was sold, and thereafter \$3,000 per month for a period of 10 years

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: 50% of the marital property.

COMMENT: In this 25-year marriage, where the plaintiff worked at the defendant's business and contributed directly and indirectly to the marriage as a spouse and mother, the Supreme Court providently exercised its discretion in awarding the plaintiff 50% of the marital property.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1567

CASE: Shea v Shea

CITATION: Esposito-Shea v. Shea, 94 A.D.3d 1215, 941
N.Y.S.2d 793 (3d Dep't 2012)

YRS MAR: 15

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$1,200 a month (2 Children)

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: Husband awarded \$12,600, 10% of the value placed on wife's law degree.

COMMENT: Supreme Court properly concluded that any reliable analysis of the wife's potential earning capacity from the law degree she attained during the marriage had to assume that if she had not attended law school, she would have sought employment commensurate with her education and Bachelor's degree. The decision to adopt the opinion of the wife's expert as to the value of her law degree was supported by credible evidence. The wife's expert focused on her actual employment history, as well as statistical data on what an individual with a Bachelor's degree could have earned in the area where she lived during the relevant time period, and concluded that, without a law degree, the wife would have had an annual earning capacity of \$44,500. The husband's expert arrived at a significantly lower figure primarily because of the emphasis he placed on the wife's actual employment history in the period prior to obtaining her law degree. He assumed in his analysis that the wife would not have entered the work force until 2006, or after she was admitted to practice law, and that she would have continued to work as a clerk throughout this entire period, even though before attending law school she had obtained a Bachelor's degree and had been accepted into a doctoral program at Indiana University. He concluded, given this

history and based on these assumptions, that the wife's potential earning capacity, even with a Bachelor's degree, would not have exceeded \$22,827 per year.

Number:1568

CASE: D'Ambra v D'Ambra

CITATION: D'Ambra v. D'Ambra, 94 A.D.3d 1532, 943 N.Y.S.2d 698 (4th Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: 15% share of the husband's business.

COMMENT: Supreme Court properly awarded one dependency exemption to each party while allowing the husband to purchase in any given year the wife's exemption for the amount of tax savings the wife would have realized were she to claim the child on her tax return. According to the uncontradicted testimony of the husband's tax expert, the wife would derive no benefit from the dependency exemption due to her limited income, which consisted solely of disability benefits. Nothing in the language of the federal tax law limits the discretion of a state court to allocate the dependency exemption, and the court therefore could have awarded both exemptions to the husband. Supreme Court erred in determining that the wife shall not share in any early retirement benefits or enhanced pension payments, if any, that the husband may receive in the future. Vested rights in a noncontributory pension plan are marital property to the extent that they were acquired between the date of the marriage and the commencement of a matrimonial action, even though the rights are unmaturing at the time the action is begun.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1569

CASE: Warner v Warner

CITATION: Warner v. Warner, 94 A.D.3d 1524, 942 N.Y.S.2d 858 (4th Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court erred in providing in judgment of divorce that all future "issues relative to income tax deductions and exemptions concerning the children" shall be referred to Family Court. The jurisdiction of Family Court is generally limited "to matters pertaining to child support and custody", and tax deductions or exemptions are not an element of support. Although Family Court Act § 115(b) provides that Family Court has jurisdiction "over applications for support, maintenance, a distribution of marital property and custody in matrimonial actions when referred to the family court by the supreme court", marital property is defined as that property which is acquired during the marriage, and the parties' entitlement to tax deductions and exemptions concerning the children will affect only property acquired after the marriage.

Number:1570

CASE: Lurie v Lurie

CITATION: Lurie v. Lurie, 94 A.D.3d 1376, 943 N.Y.S.2d 261
(3d Dep't 2012)

YRS MAR: 10

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Plaintiff was entitled to a credit in the distribution of the equity in the marital residence for the amounts he contributed to the closing costs and down payment for its purchase, as well as the amount of the mortgage loan balance forgiven by his mother.

Plaintiff contributed separate funds toward the acquisition of the marital residence and did not relinquish or forgo his claim to such separate contribution.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1571

CASE: Noto v Noto.

CITATION: Noto v. Noto, 94 A.D.3d 1069, 943 N.Y.S.2d 183 (2d Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$1,000 per month for 36 months.

EXCL OCC:

HEALTH/MED INS: husband to pay for the cost of defendant's health insurance for a 36 month period or until she qualified for Medicare, remarries, or receives health insurance through her employment, or upon his death, whichever comes first.

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court improvidently exercised its discretion in directing the plaintiff to pay for the defendant's health insurance until she qualifies for Medicare, remarries, or receives health insurance through her employment, or upon the plaintiff's death, whichever comes first. In light of the award of limited maintenance, the court should have determined that the plaintiff's obligation to pay for the defendant's health insurance should also run for a 36-month period.

Number:1572

CASE: Campfield v Campfield

CITATION: Campfield v. Campfield, 95 A.D.3d 1429, 944 N.Y.S.2d 339 (3d Dep't 2012)

YRS MAR: 23

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Wife transmuted her separate property into marital property by virtue of the deed giving an undivided one-half interest to plaintiff.

Number:1573

CASE: Chaudry v Chaudry

CITATION: Chaudry v. Chaudry, 95 A.D.3d 1058, 945 N.Y.S.2d 110 (2d Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$1,583.33 per month for a duration of 4 years commencing June 2010, and \$1,235 per month for a duration of 10 years commencing June 2014.

App. 1

LAW AND THE FAMILY NEW YORK

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$47,905.

PROP DIST TO W:

COMMENT: In light of the significant disparity in the parties' incomes and the amount of time spent at trial tracing the funds that the defendant admittedly withdrew from marital accounts without the plaintiff's knowledge, an award of one half of the plaintiff's counsel fees was appropriate.

Number:1574

CASE: Linda D. v Theo C.

CITATION: Linda D. v. Theo C., 96 A.D.3d 432, 945 N.Y.S.2d 687 (1st Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$1,200 per month

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Trial court improvidently exercised its discretion in awarding plaintiff \$100,000 for attorneys' fees and \$12,850 for expert fees. The parties' financial situations were not so disparate as to render this award appropriate.

Number:1575

CASE: Spielfogel v. Spielfogel

CITATION: Spielfogel v. Spielfogel, 96 A.D.3d 443, 947 N.Y.S.2d 56 (1st Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: lifetime maintenance in the amount of \$5,000 per month, to commence in 2018.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: There was no basis for disturbing the maintenance award, including the award of lifetime maintenance in the amount of \$5,000 per month, to commence in 2018.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1576

CASE: Quarty v Quarty

CITATION: Quarty v. Quarty, 96 A.D.3d 1274, 948 N.Y.S.2d 130
(3d Dep't 2012)

YRS MAR: 9

H AGE:

H INCOME:

W AGE:

W INCOME:

57

\$10,920

34

\$92,000 plus \$400 per month social security for child

CHILD SUPPORT:

MAINTENANCE: to husband in sum of \$1,100 per month for 30 months.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: husband awarded 25% of the value of the wife's enhanced earning capacity resulting in a net distributive award to the husband in the sum of \$155,372, to be paid at the rate of \$392.35 per month for 396 months.

COMMENT: At the time of their marriage, the husband was "legally blind". Supreme Court improperly valued the wife's Nursing license in calculation her topline income. Neither expert used that amount in calculating the value of such asset, nor was there any expert testimony that it would be appropriate to do so or, even if appropriate, specifically how it would affect the present value of the wife's license. Moreover, enhanced earnings are generally valued as of the date of commencement of a matrimonial action. It was not necessary to deduct the wife's maintenance payments to the husband from this award in order to avoid impermissible "double dipping" on the enhanced earnings derived from the wife's professional license because it concluded that the

amount of maintenance awarded was reasonable based upon the wife's prelicense income of \$46,000, combined with the \$22,000 difference between the \$70,000 topline earnings used in its determination of the value of the license and the \$92,000 annual income to which plaintiff testified at trial. Thus, the amount of enhanced earnings used to calculate the value of the wife's license (the difference between the \$46,000 baseline income and the \$70,000 topline income) hadnot been considered in the maintenance award.

Number:1577

CASE: Cusumano v. Cusumano

CITATION: Cusumano v. Cusumano, 96 A.D.3d 988, 947 N.Y.S.2d 175 (2d Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$1,371.15 per week

MAINTENANCE: \$6,000 per month for a period of seven years.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$107,500, and valuation expert fee of \$56,000.

PROP DIST TO W:

COMMENT: Supreme Court properly imputed a yearly income of \$400,000 to defendant. It was reflective of his "past income" and "demonstrated earning potential."

App. 1

LAW AND THE FAMILY NEW YORK

Number:1578

CASE: Islami v Islami

CITATION: Haagen-Islami v. Islami, 96 A.D.3d 1004, 946 N.Y.S.2d 889 (2d Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: denied

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Considering the distributive award, the parties' respective financial circumstances, their present and future earning capacities, and the fact that they had been living separate lives for at least three years prior to the commencement of the divorce action, the determination that the plaintiff was not entitled to maintenance payments was appropriate.

Number:1579

CASE: Leavitt v Leavitt

CITATION: Levitt v. Levitt, 97 A.D.3d 543, 948 N.Y.S.2d 108 (2d Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$7,500 per month until the date of the sale

of the marital residence and \$15,000 per month for a period of 10 years thereafter.

HEALTH/MED INS: defendant to maintain a life insurance policy to secure his maintenance obligation.

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Life insurance policy defendant was required to maintain to secure his maintenance obligation may be a declining term policy that would permit him to reduce the amount of coverage by the amount of support actually paid. Supreme Court should have charged the defendant with marital waste in the sum of \$73,500, representing the amount of additional income tax the plaintiff was required to pay based upon the defendant's failure, as of the time of trial, to agree to file joint income tax returns for 2009.

Number:1580

CASE: Harris v Harris

CITATION: Harris v. Harris, 97 A.D.3d 534, 948 N.Y.S.2d 343 (2d Dep't 2012)

YRS MAR: 20

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: to be recalculated plus 65% of certain educational expenses of the children

MAINTENANCE: \$1,000 per month for two years after entry of the judgment of divorce, and \$500 per month in the third year following entry of the judgment of divorce.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: \$15,000

COMMENT: Supreme Court improperly included the children's

social security benefits in computing the plaintiff's income for child support purposes. Supreme Court's directive that the plaintiff pay child support pursuant to the CSSA and the mortgage on the marital residence for the same period of time erroneously granted the children a double shelter allowance. Supreme Court improperly deducted maintenance from the plaintiff's income in calculating child support notwithstanding that the plaintiff's obligation to pay maintenance only commenced on January 11, 2011, when the judgment of divorce was entered. The provisions of the judgment directing the plaintiff to pay 65% of certain educational expenses of the children was a provident exercise of discretion. However, Supreme Court should have directed that, in the event that either party dies or the defendant remarries during the period when the plaintiff was obligated to pay maintenance, that obligation would terminate.

Number:1581

CASE: DiNoto v DiNoto.

CITATION: Dinoto v. Dinoto, 97 A.D.3d 529, 947 N.Y.S.2d 605 (2d Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Inasmuch as the court concluded that the plaintiff was responsible for causing damage to the former marital residence, the court providently exercised its discretion by awarding her only one-third of the net proceeds from any sale of marital real property located in Whitestone, Queens, rather than one-half of the net proceeds from the sale. The plaintiff's claim that the

court should have awarded her an attorney's fee was without merit, since she never made a formal application for such an award, and submitted no supporting documentation regarding the legal services rendered.

Number:1582

CASE: Biagiotti v. Biagiotti, 97 A.D.3d 941, 948 N.Y.S.2d 445 (3d Dep't 2012),

CITATION:

YRS MAR: H

AGE:

H INCOME:

W AGE:

W INCOME:

54

48

\$40,000

CHILD SUPPORT:

MAINTENANCE: \$250 per month for 15 months and \$125 per month for three years thereafter or until she remarries, whichever comes first

EXCL OCC: exclusive use of the marital residence until August 2012.

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Plaintiff was entitled to a credit for half of the marital funds used to reduce defendant's separate indebtedness. If marital assets are used to reduce one party's separate indebtedness, the other spouse can recoup his or her equitable share of the expended marital funds. The burden of proving the value of a pension rests on the party seeking an equitable share of that pension. Because plaintiff did not meet her burden, the court did not err in declining to distribute any portion of defendant's IRAs to plaintiff. The maintenance award was not an abuse of discre-

tion because this was not a marriage of long duration, the parties did not have any children in common, they were in relatively good health and employed, and they enjoyed an upper middle class standard of living. Plaintiff had been occupying the marital residence, which was defendant's separate property, while defendant had been paying the carrying costs. She was also attending college and planed to become a certified public accountant in the near future, which would enhance her earning potential.

Number:1583

CASE: Davidman v Davidman

CITATION: Davidman v. Davidman, 97 A.D.3d 627, 948 N.Y.S.2d 639 (2d Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: The marital residence was separate property. Since plaintiff failed to carry her burden establishing that the marital residence appreciated in value during the parties' marriage and, if so, that such appreciation was due in part to her efforts it was error for the Supreme Court to award the plaintiff a 50% share in the appreciation of the marital residence. Moreover, it was error for the Supreme Court to direct that this separate property be sold. Since the Supreme Court did not direct the plaintiff to pay the carrying charges for the marital residence, including the mortgage, during the pendency of her exclusive occupancy of it, the defendant became obligated to do so, while also paying child support. Supreme Court did not award the defendant

a credit against his child support obligation for any portion of the carrying charges he paid during the plaintiff's exclusive occupancy of the marital residence. As a result, the defendant was making double shelter payments. Therefore, the matter had to be remitted to the Supreme Court for a recalculation of the defendant's child support obligation, with the defendant receiving a credit for any double shelter payments he previously made.

Number:1584

CASE: Franco v Franco

CITATION: Franco v. Franco, 97 A.D.3d 785, 949 N.Y.S.2d 146 (2d Dep't 2012)

YRS MAR:41

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: \$15,000

COMMENT: There is no requirement that the assets be split evenly. The wife's distributive award was valued at \$3,032,226 and consisted largely of the liquid assets, and the husband's award was valued at \$2,700,000, consisting largely of rental income-producing property, prior to various adjustments. \$15,000 counsel fees to the plaintiff, including appellate counsel fees to defend against the defendant's appeal and counsel fees to enforce the defendant's obligations under the divorce judgment, were a provident exercise of discretion.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1585

CASE: Morales v. Inzerra

CITATION: Morales v. Inzerra, 98 A.D.3d 484, 949 N.Y.S.2d 433
(2d Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$325 per week for a period of 10 years

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$10,000

PROP DIST TO W:

COMMENT: Supreme Court providently exercised its discretion in requiring the plaintiff to pay the wife maintenance where she was disabled as a result of multiple sclerosis, lived in an assisted-living facility and Social Security disability benefits were her only independent source of income. Supreme Court properly determined that the defendant was unable to support herself, and would not likely become self-supporting in the future. Supreme Court properly imputed \$52,000 in annual income to plaintiff based on his pre-retirement earnings and experience. Although the plaintiff claimed that he retired because of a purported disability, he failed to offer medical evidence of his disability and his employment was uninterrupted in the years leading up to the commencement of the action. Moreover, he retired shortly after he was ordered to pay pendente lite maintenance to the defendant.

Number:1586

CASE: Khan v. Ahmed

CITATION: Khan v. Ahmed, 98 A.D.3d 471, 949 N.Y.S.2d 428
(2d Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$350 per week until March 15, 2014.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$20,000

PROP DIST TO W:

COMMENT: Supreme Court erred in awarding maintenance retroactive to the date of commencement of the action, as the record reflected that the plaintiff did not make an application for maintenance until she filed a proposed statement of distribution. SWhere marital funds are used to pay off the separate debt of the titled spouse on separate property, the nontitled spouse may be entitled to a credit. The reduction of indebtedness on separate property is not considered appreciation in the value of the separate property; rather, the credit is to remedy the inequity created by the expenditure of marital funds to pay off separate liabilities. The marital funds used to pay off those liabilities are added back into marital property, and the nontitled spouse is awarded his or her equitable share of those recouped marital funds.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1587

CASE: Baumgardner v. Baumgardner

CITATION: Baumgardner v. Baumgardner, 98 A.D.3d 929, 951 N.Y.S.2d 64 (2d Dep't 2012)

YRS MAR:11

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: the plaintiff would pay to the defendant child support for the parties' youngest son of \$1,063.21 per month, and the defendant would pay to the plaintiff child support for the parties' oldest son of \$282.62 per month.

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: each party would be awarded sole ownership of his or her respective retirement accounts.

COMMENT: The Court found no merit to the plaintiff's contention that the Supreme Court erred in taking judicial notice of the defendant's net worth statements which had been filed with the court pursuant to section 236 of the Domestic Relations Law and 22 NYCRR 202.16(b). The court properly determined that the plaintiff has access to, and received, financial support from his family, and providently exercised its discretion in imputing income to the plaintiff of \$75,000 per year.

Number:1588

CASE: Iarocci v. Iarocci

CITATION: Iarocci v. Iarocci, 98 A.D.3d 999, 951 N.Y.S.2d 176 (2d Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$4,050 in monthly child support, directed

the defendant to pay his pro rata share of the children's nanny and private school tuition expenses and his pro rata share of the children's extracurricular activities expenses up to \$3,000 per year.

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: distributive award of \$567,000.

COMMENT: Supreme Court incorrectly awarded the plaintiff a credit of \$24,175, representing reimbursement of capital gains taxes paid by her as a result of the defendant's sale of property in Lake George. The tax liability was incurred during the parties' marriage from the sale of marital property and, therefore, constituted the parties' marital debt. Supreme Court improvidently exercised its discretion in awarding the plaintiff a money judgment for her "lump sum" distributive award in view of the nonliquid nature of the defendant's assets, which he would otherwise have to sell to satisfy the plaintiff's distributive award. Where the parties' children had been attending private school during the parties' marriage, despite the defendant's purported objection to them doing so, Supreme Court providently exercised its discretion in directing the defendant to pay his pro rata share of the children's private school tuition.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1589

CASE: Pelcher v. Czebatol

CITATION: Pelcher v. Czebatol, 98 A.D.3d 1258, 951 N.Y.S.2d 288 (4th Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: A spouse is entitled to a credit for his or her contribution of separate property toward the purchase of the marital residence, including any contributions that are directly traceable to separate property even where, as here, the parties held joint title to the marital residence.

Number:1590

CASE: Greisman v Greisman

CITATION: Greisman v. Greisman, 98 A.D.3d 1079, 951
N.Y.S.2d 219 (2d Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC: to wife until the parties' youngest child reaches the
age of 18 or was otherwise emancipated

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: \$10,665.60 representing one-third of the value of the plaintiff's enhanced earning capacity derived from his certification as a certified public accountant, \$31,663.50 representing one-third of the value of plaintiff's accounting practice, and \$204,701.01 representing one-third of the value of the plaintiff's interest in an investment property.

COMMENT: Exclusive possession of the marital residence is usually granted to the spouse who has custody of the minor children. The need of the custodial parent to occupy the marital residence is weighed against the financial need of the parties. Supreme Court providently exercised its discretion in imputing \$93,570 income to the plaintiff based on the parties' tax return filed just prior to the commencement of this action and evidence of the plaintiff's attempts to conceal his true income. The neutral expert properly calculated the value of the plaintiff's enhanced earning capacity by comparing the expected earnings of a similarly situated individual with the plaintiff's actual normalized earnings as a certified public accountant and applying a present value discount.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1591

CASE: Williams v Williams

CITATION: Williams v. Williams, 99 A.D.3d 1094, 952 N.Y.S.2d 662 (3d Dep't 2012)

YRS MAR:28

H AGE:

H INCOME:

W AGE:

W INCOME:

\$120,000

\$15,000

CHILD SUPPORT:

MAINTENANCE: \$2,500 monthly for six years.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: approximately \$17,000 for the wife's counsel fees.

PROP DIST TO W: 50% of the marital portion of husband's pension and retirement plans.

COMMENT: The husband had a Master's degree, worked full time throughout the parties' 29-year marriage and, at the time of trial, was employed as an engineer with an annual salary of approximately \$120,000. Supreme Court properly awarded maintenance based on its finding that it was improbable that the wife, who was 57 years old at the time of trial, would ever acquire job skills permitting her to return to the comfortable upper-middle-class lifestyle that the parties enjoyed during the marriage. The fact that she may become self-supporting by some standard of living does not mean that she is self-supporting in the context of the marital standard of living.

Number:1592

CASE: Johnson v. Johnson

CITATION: Johnson v. Johnson, 99 A.D.3d 765, 952 N.Y.S.2d 243 (2d Dep't 2012)

YRS MAR:

H AGE:

W H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: 50% of the appreciation of the marital residence, and 50% of the rental income generated by the marital residence totaling \$17,401.68.

COMMENT: The appreciation in the value of the separate property marital residence was attributable to the joint efforts of the parties. Thus, the defendant was entitled to share equitably in that increased value from the date of the parties' marriage.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1593

CASE: Maldonado v Maldonado

CITATION: Maldonado v. Maldonado, 100 A.D.3d 448, 955
N.Y.S.2d 2 (1st Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$15,000

PROP DIST TO W: 35% of the appreciation in value of plaintiff's Manhattan apartment.

COMMENT: Defendant properly awarded a share of the appreciation of separate property apartment where she played a role in the upkeep and maintenance of the apartment, contributed financially to the payments of the mortgage and maintenance, and contributed indirectly by acting as homemaker and mother. Supreme Court properly imputed tip income to plaintiff since the evidence established that plaintiff was earning more than he reported on his tax returns. Plaintiff had not reported any tip income except in 2007 and the evidence showed that his cash expenditures greatly exceeded the sum of his cash withdrawals. The award of counsel fees to defendant was based upon a proper consideration of the financial circumstances of both parties and the fact that Plaintiff prolonged the trial by providing false and misleading information to his financial expert, with the result being that the expert's testimony had no value.

Number:1594

CASE: Weinheimer v. Weinheimer

CITATION: Weinheimer v. Weinheimer, 100 A.D.3d 1565, 954
N.Y.S.2d 796 (4th Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$725 per month

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court did not abuse its discretion in determining the income of defendant husband for purposes of awarding maintenance by averaging defendant's income over a period of years. Supreme Court did not err in denying the wife's request for an award of child support. During the pendency of this action, the parties resided together in the marital residence. The parties' only unemancipated child was a 17-year-old daughter who attended community college and did not live at home. The daughter worked part-time while attending college, and her tuition was paid by student loans. Although the daughter returned home for holidays, she remained in her apartment during the summer and worked full-time. Plaintiff did not allege, much less establish, that the daughter's reasonable needs were not being met. The evidence demonstrated that, with a little financial assistance from both parents, all of the daughter's bills were being paid while she attended college and lived on her own.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1595

CASE: Shah v Shah

CITATION: Shah v. Shah, 100 A.D.3d 734, 954 N.Y.S.2d 129 (2d Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$4,000 per month for a period of four years.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: 30% of husbands interest in Hi-Tech Trading (USA), Inc.

COMMENT: equitably distributing the parties' assets, the Supreme Court properly considered the husbands interest in a business, known as Hi-Tech Trading (USA), Inc. which was started by the plaintiff and a partner during the marriage, and was purportedly transferred by the plaintiff to his partner shortly before commencement of this action for no consideration, There was no showing or finding that funds he allegedly invested in High Tech were his separate property, and, thus, his interest in Hi-Tech was properly equitably distributed. The plaintiff's contention that Supreme Court engaged in "double counting" with respect to the award of maintenance was without merit, as the plaintiff's businesses constituted tangible, income-producing assets, rather than intangible assets.

Number:1596

CASE: Formica v. Formica

CITATION: Formica v. Formica, 101 A.D.3d 805, 957 N.Y.S.2d 149 (2d Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: An expert is qualified to proffer an opinion if he or she possesses the requisite skill, training, education, knowledge, or experience to render a reliable opinion. The competence of an expert in a particular subject may derive from long observation and real world experience, and is not dependent upon formal training or attainment of an academic degree in the subject. The Supreme Court properly awarded the defendant an attorney's fee of \$5,000, based on the relative financial circumstances of the parties, the relative merits of their positions at trial, and its finding that the appellant's actions prolonged the litigation.

Number:1597

CASE: Murray v Murray

CITATION: Murray v. Murray, 101 A.D.3d 1320, 956 N.Y.S.2d 252 (3d Dep't 2012)

YRS MAR: 21

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: Child support and 75% of any unreimbursed

medical expenses plus \$2,500 each semester toward college costs for the unemancipated children.

MAINTENANCE: to wife

EXCL OCC: to wife until the emancipation of the parties' youngest child.

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: While a credit is often given for the value of the former separate property, such credit is not strictly mandated since the property is no longer separate, but is part of the total marital property. There is no single template that directs how courts are to distribute a marital asset that was acquired, in part or in whole, with separate property funds. It is inappropriate to provide for future increases or decreases in maintenance "[e]xcept when a judgment provides for an imminent and measurable change" (*Majauskas v. Majauskas*, 61 N.Y.2d 481, 494, 474 N.Y.S.2d 699, 463 N.E.2d 15, 6 Employee Benefits Cas. (BNA) 1053 (1984)). Thus, Supreme Court erred in delaying the commencement of the maintenance obligation until the child support payments terminated. Supreme Court did not err in basing the child support on the parties' incomes in 2004, rather than as revealed in the most recent tax returns. The husband bore the burden of establishing a substantial change in circumstances requiring downward modification of the prior Family Court support order, and emancipation was the only change in circumstances that he alleged. Supreme Court did not err in deferring the sale of the marital residence until the emancipation of the parties' youngest child. The wife was the custodial parent, the husband did not establish that he was in immediate need of his share of the proceeds of such a sale, and the husband was best able to find an alternate residence and the wife was financially able to manage the costs of the marital residence, having done so without assistance from the husband throughout the pendency of the divorce.

Number:1598

CASE: Burnett v Burnett

CITATION: Burnett v. Burnett, 101 A.D.3d 1417, 956 N.Y.S.2d 655 (3d Dep't 2012)

YRS MAR: 36

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC: title to wife

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: Title to marital residence, remaining balance of the investment account, household furnishings and farm equipment. The husband received his checking account, plumbing business and equipment, and a motor boat and trailer.

COMMENT: Lack of any evidence upon which personal injury settlement funds might have been allocated as between the husband's personal injury claim and the wife's consortium claim, and evidence that the parties wished to treat the proceeds as joint assets of the marriage by depositing them into a joint investment account set up to pay out a monthly sum for the parties' household account for payment of their living expenses, created a presumption that it became marital property, which the husband failed to rebut by clear and convincing evidence. Evidence of the husband's wasteful dissipation of marital assets was overwhelming. Records from the investment account and from several casinos as well as his own admissions, revealed that he engaged in extensive gambling over a period of several years, incurring significant debts and depleting the substantial assets that should otherwise have been sufficient to support the parties at their previous economic level and lifestyle indefinitely. Though the husband's gambling may be considered an addiction, this did not excuse his gross economic misconduct in wasting the marital assets.

App. 1

LAW AND THE FAMILY NEW YORK

Number:1599

CASE: Elias v. Elias

CITATION: Elias v. Elias, 101 A.D.3d 938, 957 N.Y.S.2d 231 (2d Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: 25% of value of defendant's interest in Ben Elias Industries Corp.

COMMENT: Although in a marriage of long duration, where both parties have made significant contributions to the marriage, a division of marital assets should be made as equal as possible there is no requirement that the distribution of each item of marital property be made on an equal basis. The 25% share took into account the plaintiff's minimal direct and indirect involvement in the defendant's company, while not ignoring her contributions as the primary caretaker for the parties children, which allowed the defendant to focus on his business. In determining child support the court improperly deducted the distributive award from the defendant's income, a deduction that is not recognized in the CSSA.

Number:1600

CASE: Perry v Perry

CITATION: Perry v. Perry, 101 A.D.3d 1762, 957 N.Y.S.2d 798
(4th Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$1000 a month for 10 years

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Considering the uncontroverted testimony of plaintiff concerning her disability, her receipt of Social Security disability benefits, the disparity in the parties' incomes, plaintiff's health, her lack of work history during the marriage, the distribution of marital debts and assets, and defendant's waiver of child support from plaintiff, the Appellate Division increased the amount and duration of the maintenance award.

* * *

Number:1601

CASE: Sotnik v. Zavilyansky

CITATION: Sotnik v. Zavilyansky, 101 A.D.3d 1102, 956
N.Y.S.2d 514 (2d Dep't 2012)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$75,000 to wife

PROP DIST TO W:

COMMENT: Supreme Court should have awarded the plaintiff exclusive occupancy of the former marital residence only until the parties' son attained the age of 18 years — not 21 years. Supreme Court should have directed that child support obligation be decreased by the amount of any college room and board expenses defendant incurs while the parties' child attends college. Supreme Court should have allowed the defendant to secure his child support obligations by maintaining a declining term policy of life insurance rather than requiring him to maintain the existing policy coverage of \$1,400,000. Given the defendant's earning history from his private medical corporations, his current employment as a medical doctor, and his other income from his associations with Kingsbrook Medical Center, Supreme Court providently exercised its discretion in imputing an annual income to the defendant of \$135,000 for the purpose of calculating his child support obligation where the defendant's contribution to plaintiff's attainment of her medical license was de minimis, Supreme Court providently determined that defendant was not entitled to any distributive share of the plaintiff's enhanced earning capacity from her medical license.

* * *

Number:1602

CASE: Heyman v Heyman

CITATION: Heymann v. Heymann, 102 A.D.3d 832, 958
N.Y.S.2d 448 (2d Dep't 2013)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: wife's request denied

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: wife's request denied

PROP DIST TO W:

COMMENT: Upon the commencement of divorce action, plaintiff could use marital property to satisfy joint familial obligations such as educational expenses of the children incurred during the pendency of the action. However, he cannot use marital property to pay his sole obligations pursuant to a pendente lite order which directed him to pay child support and an attorney's fee. His use of such funds to make those payments was improper.

* * *

Number:1603

CASE: Knope v Knope

CITATION: Knope v. Knope, 103 A.D.3d 1256, 959 N.Y.S.2d 784
(4th Dep't 2013)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: to wife for six years

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Record did not support award of nondurational support to wife. that a person seeking maintenance may submit "general testimony" regarding a medical condition where the effect of that condition on the person's "ability to work is readily apparent without the necessity of expert testimony" (Battinelli v. Battinelli, 174 A.D.2d 503, 504, 571 N.Y.S.2d 280 (1st Dep't 1991). Where that is not apparent plaintiff is required to submit medical records or expert testimony. A decision of the Social Security Administration may serve as some evidence of a disability, but it is not prima facie evidence thereof (Matter of Frenke v. Frenke, 267 A.D.2d 238, 699 N.Y.S.2d 313 (2d Dep't 1999)).

* * *

Number:1604

CASE: Vertucci v Vertucci

CITATION: Vertucci v. Vertucci, 103 A.D.3d 999, 962 N.Y.S.2d 382 (3d Dep't 2013)

YRS MAR: 19

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$350 per week (1 child)

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$25,000 to wife.

PROP DIST TO W:

COMMENT:

* * *

Number:1605

CASE: Spathis v Spathis

CITATION: Spathis v. Spathis, 103 A.D.3d 599, 960 N.Y.S.2d 384 (1st Dep't 2013)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: wife's application denied

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: wife's application denied

PROP DIST TO W:

COMMENT: Plaintiff's payments for his mother's care and for the mortgage on his mother's house were not a waste of marital assets. When marital funds are used to pay off separate liabilities or to increase the value of separate property, "a court has the authority to effectively recoup [such] marital funds and to distribute such funds to the parties in accordance with Domestic Relations Law § 236(B)(5)(c) when equity warrants such recoupment. Where insufficient information to value his stock options at the time of the marriage or present value of the shares husband purchased, it is necessary and appropriate to resolve the issue by ordering an in-kind distribution of the shares. Proper to deny maintenance where defendant was awarded pendente lite maintenance for longer than the length of this short marriage. Proper to deny defendant counsel fees where both parties had engaged in dilatory tactics.

* * *

Number:1606

CASE: Bloom v. Petryk-Bloom

CITATION: Bloom v. Petryk-Bloom, 104 A.D.3d 632, 960 N.Y.S.2d 475 (2d Dep't 2013)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$500 per month for a period of 24 months

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: The mere fact that a party has the ability to

become self-supporting in no way obviates the need for the trial court to consider the predivorce standard of living in determining the amount and duration of maintenance.

* * *

Number:1607

CASE: Scully v Scully

CITATION: Scully v. Scully, 104 A.D.3d 1137, 961 N.Y.S.2d 646 (4th Dep't 2013)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$30,160 per and to pay his pro rata share of 80% of the children's private school tuition.

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court erred in failing to direct defendant to obtain a life insurance policy to secure his obligation for child support and his pro rata share of the children's private school tuition.

App. 1

LAW AND THE FAMILY NEW YORK

* * *

Number:1608

CASE: Reale v Reale

CITATION: Reale v. Reale, 104 A.D.3d 747, 961 N.Y.S.2d 484
(2d Dep't 2013)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$415 per week

MAINTENANCE:

EXCL OCC: ordered sold

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court properly imputed to the plaintiff
an annual income of \$127,000.

* * *

Number:1609

CASE: Benabu v. Rienzo

CITATION: Benabu v. Rienzo, 104 A.D.3d 714, 961 N.Y.S.2d 482
(2d Dep't 2013)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: plaintiff awarded \$22,222.00 as her share of the defendant's ownership interest in a real estate holding company that owned a property located at 279 Malcolm X Boulevard in Brooklyn, \$332,222.00 as her share of the defendant's ownership interest in a real estate holding company that owned a property located on West 40th Street in Manhattan, and ownership of the marital home.

COMMENT: Supreme Court providently exercised its discretion in awarding the plaintiff one-third of the appreciation of the defendant's business interests in the real estate holding companies from the date of the marriage.

App. 1

LAW AND THE FAMILY NEW YORK

* * *

Number:1610

CASE: Zloof v. Zloof

CITATION: Zloof v. Zloof, 104 A.D.3d 845, 961 N.Y.S.2d 510 (2d Dep't 2013)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$3,396 per month

MAINTENANCE: \$2,250 per month for a period of five years commencing

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: In light of the Supreme Court's finding, which was supported by the record, that the testimony proffered by the defendant and his brother lacked credibility, the court properly imputed income to the defendant.

* * *

Number:1611

CASE: Mimran v. Mimran

CITATION: Mimran v. Mimran, 104 A.D.3d 590, 961 N.Y.S.2d 437 (1st Dep't 2013)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: \$7,406,421.50 distributive award

COMMENT: Annual income of \$650,000 per year imputed to defendant for purposes of calculating child support.

* * *

Number:1612

CASE: Nolan v Nolan

CITATION: Nolan v. Nolan, 104 A.D.3d 1102, 962 N.Y.S.2d 453
(3d Dep't 2013)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Abuse of discretion to determine that wife was liable for half of the husband's tax liabilities in 2007 and 2008 where he presented no evidence that the wife was obligated to file joint tax returns in either year, or to split child-care deductions. In determining whether to award counsel fees a sufficient evidentiary basis must exist for the court to evaluate the respective financial circumstances of the parties and the value of the services rendered. The husband offered no retainer agreements or billing statements, nor did he establish the nature or value of the services rendered. In the absence of any such evidence, Supreme Court erred in awarding counsel fees to the husband.

* * *

Number:1613

CASE: Meara v Meara

CITATION:, Meara v. Meara, 104 A.D.3d 916, 960 N.Y.S.2d 911
(2d Dep't 2013)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$15,000 to plaintiff

PROP DIST TO W:

COMMENT: There is no absolute right to assignment of counsel in a matrimonial action. After 9 attorneys representing the defendant had been either relieved or discharged, Supreme Court did not improvidently exercise its discretion in refusing to appoint another attorney to represent the defendant.

App. 1

LAW AND THE FAMILY NEW YORK

* * *

Number:1614

CASE: Finch-Kaiser v Kaiser

CITATION:, Finch-Kaiser v. Kaiser, 104 A.D.3d 906, 962
N.Y.S.2d 344 (2d Dep't 2013)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$10,000 per month until her death or
remarriage.

EXCL OCC: marital residence to wife

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$16,225.50 to wife

PROP DIST TO W:

COMMENT: The record supported the Supreme Court's directive that defendant pay plaintiff and the parties' two children \$70,000 each. Those amounts represented a return of money given over a period of years by the defendant's father, and intended as gifts to the plaintiff and the children, but which was instead used by the defendant to pay life insurance premiums.

* * *

Number:1615

CASE: Lauzonis v. Lauzonis

CITATION: Lauzonis v. Lauzonis, 105 A.D.3d 1351, 964
N.Y.S.2d 796 (4th Dep't 2013)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court did not err in imputing annual income in the amount of \$20,000 to the wife for purposes of calculating child support and maintenance based upon her education, qualifications, employment history, past income, and demonstrated earning potential. Where, as here, the property at issue is held jointly, an equal disposition of that property should be presumptively in order, with the burden on the party seeking a greater share to establish entitlement. The record established that, at the very least, the wife made a "modest" contribution toward the husband's attainment of a master's degree and thus that she was entitled to some portion of his enhanced earnings.

* * *

Number:1616

CASE: Mejia v Mejia

CITATION: Mejia v. Mejia, 106 A.D.3d 786, 964 N.Y.S.2d 607
(2d Dep't 2013)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: wife to pay \$1,341 per month, subject to reduction as each child reaches the age of 21 years or is otherwise emancipated (custody to husband)

MAINTENANCE:

EXCL OCC: to husband

HEALTH/MED INS: wife to provide for children

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: The Supreme Court had no authority to direct the conveyance of the defendant's interest in the marital residence to the children. Since plaintiff had physical custody of the children, he should be awarded exclusive possession of the marital residence until the youngest child reached the age of 18 or graduates from high school, whichever occurs first, whereupon the marital residence should be sold and any proceeds, after application of any appropriate credits, should be divided equally between the parties. Considering the ages of the children (14,12 and 6), it was premature for the Supreme Court to direct the defendant to contribute toward the college expenses of the children. When there is an inconsistency between a judgment and the decision or order upon which it is based, the decision or order controls. Domestic Relations Law § 236(B)(7)(d) requires that judgment directing child support include a notice informing the parties of their right to seek a modification of the child support order upon a showing of "(i) a substantial change in circumstances; or (ii) that three years have passed since the order was entered, last modified or

adjusted; or (iii) there has been a change in either party's gross income by fifteen percent or more since the order was entered, last modified, or adjusted."

* * *

Number:1617

CASE: Kosterek v Kosterek

CITATION: Kosturek v. Kosturek, 107 A.D.3d 762, 968 N.Y.S.2d 97 (2d Dep't 2013)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: denied for failure of proof

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Plaintiff established, prima facie, her entitlement to equitable distribution of a certain parcel of real property located in Union, New Jersey. The defendant admitted in his Statement of Proposed Disposition that he acquired some ownership interest in the property during the marriage (Lee v. Lee, 18 A.D.3d 508, 512, 795 N.Y.S.2d 283 (2d Dep't 2005)), and confirmed the timing of his acquisition in opening statements, during which defense counsel asserted that, during the marriage, the defendant purchased the property, though partially with money received from another source. This unequivocal, factual assertion made during opening statements constituted a judicial admission. It was thereby established that at least a portion of the defendant's interest in the property was presumptively marital property and, thus, the burden shifted to the defendant to rebut that presumption. The trial court, upon finding that the plaintiff failed to timely file and provide the defendant with an

expert's report (22 NYCRR 202.16[g]; CPLR 3101[d]), improvidently exercised its discretion in precluding the plaintiff's expert from testifying at trial on the issue of the value of the property. There was no proof that the failure to disclose was an intentional or willful failure. The plaintiff demonstrated good cause for the delay. Further, the defendant was not prejudiced, since he had sufficient time to retain his own expert, if he so chose, and to otherwise respond to the plaintiff's expert's opinion.

* * *

Number:1618

CASE: Owens v Owens

CITATION: Owens v. Owens, 107 A.D.3d 1171, 967 N.Y.S.2d 465 (3d Dep't 2013)

YRS MAR: 24

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$2,000 per month for a period of 24 months.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$35,000 to wife

PROP DIST TO W: Wife awarded 50% of the appreciation in the value of the marital residence

COMMENT: The Appellate Division affirmed Supreme Court's classification of the real property as separate property not subject to equitable distribution. He purchased the NYC rental property seven years prior to the marriage and he utilized an absentee management system where tenants of the rental units would communicate directly with maintenance and utility workers. The wife never had any involvement in managing the property. While the husband may have treated the rental income as marital income, the proceeds from the sale of the property were wired to a bank account that was in his name only. Husband wastefully

dissipated millions of dollars of his separate property. In compelling circumstances evidence of egregious economic fault in mismanaging, dissipating and wasting separate assets can and should be considered under the statutory catchall “just and proper” factor for equitable distribution and maintenance. The fact that the wife had the ability to be self-supporting by some standard of living did not mean that she was self-supporting in the context of the marital standard of living. In modifying the maintenance award the Appellate Division determined the amount of earnings necessary to enable the wife to become self-supporting by reference to the standard of living of the parties, as well as the earning capacity of each party; these factors carried more weight in this marriage of long duration.

* * *

Number:1619

CASE: Schmitt v Schmitt

CITATION:., Schmitt v. Schmitt, 107 A.D.3d 1529, 968 N.Y.S.2d 284 (4th Dep’t 2013)

YRS MAR: 25

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: remitted

MAINTENANCE: \$16,833.75 per year for 10 years

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: remitted

COMMENT: Supreme Court erred in finding the parties’ third eldest child was emancipated during the time she resided with plaintiff in 2011. Although the child worked two jobs in 2010, defendant did not submit any evidence regarding the child’s income in 2011. The fact that plaintiff paid for the subject child’s rent and utility costs demonstrated that the child was not

economically independent and self-supporting. The court erred in failing to afford the charging lien of plaintiff's attorney priority in plaintiff's interest in the proceeds from the sale of the marital residence over the judgment awarding defendant attorney's fees.

* * *

Number:1620

CASE: Hatlee v Hatlee

CITATION: Hatlee v. Hatlee, 2013 WL 2996127 (N.Y. Sup 2013)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: The Court concluded that for purposes of determining whether union dues are deductible from income under DRL § 240(1-b)(b)(5)(vii)(A), for purposes of calculating child support, the Court must determine if said expenses reduce personal expenditures. DRL § 240(1-b)(b)(5)(vii)(A). The ability to deduct union dues for purposes of calculating an individual's income for child support purposes must be determined on a case by case basis.

* * *

Number:1621

CASE: Leonard v Leonard

CITATION: Leonard v. Leonard, 109 A.D.3d 126, 968 N.Y.S.2d 762 (4th Dep't 2013)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: In shared residency arrangements, where neither parent has the children for a majority of the time, the party with the higher income is deemed to be the noncustodial parent for purposes of child support. The residency schedule afforded the parties equal time with the children, and neither party had the children for the majority of the time. Inasmuch as plaintiff's income exceeded that of defendant plaintiff was the "noncustodial" parent and, as such, he was required to pay child support to defendant. Unlike the cases where there is joint legal custody, the father was awarded sole legal custody; that fact should not affect the child support determination. Where Court failed to set forth the required reasons for the denial of her request for an award of counsel fees the provision concerning counsel fees must be vacated and the matter remitted to Supreme Court to articulate its reasons for its denial of an award of counsel fees to defendant or, in the alternative, to reconsider its determination

App. 1

LAW AND THE FAMILY NEW YORK

* * *

Number:1622

CASE: Bellizzi v Bellizzi

CITATION: Bellizzi v. Bellizzi, 107 A.D.3d 1361, 968 N.Y.S.2d 235 (3d Dep't 2013)

YRS MAR: 40

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: to wife to cease upon the pension distribution taking effect

EXCL OCC:

HEALTH/MED INS:

LIFE INS: wife's request denied

COUNSEL FEE: denied

PROP DIST TO W:

COMMENT: The husband's pay status government pensions should have been equitably distributed rather than simply treated as an income stream for purposes of maintenance. Care must be taken to avoid double counting of the interdependent issues of distribution of a pension and maintenance, and there may be situations where maintenance would be more appropriate. Nonetheless, maintenance looks to factors and implicates discretion, which permitted Supreme Court in this case to arrive at a monthly amount less than the monthly value of the pensions. Under the circumstances, awarding a percentage of the pay status pensions more accurately and equitably reflected the value to the wife of these assets earned during the long-term marriage. Directing a party to make a former spouse the beneficiary of a life insurance policy rests in the trial court's discretion, and in light of fact that the wife would continue to receive one-half the husband's considerable state pension if he predeceased her, Supreme Court did not abuse its discretion in refusing to require the husband to make the wife the beneficiary of his life insurance policies.

* * *

Number:1623

CASE: Musacchio v Musacchio

CITATION: Musacchio v. Musacchio, 107 A.D.3d 1326, 968 N.Y.S.2d 664 (3d Dep't 2013)

YRS MAR: 21

H AGE:

H INCOME:\$200,000 W AGE:

W INCOME: \$10,000

CHILD SUPPORT: \$3,141.66 plus his pro rata share of children's health, dental and vision insurance, childcare and all unreimbursed copays.

MAINTENANCE: \$4,858.34 per month for 7 1/2 years. Once the marital residence was sold the maintenance amount would decrease to \$4,274.84.

EXCL OCC: ordered sold

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: distributive award in the amount of \$143,705.22

COMMENT: More practical and equitable for the wife to equally split the payments that the husband will receive from his AIG pension annuity should he reach the age of 65, subject to a qualified domestic relations order, rather than requiring him to purchase a separate annuity for her. In affirming the maintenance award the court placed particular significance on the disparity between the husband's income and the wife's income. Notably, early in the parties' marriage, the wife quit her job so that the parties could move to another state where the husband had obtained employment and, thereafter, the family moved often for the husband's career. The court further considered the wife's post-divorce ability to increase her earning potential, taking into account her age and prolonged absence from the work force.

* * *

Number:1624

CASE: Christoper C. v Bonnie C.

CITATION:, Christopher C. v. Bonnie C., 40 Misc. 3d 859, 968
N.Y.S.2d 855 (Sup 2013)

YRS MAR: 23

H AGE:51

H INCOME: W AGE: 56
unemployed

W INCOME: \$742 per month

CHILD SUPPORT:

MAINTENANCE: \$2,500.00 per month until the defendant was
eligible to receive full social security benefits, the defendant's
remarriage or the death of either party

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$37,506.64 in addition to the amount of
\$22,664.95 previously awarded to the defendant for attorney's
fees

PROP DIST TO W:

COMMENT: A guardian appointed pursuant to Mental Hygiene Law Article 81), however, can be given any power that the individual himself or herself possesses. Defendant wife's Guardian was given the power to participate in the divorce proceeding and to decide whether to negotiate a settlement or proceed to trial. Defendant squandered over one million dollars in assets from 2003 to the present. Although husband was living on home equity loans and did not appear to have sufficient income, without working, to maintain the high standard of living he currently enjoyed and at the same time pay lifetime maintenance, he was responsible to support his wife who could not support herself. This might necessitate that he become employed again.

* * *

Number:1625

CASE: Settle v McCoy

CITATION: Settle v. McCoy, 108 A.D.3d 810, 968 N.Y.S.2d 697
(3d Dep't 2013)

YRS MAR: 21

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$51 per week (custody to husband)

MAINTENANCE: \$1,600 per month until the wife begins to collect Social Security retirement benefits or her portion of the husband's pension, whichever occurs first

EXCL OCC:

HEALTH/MED INS:

LIFE INS: Husband to maintain a policy of life insurance, with the wife as beneficiary in an amount necessary to satisfy his maintenance obligation until such obligation terminates

COUNSEL FEE: wife's request denied although there was a disparity in income of the parties

PROP DIST TO W: \$800,000 in marital assets, including the marital home, which was unencumbered.

COMMENT: Upon parties agreement the issues of equitable distribution, maintenance and child support were decided based upon exhibits, affidavits and memoranda of law. The record supported the court's determination that wife was capable of earning \$12,090 per year at her current employment for purposes of determining child support. Supreme Court found it "questionable that she could not have re-entered the workforce years ago" despite her parenting responsibilities. Absent an agreement, Supreme Court erred in directing the wife to pay a portion of the daughter's college expenses incurred after the age of 21.

App. 1

LAW AND THE FAMILY NEW YORK

* * *

Number:1626

CASE: Halley-Boyce v Boyce

CITATION: Halley-Boyce v. Boyce, 108 A.D.3d 503, 969
N.Y.S.2d 467 (2d Dep't 2013)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$2,156.50 per month

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: awarded the plaintiff \$239,833.84, representing 50% of the proceeds from the sale of certain real property located in Jamaica, Queens, and awarded the plaintiff 50% of the value of real property located on Remington Street in Jamaica, Queens

COMMENT:

* * *

Number:1627

CASE: Gilliam v. Gilliam

CITATION: Gilliam v. Gilliam, 109 A.D.3d 871, 971 N.Y.S.2d 541 (2d Dep't 2013)

YRS MAR:19

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$1,500 per month until she reached the age of 67

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: wife awarded \$3237.50 in counsel fees and \$750 in expert fees

PROP DIST TO W:

COMMENT: Wife lived with her mother and received Social Security Disability Insurance benefits and food stamps. Since the parties stipulated that they would each receive one half of the proceeds from the defendant's pension and deferred compensation plan when they were distributed, the defendant's maintenance obligation should not be reduced in the future by the amount of that payment because, by reducing the defendant's obligation to this extent, the court, in essence, would not award the plaintiff any portion of that pension. An award of expert fees will generally be warranted where, as here, there is a significant disparity in the financial circumstances of the parties.

App. 1

* * *

Number:1628

CASE: Zufall v Zufall

CITATION: Zufall v. Zufall, 109 A.D.3d 1135, 972 N.Y.S.2d 749
(4th Dep't 2013)

YRS MAR:

H AGE: 50

H INCOME:\$2,798 W AGE:
per month.

W INCOME: Social Security disability benefits of \$622 per
month plus workers' compen-sation benefits of \$400 per month

CHILD SUPPORT:

MAINTENANCE: \$150 per week for seven years from the date
of commencement of the action

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Pursuant to Domestic Relations Law § 248,
defendant may move to terminate maintenance on the ground
that plaintiff is "habitually living with another man and holding
herself out as his wife," The defendant cited no authority for the
proposition that the court must include such a provision in the
judgment of divorce

* * *

Number:1629

CASE: Kessler v Kessler

CITATION: Kessler v. Kessler, 111 A.D.3d 895, 977 N.Y.S.2d 252 (2d Dep't 2013), order recalled and vacated on reconsideration, 118 A.D.3d 946, 991 N.Y.S.2d 43 (2d Dep't 2014)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: 50% of the parties' marital property

COMMENT: Supreme Court providently exercised its discretion in denying the defendant a credit for \$20,000 of marital funds used to pay a premarital debt of the plaintiff. "The parties' choice of how to spend funds during the course of the marriage should ordinarily be respected," and the "[c]ourts should not second-guess the economic decisions made during the course of a marriage, but rather should equitably distribute the assets and obligations remaining once the relationship is at an end" (Mahoney-Buntzman v. Buntzman, 12 N.Y.3d 415, 421, 881 N.Y.S.2d 369, 909 N.E.2d 62 (2009)).

App. 1

LAW AND THE FAMILY NEW YORK

* * *

Number:1630

CASE: Abely v Lally

CITATION: Aebly v. Lally, 112 A.D.3d 561, 977 N.Y.S.2d 50 (2d Dep't 2013)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC: to defendant wife until transferred to her or sold.

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: \$36,227.50 as a distributive award

COMMENT: Since plaintiff used \$7,500 of marital funds to pay a retainer fee to his first attorney in connection with this litigation, the defendant was entitled to a credit in the sum of one half of this retainer fee. Supreme Court improvidently exercised its discretion in directing the immediate sale of the marital residence without first offering the defendant the option of retaining exclusive occupancy of the marital residence by purchasing the plaintiff's interest

* * *

Number:1631

CASE: Alleva v Alleva

CITATION: Alleva v. Alleva, 112 A.D.3d 567, 977 N.Y.S.2d 267
(2d Dep't 2013)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$750 per week until she became eligible for
full Social Security retirement benefits or remarries

EXCL OCC:

HEALTH/MED INS:

LIFE INS: defendant to maintain life insurance on wife's behalf
to secure his maintenance obligation

COUNSEL FEE: \$10,000 to wife

PROP DIST TO W:

COMMENT: Supreme Court providently exercised its discretion in equally allocating responsibility for marital debt, including certain credit card debt incurred during the pendency of this action. In general, financial obligations incurred during the marriage which are not solely the responsibility of one party should be shared equally by the parties (*Mahoney-Buntzman v. Buntzman*, 12 N.Y.3d 415, 421, 881 N.Y.S.2d 369, 909 N.E.2d 62 (2009)). The plaintiff argued that the defendant should be solely responsible for certain credit card debt that the plaintiff incurred during the pendency of the action for, inter alia, the support of herself and the parties' two emancipated children. However, the plaintiff did not assert that the defendant failed to comply with a pendente lite order directing him to pay maintenance and expenses of the children. Under these circumstances, the plaintiff failed to show that the debt should be borne solely by the defendant.

* * *

Number:1632

CASE: Augustin v. Bullen

CITATION: Augustin v. Bullen, 112 A.D.3d 658, 976 N.Y.S.2d 553 (2d Dep't 2013)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$55,000 to wife.

PROP DIST TO W:

COMMENT: Supreme Court improvidently exercised its discretion in directing the plaintiff to pay 61% of certain medical bills incurred as a result of the defendant's three pregnancies. Generally, expenses incurred prior to the commencement of an action for a divorce are marital debt to be equally shared by the parties upon an offer of proof that they represent marital expenses. Equitable distribution does not necessarily mean equal distribution. The court may consider the entirety of the marital estate in apportioning responsibility for marital debt. The evidence at trial did not establish a compelling reason why the plaintiff should be responsible for 61% of the subject medical bills, and those bills were not incurred primarily for the plaintiff's benefit

* * *

Number:1633

CASE: DiPalma v DiPalma

CITATION: DiPalma v. DiPalma, 112 A.D.3d 663, 977 N.Y.S.2d 276 (2d Dep't 2013)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: awarded the plaintiff nondurational maintenance of \$1,500 per month

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court, finding that the defendant was not credible in his testimony with respect to his net worth, properly imputed an annual income of \$84,000 to the defendant based on evidence indicating that the defendant received income from rental property. The defendant was continually evasive regarding his income and assets.

* * *

Number:1634

CASE: Kim v Schiller

CITATION:, Kim v. Schiller, 112 A.D.3d 671, 978 N.Y.S.2d 229 (2d Dep't 2013)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: for the parties' two children of \$3,774 per

month; defendant to pay 50% of, inter alia, all health care expenses of the parties' children not covered by insurance.

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: \$148,200 as the plaintiffs portion of the defendant's enhanced earning capacity; possession and ownership of the former marital residence

COMMENT: Supreme Court properly determined that the plaintiff was entitled to a share of the defendant's enhanced earning capacity. She made substantial indirect contributions, as the plaintiff was supportive of the defendant's attainment of his degree and the advancement of his career. Defendant was entitled to a credit of \$20,000 with respect to funds from his separate property that he used during the marriage to repay the plaintiff's student loan debt. Since the pendente lite award actually made to the plaintiff was less than the \$5,200 that the defendant made in voluntary child support payments, the defendant was not entitled to a credit for the entire sum of \$5,200, but, he was entitled to a credit of \$3,400 for those payments. As a wage earner contributing to the support of his children, defendant was entitled to claim one of the children as a dependent on his income tax returns (*Lueker v. Lueker*, 72 A.D.3d 655, 658, 898 N.Y.S.2d 605 (2d Dep't 2010)). Supreme Court erred in directing defendant to contribute or to additionally contribute to certain discretionary expenses that the plaintiff incurred on behalf of the children, including a sweet sixteen party for the parties' daughter, trips to South Korea, and new furniture. The court lacked authority to compel him to contribute to these "add-on" child care expenses incurred prior to the commencement of this action (Domestic Relations Law 236[B][7][a]). Supreme Court's decision concluding that defendant was obligated to pay pendente lite maintenance, was enforceable, notwithstanding that it was never reduced to a written order (22 NYCRR 202.8[g]). Supreme Court improvidently exercised its discretion in awarding the plaintiff expert fees. Absent a showing of necessity or inability to pay, an award of such fees is generally unjustified.

Number:1635

CASE: Alexander v Alexander

CITATION:, Alexander v. Alexander, 116 A.D.3d 472, 985 N.Y.S.2d 1 (1st Dep't 2014), leave to appeal denied, 26 N.Y.3d 915, 26 N.Y.S.3d 760, 47 N.E.3d 90 (2016)

YRS MAR:25

H AGE:55

H INCOME:

W AGE:56

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$7,500 per month until the earliest of either party's death, the wife's remarriage, or December 31, 2024.

EXCL OCC:

HEALTH/MED INS:

LIFE INS: denied

COUNSEL FEE: \$135,000 interim counsel fees

PROP DIST TO W: marital home, valued at \$2 million, and approximately \$750,000 in cash

COMMENT: Court properly accepted the neutral appraiser's valuation of business based on the formula in the shareholders' agreement. As the price in the shareholders' agreement was the only evidence of its actual value, the court properly credited the neutral appraiser's report, which was based on that price. Given the lack of evidence the court properly declined to require the husband to obtain life insurance to cover his obligations under the judgment.

* * *

Number:1636

CASE: Cabral v. Cabral, 122 A.D.3d 893, 998 N.Y.S.2d 111 (2d Dep't 2014)

CITATION:

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: income from the insurance agency, pension which resulted from the defendant's employment with the County divided equally between the parties

COMMENT: Supreme Court properly awarded the plaintiff \$17,348.80, representing his overpayment of child support, as the overpayment was made pursuant to a judgment that was later reversed on appeal (Cabral v. Cabral, 87 A.D.3d 605, 606, 929 N.Y.S.2d 155 (2d Dep't 2011); see also People ex rel. Breitstein ex rel. Aaronson v. Aaronson, 3 A.D.3d 588, 589, 771 N.Y.S.2d 159, 7 A.L.R.6th 825 (2d Dep't 2004))

* * *

Number:1637

CASE: Cohen v Cohen

CITATION: Cohen v. Cohen, 120 A.D.3d 1060, 993 N.Y.S.2d 4
(1st Dep't 2014)

YRS MAR: 10

H AGE: 79

H INCOME:

W AGE:54

W INCOME:

CHILD SUPPORT: custody to husband

MAINTENANCE: \$22,500 per month in non-durational maintenance

EXCL OCC:

HEALTH/MED INS:

LIFE INS: \$1 million for wife

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Although defendant was cross-examined during the financial phase of the trial, on May 18, 2011, in the midst of her cross-examination on custody issues, she left New York and returned to Paris. Despite a three-week adjournment, defendant did not return to court, claiming that she was under doctor's orders not to travel. The court ended the trial on June 7, 2013. The court drew an adverse inference against defendant with respect to custody issues based on her failure to complete her cross-examination, but refused to default her or to strike her testimony in its entirety.

The parties enjoyed a lavish lifestyle, and plaintiff assumed the role of financial provider, acquiescing in defendant's financial dependency. Defendant was not going to receive a distributive award, and due to prenuptial agreement her own assets were limited. Defendant suffered from a mild cognitive impairment that compromised her ability to work, and she was incapable of supporting herself at a standard of living approximating the marital standard.

App. 1

* * *

Number:1638

CASE: Fisher v Fisher

CITATION: Fisher v. Fisher, 122 A.D.3d 1032, 996 N.Y.S.2d 759
(3d Dep't 2014)

YRS MAR:45

H AGE:

H INCOME: \$40,000 W AGE:

W INCOME: \$27,000 and Social Security benefits

CHILD SUPPORT:

MAINTENANCE: \$500 per month

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: 50% of marital property to wife. Both parties were employed at the time of trial. They enjoyed a modest standard of living during their marriage and, Supreme Court otherwise allocated the parties' marital assets in an equitable-and nearly equal-fashion. While Supreme Court awarded the wife one half of the husband's pension, the husband had not yet retired, and the Court deemed it appropriate, in order to avoid a potential gap in the wife's receipt of financial support, to modify the duration of the award to provide that maintenance be paid until such time as the husband retires and the wife begins receiving her portion of his pension benefits.

* * *

Number:1639

CASE: Gordon v Gordon

CITATION:, Gordon v. Gordon, 113 A.D.3d 654, 979 N.Y.S.2d 121 (2d Dep't 2014)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$1,000 per week commencing on February 10, 2012, through October 31, 2012, \$1,100 per week commencing November 1, 2012, through the closing on the sale of the former marital residence, and \$1,775 per week thereafter until she attains the age of 62

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Trial court erred by not addressing the payment of the unreimbursed health care expenses of the parties' children. Plaintiff's request for an award of an attorney's fee incurred in connection with the appeal should be addressed in the first instance to the Supreme Court.

App. 1

* * *

Number:1640

CASE: Hainsworth v Hainsworth

CITATION:, Hainsworth v. Hainsworth, 118 A.D.3d 747, 987
N.Y.S.2d 215 (2d Dep't 2014)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$1,500 per month until the earlier of the
plaintiff attaining the age of 62, her remarriage, or her death.

EXCL OCC:

HEALTH/MED INS:

LIFE INS: for wife and children

COUNSEL FEE:

PROP DIST TO W:

COMMENT: In the absence of any evidence at trial that the
defendant was currently uninsurable due to a pre-existing medi-
cal condition, the Supreme Court providently exercised its discre-
tion in directing the defendant to maintain a life insurance policy
to secure his maintenance and child support obligations.

* * *

Number:1641

CASE: Hymowitz v Hymowitz

CITATION: Hymowitz v. Hymowitz, 119 A.D.3d 736, 991
N.Y.S.2d 57 (2d Dep't 2014)

YRS MAR: 20

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: Supreme Court should have awarded the defendant a credit against the proceeds of the sale of the marital residence for the amount of money the plaintiff withdrew from the parties' home equity line of credit account to pay his attorney's fees and expert's fees. This effectively made the defendant, the nonmonied spouse, pay a substantial portion of the counsel fees of the monied spouse, the plaintiff, in violation of Domestic Relations Law § 237 and, therefore, was improper.

PROP DIST TO W:

COMMENT: Transfer of a 1/3 interest a family-owned hardware store, to the plaintiff from his father and uncle which occurred during the marriage was tantamount to a "gift from a party other than the spouse" and, thus, was the separate property of the plaintiff not subject to equitable distribution.

Supreme Court improvidently exercised its discretion in awarding the plaintiff a credit against the proceeds of the sale of the marital residence for 100% of the payments he made to reduce the principal balance of the mortgage during the divorce proceedings. The plaintiff was entitled to a credit of only 50% of the reduction in mortgage principal because generally, it is the responsibility of both parties to maintain the marital residence during the pendency of a matrimonial action.

In calculating the plaintiff's retroactive child support obligation, the court should determine the amount of payments made by him on behalf of the defendant and children under the pendente lite order, which required him to pay the carrying charges for the marital residence. To the extent that these payments can appropriately be allocated to temporary child support rather than temporary maintenance, the plaintiff should be permitted to offset such payments against accrued arrears.

* * *

Number:1642

CASE: Kessler v Kessler

CITATION: Kessler v. Kessler, 118 A.D.3d 946, 991 N.Y.S.2d 43 (2d Dep't 2014)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: 50% of the parties' marital property

COMMENT: Supreme Court providently exercised its discretion in denying the defendant a credit for \$20,000 of marital funds used to pay a premarital debt of the plaintiff. The parties' choice of how to spend funds during the course of the marriage should ordinarily be respected," and the "[c]ourts should not second-guess the economic decisions made during the course of a marriage, but rather should equitably distribute the assets and obligations remaining once the relationship is at an end" (Mahoney-Buntzman v. Buntzman, 12 N.Y.3d 415, 421, 881 N.Y.S.2d 369, 909 N.E.2d 62 (2009)).

* * *

Number:1643

CASE: Lewis v Lewis

CITATION: Lewis v. Lewis, 118 A.D.3d 958, 989 N.Y.S.2d 64 (2d Dep't 2014)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court erred in directing defendant to pay college expenses for the parties' daughter, who was only 15 years old at the time of trial. Based upon the child's age, and the lack of evidence presented as to her interest in and possible choice of college, a directive compelling the plaintiff to pay for those expenses was premature and not supported by the evidence.

App. 1

LAW AND THE FAMILY NEW YORK

* * *

Number:1644

CASE: Lowe v Lowe

CITATION: Lowe v. Lowe, 123 A.D.3d 1207, 998 N.Y.S.2d 252
(3d Dep't 2014)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$3,000 per month for a period of 30 months

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Wife wastefully dissipated marital assets. She developed a shopping problem and, despite the husband's effort to stop her, bought over \$30,000 worth of items from television shopping channels. Not an abuse of discretion to reduce the wife's award by one half of the amount dissipated, or \$15,955. (Domestic Relations Law § 236[B][5][d] [12]).

* * *

Number:1645

CASE: Lubrano v Lubrano

CITATION: Lubrano v. Lubrano, 122 A.D.3d 807, 995 N.Y.S.2d 741 (2d Dep't 2014)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$150 a week from October 1, 2012 through September 30, 2013

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$38,000 to wife

PROP DIST TO W:

COMMENT: In light of factors such as the disparity in income between the parties, the relative merits of the parties' positions, and the defendant's conduct which delayed the proceedings, the Supreme Court properly directed the defendant to pay a portion of the plaintiff's counsel fee.

App. 1

LAW AND THE FAMILY NEW YORK

* * *

Number:1646

CASE: Myers v Myers

CITATION: Myers v. Myers, 118 A.D.3d 1315, 987 N.Y.S.2d 766
(4th Dep't 2014)

YRS MAR: 13

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: for a 10-year period

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: "Vast discrepancy" in the incomes of the parties. Plaintiff's sole source of income consisting of Social Security Disability payments. Relatively comfortable standard of living during the marriage. Even if plaintiff were able to find a job, she would never approach her pre-divorce standard of living, while defendant "clearly can."

* * *

Number:1647

CASE: Rech v Rech

CITATION: Rech v. Rech, 122 A.D.3d 1286, 996 N.Y.S.2d 824
(4th Dep't 2014)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: The Court did not err in refusing to order plaintiff to reimburse defendant for half of the prejudgment carrying costs for the marital residence. The court has broad discretion to require one party to pay all of the carrying costs of the marital residence where that party has been its sole occupant during the course of the action, and defendant maintained sole occupancy of the marital residence after the action was commenced.

The Court did not err in summarily denying defendant's motion to reduce his child support obligation inasmuch as defendant failed to provide an updated statement of net worth in support of his motion.

App. 1

* * *

Number:1648

CASE: Smith v Smith

CITATION: Smith v. Smith, 116 A.D.3d 1139, 983 N.Y.S.2d 341
(3d Dep't 2014)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: Mother to pay \$150 per week (Custody to
Father)

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court calculated the mother's presumptive weekly child support obligation to be \$258.33, but concluded that it would be "just and appropriate" to reduce it to \$30 per week. The Appellate Division found that father's income was twice that of the mother and such a disparity, alone, can justify a deviation. The father also received significant tax deductions and credits for the children, whereas the mother received none. Additionally, the mother was responsible for paying a significant portion of the children's uninsured health-related and child-care expenses, as well as other costs associated with her extended and substantial parenting time, all of which impacted the mother's financial resources. It found \$150 per week to be "just and appropriate" under the circumstances.

* * *

Number:1649

CASE: Smithie v Smithie

CITATION: Smithie v. Smithie, 122 A.D.3d 719, 995 N.Y.S.2d 722 (2d Dep't 2014)

YRS MAR: 10

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Gifts given by one spouse to another during a marriage are marital property and, thus, are subject to equitable distribution. During the marriage, the plaintiff gave defendant a diamond ring valued at \$16,900. Supreme Court erred in failing to equitably distribute the value of that item.

App. 1

LAW AND THE FAMILY NEW YORK

* * *

Number:1650

CASE: Taylor v Taylor

CITATION: Taylor v. Taylor, 123 A.D.3d 693, 997 N.Y.S.2d 733
(2d Dep't 2014)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Defendant's contention that the Supreme Court improperly awarded the plaintiff a Florida condominium as her separate property could not be reviewed on this record. It is the obligation of the appellant to assemble a proper record on appeal. The plaintiff caused to be admitted into evidence at trial certain documentation in support of her contention that the money used to purchase the condominium was a gift from her father and son. The defendant's failure to provide this Court with copies of that evidence precluded it from rendering an informed decision on the merits on the issue of whether the plaintiff sustained her burden of proving that the Florida condominium was her separate property.

* * *

Number:1651

CASE: VM v NM

CITATION: V.M. v. N.M., 43 Misc. 3d 1204(A), 990 N.Y.S.2d 440
(Sup 2014)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: A spouse's wasteful dissipation of marital assets is relevant to both the equitable distribution of marital property and maintenance (DRL § 236[B][5][d] [12]; [6][a][17]). The Court charged plaintiff with willful dissipation of funds based on a 2011 loss of \$1,959,130. As a result, defendant was awarded the sum of \$979,565 representing her half share of the funds lost.

App. 1

LAW AND THE FAMILY NEW YORK

* * *

Number:1652

CASE: Whitaker v Case

CITATION: Whitaker v. Case, 122 A.D.3d 1015, 996 N.Y.S.2d
752 (3d Dep't 2014)

YRS MAR: 14

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: Custody to husband

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court did not abuse its discretion in retroactively suspending the wife's child support obligation pursuant to DRL § 241, and directing that the payments be held in escrow pending a determination as to whether the husband interfered with her visitation. It did not abuse its discretion in directing that the payments held in escrow be refunded to the wife after it determined that suspension was warranted due to the husbands interference. However, Supreme Court improperly adjusted the distributive award payable to the wife to reimburse her for the child support payments that she actually made to the husband for the benefit of the children during the pendency of her application. This adjustment violated the strong public policy against restitution or recoupment of support overpayments.

Number 1653

CASE: Stewart v Stewart

CITATION: Stewart v. Stewart, 133 A.D.3d 493, 20 N.Y.S.3d 35 (1st Dep't 2015), leave to appeal denied, 26 N.Y.3d 919, 26 N.Y.S.3d 765, 47 N.E.3d 95 (2016)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: Wife's request denied

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: (1) Plaintiff was guilty of egregious economic fault in claiming to have given away jewelry and property worth over \$10 million, failing to disclose her offshore and foreign accounts, and secreting millions more in assets. (2) The award to plaintiff of jewelry valued at \$8,520,000 was properly based on a jewelry appraisal based on a "hypothetical fair market valuation." Plaintiff could not complain about this valuation method, since she secreted the very jewelry she complained was missing from the valuation. (3) Denial of a maintenance to plaintiff was a provident exercise of its discretion as the court considered the relevant factors in Domestic Relations Law § 236[B][6][a], including that plaintiff would continue to receive substantial income from her ownership interest in Agravina and from the parties' Income Trust, that she was to receive millions of dollars of assets in equitable distribution, and that she had secreted millions more in marital assets.

App. 1

LAW AND THE FAMILY NEW YORK

* * *

Number 1654

CASE: Shamp v Shamp

CITATION: Shamp v. Shamp, 133 A.D.3d 1213, 20 N.Y.S.3d 265
(4th Dep't 2015)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: Husband's request denied

PROP DIST TO W:

COMMENT: (1) For a party to be entitled to an award of counsel fees, there must be sufficient documentation to establish the value of the services performed, and the husband failed to provide any such documentation.(2) Court did not err in refusing to credit the husbands testimony that his income ranged from \$25,000 to \$33,000 per year where he failed to provide his income tax returns or any valid evidence of his income or earnings, and the evidence established that he indicated on a vehicle loan application that he made approximately \$60,000 per year.

* * *

Number 1655

CASE: Sawin v Sawin

CITATION: Sawin v. Sawin, 128 A.D.3d 663, 7 N.Y.S.3d 589 (2d Dep't 2015)

YRS MAR:

22 H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Although credit card debt incurred prior to the commencement of a matrimonial action constitutes marital debt and should be equally shared by the parties, debt incurred after the commencement of a matrimonial action typically is the responsibility of the party who incurred the debt. Nonetheless, debt incurred in connection with household living expenses and clothing for the parties' children is debt that can be divided between the parties, even if incurred after the commencement of such an action. However, debt incurred for the purchase of personal items for one of the parties cannot be so divided.

App. 1

* * *

Number 1656

CASE: Samimi v. Samimi

CITATION: Samimi v. Samimi, 134 A.D.3d 1010, 22 N.Y.S.3d 515 (2d Dep't 2015)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: \$2378 per month

MAINTENANCE: \$20,000 per year for 7 years

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court was permitted to impute income of \$130,000 to the defendant in calculating his child support obligation since his account of his finances was not credible. The defendant's testimony and financial documentation indicated that his annual income was only approximately one-third of his annual expenses, and no evidence was submitted to show that these expenses had not been paid in a timely manner.

* * *

Number 1657

CASE: Naik v Naik

CITATION: Naik v. Naik, 125 A.D.3d 734, 3 N.Y.S.3d 405 (2d Dep't 2015)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$2000 per month

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: The determination to award maintenance until the time the defendant was eligible to collect Social Security retirement benefits was an improvident exercise of discretion. Maintenance is designed, among other things, to encourage the recipient spouse to gain economic independence, while ensuring that the reasonable needs of that spouse are met. Thus, maintenance should continue only as long as would provide the recipient with enough time to become self-supporting.

App. 1

* * *

Number 1658

CASE: Gonzalez v Garcia

CITATION:, Gonzalez v. Garcia, 134 A.D.3d 989, 22 N.Y.S.3d 513 (2d Dep't 2015)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: Husband's request denied.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Husband denied maintenance where the parties led separate financial lives for many years, and the defendant maintained an extravagant lifestyle despite his unsubstantiated claims of being unable to engage in any form of work and being in need of support.

* * *

Number 1659

CASE: Gifford v Gifford

CITATION: Gifford v. Gifford, 132 A.D.3d 1123, 19 N.Y.S.3d 102 (3d Dep't 2015)

YRS MAR:26 H H INCOME:
AGE:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$6,000 per month from January 1, 2014 through January 31, 2020, \$3,000 per month from February 1, 2020 through June 1, 2022, and \$800 per month thereafter, terminating upon either party's death or the wife's remarriage.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: (1) The husband's future earning prospects far exceeded the wife's, such that the limited nondurational award in this long-term marriage was within the court's discretion. Even though the wife could be self-sufficient, the additional maintenance award facilitated her ability to maintain the comfortable predivorce standard of living that the parties enjoyed. (2) The Court's denial of the wife's request for counsel fees was not an abuse of discretion. Although her status as the less monied spouse gave rise to a rebuttable presumption that she was entitled to counsel fees, in light of the equitable distribution, maintenance and substantial interim award of fees, the presumption in her favor was adequately rebutted.

* * *

Number 1660

CASE: Ceravolo v DeSantis

CITATION: Ceravolo v. DeSantis, 125 A.D.3d 113, 1 N.Y.S.3d 468 (3d Dep't 2015)

YRS MAR:

14 H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: (1) The Equitable Distribution Law does not purport to address financial transactions between persons prior to their marriage, which cannot be considered to have been the product of the marital enterprise. While the wife made certain substantial contributions of money and effort toward the acquisition and maintenance of the marital residence was amply supported by the record, the effect of such contributions by the wife, particularly those she made before the marriage, was not to transform the husband's premarital, separate property into marital property. For this same reason, equitable distribution does not afford the wife any remedy with respect to the \$30,000 that she contributed towards the down payment of the house or the premarriage mortgage payments that she made. (2) To the extent that Matwijczuk v. Matwijczuk, 261 A.D.2d 784, 690 N.Y.S.2d 343 (3d Dep't 1999) and Ciaffone v. Ciaffone, 228 A.D.2d 949, 645 N.Y.S.2d 549 (3d Dep't 1996)) held that separate property contributions made by a nontitled spouse toward the acquisition or improvement of premari-

tal property can serve to transform such property into a marital asset, they should no longer be followed.

* * *

Number 1661

CASE: Macaluso v Macaluso

CITATION: Macaluso v. Macaluso, 124 A.D.3d 959, 1 N.Y.S.3d 464 (3d Dep't 2015)

YRS MAR:20 H H INCOME:
AGE:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:(1)The act of transferring separate property into an account held by both spouses “raises a presumption that the funds are marital property to be distributed among the parties according to the principles of equitable distribution”. (2) For the reasons set forth in **Ceravolo v. DeSantis** (— AD3d —), a parcel of real property that is separate property cannot be transformed or transmuted into marital property by the efforts and contributions of the nontitled spouse.”

* * *

Number 1662

CASE: Carroll v Carroll

CITATION: Carroll v. Carroll, 125 A.D.3d 710, 3 N.Y.S.3d 397
(2d Dep't 2015)

YRS MAR:

31 H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: In light of the parties' long-term marriage, their respective ages, and their financial circumstances, and because the defendant had only part-time work experience and suffered from various medical conditions, it was unrealistic to believe" that she would be able to achieve a level of financial independence which would eliminate her need to rely on the plaintiff's support. Supreme Court should have awarded the defendant maintenance until the earliest of her eligibility for full Social Security retirement benefits at the age of 66, her remarriage, or the death of either party.

* * *

Number 1663

CASE: Branche v Holloway

CITATION: Branche v. Holloway, 124 A.D.3d 553, 2 N.Y.S.3d 450 (1st Dep't 2015)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: (1) The court properly considered defendant's egregious economic fault in liquidating, dissipating, or failing to account for more than \$2 million in assets, which represented approximately 25% of the marital estate, as well as his failure to disclose various accounts, and the fact that he increased the encumbrances on the marital home in violation of a court order. (2) The court properly imputed to defendant income of \$1 million annually based on the fact that he earned in excess of \$1 million annually from 2000 through 2009. The report and testimony of a vocational expert showed that defendant's present and future earning potential was \$1 million annually and that defendant had failed to conduct a reasonable job search after his employment was terminated in 2009. Moreover, while defendant's base salary in the position for which he was hired in 2011 was \$350,000, he was eligible for two bonuses that would bring his total salary to \$1 million.

* * *

Number 1664

CASE: Beardslee v Beardslee

CITATION: Beardslee v. Beardslee, 124 A.D.3d 969, 1 N.Y.S.3d 483 (3d Dep't 2015)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: When one spouse contributes separate property toward the purchase of a marital asset, such as a marital home, the contributing spouse is generally entitled to a credit representing the amount of that separate property contribution. The use of separate funds to purchase a marital asset does not mandate that a court give a credit, however; the court may consider the use of separate property when exercising its discretion in arriving at an equitable distribution of that asset.

* * *

Number 1665

CASE: Antinora v Antinora

CITATION: Antinora v. Antinora, 125 A.D.3d 1336, 3 N.Y.S.3d 500 (4th Dep't 2015)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:(1) The court did not abuse its discretion in increasing the distributive award in lieu of requiring the husband to contribute to her attorney's fees. (2) The court erred in simply averaging the values set forth in the real estate appraisals of the parties' experts without articulating its reason for doing so.(3) In light of husband's prior voluntary maintenance payments, and considering the husband's share of marital debt the court properly determined that the wife was not entitled to retroactive spousal maintenance. (4) Post-retirement cost of living adjustments are merely supplements and enhancements to already existing pension benefits.

App. 1

* * *

Number 1666

CASE: Albertalli v Albertalli

CITATION: Albertalli v. Albertalli, 124 A.D.3d 941, 1 N.Y.S.3d 439 (3d Dep't 2015)

YRS MAR:

6 H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: (1) It is within Supreme Court's discretion to determine whether to credit the husband for the use of his separate property in acquiring the marital residence. Partial use of separate funds to acquire a marital asset does not mandate that a credit for separate funds be given. (2) Case law reflects a preference for allowing a custodial parent to remain in the marital residence until the youngest child becomes 18 unless such parent can obtain comparable housing at a lower cost or is financially incapable of maintaining the marital residence, or either spouse is in immediate need of his or her share of the sale proceeds.

Number 1666

CASE: D'Iorio v D'Iorio

CITATION: D'Iorio v. D'Iorio, 135 A.D.3d 693, 24 N.Y.S.3d 325
(2d Dep't 2016)

YRS MAR: 23

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$877.23 per week and additional maintenance
of \$532 per month for COBRA benefits

EXCL OCC:

HEALTH/MED INS:

LIFE INS: in the defendant's favor in an amount sufficient to
secure his maintenance obligation

COUNSEL FEE:

PROP DIST TO W:

COMMENT:

The Appellate Division increased the durational award of the monthly maintenance award to require payment until the earliest of the wife's eligibility for full Social Security retirement benefits, her remarriage or cohabitation pursuant to Domestic Relations Law § 248, or the death of either party. The plaintiff, born in 1949, had been steadily employed throughout the marriage. The defendant, born in 1957, was the primary caregiver for the children and a homemaker. In light of the parties' long-term marriage, respective ages, and financial circumstances, and the defendant's limited work experience, it was unrealistic to believe that the defendant would be able to achieve a level of financial independence which would eliminate her need to rely on the plaintiff's support.

App. 1

LAW AND THE FAMILY NEW YORK

Number 1667

CASE: Brody v Brody

CITATION: Brody v. Brody, 137 A.D.3d 830, 27 N.Y.S.3d 186
(2d Dep't 2016)

YRS MAR:61/2 years H AGE:

H INCOME:

W AGE:

48 W INCOME:

CHILD SUPPORT: \$8,000 in monthly child support payments

MAINTENANCE: \$13,000 per month in spousal maintenance for
a period of 24 months prospective only

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:

In making the maintenance award prospective only the court found that the defendant would not be the primary caretaker for the children, and she could pursue full-time employment; the defendant had not, over the course of this very lengthy litigation, taken any steps to prepare herself for a career despite having had the ability and opportunity to do so. The defendant utilized a significant portion of the \$8,000 per month child support payments to cover her own personal expenses; the defendant had the ability to become self-supporting during the litigation, but "made other choices"; and the plaintiff adequately provided for the needs of the defendant and the parties' children during the entire pendency of this litigation (citing *Grumet v. Grumet*, 37 A.D.3d 534, 536, 829 N.Y.S.2d 682 (2d Dep't 2007); *Markopoulos v. Markopoulos*, 274 A.D.2d 457, 459, 710 N.Y.S.2d 636 (2d Dep't 2000)).

Number 1668

CASE: Stuart v Stuart

CITATION: Stuart v. Stuart, 137 A.D.3d 1640, 27 N.Y.S.3d 307
(4th Dep't 2016)

YRS MAR:

H AGE: 66

H INCOME: W AGE:
\$1,975.29

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$850 per month

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: None

PROP DIST TO W:

COMMENT:

The maintenance to defendant wife of \$1,116 per month for 7 1/2 years was excessive and reduced on appeal. After paying maintenance along with child support, plaintiff had only \$252.59 per month upon which to live. Although plaintiff, who was 66, should be able to find employment to supplement his income, it was unlikely that he would be able to earn enough to afford the amount of maintenance awarded by Supreme Court.

The court failed to comply with Domestic Relations Law § 237 when it ordered plaintiff to pay \$2,000 in counsel fees without an affidavit from either party "detailing the financial agreement[] between the party and the attorney." Because [defendant] did not submit documentation identifying the services rendered by her attorney or the fees incurred, the court was precluded from awarding attorney's fees to her.

App. 1

LAW AND THE FAMILY NEW YORK

Number 1669

CASE: Carvalho v Carvalho

CITATION: Carvalho v. Carvalho, 140 A.D.3d 1544, 34 N.Y.S.3d 535 (3d Dep't 2016)

YRS MAR: 33 years H AGE:

H INCOME:

W AGE:70

W INCOME: \$9,000 per year

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:

When the courts fashion an equitable distribution award involving marital assets that are wastefully dissipated, they credit the other spouse for his or her distributive share of those depleted assets. However, when the depleted marital assets have been spent on legitimate household or living expenses, they are not included in the equitable distribution calculus.

The parties jointly held money market account balance was listed in the husband's statement of net worth as \$29,370.52. In the absence of any evidence of a different account balance, the Supreme Court should have valued account at \$29,370.52

Number 1670

CASE: Elsayed v Edrees

CITATION: Elsayed v. Edrees, 141 A.D.3d 503, 35 N.Y.S.3d 411 (2d Dep't 2016), leave to appeal denied, 28 N.Y.3d 908, 47 N.Y.S.3d 223, 69 N.E.3d 1019 (2016)

YRS MAR: 18

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:

Supreme Court's determination denying the husband equitable distribution of the wife's nursing license was supported by the record. It is incumbent upon the nontitled party seeking a distributive share of such assets to demonstrate a substantial contribution to the titled party's acquisition of that marital asset. The nontitled spouse also has the burden of proving the asset's value. The defendant failed to prove the value of the plaintiff's nursing license, or demonstrate that he made a substantial contribution to the acquisition of her nursing license.

App. 1

LAW AND THE FAMILY NEW YORK

Number 1671

CASE: Fench v Fench

CITATION: Fenech v. Fenech, 141 A.D.3d 683, 35 N.Y.S.3d 471
(2d Dep't 2016)

YRS MAR: 11

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT: defendant husband awarded sole custody of
the child

MAINTENANCE: \$1,500 per month for 54 months

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:

The court erred in imputing only \$55,000 of income per year to the defendant. In his testimony, the defendant was unable to explain how his reported pension and rental incomes enabled him to cover his expenses.

The Appellate Division modified the judgment to conform to the decision. The judgment failed to conform to the decision. When there is an inconsistency between a judgment and the decision upon which it is based, the decision controls, and such inconsistency may be corrected on appeal.

Number 1672

CASE: Shkreli v Shkreli,

CITATION: Shkreli v. Shkreli, 142 A.D.3d 546, 36 N.Y.S.3d 208
(2d Dep't 2016)

YRS MAR: 28

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:

Supreme Court properly determined that the marital residence, which was purchased during the marriage, was marital property. Where one spouse contributed monies derived from separate property toward the acquisition of the marital residence," he or she generally will receive "a credit for that contribution" (Fields v. Fields, 15 N.Y.3d 158, 166, 905 N.Y.S.2d 783, 931 N.E.2d 1039 (2010)). The contributing spouse does not meet the burden of establishing the value of a separate property contribution if he or she offers only his or her own testimony in support of the claim or he or she does not trace the source of the alleged separate property. Here, the plaintiff failed to establish the value of his separate property contribution to the purchase of the marital residence.

Prior to the commencement of this action, the plaintiff liquidated a retirement account and obtained a \$250,000 mortgage on the marital residence. He used \$100,000 of the mortgage proceeds to repay his sister-in-law, who had lent him that amount of money to pay off the previous mortgage on the marital residence. Supreme Court properly found that the plaintiff wastefully dissipated certain marital assets and awarded the defendant a credit

for the wasteful dissipation of such assets., The plaintiff presented no evidence as to what he did with the remaining proceeds from the \$250,000 mortgage he obtained just prior to the commencement of the action and the money from the liquidated retirement account.

Number 1673

CASE: Canzona v Canzona

CITATION: Canzona v. Canzona, 142 A.D.3d 1030, 38 N.Y.S.3d 42 (2d Dep't 2016)

YRS MAR:

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$2,500 per month nondurational maintenance.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:

“Judicial estoppel, or the doctrine of inconsistent positions, precludes a party who assumed a certain position in a prior legal proceeding and who secured a judgment in his or her favor from assuming a contrary position in another action simply because his or her interests have changed”. Supreme Court properly determined that the defendant was not judicially estopped from seeking an award of maintenance because she previously filed two separate bankruptcy petitions, which alleged, in part, that she was not entitled to any alimony, maintenance, or support payments. The parties were still married at the time the bankruptcy petitions were filed, and the defendant was not required to list any possible future rights to maintenance payments in the bankruptcy petitions.

Number 1674

CASE: Castello v Castello

CITATION: Castello v. Castello, 144 A.D.3d 723, 41 N.Y.S.3d 250 (2d Dep't 2016)

YRS MAR:26

H AGE: 50

H INCOME:

W AGE: 49

W INCOME:

CHILD SUPPORT:

MAINTENANCE: maintenance of \$5,500 per month for eight years, or until the plaintiff's remarriage or the death of either party

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:

Supreme Court correctly imputed income annual income of \$240,000 to the defendant, in reliance upon the report of the neutral financial evaluator, and the testimony at trial, which established that the defendant had total control over the book-keeping and finances of the company and funneled personal expenses through the company.

Supreme Court erred in directing defendant to continue to make the lease payments on vehicles leased by his emancipated children. The obligation of a parent to support his or her child terminates when the child reaches the age of 21 years.

When the Supreme Court signed the proposed judgment of divorce, it struck a provision which would have expressly granted concurrent jurisdiction to the Family Court with respect to the issues of child support and maintenance. The striking of that provision does not bar the Family Court from exercising concurrent jurisdiction.

App. 1

LAW AND THE FAMILY NEW YORK

Number 1675

CASE: Kaprov v Stalinsky

CITATION: Kaprov v. Stalinsky, 145 A.D.3d 869, 44 N.Y.S.3d 123 (2d Dep't 2016), leave to appeal denied, 29 N.Y.3d 913, 63 N.Y.S.3d 4, 85 N.E.3d 99 (2017)

YRS MAR: 12

H AGE:

H INCOME:

W AGE:

W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$3,000 per month for seven years, effective September 1, 2014,

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$125,000 to wife

PROP DIST TO W: 70% of the marital assets

COMMENT:

A party's maintenance obligation is retroactive to the date the application for maintenance was first made. However, the party is also entitled to a credit for any amount of temporary maintenance already paid. Pursuant to the version of Domestic Relations Law § 236(B)(6)(a) in effect at the time of the commencement of this action, one of the factors a court should take into account in deciding the amount and duration of a maintenance award is "the existence and duration of a pre-marital joint household" (Domestic Relations Law § 236[B][6][a][6]). The wife testified that the couple lived together from 1984 to 2010, approximately 26 years. Thus, an 11-year award of maintenance (which included the temporary award paid for 4 years) was not out of proportion with the duration of the joint household. The maintenance award was appropriate for the wife to become self-supporting given the factors involved, including the duration of the pre-marital joint household, as well as the wife's age, absence from the workforce, reduced earning capacity, and limited education.

Number 1676

CASE: Anonymous v. Anonymous, 150 A.D.3d 91, 51 N.Y.S.3d 66 (1st Dep't 2017)

YRS MAR: H AGE: H W AGE: W
 INCOME: INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE

PROP DIST TO W:

COMMENT: Invoices, standing alone, may not be regarded as evidence of title or ownership of the art. An invoice is not a bill of sale, nor is it evidence of a sale. It is a mere detailed statement of the nature, quantity, or cost of the goods, or price of the things invoiced, and it is as appropriate to a bailment as a sale. Hence, standing alone, it is never regarded as "evidence of title". An invoice cannot be said to be dispositive of ownership. The title to personalty cannot be determined by relying solely upon an invoice.

* * *

Number 1677

CASE: Aristova v. Derkach, 155 A.D.3d 517, 67 N.Y.S.3d 21 (1st Dep't 2017)

YRS MAR: H AGE: H W AGE: W
 INCOME: INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Under the circumstances of this case, the court properly awarded prospective maintenance only. During the first two years following commencement of the action, the parties lived together in the marital residence with their children. During that period, plaintiff voluntarily bore the majority of the family's expenses, including costs associated with the parties' cooperative apartment, and the family's medical and dental insurance costs, as well as groceries and other family expenses. defendant did not move for pendente lite relief until two months before the scheduled trial date.

* * *

Number 1678

CASE: Arthur v. Arthur, 148 A.D.3d 1254, 48 N.Y.S.3d 813 (3d Dep't 2017)

| | | | | |
|----------|--------|---------|--------|---------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| 8 | | INCOME: | | INCOME: |

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:

Wife properly awarded \$25,000 distributive award on basis of the parties' testimony describing the extent and cost of repairs

made to two homes acquired by the husband prior to the marriage, which was his separate property. Supreme Court credited the wife's testimony that the total cost of repairs was approximately \$50,000 and that marital funds from a joint account were used. The wife's description of the repairs and estimation of the amount expended were not challenged on cross-examination, and the absence of documentary support for the wife's testimony did not invalidate the award, since it was within the province of the court to determine the weight accorded her testimony.

Although neither party offered any proof of any appreciation of either property from the date of the marriage to the date of commencement, Supreme Court did not abuse its discretion in finding that the use of marital funds for improvement of the husband's separate property, combined with both direct and indirect contributions from both parties, constituted a proper basis for the distributive award.

* * *

Number 1679

CASE: Barnhart v. Barnhart, 148 A.D.3d 1264, 48 N.Y.S.3d 818 (3d Dep't 2017)

| | | | | |
|----------|--------|---------|--------|---------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| 12 | | INCOME: | | INCOME: |

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Where husband testified that the marital home was worth "\$50,000[,] we decided on that," and neither party submitted any other proof that would allow for a more precise valuation of the home or any proof that would indicate, contrary to the husband's testimony, that the \$50,000 valuation of the home was even contested, it was not an abuse of discretion, in

the absence of any opposing proof, to credit the husband's testimony as to the value of the home.

Supreme Court did not err in attributing no value to a 2012 Chevy vehicle that the court awarded to the wife, subject to any debt against it, where proof established that the vehicle was marital property, and the husband put forward no documentary evidence establishing that the vehicle was titled to him, he conceded both that the vehicle was within the wife's possession and that she was paying the lien on it. The husband had the burden of proving the asset's value so as to afford the court a sufficient basis upon which to make a distributive award. Particularly given the husband's testimony that he had "no idea" what the vehicle was worth, Supreme Court did not abuse its discretion in determining that it had no value for the purpose of equitable distribution.

* * *

Number 1680

CASE: Brinkmann v. Brinkmann, 152 A.D.3d 637, 58 N.Y.S.3d 559 (2d Dep't 2017)

| | | | | |
|--------|--------|---------|--------|---------|
| YRS | H AGE: | H | W AGE: | W |
| MAR:36 | | INCOME: | | INCOME: |

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:

Supreme Court did not err in granting the plaintiff a credit for one-half of the payments that he made towards the mortgage on the marital residence following the commencement of the action. Generally, it is the responsibility of both parties to maintain the marital residence during the pendency of a matrimonial action. The defendant voluntarily moved out of the marital residence in

2010, and the plaintiff had been solely responsible for the mortgage payments on the residence since that time.

* * *

Number 1681

CASE: Bruzzese v. Bruzzese, 152 A.D.3d 563, 61 N.Y.S.3d 18 (2d Dep't 2017), leave to appeal dismissed, 30 N.Y.3d 1035, 69 N.Y.S.3d 233, 91 N.E.3d 1212 (2017)

| | | | | |
|----------|--------|---------|--------|---------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| | | INCOME: | | INCOME: |

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:

Supreme Court, relying on the physician-patient privilege, improperly precluded testimony of two witnesses who were doctors, regarding the defendant's mental health. It noted that in a matrimonial action, a party waives the physician-patient privilege concerning his or her mental or physical condition by actively contesting custody. However, there first must be a showing beyond mere conclusory statements that resolution of the custody issue requires revelation of the protected material (*McDonald v. McDonald*, 196 A.D.2d 7, 13; see *Baecher v. Baecher*, 58 A.D.2d 821). Since the defendant actively contested custody, and the plaintiff made the requisite showing that resolution of the custody issue required revelation of the protected material, the court should not have precluded the testimony of the doctors regarding the defendant's mental health.

* * *

Number 1682

CASE: Cohen v. Cohen, 146 A.D.3d 1040, 45 N.Y.S.3d 628 (3d Dep't 2017)

| | | | | |
|----------|--------|---------|--------|---------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| 2 | | INCOME: | | INCOME: |

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: After trial Supreme Court, inter alia, sua sponte, converted the parties' request for equitable distribution of the marital residence to a claim for partition of the property because the parties acquired the property before the marriage as joint tenants with the right of survivorship. Supreme Court's sua sponte conversion of the parties' request for equitable distribution of the marital residence into a claim for partition was not erroneous. Although a partition action is statutory, it is equitable in nature. Inasmuch as Supreme Court is empowered to "adjust the rights of the parties so each receives his or her proper share of the property and its benefits" there was no error in Supreme Court's decision to treat the action as one seeking partition of the marital residence.

* * *

Number 1683

CASE: JJ.A.R. v. R.L.R., 54 Misc. 3d 1220(A), 54 N.Y.S.3d 610 (Sup 2017)

| | | | | |
|----------|--------|---------|--------|---------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| | | INCOME: | | INCOME: |

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$100,000

PROP DIST TO W: \$1.5 million

COMMENT: The fact that a party has received a substantial distributive award does not mandate a denial of any counsel fee award where, as here, the prospective circumstances are such that "any attempt to replenish distributive assets spent on legal fees may prove quixotic". Considering the amount of fees incurred by Plaintiff, approximately \$365,000, and the amount sought by Defendant, approximately \$540,000, such an award would result in an appropriate leveling of the playing field.

* * *

Number 1684

CASE: Galanopoulos v. Galanopoulos, 152 A.D.3d 745, 59 N.Y.S.3d 122 (2d Dep't 2017)

| | | | | |
|----------|--------|---------|--------|---------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| 22 | | INCOME: | | INCOME: |

CHILD SUPPORT:

MAINTENANCE: \$5,000 per month from December 1, 2014, until November 1, 2017, then \$4,000 per month until November 1, 2020, and then \$3,000 per month until October 31, 2023.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: Marital residence, with a credit to the defendant of \$315,000, and the total sum of \$514,564, representing equitable share of numerous real estate investment proper-

ties, including the sum of \$83,500, representing one-half of the value of funds defendant had withdrawn from an account in his name with Eurobank.

COMMENT:

Supreme Court did not err in declining to consider his potential tax liabilities resulting from a future sale of property located on in Patterson, New Jersey. There was no evidence of an impending sale of that property, and it would be inequitable to saddle the plaintiff with any capital gains tax liability that the defendant might incur upon a sale of the property at some point in the future. Moreover, where, as here, a party fails to offer any competent evidence concerning tax liabilities, the court is not required to consider the tax consequences of its award.

* * *

Number 1685

CASE: Kumar v. Chander, 149 A.D.3d 709, 51 N.Y.S.3d 177 (2d Dep't 2017)

| | | | | |
|-------|--------|---------|--------|---------|
| YRS | H AGE: | H | W AGE: | W |
| MAR:9 | | INCOME: | | INCOME: |

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:

Supreme Court providently exercised its discretion in awarding defendant \$500 based on its determination that the plaintiff possessed the defendant's jewelry, which was the defendant's separate property, and the plaintiff's failure to dispute the defendant's claim that the jewelry was valued at \$500.

* * *

Number 1686

CASE: Lestz v. Lestz, 155 A.D.3d 857, 63 N.Y.S.3d 690 (2d Dep't 2017)

| | | | | |
|----------|--------|---------|--------|---------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| 23 | | INCOME: | | INCOME: |

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:

An increase in the value of separate property is considered separate property 'except to the extent that such appreciation is due in part to the contributions or efforts of the other spouse. (Domestic Relations Law § 236[B][1] [d][3]). The nontitled spouse has the burden of establishing that any increase in the value of the separate property was due at least in part to his or her direct or indirect contributions or efforts during the marriage. Supreme Court improperly awarded the plaintiff \$91,500, representing, in effect, 25% of the appreciation in value during the marriage of the defendant's dental practice, which was his separate property. The plaintiff did not offer any proof of the value of the dental practice at the time of the marriage. Accordingly, she failed to satisfy her burden of establishing "the baseline value of the business and the extent of its appreciation", and the court erred in making an award to the plaintiff on this basis.

* * *

Number 1687

CASE: Minervini v. Minervini, 152 A.D.3d 666, 58 N.Y.S.3d 568 (2d Dep't 2017)

| | | | | |
|----------|--------|---------|--------|---------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| | | INCOME: | | INCOME: |

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

Plaintiff was entitled to receive a credit against the proceeds of the sale of the marital residence for the money that he paid to reduce the balance of the mortgage during the pendency of the action. The plaintiff made these payments without any contribution from the defendant. Where, as here, a party has paid the other party's share of what proves to be marital debt, such as the mortgage, taxes, and insurance on the marital residence, reimbursement is required. Credit card debt incurred prior to the commencement of a matrimonial action constitutes marital debt and should be equally shared by the parties.

* * *

Number 1689

CASE: Ning-Yen Yao v. Karen Kao-Yao, 147 A.D.3d 624, 48 N.Y.S.3d 337 (1st Dep't 2017)

| | | | | |
|----------|--------|---------|--------|---------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| 7 | | INCOME: | | INCOME: |

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$200,000 was proper.

PROP DIST TO W:

COMMENT:

The party seeking distribution of an award based on the other party's enhanced earning capacity must establish its value

through expert testimony. Actual earnings, projected over time are a recognized proxy for value of a person's future earning capacity. An expert's opinion does not have to be completely disregarded because it is based upon plaintiff's actual earnings information. Valuation of a professional license is largely dependent upon expert testimony and where plaintiff made no effort to establish a different value by retaining his own expert for the court to consider the court was justified in relying on the only expert opinion it had, and making corresponding adjustments that took into account some of plaintiff's challenges.

Maintenance award was proper where the equitable distribution awarded (10% of plaintiff's enhanced earnings of \$3,440,000) was a very modest percentage of plaintiff's enhanced earnings and the award was only for a very limited duration after the entry of judgment, and was also a relatively small amount. Under these circumstances, there was no risk of double dipping using the same stream of income to pay both awards (see Grunfeld v. Grunfeld, 94 N.Y.2d at 705).

* * *

Number 1690

CASE: Repetti v. Repetti, 147 A.D.3d 1094, 47 N.Y.S.3d 447 (2d Dep't 2017)

| | | | | |
|--------|--------|---------|--------|---------|
| YRS | H AGE: | H | W AGE: | W |
| MAR:23 | | INCOME: | | INCOME: |

CHILD SUPPORT:

MAINTENANCE: \$1,350 per week from the time that title for the marital residence passes to a bona fide purchaser until the plaintiff reaches the age of 67 or such age that she would qualify for full Social Security benefits, or until her remarriage or death.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: \$480,000 for her martial share of the defendant's interest in his accounting firm; directed that if title to the marital residence did not pass to a bona fide purchaser on or before June 30, 2015, then beginning on July 1, 2015, until the

sale is completed, the parties would equally share the cost of the mortgage, real estate taxes, and real estate insurance on the marital residence, and the plaintiff would pay all other expenses related to the marital residence.

COMMENT:

When college is several years away, and no evidence is presented as to the child's academic interests, ability, possible choice of college, or what his or her expenses might be, a directive compelling a parent to pay for those expenses is premature and not supported by the evidence. (unemancipated child was 16 years old and was entering his junior year of high school.)

Supreme Court erred in awarding the plaintiff a portion of the defendant's interests in Congoo, LLC, and Mass Transmit, LLC. The plaintiff, as the party seeking an interest in those businesses, did not submit sufficient evidence as to the value of the defendant's interests in those businesses. Additionally, the plaintiff failed to demonstrate that the defendant's interests in Congoo, LLC, and Mass Transmit, LLC, could be distributed in-kind by transferring one-half of his interest to her, by assigning one-half of his interest to her, or by distributing one-half of his yearly distributions to her (see *Herrmann v. Herrmann*, 132 A.D.2d 972).

* * *

Number 1691

CASE: Reynolds v. Reynolds, 155 A.D.3d 1421, 65 N.Y.S.3d 314 (3d Dep't 2017)

| | | | | |
|----------|--------|---------|----------|-----------|
| YRS MAR: | H AGE: | H | W AGE:59 | W |
| 32 | | INCOME: | | INCOME:60 |

CHILD SUPPORT:

MAINTENANCE: to wife

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: Each party received a distributive award of liquid and nonliquid assets worth more than a million dollars.

COMMENT:

It was impermissible to base a maintenance award on the income produced by the parties' store, which the court ordered sold, as the proceeds of the court-ordered sale were to be equitably distributed between the parties. Such an award was not legally precluded. Nonetheless, in the circumstances presented, this income should not provide the basis for a maintenance award. Unlike income derived from an intangible asset such as a professional license, income produced by a tangible asset such as the store may be the basis of a maintenance award when that income will continue to flow to a spouse, even though the underlying income-producing asset has been distributed as marital property (Keane v. Keane, 8 NY3d 115, 121-122 [2006]). Here, however, neither party would receive income from the store after it was sold.

* * *

Number 1692

CASE: Seale v. Seale, 149 A.D.3d 1164, 51 N.Y.S.3d 647 (3d Dep't 2017)

| | | | | |
|----------|--------|---------|--------|---------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| 8 | | INCOME: | | INCOME: |

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:

The remedy of preclusion is reserved for those instances where the offending party's lack of cooperation with disclosure was willful, deliberate, and contumacious." Moreover, it is axiomatic that a party cannot be compelled to produce documents that the party does not have or that do not exist.

* * *

Number 1693

CASE: Stuart v. Stuart, 155 A.D.3d 1371, 65 N.Y.S.3d 585 (3d Dep't 2017)

| | | | | |
|----------|--------|-----------|--------|----------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| 23 | | INCOME: | | INCOME: |
| | | \$497,000 | | \$23,000 |

CHILD SUPPORT: \$1,478.15 per month

MAINTENANCE: \$9,000 per month in durational maintenance for a period of 10 months. Upon expiration of the 10-month durational maintenance award, should the husband earn over \$100,000 for any calendar year through July 2026, the wife would then be entitled to a continuing maintenance payment in the amount of \$20,000 for that given year

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:

Although Supreme Court acknowledged the vast disparity in the parties' incomes prior to the divorce, it appropriately took into consideration the fact that the husband was 65 years old as of the date of trial and, although in good health, indicated his intent to retire in early 2016 and return to Canada upon expiration of his then-current employment contract. Upon his retirement, he did not intend on continuing to practice medicine and was not licensed to practice in Canada. The husband indicated that he intended to support himself during retirement from the proceeds of his 401(k) plan, Social Security benefits, Canadian pension and the income generated from his medical equipment lease. Supreme Court recognized that, despite the husband's impending retirement, his earning potential remained significant and, it included a provision that, upon expiration of the 10-month durational maintenance award, should the husband earn over \$100,000 for any calendar year through July 2026, the wife would then be entitled to a continuing maintenance payment in the

amount of \$20,000 for that given year. Supreme Court also took into consideration the fact that the wife’s nursing license remained valid and that, despite her physical limitations, she was capable of obtaining more lucrative employment if she so chose. The court acknowledged that the parties’ predivorce standard of living was largely dependent on the husband’s significant earnings; however, it also considered the fact that same was also financed by credit card debt and credited the fact that the husband assumed all such credit card debt held in his name and jointly with the wife. The distributive award to the wife was significant. She received, among other things, the \$160,000 marital residence, the contents of the marital home worth approximately \$40,000, a \$10,000 motorcycle and half of the husband’s \$1.2 million 401(k). The maintenance award terminated only after the balance of the mortgage and home equity loan were paid in full. Supreme Court’s maintenance award struck the appropriate balance between each party’s needs, appropriately taking into consideration their ongoing ability to pay.

* * *

Number 1694

CASE: Tiger v. Tiger, 155 A.D.3d 1386, 65 N.Y.S.3d 302 (3d Dep’t 2017)

| | | |
|-------------|----------|------------------------|
| YRS MAR: 25 | H AGE:51 | H INCOME: \$125,000 |
|-------------|----------|------------------------|

| | |
|--------|-------------------------------------------------------------|
| W AGE: | W INCOME: Social Security disability pay of \$685 per month |
|--------|-------------------------------------------------------------|

CHILD SUPPORT:

MAINTENANCE: \$794.42 per week

EXCL OCC:

HEALTH/MED INS:

LIFE INS: life insurance policy obtained through employer for wife’s benefit

COUNSEL FEE:

PROP DIST TO W: Disabled wife received award of \$49,784. The husband’s IRA, valued at approximately \$102,000, was divided equally,

COMMENT: Disabled wife's condition left her "unable to become self-supporting." The wife's eventual combined monthly income at age 62 of \$5,373, from SSD (\$685), Social Security (\$1,245.50) and maintenance (\$3,442.50), was not excessive or unreasonable. Supreme Court was not required to order that, upon receipt of Social Security at age 62, the wife must lose all maintenance and must subsist on the more meager monthly Social Security income (\$1,245.50), combined with SSD (\$685), of \$1,930.50 (\$23,166 annually). The court was not obligated to freeze the wife's benefits at the level set upon the divorce, \$4,127.50 (SSD and maintenance), by reducing maintenance by the amount of Social Security. The receipt of Social Security benefits is a factor to be considered and for a variety of reasons, maintenance awards often terminate or are proportionately reduced upon a spouse's subsequent receipt of Social Security. However, on these facts, the court did not abuse its considerable discretion in declining to do so here.

Courts often authorize the purchase of a declining term life insurance policy that reduces the amount of coverage as the awards (maintenance, distributive and/or child support) are actually paid. Supreme Court included the life insurance directive in a separate provision from the maintenance award, supporting the conclusion that the policy was not intended merely to secure his payment of maintenance, but was part of her award.

* * *

Number 1695

CASE: Wallace v. Wallace, 154 A.D.3d 1078, 62 N.Y.S.3d 561 (3d Dep't 2017)

| | | | | |
|----------|--------|---------|--------|---------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| 11 | | INCOME: | | INCOME: |

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:

Husband should have been credited for his premarital contribu-

tions toward the purchase of the marital home which was deeded to both parties. While the marital residence was purchased prior to the marriage, the parties did not argue that it was other than marital property subject to equitable distribution. When one spouse contributes separate property toward the purchase of a marital asset, such as a marital home, the contributing spouse is generally entitled to a credit representing the amount of that separate property contribution.” While he temporarily placed some of the withdrawn 401(k) funds in the parties’ joint account, this was done for convenience and those funds were used at the closing on the marital residence the following week, and, under all circumstances, it found that they retained their character as separate property.

Number 1696

CASE: Cullen v Cullen

CITATION: __ N.Y.S.3d __, 2018 WL 635171, 2018 N.Y. Slip Op. 00541 (2d Dept., 2018)

| | | | | |
|----------|--------|---------|--------|---------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| 26 | | INCOME: | | INCOME: |

CHILD SUPPORT:

MAINTENANCE: \$2,200 per month for the first five years, and in the sum of \$1,000 per month for the last three years.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:

The court properly considered as one factor in awarding maintenance to the plaintiff the inheritance that the defendant was entitled to receive from his aunt’s estate, even though the inheritance was the defendant’s separate property and not subject to equitable distribution. Additionally, because Hudson Marine, Inc., a diving services company constituted a tangible income-producing asset, the court did not err in awarding the plaintiff a distributive share of Hudson in addition to maintenance. The

court did not place undue emphasis on the inheritance that defendant was entitled to receive from his aunt's estate, and was permitted to consider the inheritance as a factor in equitably distributing the marital assets.

Number 1697

CASE: Cullen v Cullen

CITATION: 157 A.D.3d 930, 69 N.Y.S.3d 881, 2018 WL 635942
(2d Dept, 2018)

| | | | | |
|----------|--------|---------|--------|---------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| 27 | | INCOME: | | INCOME: |

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$90,000

PROP DIST TO W:

COMMENT:

Plaintiff was entitled to an award of an attorney's fee in the amount of \$90,000 based upon, inter alia, the relative merits of the parties' positions and the defendant's obstructionist tactics, which unnecessarily prolonged the litigation. Those tactics included, but were not limited to, the defendant's insistence that the parties proceed to a jury trial on the grounds for the divorce, despite the plaintiff having agreed either to settle on a ground other than cruel and inhuman treatment or to withdraw the case and re-file on the ground of irretrievable breakdown of the marital relationship, and the defendant's motion filed after trial to exclude the plaintiff from a tennis club where the parties were both previously members.

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Number 1698

CASE: Spencer-Forrest v Forrest

CITATION: — N.Y.S.3d —, 2018 WL 1179339, 2018 N.Y. Slip Op. 01496 (2d Dept., 2018)

YRS MAR: W
2828 him INCOME:
H AGE: 67
H
INCOME:
W AGE: 68

CHILD SUPPORT:

MAINTENANCE: denied

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: 50% of the marital portion of the residence which defendant contributed to the marriage and equal distribution of the financial marital assets

COMMENT:

The parties' choice of how to spend funds during the course of the marriage should ordinarily be respected. Courts should not second-guess the economic decisions made during the course of a marriage, but rather should equitably distribute the assets and obligations remaining once the relationship is at an end.

Number 1699

CASE: Ahrens v Ahrens

CITATION: — N.Y.S.3d —, 2018 WL 1355819, 2018 N.Y. Slip Op. 01724 (4th Dept., 2018)

YRS MAR: H AGE: H W AGE: W
20 INCOME: INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:

The court did not err in imputing to the husband an annual income in the amount of \$135,000 for the purpose of determining whether he should receive maintenance. In imputing income to the husband, the court may consider a party's past income and demonstrated earning potential as evidenced by a party's income from investments, deferred compensation, substantial distributions, and offers of employment. For most of the parties' 20-year marriage, the husband's income ranged from \$140,000 to \$190,000 annually. It was therefore not an abuse of discretion for the court to conclude that the husband's current income of \$89,183, inclusive of expense reimbursements, was a dramatic departure from his past earnings that had been reduced only in the past two years. It also was within the court's discretion to consider a job offer that the husband received during the course of the divorce proceedings with a base salary in the amount of \$135,000.

Number 1700

CASE: M.M., v. D.M.,

CITATION: 2018 WL 1414195 (1st Dept., 2018)

| | | | | |
|----------|--------|---------|--------|---------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| 15 | | INCOME: | | INCOME: |

CHILD SUPPORT:

MAINTENANCE: to wife for six months or until wife received her distributive share of the marital assets. The court found that the cash flow from those assets would be sufficient to support her lifestyle without the need for additional maintenance from defendant.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: 60% of non-business marital assets to plaintiff and 40% to defendant.

COMMENT: Referee erred in ordering husband to contribute to the cost of a nanny, since plaintiff did not work, and the youngest child was 12 years old at the time of trial.

Since plaintiff did not claim that her needs and the children's needs were not being met by defendant's voluntary payments, the Appellate Division declined to make defendant's support obligations retroactive.

The Referee providently exercised his discretion in allocating 65% of plaintiff's counsel fees to defendant. The parties' accrued counsel fees exceeded \$7,000,000, and were paid mostly out of their liquid marital assets, although defendant was earning a substantial salary until 2015. In view of the fact that plaintiff's access to funds was limited to her equitable distribution award, the Referee properly identified defendant as the (monied@ spouse. Referee properly took into account that, although both parties engaged in needless litigation, plaintiff's trial positions were on the whole more successful.

Number 1701

CASE: Roberts v Roberts

CITATION: __ N.Y.S.3d __, 2018 WL 1403827, 2018 N.Y. Slip Op. 01949 (2d Dept., 2018)

| | | | | |
|-----------------|---------------|----------------|---------------|----------------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| | | INCOME: | | INCOME: |

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:

It is the obligation of the appellant to assemble a proper record on appeal, which must include any relevant transcript of proceedings before the Supreme Court. Appeals that are not based on complete and proper records must be dismissed.

Number 1702

CASE: Sheehan v Sheehan

CITATION: ___ N.Y.S.3d ___, 2018 WL 2123737, 2018 N.Y. Slip Op. 03388 (2d Dept., 2018)

| | | | | |
|----------|--------|---------|--------|---------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| 12 | | INCOME: | | INCOME: |

CHILD SUPPORT:

MAINTENANCE: \$2,100 per month maintenance for a period of three years, and \$1,880 per month child support.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$40,000

PROP DIST TO W:

COMMENT:

Number 1703

CASE: Mascia v Mascia

CITATION: — N.Y.S.3d —, 2018 WL 2224960, 2018 N.Y. Slip Op. 03523 (2d Dept., 2018)

| | | | | |
|----------|--------|---------|--------|---------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| | | INCOME: | | INCOME: |

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:

Supreme Court had the authority to modify the third decretal paragraph of the original divorce judgment, given the discrepancy between the terms of that decretal paragraph and the underlying decision. A judgment must conform strictly to the court's decision. Where there is an inconsistency between a judgment and the decision upon which it is based, the decision controls. However, the Supreme Court was without authority, sua sponte, to modify the fourth decretal paragraph of the original judgment to add a reference to the variable supplemental pension plan, as this was a substantive modification based on

new evidence that had not previously been submitted to the court. Such a modification goes beyond the court's inherent authority to correct a (mistake, defect or irregularity@ in the original judgment (not affecting a substantial right of a party@.

Number 1704

CASE: Greco v Greco

CITATION: — N.Y.S.3d —, 2018 WL 2225174, 2018 N.Y. Slip Op. 03510 (2d Dept., 2018)

| | | | | |
|----------|--------|---------|--------|---------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| 11 | | INCOME: | | INCOME: |

CHILD SUPPORT:

MAINTENANCE: monthly maintenance of \$4,500 until her remarriage or cohabitation, or the death of either party, or until the defendant begins to draw Social Security benefits or reaches the age of 67 or such age that she would qualify for full Social Security benefits, whichever occurs first, at which time the maintenance award would be reduced to \$2,000 per month.

EXCL OCC:

HEALTH/MED INS: plaintiff to pay for the defendant's health insurance premiums until the earliest of such time as the defendant is eligible for Medicaid or Medicare, or she obtains health insurance through employment, or remarries or cohabitates.

LIFE INS:**COUNSEL FEE:**

PROP DIST TO W: \$114,555.50, representing her equitable share of the appreciated value of the marital residence

COMMENT:

Supreme Court awarded the plaintiff full custody of the children based upon the defendant's psychiatric condition. Taking into consideration all the relevant factors, including the fact that the defendant was suffering from a psychiatric condition and was unable, for the foreseeable future, to be self-supporting, it was an improvident exercise of the court's discretion to limit the maintenance award to a period of three years. It modified the duration of the defendant's maintenance.

CHILD SUPPORT: \$259.44 per week

MAINTENANCE: \$250 per week for a period of 48 months

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:

At trial, the plaintiff stipulated that his income was \$100,000 for child support purposes. In light of the plaintiff's stipulation regarding the amount of income for child support purposes, the Supreme Court providently exercised its discretion in imputing income of \$100,000 to him for maintenance purposes.

The court should have denied, as premature, the defendant's request to allocate between the party's responsibility for the future college expenses of the parties' then 13-year-old child.

Wife received equitable distribution of a portion of a contingency fee that the plaintiff, and attorney, was paid after commencement of the action. The court found that only \$240,000 of the structured settlement earned prior to commencement was marital property, to reflect that the defendant was not entitled to compensation for the work the plaintiff performed after the commencement of the action. The court properly determined that the defendant's equitable share of the structured settlement payments was 50%, and that her distributive award should be reduced by 15% to account for the plaintiff's income tax liability.

Number 1707

CASE: Woodman v Woodman

CITATION: ___ N.Y.S.3d ___, 2018 WL 3007508 (Mem), 2018 N.Y. Slip Op. 04479 (4th Dept., 2018)

| | | | | |
|----------|--------|---------|--------|---------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| | | INCOME: | | INCOME: |

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CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:

Appeal dismissed based on defendant's failure to provide an adequate record to permit meaningful appellate review. It is the obligation of the appellant to assemble a proper record on appeal. The record must contain all of the relevant papers that were before the Supreme Court.

Number 1708

CASE: DeSouza v DeSouza

CITATION: ___ N.Y.S.3d ___, 2018 WL 3383635, 2018 N.Y. Slip Op. 05237 (3d Dept., 2018)

| | | | | |
|----------|--------|---------|--------|---------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| knowing | | INCOME: | | INCOME: |

CHILD SUPPORT: \$2,562 per month in child support

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: 50% interest in the husband's ownership in Halifax Fan after separate property credit to husband for the value of this former separate property.

COMMENT:

Where a net loss is sustained on rental property for a given year, such rental income is properly excluded from the calculation of the parties' total gross income for child support purposes.

Number 1709

CASE: Miszko v Miszko

CITATION: __ N.Y.S.3d __, 2018 WL 3383618, 2018 N.Y. Slip Op. 05241 (3d Dept., 2018)

| | | | | |
|----------|--------|---------|-----------|---------|
| YRS MAR: | H AGE: | H | W AGE: 71 | W |
| 41 | | INCOME: | | INCOME: |

CHILD SUPPORT:

MAINTENANCE: nondurational maintenance to the wife in an amount subject to reduction once she received her share of the husband's accidental disability retirement pension.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:

Accidental disability retirement pension was marital property. Compensation for personal injuries constitutes separate property, but the party claiming that a portion of a disability pension is separate property bears the burden of demonstrating what portion of the pension reflects compensation for personal injuries, as opposed to deferred compensation' related to the length of employment that the employee would have been entitled to receive regardless of the injury. The husband failed to meet his burden of showing what portion of his pension was attributable to his injuries as opposed to these vested pension rights, instead advancing the legally and factually unsupported claim (that the whole amount . . . is a disability benefit@ but, Supreme Court correctly treated the entire pension as a marital asset.

The husband was less than forthcoming about his financial situation, but the record left no doubt that he lived on a comfortable income that exceeded his expenses. In contrast, the wife lived on a far more limited Social Security and pension income supplemented by wages from part-time, menial work. It was not an abuse of discretion for Supreme Court to determine from the foregoing that maintenance was warranted in an amount that

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covered the wife's modest living expenses while permitting the husband to meet his own.

Number 1710

CASE: James v James

CITATION: — N.Y.S.3d —, 2018 WL 3371606, 2018 N.Y. Slip Op. 05147 (2d Dept., 2018)

| | | | | |
|----------|--------|---------|--------|---------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| 22 | | INCOME: | | INCOME: |

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: 20% interest in defendant's learning centers; equitable distribution of the plaintiff's pension, and plaintiff's tax-deferred annuity with the New York City Board of Education.

COMMENT:

Number 1711

CASE: O'Brien v O'Brien

CITATION: — N.Y.S.3d —, 2018 WL 3371437, 2018 N.Y. Slip Op. 051827 (2d Dept., 2018)

| | | | | |
|----------|--------|---------|--------|---------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| 20 | | INCOME: | | INCOME: |

CHILD SUPPORT: (3 children) based upon an imputed income of \$30,000, the defendant-wife's child support obligation was \$1,034.60 per month.

MAINTENANCE: the defendant was not awarded maintenance

EXCL OCC:

HEALTH/MED INS:

LIFE INS: the defendant was directed to provide a life insurance policy in the amount of \$200,000 to secure her child support obligation

COUNSEL FEE: the defendant was denied counsel fees

PROP DIST TO W:

COMMENT:

Supreme Court improvidently exercised its discretion in imputing income to the defendant of \$66,000, and then computing her child support obligation based on that income, because there was no evidence that the defendant's past income or demonstrated future potential earnings amounted to \$66,000 or any amount close to that figure. Thus, the determination had no basis in law or fact. The defendant's mother testified that she had been giving the defendant between \$1,800 and \$2,000 each month since the defendant had left the marital residence. The court may impute income to a party based on his or her employment history, future earning capacity, educational background, or money received from friends and relatives. The court should have imputed an annual income to the defendant in the sum of \$30,000, not \$66,000, based on the evidence of the defendant's educational background and past earnings, as well as the monetary gifts that the defendant's mother provided to her.

Number 1712

CASE: Papakonstantis v Papakonstantis

CITATION:

| | | | | |
|----------|--------|---------|--------|---------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| 22 | | INCOME: | | INCOME: |

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LAW AND THE FAMILY NEW YORK

CHILD SUPPORT: (one unemancipated child) \$576.20 per week from July 31, 2015, through July 31, 2016, and decreasing, thereafter, to \$391.82 per week from August 1, 2016.

MAINTENANCE: \$3,000 per month commencing August 1, 2015, for a period of 72 months

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: plaintiff's application for counsel fees was denied

PROP DIST TO W: 50% of the defendant's interest in a real estate investment company,

COMMENT:

The plaintiff did not work outside the home for the entire marriage, having left her secretarial job to raise the parties' three children.

Number 1713

CASE: Belilos v Rivera

CITATION: — N.Y.S.3d —, 2018 WL 4608918, 2018 N.Y. Slip Op. 06223 (2d Dept., 2018)

| | | | | |
|----------|--------|---------|--------|---------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| | | INCOME: | | INCOME: |

CHILD SUPPORT:

MAINTENANCE: \$5,000 per month for five years

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$75,000 for counsel fees and \$15,000 for expert fees

PROP DIST TO W: The court deducted from the distribution to the defendant of certain funds held in escrow \$150,000 as the plaintiff's separate property from inheritance, and distributed that sum to the plaintiff, awarded the plaintiff 25% of the value of the defendant's enhanced earning capacity, and distributed to the plaintiff one-half of the value of the defendant's interests in certain business entities that performed billing services for his medical practice group.

COMMENT:

To overcome a presumption that commingled property in a joint account is marital property, the party asserting that the property is separate must establish by clear and convincing evidence that the property originated solely as separate property and the joint account was created only as a matter of convenience, without the intention of creating a beneficial interest. The plaintiff established that during the marriage, she inherited the aggregate sum of \$150,000 from her uncle. The plaintiff deposited the inheritance monies into one of the parties' joint accounts merely because she did not have any bank accounts titled solely in her name. The defendant admitted at the trial that, at his deposition, he testified that he intended to return the plaintiff's inheritance monies to her when the instant litigation settled, and that he intended to make things (right@ with respect to the plaintiff's inheritance. Thus, contrary to the defendant's contentions, he recognized the separate character of the inheritance monies, such that the presumption that the commingled funds were marital was overcome.

Number 1714

CASE: Button v Button

CITATION: ___ N.Y.S.3d ___, 2018 WL 5292748, 2018 N.Y. Slip Op. 07216 2018 WL 5292748 (3d Dept., 2018)

| | | | | |
|----------|--------|---------|--------|---------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| 12 | | INCOME: | | INCOME: |

CHILD SUPPORT: (3 children) biweekly child support award of \$694.81, increased to \$752.80 upon the termination of maintenance., Court ordered the parties to share in the payment of the children’s medical insurance premiums and unreimbursed medical, dental and ophthalmological expenses.

MAINTENANCE: biweekly maintenance of \$200 to wife;

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: \$3,750

PROP DIST TO W:

COMMENT:

Number 1715

CASE: Gorman v Gorman

CITATION: __ N.Y.S.3d __, 2018 WL 5274250, 2018 N.Y. Slip Op. 07104 (2d Dept., 2018)

| | | | | |
|----------|--------|---------|--------|---------|
| YRS MAR: | H AGE: | H | W AGE: | W |
| 24 | | INCOME: | | INCOME: |

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS: defendant directed to provide health insurance for the plaintiff until she becomes eligible for coverage through employment or through Medicare effective as of the date of the defendant’s verified answer

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT:

Taking into account the plaintiff’s lack of candor in his testimony as to his finances, his history of gambling winnings and related benefits, and his failure to submit a current net worth

statement and disclose his living expenses (which he shared with his fiancé), it was appropriate to impute to the plaintiff additional income above his basic governmental salary. It found it appropriate to impute to the plaintiff an annual income of \$100,000, which attributed to the plaintiff enhanced income from his gambling activities and reflected an adjustment for the savings that the plaintiff should obtain from sharing living expenses with his fiancé.

Supreme Court should not have imputed income to the wife based on statistical information from the New York State Department of Labor that was not admitted in evidence at trial.

Supreme Court should not have determined, nearly two years after the parties' youngest child had attained the age of 21, what the child support would have been for that child based on the trial testimony.

Plaintiff purchased a diamond engagement ring for \$3,200 for his fiancé' prior to commencement of the action, and failed to prove that it was separate property. Supreme Court should have given the defendant a 50% credit of the ring's purchase price, i.e., \$1,600, toward her distributive award.

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SECTION: Appendix 1 2020 Update
PAGE:
NOTE:

EDITOR: **PLEASE ADD THE FOLLOWING TO Appendix 1 - Summary of
Equitable Distribution Decisions**

CASE: Lynch v Lynch
CITATION: 2019 WL 138524 (2d Dept.,2019
YRS MAR: 18 H AGE: H INCOME: W AGE: W INCOME:
CHILD SUPPORT:

MAINTENANCE:
EXCL OCC:
HEALTH/MED INS:
LIFE INS:
COUNSEL FEE:
PROP DIST TO W:

COMMENT: No enhanced earning capacity attributable to MBA Degree where obtaining the MBA degree merely allowed the defendant to secure employment at a substantially similar level of compensation to what he had earned in the past.

CASE: Nerayoff v Rokhsar
CITATION: --- N.Y.S.3d ----, 2019 WL 362120, 2019 N.Y. Slip Op. 00607 (2d Dept., 2019)
YRS MAR: 8 H AGE: H INCOME: W AGE: W INCOME:
CHILD SUPPORT:

MAINTENANCE:
EXCL OCC:
HEALTH/MED INS:
LIFE INS:
COUNSEL FEE:\$ 180,000 to wife
PROP DIST TO W:

COMMENT:

Where plaintiff transferred his interest in pre-marital business to the defendant while IRS litigation pertaining to his potential tax liabilities was ongoing, and proceeds from subsequent sale of business placed into a bank account in defendant's name, the plaintiff had unclean hands in connection with his transfer of business to the defendant for the purpose of shielding it from the IRS and he was prohibited from arguing that all or a portion of the proceeds from the sale were separate property. Supreme Court providently exercised its discretion in awarding each party one-half of the interest, dividend loss carryovers, and net operating losses accumulated during the marriage. In light of the holding that the proceeds of business were a marital asset Appellate Division rejected the plaintiff's contention that the interest, dividend loss carryovers, net operating losses, and capital loss carryovers were, either in whole or in part, his separate property.

CASE: Oppenheim v Oppenheim

CITATION: 2019 WL 362109, 2019 N.Y. Slip Op. 00610 (2d Dept., 2019)

YRS MAR: 22 H AGE: H INCOME: W AGE: W INCOME:

CHILD SUPPORT: children emancipated

MAINTENANCE: denied in light of, among other relevant factors, the parties' distributive shares of the substantial marital estate .

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE: denied where both parties had been permitted to advance themselves significant funds for that purpose from marital assets.

PROP DIST TO W:

COMMENT:

CASE: Mack v Mack

CITATION: --- N.Y.S.3d ----, 2019 WL 758593, 2019 N.Y. Slip Op. 01284 (3d Dept., 2019)

YRS MAR: 15 H AGE: H INCOME: W AGE: W INCOME:

CHILD SUPPORT:\$2,238.50 monthly (2 children)

MAINTENANCE: \$2,485.68 monthly until 2022

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: 50% of the marital property

COMMENT: Supreme Court found husbands testimony and the income shown on the tax returns to be incredible based on the parties' standard of living, the reality of the husband's business and accounting practices, and testimony that the husband paid personal expenses from corporate accounts. Considering his education, professional qualifications, demonstrated earning potential and prior employment and income, the court did not abuse its discretion in imputing to the husband \$200,000 in annual income for support purposes.

CASE: Morille-Hinds v Hinds

CITATION: --- N.Y.S.3d ----, 2019 WL 693232, 2019 N.Y. Slip Op. 01208 (2d Dept.,2019)

YRS MAR: 14 H AGE:54 H INCOME: W AGE:54 W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:\$ 23,122.25.

PROP DIST TO W: equal distribution

COMMENT: In awarding counsel fee to wife court considered disparity in the parties' incomes, as well as the fact that the plaintiff failed to produce documents, and that she maintained unreasonable positions regarding the issues of equitable distribution and child support despite the guidance offered by the Court upon its remittal of the issues.

CASE: Westreich v Westreich

CITATION: --- N.Y.S.3d ----, 2019 WL 692975, 2019 N.Y. Slip Op. 01256 (2d Dept.,2019)

YRS MAR: 12 H AGE: H INCOME: W AGE: W INCOME:

CHILD SUPPORT: awarded \$ 100,000 per year in basic child support (2 children)

MAINTENANCE: \$ 1 million per year in maintenance for a period of four years

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:\$ 425,000.

PROP DIST TO W: the net value of her equitable distribution award was \$ 17,336,371

COMMENT: Liability for marital debt need not be equally apportioned but should be distributed in accordance with general equitable distribution principles and factors. Nevertheless, the burden of repaying marital debt should be equally shared by the parties in the absence of countervailing factors. While the division of liabilities need not be in the same proportion as the division of assets, in the absence of the consistent use of the same percentage, an Appellate Court must consider the reasons offered to support the allocation of the particular asset or liability at issue.

The defendant testified that he caused the funds necessary for the purchase of the marital residence to be transferred from his Westfield account to a joint Merrill Lynch account for convenience in that there was no ability to write certified checks on the Westfield account. The funds were in the joint account only for a few days before they were disbursed for the purchase of the residence. The Appellate Division noted that there was no evidence that refuted the defendant's contention that his interest in the Westfield account was premarital, separate property, and there was no evidence that the funds used to provide the cash component of the purchase price of the marital residence did, or even could have, come from any marital property source. The Appellate Division held that given the documented deposit of \$ 2,565,934 into the joint Merrill Lynch account just 10 months after the marriage, the absence of any preexisting marital account or asset in such an amount, and the rapid in-and-out nature of the transaction just prior to the closing, the conclusion was inescapable that the \$ 2,565,934 came from the defendant's premarital assets, and he should have received a credit therefor.

CASE: Flom v Flom

CITATION: --- N.Y.S.3d ----, 2019 WL 1064152, 2019 N.Y. Slip Op. 01643 (1st Dept., 2019)

YRS MAR: 18 H AGE: H INCOME: W AGE: W INCOME:

CHILD SUPPORT: \$ 4,250 monthly (2 children)

MAINTENANCE: \$ 26,000 in monthly taxable maintenance for six years

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: marital property subject to distribution should be divided equally.

COMMENT: Although there is no requirement that each marital asset be divided evenly, “where both spouses equally contribute to the marriage which is of long duration, a division should be made which is as equal as possible.” There was no basis to reduce equitable distribution merely because the parties chose to hire domestic help.

Court providently exercised its discretion in ordering an in-kind distribution of plaintiff’s interest in Flomsky LLC. Plaintiff’s contention that his interest could not be distributed because defendant failed to value the asset was unavailing in light of his proposal prior to trial to distribute Flomsky in lieu of maintenance. He also failed to explain how Flomsky differed from his other private investments, which were readily distributed without formal valuations. Defendant’s in-kind distribution was 50%.

CASE: Dilascio, v.. Dilascio

CITATION: --- N.Y.S.3d ----, 2019 WL 1141928, 2019 N.Y. Slip Op. 01742 (2d Dept., 2019)

YRS MAR: 15 H AGE: H INCOME: W AGE: W INCOME:

CHILD SUPPORT:

MAINTENANCE: \$140,000 per year until age 62.

EXCL OCC:

HEALTH/MED INS:

LIFE INS: \$500,000, naming the plaintiff as the beneficiary for as long as the defendant was obligated to pay maintenance or child support

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Court declined to maintenance and child support retroactive to the commencement of the action. Where life insurance is appropriate, it should be set in an amount sufficient to prevent financial injury to a former spouse or children who, but for the payor spouse's death, would have continued to receive maintenance, a distributive award, or child support.

CASE: Larowitz v Lebetkin

CITATION: --- N.Y.S.3d ----, 2019 WL 1338331, 2019 N.Y. Slip Op. 02273 (1st Dept., 2019)

YRS MAR: H AGE: H INCOME: W AGE: W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Appellate Division rejected defendant's argument that distributive awards as low as 5% are only for spouses who commit heinous domestic violence

CASE: Cotton v Roedelbronn CITATION: --- N.Y.S.3d ----, 2019 WL 1338211, 2019 N.Y. Slip Op. 02294 (1st Dept.,2019)

YRS MAR: H AGE: H INCOME: W AGE: W INCOME:

CHILD SUPPORT:

MAINTENANCE: monthly maintenance of \$ 20,000 for 36 months.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: 10% of plaintiff husband's business interest valued at \$ 19,942,898, and 40% of his interests in two other business entities valued at \$ 3,280,150 and \$ 655,943

COMMENT: Court providently exercised its discretion in awarding defendant monthly maintenance of \$ 20,000 for 36 months where only evidence of defendant's expenses was her net worth statement, which the Referee found riddled with misstatements, inaccuracies, and unsubstantiated expenses.

CASE: Ragucci v Ragucci

CITATION: --- N.Y.S.3d ----, 2019 WL 1389161, 2019 N.Y. Slip Op. 02407 (3d Dept., 2019)

YRS MAR: H AGE: H INCOME: W AGE: W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Student loan debt for the child's education was properly treated as the husband's separate liability where, among other things, only the husband's personal information and signature appeared on the loan application, the husband was in charge of the family's finances during the marriage, the wife was unaware of the loan and he made monthly payments on the loan starting in 2009, and later stopped making payments in April 2012 when he mistakenly believed that the child had thereafter taken responsibility for the loan repayments.

CASE: Jankovic v Jankovic

CITATION: --- N.Y.S.3d ----, 2019 WL 1371980 (Mem), 2019 N.Y. Slip Op. 02322 (2d Dept., 2019)

YRS MAR: 30 H AGE: H INCOME: W AGE: W INCOME:

CHILD SUPPORT:

MAINTENANCE: non-durational maintenance of \$ 333 per month commencing in 2018
EXCL OCC:
HEALTH/MED INS:
LIFE INS:
COUNSEL FEE: \$ 15,000.
PROP DIST TO W:

COMMENT:

CASE: Candea v Candea
CITATION: --- N.Y.S.3d ----, 2019 WL 2363775, 2019 N.Y. Slip Op. 04349 (2d Dept., 2019)
YRS MAR:18 H AGE: H INCOME: W AGE: W INCOME:
CHILD SUPPORT:

MAINTENANCE: \$ 2,133 per month for a period of seven years
EXCL OCC:
HEALTH/MED INS:
LIFE INS:
COUNSEL FEE: denied
PROP DIST TO W:

COMMENT:

CASE: Hofman v Hofman
CITATION: --- N.Y.S.3d ----, 2019 WL 2504654, 2019 N.Y. Slip Op. 04872 (1st Dept., 2019)
YRS MAR: 16 ½ H AGE: H INCOME: W AGE: W INCOME:
CHILD SUPPORT:

MAINTENANCE: Denied
EXCL OCC:

HEALTH/MED INS:
 LIFE INS:
 COUNSEL FEE: 41% of her counsel fees
 PROP DIST TO W:

COMMENT: Denial of post-divorce maintenance to defendant was supported by the record, which showed that defendant's distributive award, now substantially increased, would generate cash flow sufficient to render her self-supporting. Maintenance and child support retroactive to the commencement of the action was not warranted where Defendant never moved for pendente lite support, the parties entered into two stipulations in which they agreed that each would withdraw approximately \$ 2.2 million against equitable distribution to use for personal and marital expenses, and there was no evidence that either defendant's or the children's needs were not met.

CASE: Beyel v Beyel
 CITATION: --- N.Y.S.3d ----, 2019 WL 2608376, 2019 N.Y. Slip Op. 05102 (2d Dept.,2019)
 YRS MAR: 27 H AGE: H INCOME: W AGE: W INCOME:
 CHILD SUPPORT:

MAINTENANCE: \$3,000 per month for 10 ½ years
 EXCL OCC:
 HEALTH/MED INS:
 LIFE INS:
 COUNSEL FEE: \$10,000
 PROP DIST TO W:

COMMENT:

CASE: Burke v Burke
 CITATION: .--- N.Y.S.3d ----, 2019 WL 3679808, 2019 N.Y. Slip Op. 06060 (2d Dept., 2019)

YRS MAR: 22 H AGE: H INCOME: W AGE: W INCOME:
CHILD SUPPORT:

MAINTENANCE:
EXCL OCC:
HEALTH/MED INS:
LIFE INS:
COUNSEL FEE:

PROP DIST TO W: (1) 50% of the defendant's total pension, (2) a 50% share in the defendant's total interest in the Sergeants Benevolent Association Annuity Fund, (3) a 50% interest in the defendant's total Deferred Compensation Plan, (4) a 50% interest in the defendant's total benefits from the Police Superior Officers' Variable Supplement Fund.

COMMENT: The inclusion in the plaintiff's distributive award of a portion of certain pension credits the defendant "bought back" for his part-time employment as a school janitor the marriage was proper where the purchase of the pension credits, which was realized during the marriage and effected with the use of marital funds, resulted in an enhanced pension benefit. Inasmuch as this occurred during the marriage and through the use of marital funds, it constituted marital property subject to equitable distribution.

CASE: Yuliano v Yuliano
CITATION: --- N.Y.S.3d ----, 2019 WL 4281721, 2019 N.Y. Slip Op. 06535 (2d Dept.,2019)
YRS MAR: 22 H AGE: H INCOME: W AGE: W INCOME:
CHILD SUPPORT:

MAINTENANCE: \$1,000 per month for a period of four years
EXCL OCC: Court directed that the marital residence be sold and that the parties share equally the net proceeds of the sale, as well as the contents of the marital residence.
HEALTH/MED INS:
LIFE INS:
COUNSEL FEE:
PROP DIST TO W: 50% membership interest in real estate corporation, 12%, or \$24,937.32, of the value of the plaintiff's enhanced earning capacity (dentist).

COMMENT: Defendant was entitled to a credit in the sum of \$12,500, representing one-half of the sum that the plaintiff withdrew from a bank account and used to pay her attorney's fees

CASE: Pandis v Lapas

CITATION: --- N.Y.S.3d ----, 2019 WL 5057564, 2019 N.Y. Slip Op. 07267(2d Dept.,2019)

YRS MAR: 20 H AGE: H INCOME: \$275,310 W AGE: W INCOME: \$92,000

CHILD SUPPORT: \$3,593.75 per month, which was 69% of the basic child support for the two children, plus 69% of the children's add-on expenses, including private school tuition and college tuition.

MAINTENANCE: \$1,750 per month for six years.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W:

COMMENT: Supreme Court cited a version of Domestic Relations Law § 236 that was not in effect at the time the court made its determination. However, reversal was not warranted on this basis because the court enumerated and weighed the applicable factors in determining the amount and duration of the defendant's maintenance award. The Supreme Court did not err in setting the combined parental income cap for child support purposes at \$250,000. The test generally applied is whether the child is receiving enough to meet his or her 'actual needs and the amount required to live an appropriate lifestyle.

CASE: Ambrose v Ambrose

CITATION: --- N.Y.S.3d ----, 2019 WL 5582047, 2019 N.Y. Slip Op. 077577 (2d Dept.,2019)

YRS MAR: 2 ½ H AGE: H INCOME: W AGE: W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: Supreme Court did not improvidently exercise its discretion in denying the defendant a distributive share of the plaintiff's retirement assets. Defendant was awarded full title to her non-vested retirement assets

COMMENT:

CASE: Santamaria v Santamaria

CITATION: --- N.Y.S.3d ----, 2019 WL 5945643, 2019 N.Y. Slip Op. 08239 (2d Dept.,2019)

YRS MAR: 13 ½ H AGE: H INCOME: W AGE: W INCOME:

CHILD SUPPORT: child support retroactive to November 18, 2015, the date of the custody order to wife.

MAINTENANCE: \$750 per month, commencing December 15, 2015, for a period of four years or until she remarries.

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: Supreme Court awarded the plaintiff-husband a separate property credit of \$332,000 related to the marital residence which was his separate property that he transferred into joint names in 2010, and awarded the defendant a 50% share of any equity in the residence (which he acquired in 2002) that accrued from 2002 until the date of its sale.

COMMENT: Although the plaintiff waived any interest in the defendant's degree, the defendant's enhanced earning ability did benefit the marriage, and it was not unreasonable for the Supreme Court to direct the plaintiff to pay \$20,000 of the outstanding student loan debt which were incurred during the marriage. T outstanding student loan balance was approximately \$52,000, and that the majority of the student loans were incurred during the marriage.

CASE: Ospina–Cherner v. Cherner

CITATION: --- N.Y.S.3d ----, 2019 WL 7160520 (2d Dept., 2019)

YRS MAR: 13 H AGE: H INCOME: W AGE: W INCOME:

CHILD SUPPORT:

MAINTENANCE:

EXCL OCC:

HEALTH/MED INS:

LIFE INS:

COUNSEL FEE:

PROP DIST TO W: Parties required to sell the New Rochelle property and equally share in the net profits or losses; the defendant was entitled to one-half of the plaintiff's one-half share of the proceeds from the sale of certain Bronx property; the plaintiff was awarded Colombia property owned with mother; and parties were not entitled to any equitable distribution of the other's retirement or pension accounts.

COMMENT: Supreme Court did not err in determining defendants distributive award of the proceeds of the sale of certain Bronx property. The court considered the plaintiff's conveyance of a portion of her interest in the property to her mother, before the commencement of this action for no consideration, and accounted for the improper transfer in determining the defendant's equitable share.

Supreme Court erred when it awarded the plaintiff \$25,000 of the defendant's enhanced earning capacity from his MBA where its value was based on its determination of the cost of the acquisition of the MBA degree and plaintiff failed to establish the actual value of the defendant's enhanced earning capacity.

