Maintenance and Spousal Support, Then and Now: Are They the Same?

By Joel R. Brandes

A spouse in need of support may commence a matrimonial action in the Supreme Court and seek an award of maintenance in that action, or she may bring an independent action for spousal support in the Supreme Court, or a proceeding for spousal support in the Family Court. One question which has perplexed lawyers and judges alike is: are maintenance and spousal support the same?

Maintenance Awards

Until July 19, 1980, alimony was awarded to wives but not to husbands. Since 1962 former Domestic Relations Law § 236[1] was the controlling statutory provision regarding alimony. It authorized the court in a matrimonial action to direct payment of alimony so as to "provide suitably" as in the court's discretion, "justice requires, having regard to the length of time of the marriage, the ability of each party to be self- supporting, the circumstances of the case and of the respective parties." However, if the wife was guilty of misconduct which constituted grounds for divorce or legal separation, she was not entitled to an award of alimony. Alimony awards were permanent.[2] The measure of the amount of alimony, where possible, was said to be the standard of living during coverture,

When the Equitable Distribution system became law on July 19, 1980 alimony was replaced with "maintenance."[3] Domestic Relations Law § 236[B][1], as originally enacted in 1980, defined "maintenance" as "payments provided for in a valid agreement between the parties or awarded by the court, to be paid at fixed intervals for a definite or indefinite period of time, to meet the reasonable needs of a party to the matrimonial action.[4] The primary difference, aside from duration, is that in theory, alimony was awarded to help maintain the wife's prior standard of living. Maintenance, on the other hand, was geared to "reasonable needs" and ability to pay.[5] The 1980 statute set forth 10 factors as criteria to be weighed and balanced by the court in awarding maintenance. It also impliedly adopted the concept of "rehabilitative" maintenance to tide the recipient over until there was an ability to be self-supporting.

Domestic Relations Law § 236[B] was amended effective August 2, 1986. The 1986 amendment contained new and revised factors for setting maintenance. The amendment relocated the reference to "the circumstances of the case and of the respective parties." The most significant aspect of the 1986 amendment was the deletion of the "reasonable needs and ability to pay" basis for maintenance and the substitution in its place of the old test of "standard of living of the parties established during the marriage." In the 1980 statute, standard of living had been one of the 10 factors to be considered "where practical and relevant," but was subordinate to the general objective of meeting "reasonable needs and ability to pay." [6]

In 2009 loss of health insurance benefits upon dissolution of the marriage was added as a factor to be considered by the court in making a maintenance award and in making a property distribution.[7]

In 2010 Domestic Relations Law § 236 [B] [6] was amended again,[8] this time to change the title of subdivision [B][6] from "Maintenance" to "Post-divorce maintenance awards," and to increase the number of factors for the court to consider in determining the amount and duration of maintenance from 14 to 20 factors. The title of the section appears to indicate that the section deals with maintenance awards after a divorce is granted. The title is misleading because maintenance may be awarded in any matrimonial action, even when the court refuses to grant a divorce or dissolution of the marriage.[9]

Until 2016 Domestic Relations Law § 236 [B][6] [a] provided that except where the parties have entered into an agreement pursuant to Domestic Relations Law § 236[B][3] providing for maintenance, the court may order maintenance, in any matrimonial action, in such amount as justice requires, having regard for the standard of living of the parties established during the marriage, whether the party in whose favor maintenance is granted lacks sufficient property and income to provide for his or her reasonable needs and whether the other party has sufficient property or income to provide for the reasonable needs of the other and the circumstances of the case and of the respective parties.[10]

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Amount of Maintenance Award

In 2015, in exchange for the Legislature eliminating "enhanced earning capacity" as marital property,[11] the maintenance provisions were amended to adopt a formula approach to maintenance awards. Subdivision [B][6][a] was amended to, among other things, remove language that "the court may order maintenance, in any matrimonial action, in such amount as justice requires, having regard for the standard of living of the parties established during the marriage, whether the party in whose favor maintenance is granted lacks sufficient property and income to provide for his or her reasonable needs and whether the other party has sufficient property or income to provide for the reasonable needs of the other and the circumstances of the case and of the respective parties."

Under the 2015 amendment the application of the appropriate formula is intended to result in the "post-divorce maintenance guideline obligation."[12] Domestic Relations Law § 236 [B][6], still titled "Post-divorce maintenance awards," defines the "post-divorce maintenance guideline obligation" as the guideline amount of post-divorce maintenance and the guideline duration of post-divorce maintenance.[13] The court must order the post-divorce maintenance guideline obligation up to the "income cap," unless the court finds that the post-divorce maintenance guideline obligation is unjust or inappropriate, based upon consideration of any one or more of the 15 factors listed in Domestic Relations Law § 236 [B][6][e][1][(a)-(o).[14] These factors are:

(a) the age and health of the parties;

(b) the present or future earning capacity of the parties, including a history of limited participation in the workforce;

(c) the need of one party to incur education or training expenses;

(d) the termination of a child support award before the termination of the maintenance award when the calculation of maintenance was based upon child support being awarded which resulted in a maintenance award lower than it would have been had child support not been awarded;

(e) the wasteful dissipation of marital property, including transfers or encumbrances made in contemplation of a matrimonial action without fair consideration;

(f) the existence and duration of a pre-marital joint household or a pre-divorce separate household;

(g) acts by one party against another that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment. Such acts include but are not limited to acts of domestic violence;

(h) the availability and cost of medical insurance for the parties;

(i) the care of children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws provided during the marriage that inhibits a party's earning capacity;

(j) the tax consequences to each party;

(k) the standard of living of the parties established during the marriage;

(l) the reduced or lost earning capacity of the payee as a result of having forgone or delayed education, training, employment or career opportunities during the marriage;

(m) the equitable distribution of marital property and the income or imputed income on the assets so distributed;

(n) the contributions and services of the payee as a spouse, parent, wage earner and homemaker and to the career or career potential of the other party; and

(o) any other factor which the court shall expressly find to be just and proper.

Domestic Relations Law § 236 [B][6] contains formulas for the court to determine the guideline amount of post-divorce maintenance:

(1) where child support will be paid for children of the marriage and where the payor is also the non-custodial parent;[15] and

(2) where child support will not be paid for children of the marriage, or where child support will be paid for children of the marriage but the payor is the custodial parent.[16]

If child support will be paid for children of the marriage but the payor is the custodial parent, post-divorce maintenance must be calculated prior to child support.[17]

Where the guideline amount of post-divorce maintenance would reduce the payor's income below the self-support reserve for a single person, the guideline amount of post-divorce maintenance is the difference between the payor's income and the self-support reserve. If the payor's income is below the self-support reserve, there is a rebuttable presumption that no post-divorce maintenance shall be awarded.[18]

Where the payor's income exceeds the income cap,[19] the court must determine the guideline amount of post-divorce maintenance pursuant to the formulas referred to in the preceding paragraphs and perform the calculations for the income of the payor up to and including the income cap.[20] For income exceeding the income cap, the amount of additional maintenance awarded, if any, is within the

discretion of the court which must take into consideration any one or more of the 15 factors set forth in Domestic Relations Law § 236 [B][6][e][1] [(a)-(o). [21]

Duration of Maintenance Award

Domestic Relations Law § 236 [B][6] contains an advisory formula for the court to use in determining the duration of post-divorce maintenance based upon the percent of the length of the marriage. The advisory formula is: zero years married up to and including 15 years, 15%–30%; more than 15 years married up to and including 20 years, 30%–40%; more than 20 years married, 35%–50%.[22]

In determining the duration of post-divorce maintenance, the court must consider the factors listed in Domestic Relations Law § 236 [B][6][e][1] [(a)-(o) whether or not the court utilizes the advisory schedule.[23]

When determining the duration of post-divorce maintenance, the court must take into consideration the anticipated retirement assets, benefits, and retirement eligibility age of both parties, if ascertainable at the time of its decision. If the anticipated retirement assets, benefits, and retirement eligibility age of both parties is not ascertainable at the time of decision, the actual full or partial retirement of the payor with substantial diminution of income is a basis for a modification of the maintenance award.[24]

Spousal Support

Spousal support, which is awarded pursuant to Article 4 of the Family Court Act,[25] has been largely undefined as a concept. In contrast to maintenance, which may be awarded in a matrimonial action where the court grants[26] or refuses to grant the relief requested by the other spouse,[27] spousal support may be awarded in a matrimonial action where the court does not grant the relief requested by the other spouse, and in an independent action in Supreme Court for support under Article 4 of the Family Court Act,[28] in addition to a Family Court support proceeding.

Until it was amended in 2016, former Family Court Act § 412 provided that "a married person was chargeable with the support of his or her spouse and, if possessed of sufficient means or able to earn such means, may be required to pay for his or her support a fair and reasonable sum, as the court may determine, having due regard to the circumstances of the respective parties.[29] Family Court Act § 412 specified "the circumstances of the respective parties" as the factors to be considered by a court in awarding spousal support.[30] There was no statutory requirement that the factors considered be enumerated in the court's decision.[31]

Although Family Court Act § 412 appeared to limit the support obligation to a spouse who was "possessed of sufficient means or able to earn such means" a respondent in a spousal support proceeding was prima facie presumed to have sufficient means to support his or her spouse.[32]

Courts were not required to apply the provisions and standards of Domestic Relations Law § 236 [B][6] to awards of spousal support, made pursuant to Family Court Act § 412.[33] The Appellate Division decisions[34] had held that, in a Family Court Act article 4 support proceeding, the Family Court could refer to Domestic Relations Law § 236 [B][6] to reach a determination of the amount of support to be paid. However, it was not required to do so.[35] It was held that while the Family Court is required to provide a reasoned analysis for its decision,[36] where it considers the factors listed in the Domestic Relations Law, it was not required to articulate on the record an analysis of each of the factors set forth in Domestic Relations Law § 236[B][6][a].[37]

In proceedings under former Family Court Act § 412 support was awarded on a "means" basis. This meant that a spouse could be required to provide for support if possessed of sufficient means or able to earn such means, having due regard to the "circumstances of the respective parties. It was held that this required a delicate balancing of each party's needs and means. The determination of a spouse's support obligation depended on the particular circumstances of the case, including each spouse's financial means, a spouse's need to have money to live on after payments were made, the duration of the marriage, and each spouse's ability to be self-supporting.[2381] An award of spousal support under Family Court Act § 412 was broadly "determined by evaluating the assets, earning potential and circumstances of the parties involved."[39]

There was and still is no durational limit in the Family Court Act on spousal support.[40]

Until the enactment of the equitable distribution system in July 1980,[41] a spouse guilty of misconduct constituting grounds for divorce was not entitled to support under Family Court Act § 412. Family Court Act § 412 was not amended when the equitable distribution law was enacted and the former case law has never been distinguished or overruled. Notably, the Third Department has held that marital misconduct may be a relevant consideration in awarding spousal support under Family Court Act § 412 depending upon the facts and circumstances of the case.[42]

The New Spousal Support

Effective January 23, 2016 Family Court Act § 412 was amended to make it almost identical to Domestic Relations Law § 236 [B][6][a]. Family Court Act § 412 as amended reflects a substantial change in the Legislature's approach to spousal support. The previous spousal support provision gave the court great leeway, directing only in general terms that a married person, if possessed of sufficient means or able to earn such means, may be required to pay for his or her support a fair and reasonable sum, having due regard to the circumstances of the respective parties.

The 2015 amendment to Family Court Act § 412 creates a substantial presumptive entitlement to spousal support.

Family Court Act § 412, subdivision 1 provides that a married person is chargeable with the support of his or her spouse and, except where the parties have entered into an agreement providing for support,[43] the court, upon application by a party, shall make its award for spousal support pursuant to the provisions of Article 4.

Family Court Act § 412, subdivision 2 contains the same definitions of "payor," "payee," "income," "income cap," "guideline amount of spousal support," "self-support reserve" and "agreement" as provided in Domestic Relations Law § 236[B][3].

Family Court Act § 412, subdivision 3 contains a provision identical to that in Domestic Relations Law § 236[B][6] for the court to calculate the guideline amount of spousal support where the payor's income is lower than or equal to the income cap.

Family Court Act § 412, subdivision 4(a) provides that the court shall perform the calculations set forth in subdivision 3 for the income of the payor up to and including the income cap; and for income exceeding the cap, the amount of additional spousal support awarded, if any, is within the discretion of the court which must take into consideration any one or more of the 14 factors set forth in Family Court Act § 412 (6)(a). Subdivision 4(a) is identical to Domestic Relations Law § 236[B][6] in providing that where the guideline amount of spousal support would reduce the payor's income below the self-support reserve for a single person, the guideline amount of spousal support shall be the difference between the payor's income and the self-support reserve. If the payor's income is below the self-support reserve, there shall is a rebuttable presumption that no spousal support is awarded.

Family Court Act § 412, subdivision (6)(a) provides that the court shall order the guideline amount of spousal support up to the income cap in accordance with Family Court Act § 412 (3), unless the court finds that the guideline amount of spousal support is unjust or inappropriate, which finding shall be based upon consideration of any one or more of 14 factors set forth in Family Court Act § 412 (6)(a), and adjusts the guideline amount of spousal support accordingly based upon its consideration of the 14 factors.[44]

The Differences

Most of the provisions of Domestic Relations Law § 236 [B][6] are identical to those in Family Court Act § 412. Spousal support guidelines are established for Family Court using the same two formulas set forth for maintenance guidelines. The court may adjust the guideline amount of spousal support up to the income cap where it finds that the guideline amount of spousal support is unjust or inappropriate, after consideration of one or more factors, and adjusts the guideline amount of spousal support accordingly based upon its consideration of these factors. Where there is income over the cap, additional spousal support may be awarded after consideration of one or more of the same factors. The same income cap applies to post-divorce maintenance and spousal support. Both courts are required to set forth the factors considered and the reasons for the decision in writing or on the record, which may not be waived by either party or counsel.

However, there are significant differences. The post-divorce maintenance calculation contains 15 factors for the court's consideration, rather than 14 factors in the spousal support calculation. The post-divorce maintenance calculation takes into consideration one additional factor which is not in the spousal support calculation, (m) the equitable distribution of marital property and the income or imputed income on the assets so distributed.

Moreover, factor (e) for post-divorce maintenance, which is factor (5) for spousal support, "the wasteful dissipation of marital property, including transfers or encumbrances made in contemplation of a support proceeding without fair consideration," does not lend itself to a spousal support proceeding. Marital property is a term of art which is defined in the Equitable Distribution Law, but is not defined in Family Court Act § 412, and therefore, since there is no distribution of marital property in a support proceeding, there cannot be a wasteful dissipation of marital property. For the same reason, the phrase "transfers and encumbrances" refers to marital property and makes no sense in the context of a spousal support proceeding since "marital property" only exists in an action in which equitable distribution is available.

Neither does factor (l) for post-divorce maintenance, which is factor (12) for spousal support, "the reduced or lost earning capacity of the payee as a result of having forgone or delayed education, training, employment or career opportunities during the marriage." Quantifying reduced or lost earning capacity requires a party to offer expert testimony, something that support petitioner's in Family Court can rarely afford.

Another difference between post-divorce maintenance and spousal support is that post-divorce maintenance may be durational, while a durational limit may not be placed on spousal support in the Family Court Act.[45]

The definition of income for post-divorce maintenance also includes a subdivision (b), income from income-producing property that is being equitably distributed. This addition is not in the definition of income for purposes of spousal support since equitable distribution is not available in a spousal support proceeding.

Post-divorce maintenance terminates upon the death of either party or upon the payee's valid or invalid marriage, or upon modification pursuant to Domestic Relations Law § 236 [B][9][b] or Domestic Relations Law § 248.

Under Family Court Act § 412 spousal support terminates upon the death of either party or modification by agreement or court order. The court may modify an order of spousal support upon a showing of a substantial change in circumstances. Unless modified, a spousal support order continues until there is a written or oral stipulation or agreement between the parties, the issuance of a judgment of divorce or other order in a matrimonial proceeding, or the death of either party.

The Supreme Court may modify an order of post-divorce maintenance pursuant to Domestic Relations Law § 236 [B][9][b] [46] or Domestic Relations Law § 248. If not ascertainable at the time of decision, the actual full or partial retirement of the payor with substantial diminution of income is also a basis for a modification of the post-divorce maintenance award.

Finally, in awarding post-divorce maintenance, the court may, where appropriate, consider the effect of a barrier to remarriage, pursuant to Domestic Relations Law § 253(6), on the 15 enumerated factors. This provision is not applicable in a spousal support proceeding.

Conclusion

The Supreme Court may award maintenance or spousal support. In awarding maintenance there are several factors that the court may consider, including barriers to remarriage, which are not part of the spousal support calculation. Maintenance can have a durational limit. In contrast, there is no durational limit on spousal support, and a respondent in a spousal support proceeding is prima facie presumed to have sufficient means to support his or her spouse.[47] The Family Court Act creates a presumptive entitlement to support. There is no such entitlement in a matrimonial action. As we have seen, these statutes are procedurally similar, but, as a practical matter, they are far from the same.

Endnotes

1. Added L.1962, c. 313, § 10. It now appears in gender neutral terms as Domestic Relations Law § 236 [A], due to Laws of 1980, Chapter 281, eff July 19, 1980.
2. *See* former Domestic Relations Law § 236, now amended and redesignated as Domestic Relations Law § 236(A) (1).
3. Domestic Relations Law § 236 [B]; Laws of 1980, Chapter 281, effective July 19, 1980.
4. Domestic Relations Law § 236[B] [1].
5. Dom Rel Law § 236(B) (5) and (B) (6).
6. Laws of 1986, Chapter 844.
7. Domestic Relations Law § 236[B] [6] [a] [11], as added by Laws of 2009, Ch 229. The amendments applied to any action or proceeding commenced on or after the effective date of September 14, 2009.
8. *See* Laws 2010, Ch. 182, §§ 7, 9, effective October 13, 2010; Laws of 2010, Ch. 371, §§ 1, 2, 4, effective October 12, 2010; Laws of 2010, Ch. 371, § 3, effective August 13, 2010.
9. Domestic Relations Law § 236 [B][8][b].
10. *See* Domestic Relations Law § 236 [B] [6][a], Laws of 2010, Ch 371.
11. *See* Domestic Relations Law § 236 [B][5][d], which provides, in part: The court shall not consider as marital property subject to distribution the value of a spouse's enhanced earning capacity arising from a license, degree, celebrity goodwill, or career enhancement. However, in arriving at an equitable division of marital property, the court shall consider the direct or indirect contributions to the development during the marriage of the enhanced earning capacity of the other spouse.
12. Laws of 2015, Ch. 269, § 3, effective October 25, 2015; Laws of 2015, Ch. 269, §§ 1, 2, 4, 5, effective January 23, 2016.
13. Domestic Relations Law § 236 [B][6][b][7].
14. Domestic Relations Law § 236 [B] [6][e][1].
15. Domestic Relations Law § 236 [B][6][c][1]. The formula is as follows:
    (a) Subtract 25% of the payee's income from 20% of the payor's income.
    (b) Multiply the sum of the payor's income and the payee's income by 40%.
    (c) Subtract the payee's income from the amount derived by (b).
    (d) Determine the lower of the two amounts derived by (a) and (c).
    (e) The guideline amount is the amount determined by (d). If the amount determined by (d) is less than or equal to zero, the guideline amount of post-divorce maintenance is zero dollars.
16. Domestic Relations Law § 236 [B][6][c][2]. The formula is as follows:
    (a) Subtract 20% of the payee's income from 30% of the payor's income.
    (b) Multiply the sum of the payor's income and the payee's income by 40%.
    (c) Subtract the payee's income from the amount derived by (b).
    (d) Determine the lower of the two amounts derived by (a) and (c).
    (e) The guideline amount is the amount determined by (d). If the amount determined by (d) is less than or equal to zero, the guideline amount of post-divorce maintenance is zero dollars.
17. Domestic Relations Law § 236 [B][6][f].
18. Domestic Relations Law § 236 [B][6][g].
19. "Income cap" originally meant up to and including $175,000 of the payor's annual income. It is adjusted every two years by the Office of Court Administration which determines and publishes the income cap. The present income cap is $192,000. As of March 1, 2020 it is adjusted on March 1, every two years, See Laws of 2019, Ch 335.
20. Domestic Relations Law § 236 [B][6][d][1].
21. Domestic Relations Law § 236 [B][6][d][2].
22. Domestic Relations Law § 236 [B][6][f][1].
23. Domestic Relations Law § 236 [B][6] [f][2].
24. Domestic Relations Law § 236 [B][6] [f][4].
25. *See* Family Court Act § 412.
26. Domestic Relations Law § 236 [B] [8][b].
27. *Id.*
28. *See Kagen v. Kagen*, 21 N.Y.2d 532, 289 N.Y.S.2d 195 (1968)

    In *Kenyon v. Kenyon*, 155 A.D.2d 825, 548 N.Y.S.2d 97 (3d Dep't, 1989) at trial, plaintiff withdrew her action for a separation, leaving only the action seeking to set aside an antenuptial agreement, which included an application for support and maintenance. The Appellate Division held that since there was no longer a matrimonial action pending, the provisions of Domestic Relations Law § 236(B) were inapplicable. Thus, plaintiff's application for support was viewed as one for spousal support under Family Court Act article 4. The court noted that although Family Court is the appropriate forum for such a proceeding where no matrimonial action is pending, Supreme Court had jurisdiction to consider the matter (*see*, *Kagen v. Kagen*, 21 N.Y.2d 532).The court noted that

in contrast to the definition of maintenance in the context of a matrimonial action there is no provision for a definite period or duration of spousal support.

In *Levy v. Levy,* 65 A.D.3d 1295, 885 N.Y.S.2d 761 (2d Dep't, 2009) the Appellate Division found that Supreme Court's award of spousal support in the amount of $150 per week was appropriate, based upon a consideration of the parties' respective circumstances at the time of their presentation to the court, including the defendant's needs and the plaintiff's means. However, the court erred in imposing a durational limit on the award. In this case, the husband did not pursue his cause of action for divorce, and it was dismissed by order of the Supreme Court. Since there no longer was a matrimonial action pending, the defendant's application for support was properly viewed as one for spousal support under Family Court Act § 412, rather than under the provisions of Domestic Relations Law § 236(B). There is no durational provision in the Family Court Act on spousal support, as there is in the case of maintenance in the context of a matrimonial action. To the same effect *see Nizolek v. Nizolek*, 93 A.D.3d 934, 939 N.Y.S.2d 759 (3d Dep't, 2012).

29. Family Court Act § 412.
30. The relevant factors to be considered upon an application for spousal support under former Family Court Act § 412 were discussed in *Polite v. Polite*, 127 A.D.2d 465, 467–468, 511 N.Y.S.2d 275 (1st Dep't, 1987) and *Bruno v. Bruno*, 50 A.D.2d 701, 375 N.Y.S.2d 442 (3d Dep't,1975).
31. *See* CPLR 4213, subd. [b].
32. Family Court Act § 437: A respondent is prima facie presumed in a hearing under section 433 and section 454 to have sufficient means to support his or her spouse and children under the age of 21 years.
33. *Byrum v. Byrum*, 110 Misc.2d 628, 442 N.Y.S.2d 894 (Fam. Ct 1981).
34. *Burke v. White*, 126 A.D.2d 838, 510 N.Y.S.2d 759 (3d Dep't, 1987); *in re Mastrogiacomo v. Mastrogiacomo*, 49 A.D.2d 708149 A.D.2d 708, 540 N.Y.S.2d 325 (2d Dep't, 1989).
35. *In re Mastrogiacomo v. Mastrogiacomo*, *supra*; *Sweet v. Sweet*, 75 A.D.3d 744, 905 N.Y.S.2d 331 (3d Dep't, 2010).
36. *See* CPLR 4213 [b].
37. *Burke v. White*, 126 A.D.2d 838, 510 N.Y.S.2d 759 (3d Dep't,1987).
38. 21 *Stratienco v. Stratienco*, 61 A.D.3d 767 (2d Dep't, 2009).
39. *Nizolek v. Nizolek*, 93 A.D.3d 934, 939 N.Y.S.2d 759 (3d Dep't 2012).
40. *Blisko v. Blisko*, 149 A.D.2d 127, 128-29, 544 N.Y.S.2d 670, 671 (2d Dept, 1989); *Forbush v. Forbush* (1985, 4th Dept) 115 App. Div. 2d 335, 496 N.Y.S.2d 311; *Levy v. Levy*, 65 A.D.3d 1295, 885 N.Y.S.2d 761 (2d Dep't 2009).
41. *Stratienco v. Stratienco*, 61 A.D.3d 767 (2d Dep't, 2009).
42. *Nicit v. Nicit*, 160 A.D.2d 1197, 555 N.Y.S.2d 205 (3d Dep't 1990) (citing *Stevens v. Stevens*, 107 A.D.2d 987, 988, 484 N.Y.S.2d 708).
43. Pursuant to Family Court Act § 425.
44. Family Court Act § 412 (6)(a) (Laws of 2015, Ch. 269, § 7, effective January 23, 2016).
45. *Blisko v. Blisko*, 149 A.D.2d 127, 128-29, 544 N.Y.S.2d 670, 671 (2d Dept, 1989); *Forbush v. Forbush*, 115 App. Div. 2d 335, 496 N.Y.S.2d 311(4th Dep't, 1989); *Levy v. Levy*, 65 A.D.3d 1295, 885 N.Y.S.2d 761 (2d Dep't, 2009).
46. Domestic Relations Law § 236 [B][9][b] provides, in relevant part: b. (1) Upon application by either party, the court may annul or modify any prior order or judgment made after trial as to maintenance, upon a showing of the payee's inability to be self-supporting or upon a showing of a substantial change in circumstance, including financial hardship or upon actual full or partial retirement of the payor if the retirement results in a substantial change in financial circumstances.
47. Family Court Act § 437 provides that a respondent is prima facie presumed in a hearing under section 433 and section 454 to have sufficient means to support his or her spouse and children under the age of 21.

    The statutory presumption is a presumption of fact, which the respondent can overcome by offering contrary evidence. *Dayouze S. v. Daniel S.*, 126 Misc. 2d 32, 480 N.Y.S.2d 985 (Fam. Ct. 1984).