
FAMILY LAW



Military Pensions

Notwithstanding the recent decision by the U.S. Attorney General to try terrorists in Federal Court instead of military court, the military still has the final say when it comes to pension distributions of its soldiers. In a recent case, a couple married six years divorced and sought to split one spouse's military pension. However, neither party was aware of a federal rule that a military pension is subject to garnishment as part of a distribution of marital assets only if the parties' marriage was concurrent with at least ten years of military service. The state court in Connecticut deferred to the federal rule and prohibited a distribution to the non-military spouse.

Grandparent's Visitation Rights

A common problem for grandparents is securing visitation rights to their grandchildren. The problem often arises when after a couple's divorce one parent subsequently dies. The remaining parent can deny the child's grandparents visitation. Such was the case when a child's father prohibited visitation by his ex-wife's mother. The grandmother petitioned the court for visitation. The court found that the grandmother did not meet the "very high threshold requirement" for court "interference with the surviving parent's parental rights."

Even intensive participation in the raising of a grandchild by a grandparent does not allow visitation for that grandparent over the objection of a parent unless the grandparent was the primary decision maker for the child's

health, education, moral or social needs. This comes from a case where a grandparent petitioned for custody of a grandchild whose father was incarcerated and whose mother was unable to provide a stable environment for the child. The Court found that the grandparent had assisted in raising the grandchild but did not have a relationship akin to that of a parent, so it denied the grandparent any rights to the child.

Distribution of Assets in Divorce

Not surprisingly, litigation has arisen because a divorcing spouse is often unhappy with the distribution amount from retirement account due to market fluctuations. It is now especially important to know how and when such retirement accounts are to be evaluated for division and distribution. With the prevailing market downturn, the value of a spouse's pension or holdings can drop significantly from the date of judgment for divorce until the date the assets are distributed. In a recent case, the court denied a petition after trial to permit new evidence to show that the value of a spouse's estate had dropped 50% or approximately \$8,000,000, thereby warranting a reduction in distribution. The court denied the petition finding that the petitioner engaged in a speculative investment business which regularly results in large fluctuations in value. Naturally, the questions becomes, what investments out there right now are stable that would not cause similar results?

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