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Matrimonial Matters

Court of Appeals affirms child support holding

In ***Keller-Goldman v. Goldman*** (No. 106 SSM7, [June 12, 2018], the Court of Appeals affirmed the First Department (149 AD3d 422 [2017]). The divorcing parties entered into an agreement resolving all issues in their separation. They had four unemancipated children; however, the agreement only provided for child support of $2,500 a month to be paid by the father for the three children of which the mother had custody. (Pursuant to the CSSA, the mother would have gotten $5,000 a month.) The father had custody of the remaining child, with no child support to be paid by the mother.

The terms of the agreement provided that there would be a reduction in the father's child support obligation as children emancipated. When a child emancipated, the amount due from the father would drop to $2,150 per month, when the second child emancipated, it would drop to $1,462 per month. In a following paragraph, there was a provision stating that, "During the period in which a Child is attending a college and residing away from the residences of the parties and [the father] is contributing towards the room and board expenses of that Child, [the father] shall be entitled to a credit against his child support obligations in an amount equal to the amount [the father] is paying for that Child's room and board. The credit shall be allocated in equal monthly installments against [the father's] child support payments."

During the time the parties negotiated and signed the agreement, the

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oldest child in the mother's custody was in Israel in a 10-month seminary program. Being responsible per the agreement for the entirety of the costs of the program (e.g., room, board and tuition), the father paid about $12,000 for the child's room and board. Before the Judgment of Divorce entered, the father told the mother he was due a credit for payment of the room and board costs--of $1,200 a month.

The mother filed "for a declaration that the pending Judgment include language making clear that any credit due the father would be capped in accordance with the graduated emancipation reduction provision in the agreement." The mother wanted the father's deduction capped at $350 ($2,500 - $2,150), claiming that to allow the father to take the entirety of the room and board amount "could, in theory, completely deprive one or two of her children of support. ..." The father countered, "the court was required to enforce the plain language of the agreement." During oral argument, "the [trial] court opined that, as a matter of public policy, the agreement could not be enforced as written. ..." The court stressed the fact that the father was already enjoying a reduction in the presumptive support amount provided by the [CSSA]. The judgment of divorce "clarified" the provision, capping the father's credit against child support "at the amount identical to the decrease in monthly child support when such child becomes emancipated."

On appeal, the issue was whether the rules of contract applied to the agreement. These rules require that, "a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms … and courts may not by construction add or excise terms nor distort the meaning of those used and thereby make a new contract for the parties under the guise of interpreting the writing." However, the First Department "has articulated a very important caveat to that principle: The parties cannot contract away the duty of child support. Despite the fact that a separation agreement is entitled to the solemnity and obligation of a contract, when children's rights are involved the contract yields to the welfare of the children. The duty of a parent to support his or her child shall not be eliminated or diminished by the terms of a separation agreement, nor can it be abrogated by contract." quoting, ***Matter of Thomas B.***, 69 AD2d 24 (1st Dept., 2009).

So, is this issue settled? It should be noted that one First Department Judge dissented, and the majority decision of the Court of Appeals consisted of the following: "Like the Appellate Division, and in light of the significant downward departure from

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the support contemplated under the Child Support Standards Act, we cannot say that the Supreme Court erred when, prior to incorporating the parties' agreement into the judgment, it interpreted the disputed provision, in the context of the larger agreement and the parties' respective financial circumstances, in a manner that ensured adequate support to each unempancipated child, as the parties clearly intended."—with two judges dissenting.

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