



WINNING IN COURT

Do you have the judge's decision? Did we win?

Winning is an illusive concept in family law cases. In most situations, it is best understood to mean that one party persuaded the judge that his/her proposals best met the needs of the children and the parties. It is also best understood to result in a workable solution that the parties and their children can reliably carry out in their day-to-day lives. Winning on paper and not getting what was ordered is a hollow "win."

The Minnesota Court of Appeals frequently refers to the broad discretion accorded district courts in family law matters. Controlling Minnesota statutes express this in phrases well known to family law attorneys and many family law parties as well. Here are just a few:

- A court may exclude a party from the family home if it is **"reasonable."** Minn. Stat. Sec. 518.131, Subd 2(b) regarding temporary orders and Minn. Stat. 518.63 regarding a final decree.
- A court may award attorney fees for unreasonable litigation behavior **"in its discretion."** Minn. Stat. Sec. 518.14, Subd. 1.
- Custody is determined based on **"the best interests of the child"** which means **all relevant factors** affecting the circumstances of **both parties** and the child. Minn. Stat. Sec. 518.17, Subd. 1. See also modification standards for custody, Minn. Stat. Sec. 518.17, Subd. (d) and parenting time, Minn. Stat. Sec. 518.175, Subd. 5.
- The Court may deviate from the child support guidelines after considering the **financial circumstances of both parties and the child.** Minn. Stat. Sec. 518.551(c) and (h). See also modification of support, Minn. Stat. Sec. 518.64, Subd. 2 (can be based on the circumstances of either party).
- Maintenance orders shall be in amounts and for periods of time that the Court deems **"just"** after reviewing the **circumstances of both parties.** Minn. Stat. Sec. 518.552, Subd. 2. See also modification of maintenance, Minn. Stat. Sec. 518.552, Subd. 2(c) (can be based on the circumstances of either party).

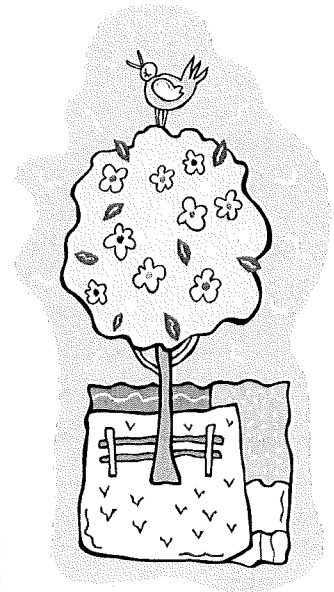
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Checklist For The Upcoming Two Months

- Get ready to file tax returns. Need the forms for claiming dependency exemptions? See www.irs.gov and www.taxes.state.mn.us/
- Attend spring parent-teacher conferences.
- Confirm spring break and Easter parenting time schedules.
- Start thinking and talking about kids' summer plans.

- The court is to make a “just and equitable” division of marital property, basing its decision on “all relevant factors” affecting the circumstances of both parties. Minn. Stat. Sec. 518.58, Subd. 1.
- Nonmarital property can be awarded to the non-owner spouse if that spouse’s financial circumstances are so inadequate as to work undue hardship based on “all relevant factors” relating to each party. Minn. Stat. Sec. 518.58, Subd. 2.

What these statutes mean for a family law party is that you must consider the impact of your proposals on the other party and the children. To offer only evidence on how it works for you is offering only half of the evidence.

Thus, if you believe you should get \$50,000 from the equity of the house and want it for a downpayment, and your spouse is unemployed, it behooves you to show how your spouse realistically can come up with that amount of cash or how you can get the money out of other assets. It also behooves you to show how both of you can meet your monthly living expenses if your proposal is ordered.

Questions which you may wish to discuss with the opposing side, or for which you may wish to provide answers in your evidence and arguments to the Court include:

- What does the other party say he/she wants and how does the proposal fit in with his/her desires?
- Do you see some additional needs or “extras” for the other side that would benefit the other side’s future plans? What are they and does the proposal address those?
- If you received the other side’s part of your proposal, could you make it work for you and your kids? How?
- What other options did you consider and why are those not being presented as a proposal?


- Does the proposal give the opposing side any flexibility in case he/she changes his/her mind or something unexpected occurs?
- Does the proposal meet the opposing side’s long-term goals/needs, as well as his/her short-term goals/needs? If so, how?
- If the opposing side is unable to meet his/her obligations in the proposal, how will that impact him/her and you? Do the facts permit any way to cushion both of the parties and the children in that circumstance?

These are the kinds of questions most parties consider in deciding whether a proposal meets their own needs and wishes. By also evaluating your proposal from the other side’s point of view, you will develop the evidence and arguments to permit the Court to implement its discretion, consider both sides’ circumstances, and adopt your proposal.

Doing so has additional benefits. First, it increases the likelihood that you keep both sides at the negotiating table and thereby increases the likelihood of reaching agreement on some or all of the issues.

Second, it increases the likelihood that you will significantly narrow any issues that are left for the Court to determine. For example, the big issue of how to divide the property in half might become the small issue of how much money the other side should be required to borrow now and how much of your share of the equity will be paid later.

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If you want to make peace, you don't talk to your friends. You talk to your enemies.

Moshe Dayan

MIXED MEDIA REVIEW

Computer and the Internet



Trying to figure out your post-decree net income? Want to see what difference various assumptions about your filing status, number of dependency exemptions, and other tax variables would make? Family law lawyers frequently use a computer program called FinPlan to calculate appropriate withholding levels for various scenarios. FinPlan is newly available from Thomson-West publishing. One could also prepare sample tax returns using less expensive programs such as TurboTax. Some internet sites which may provide helpful net pay analysis are paycheck-city.com or <http://www.cpa2client.com/calculators20040704/PayrollGross.html>.

As always, use these resources with caution. Know whether the program provides withholding or actual tax amounts. Be sure you know the assumptions behind entry fields and follow entry instructions. Start with correct entry data. Know what deductions the Court will allow or has discretion to allow. See for example the deductions allowed when calculating net income for child support in Minnesota. Minn. Stat. Sec. 518.551, Subd. 5(b).



Books



Mirror, mirror on the wall. Pretty girls don't play ball. Let's get ugly. Not too bad as a team cheer for girls softball, but not so great when the "team" is a junior high clique focused on being ugly to one or two classmates. Odd Girl Out by Rachel Simmons gives parents help in anticipating and preventing the hidden culture of aggression for girls in their teens.



Seminars



Adults can get ugly too. The seminar Dealing with Difficult Personalities offers strategies for interpersonal challenges in the work place, many of which appear to be adaptable to family or ex-spouse situations. Contact: CareerTrack at 1-800-556-3009 or www.careertrack.com



"You can't gain a good reputation on what you are going to do."

Henry Ford

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Third, if you consider the opposing side's view point seriously, you will identify real life details and logistics that need to be discussed thereby increasing the likelihood of a workable future plan. The more realistic the plan from both sides of the case, the more likely it will be implemented voluntarily or can be enforced by the Court, if necessary.

Unlike other kinds of litigation, family law litigation usually involves defined resources, both financial

and personal. There are no deep pockets. There are only so many hours in a child's day.

The Court is required to exercise its discretion and look to both sides' circumstances in resolving family law issues. Implicit in the statutes is a desire to keep family court orders within the ability of the parties to comply with them so that their daily lives run as smoothly as possible. Not only do you want a result in your day-to-day life, so does the Legislature and the Court. Your life is where the real "wins" occur.

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Providing attorney representation, mediation, and collaborative law services in divorces, paternity, post-decree, adoption, guardianship and other family law cases.

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Ripples...

the drop of one stone...

a single event transforming the lake...



Each family law matter creates ripples in the lives of the people involved in the case and in our society. This publisher believes that individuals can choose to toss the stone in a way that promotes ripples of cooperation, connection and positive values for the benefit of themselves, and the smaller and greater communities in which they live. "Family Law Ripples" is dedicated to providing practical and legal information to that end.