

She Earns/He Earns



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In August of last year, Dina McGreevey dropped her fraud claim against her soon to be ex, James McGreevey, the NJ governor who resigned after announcing he was a Gay American. Thus ended one of the most distasteful public divorce trials in NJ history. Among other claims, Mrs. McGreevey sought compensatory damages for having been tricked into a sham marriage by a gay man who needed a wife as a cover to advance his political career.

The McGreeveys were married for eight years and have a six year old daughter. Jim, 51 & Dina, 41 lived together for four years. The divorce took another four. Rather than resolving their differences out of the limelight, this couple squabbled publicly, causing the court to admonish both of them afterwards. In her opinion, Union County Superior Court Judge Karen Cassidy wrote, "Their anger seemed to override any ability to testify credibly or to be reasonable."

Before the divorce was filed, the governor offered \$300,000 to settle. After all the melodrama, Mrs. McGreevey was awarded \$109,000, one half of the marital estate.

The McGreevey bitter battle, televised daily, included details of the Governor's affair with a male Israeli sailor who he put on his payroll, claims of ménages à trois & arguments over whether to have a pony at their daughter's birthday party. No wonder the Governor's legal fees to three separate firms totaled \$498,000, while Dina owes \$526,000.

As New Jersey's first couple, the McGreeveys lived rent free in Drumthawcket, the governor's Princeton mansion, had access to the Island Beach

State Park house, a car and driver, clothing allowance and an abundance of prestige and social standing. Accustomed to this life style, Mrs. McGreevey argued she was entitled to her share of the "celebrity goodwill" her husband accumulated which she estimated to be worth \$1.4 million. According to Mrs. McGreevey, her husband throwing it all away for a sorted affair constituted marital misconduct for which she deserved full compensation.

The court disagreed and held that Mrs. McGreevey's entitlement to her First Lady life style stopped the day her husband resigned. A spouse's star rises and falls with that of her partner. Poor Mrs. McGreevey was not even entitled to royalties from her ex's seedy memoir, *The Confession*.

The former gov claimed he was unemployable due to the scandal. He bides his time as an unemployed Episcopal seminary student, forced to rely upon his millionaire boyfriend for walking around money.

McGreevey's public service career got underway as Mayor of Woodbridge where he received an annual salary of \$35,000. He leaped straight to the governorship, earning \$170,000. Mrs. McGreevey, who has a BA, worked as a fundraiser for Columbus Hospital in Newark.

Even though Jim lost his job, Mrs. McGreevey demanded \$2,500 monthly alimony for an indefinite period, since her ex still had his BA from Columbia, law degree from Georgetown and Masters Degree in Government from Harvard. She viewed his earning capacity in the high three figures. Look at Bill Clinton, Tom Kean and Brendon Byrne. On this issue, the court sided with the gov. No alimony, only \$1,075 per month child support.

McGreevey vs. McGreevey illustrates the trial court's struggle with what constitutes a parent's earning capacity for support purposes, when a lucrative position is lost and a salary unexpectedly plummets. Generally, ex-spouses & parents cannot assume lower paying jobs with no good reason. Their duty to support must be discharged in accordance with their financial ability.

No one is allowed to intentionally reduce earnings and use that reduction to evade support. Neither can they escape by pursuing education goals or self employment. If the income reduction is voluntary, due to dereliction of duty or action taken solely to avoid future support obligations, that parent will be held to their previous income level. Mr. McGreevey certainly did not lose his position just to foil Mrs. McGreevey's alimony claim.

Courts are as mindful of market conditions as they are of sudden income reductions. Job availability is subject to market demand and the status of the economy. A court will not enter a confiscatory order to punish a recalcitrant parent. The non payor will only end up in jail for failure to pay. If a litigant's income is reduced involuntarily through illness, layoff or another unforeseen development, they will not be penalized. A professional football player cannot be expected to continue to receive million dollar bonuses into his forties.

Courts take into consideration each party's age, education, training, health, earnings history and child care responsibilities. Especially important is whether (s) he actively sought employment commensurate with his/her background. There is an expectation that workers can re-position themselves with a roughly equivalent salary, even with a career change.

Earning capacity analysis, especially when establishing a new order, is fact sensitive. The classic case is when the non working spouse has a BA, but has been out of the workplace or underemployed for the last 15 years, while serving as the primary family caretaker, supporting the career of the other. Prior to separation, (s) he may have a part-time job while the children are in school. But after they separate, the superior income spouse will quickly insist that with a college degree, their former spouse re-enter the workplace at the same level they left it.

What if the family now lives in the suburbs and the spouse

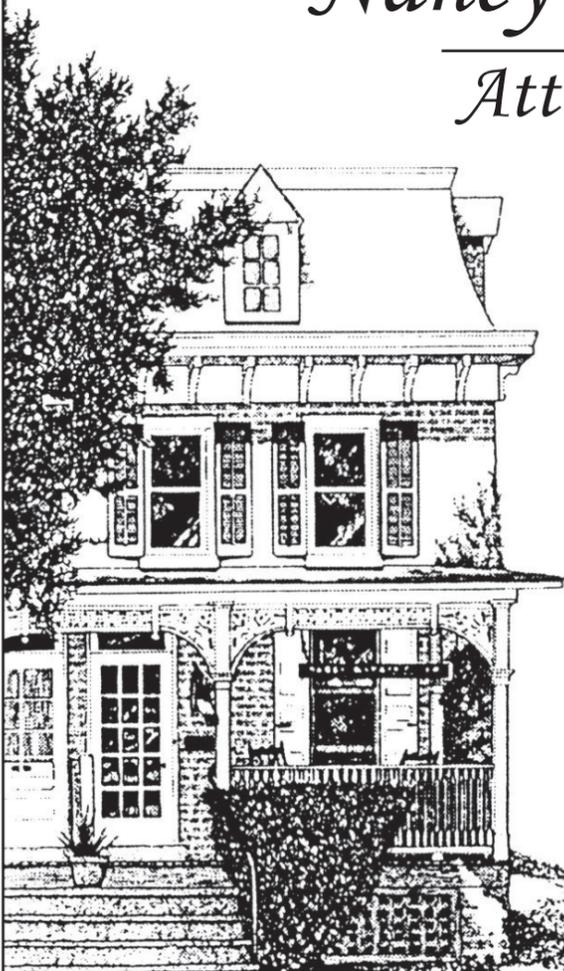
re-entering the workforce was earning Philadelphia wages? Is (s)he expected to commute 2 hours a day again, with children engaged in after school activities that require them to be driven everywhere?

In each case, a court will scrutinize how long the person was out of the work force, how many years (s)he worked before leaving, whether similar opportunities are available and if re-training is necessary. Courts insist upon a bona fide effort to secure employment commensurate with work experience. In the absence of a credible attempt to reinsert them into the work world again, courts will speculate to some extent and hold the spouse to a figure that seems reasonable.

If you find yourself in Mrs. McGreevey's position, be prepared to realistically assess your spouse's earning capacity. Gather evidence on past earnings, obtain their social security history and consider hiring a vocational expert to assess employment opportunities in the area.

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