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RESULTS MATTER

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Consequences of Failing to Report Increases in Income

In Pennsylvania, each party to a support obligation has an ongoing and affirmative obligation to notify the court or the other party of any changes in income. Failure to do so could have dire consequences, as in the case of Krebs v. Krebs, 944 A.2d 768 (Pa. Super 2008). In that case, Father failed to notify Mother (or the Court) of increases in income from 2001 to 2005, and Mother, who had no knowledge of those increases, did not file her Petition to Modify until 2006, immediately upon learning of a change in income and benefits.

The Pennsylvania Superior Court held that Father's support obligation should be increased retroactively to the date Father first experienced increases in 2001 rather than the date Mother filed her Petition in 2006. It reasoned that Father's failure to notify Mother constituted a misrepresentation upon which Mother relied. Thus, Father was assessed with retroactive arrears from 2001 forward in an amount exceeding \$80,000.

Although the Krebs Mother also requested attorneys' fees, the Court declined to address that issue but did not deny the award.

Obligations of the Parties to a Support Order

The obligations of the parties of a Domestic Relations Support Order are set forth in the standard language of a support order and in the Pennsylvania Domestic Relations Code. One of those obligations is that “. . . a party to a support proceeding shall notify the domestic relations section. . . and the other parties in writing or by personal appearance within seven days of any material change in circumstances relevant to the level of support or the administration of the support order. . .” (See Section 4352 of the Code). A “material change” includes an increase and a decrease of income.

Generally, a payor is eager to notify the Court or the other party of a decrease in income but not an increase. This is so because a payor's increase in income will generally trigger an increase in a support obligation while a decrease generally triggers the opposite. However, these concerns do not negate a party's obligation to notify the other of such an increase.

Petition to Modify Support

Although the obligation to notify of an increase or decrease in income remains constant, the decision to file a Petition to Modify Support is discretionary. A party who is notified or made aware of relevant changes in the income of the other party may certainly opt not to file a Petition to Modify. However, such a choice will very likely cause a rejection of any later argument that the party is entitled to retroactive arrears based on a failure to notify or a misrepresentation.

As an alternative to litigating a change in a support obligation, the parties can certainly enter into a written agreement to change it. But unless one party files a Petition to Modify, the Court cannot impose such an obligation.

Retroactivity of the Support Order

Absent a failure to notify the other of an increase in income, the retroactive date of a modified support order will usually be the date the Petition to Modify Support was filed or served. However, as set forth in the above cited Krebs case, the court has the authority to order an earlier effective date under certain circumstances. Those circumstances include the failure of a party to notify the other party or the Court of an increase in income.

The Krebs Court, which held that Father's support obligation was increased retroactively to a date prior to the time Mother filed her Petition, addressed the specific circumstances which allowed such a retroactive change. These circumstances were as follows:

- (1) Father was aware of his obligation to report his increases in income to Mother and the court;
- (2) Father's increases were significant;
- (3) Father failed to comply with his obligation to notify Mother of such changes;
- (4) Father's failure to report his increases to Mother or the Court constituted misrepresentation, and Mother's reliance on that misrepresentation was the reason she did not file a Petition to Modify in 2001; and
- (5) Mother filed her Petition to Modify immediately upon learning that Father had experienced a change in income and circumstances.

The authority for the Krebs Court decision is Section 4352(e) of the Pennsylvania Domestic Relations Code. This Section allows the Court to apply a retroactive date which is earlier than the filing date if a party failed to file earlier because he or she relied on the misrepresentation of the other party. The Court found the Krebs facts to be exactly those: Father's failure to notify Mother of his increases constituted a

misrepresentation and Mother's reliance upon that misrepresentation caused her not to file on an earlier date.

What You Need to Know

If you are a party to a support order and experience an increase in income or benefits, you must notify the other party or the court of the change. If you do not, the court has the power to do the following:

- (1) determine that your failure to notify was a misrepresentation;
- (2) determine that the other party's reliance on your misrepresentation was the reason he or she did not file a Petition to Modify on an earlier date;
- (3) determine that you owe arrears retroactively to the date you first experienced increases in income rather than the date the other party filed a Petition to Modify;
- (4) determine that you willfully failed to notify the other party of your increase in income and should therefore pay the other party's attorneys' fees.

If you are the party who has been notified of the other party's increase in income, you must file a Petition to Modify promptly upon learning of the change. If you unreasonably delay, the Court may very likely decide your entitlement to arrears extends only to the date you filed the Petition rather than the date the other party first experienced an increase.

While the Krebs case is illustrative of the need to keep the other party and the court informed as to any significant changes, individual circumstances as well as individual courts may effect a result different from that of the Krebs case. Therefore, the above should not be considered as a substitute for sound legal advice.

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