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LETTER TO THE EDITOR

Matrimonial Attorney Not Up to Date on Property Distribution

Elliot Scheinberg responds to the recent article “Differences Between Annulment and Divorce,” where author Michael Liptrot advances “an anachronistic contention regarding the method of property distribution following the dissolution of a marriage.”

April 09, 2024 at 03:00 PM

Letter to the Editor

By Elliott Scheinberg | April 09, 2024 at 03:00 PM



[Editor's Note: This letter was submitted in response to the column “Differences Between Annulment and Divorce,” which the New York Law Journal published on April 8, 2024.]

In his article, “Differences Between Annulment and Divorce,” NYLJ, April 8, 2024, Michael Liptrot twice advances an anachronistic and repugnant contention regarding the method of property distribution following the dissolution of a marriage, that property is distributed in accordance with the form in which title is held.

Effective July 19, 1980, nearly 44 years ago, the Legislature, in clear and firm language in the very opening paragraphs of the Domestic Relations Law §236B, eliminated title as a method of property distribution (Chapter 281 of the Laws of 1980). Liptrot’s claim is simultaneously antithetical to the principle of economic partnership in the Equitable Distribution scheme as set forth in the landmark decision *Price v. Price*, 69 NY2d 8, 14 [1986].

He initially states that in the event of a *divorce* “the court’s role is to equitably separate this shared life, ensuring a fair distribution of assets, responsibilities, and rights.” However, in the event of an *annulment*, says he, property distribution is still governed in accordance with title: “if the parties have jointly titled assets, they would still need to navigate dividing that property, as the laws of title still apply.”

In his conclusion, he reprises this flawed distinction: “Divorce ends a legally recognized marriage, dealing comprehensively with asset division, child custody, and spousal support, making it a viable route for couples whose marriages are valid but irretrievably broken. Annulment, on the other hand, erases the marriage from its inception and requires specific criteria for such a declaration.”

Domestic Relations Law (DRL) §236B(1)(c) states:

The term ‘marital property’ shall mean all property acquired by either or both spouses during the marriage and before the execution of a separation agreement or the commencement of a matrimonial action, *regardless of the form in which title is held*, except as otherwise provided in agreement pursuant to subdivision three of this part. Marital property shall not include separate property as hereinafter defined.

DRL §236B(1)(c) underscores that the statute applies to *all* “matrimonial actions” whether by way of divorce or by annulment. DRL § 236B(2) provides:

Except as provided in subdivision five of this part, the provisions of this part shall be applicable to actions for an *annulment* or dissolution of a marriage, for a divorce, for a separation, for a declaration of the nullity of a void marriage, for a declaration of the validity or nullity of a foreign judgment of divorce, for a declaration of the validity or nullity of a marriage, and to proceedings to obtain maintenance or a distribution of marital property following a foreign judgment of divorce, commenced on and after the effective date of this part. Any application which seeks a modification of a judgment, order or decree made in an action commenced prior to the effective date of this part shall be heard and determined in accordance with the provisions of part A of this section.

He next incorrectly posits: “Divorce will always involve the division of assets and debts, but it *may* also include spousal maintenance.” He omits that the statute also makes maintenance applicable to annulments, DRL §236B(2), (4).

An apology is due to those who read “Differences Between Annulment and Divorce.”

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