
LEGAL MATTERS

WISSELMAN, HAROUNIAN & ASSOCIATES, P.C.

1010 Northern Blvd., Great Neck, NY 11021

516-773-8300 ♦ info@lawjaw.com

PROTECTING YOUR RIGHTS

Volume 1, Issue 1

Fall 2007

Prenuptial Agreements: Not Just for Millionaires

Jacqueline Harounian

Wisselman, Harounian & Associates, P.C.

Several decades ago, prenuptial (or premarital) agreements were used only in rare instances, for the super wealthy Donald Trumps of the world, or the short term unions of Hollywood celebrities. Today, the high divorce rate, the desire to simplify court proceedings and keep legal costs down have made prenuptial agreements more widely used among a variety of segments. Given the improved financial status of women, many prenuptial agreements are now requested by the “bride to be”.

In general, prenuptial agreements are recommended when:

- ♦ One party expects a large inheritance;
- ♦ There is a family business or real estate holdings;
- ♦ One party is not working and will need support (e.g., a wife who will give up her career to raise children);
- ♦ One party has children from a prior marriage or relationship;
- ♦ One party is entering the marriage with debts.

Aside from the more “typical” agreements, our firm has also drafted customized agreements for clients in specialized situations, such as:

Continued on page 2

Parental Alienation: Who is the Real Victim?

Jerome A. Wisselman

Wisselman, Harounian & Associates, P.C.

In the matrimonial field of law, it is not surprising to see couples embroiled in lengthy struggles over issues relating to divorce, visitation, custody, orders of protection, charges of criminal contempt for disregarding court orders concerning visitation rights, and charges of aggressive behavior.

In some instances of aggressive behavior, a parent may have been the recipient of Parental Alienation, and the anger may very well be rooted in deep frustration towards the alienating parent and child. What is parental alienation, and how can it tear away so severely at the family structure?

Parental Alienation is any behavior by a parent, mother or father, whether conscious or unconscious, that could create alienation in the relationship between that child and the other parent. It involves brainwashing and manipulation of the child by one parent, with the purpose of destroying a loving and warm relationship the child may have shared with the other parent.

Parental alienation can be mild and temporary or extreme and ongoing. It is not uncommon that cases of this nature can extend for long periods of time. Regardless of the degree, most researchers believe that any alienation of a child against the child's other parent is harmful to the child and can cause them severe psychological damage, which can extend well into adulthood. Parental alienation often forces children to choose sides and become allies against the other parent. Children caught in the middle of such conflicts can suffer severe losses of love, respect and peace during their early formative years. In some cases, the child is so alienated that the target parent may withdraw, leaving the child with the alienating parent. The impact can be so severe, that these children often suffer effects similar to those studied in the psychology of torture.

Continued on page 3

INSIDE THIS ISSUE

- 1 Prenuptial Agreements: Not Just For Millionaires
- 1 Parental Alienation: Who is the Real Victim?
- 3 Spotlight on Our Attorneys
- 4 Bill of Rights for Children of Divorce

Prenuptial Agreements/Continued from page 1

- ◇ Protecting a family home that had been in the groom's family for generations, which the parties expected to live in together during the marriage;
- ◇ Shielding the future income of an aspiring actress;
- ◇ Providing spousal support to a husband who cared for his new wife as she battled cancer;
- ◇ Protecting a husband's pension in a second marriage

New York Courts have recognized a strong public policy favoring written agreements that are made knowingly and in good faith. Domestic Relations Law 236 (B)(3), New York's equitable distribution law, allows parties to "opt out" of a judicial determination of their rights in favor of a settlement they create themselves through the process of negotiation. Pursuant to General Obligations Law 3-303, "a contract made between persons in contemplation of marriage remains in full force after the marriage takes place". Parties can even enter into an agreement *after* the wedding (a postnuptial agreement). This type of agreement will have the same legal effect as a prenuptial agreement. Generally, a written agreement between two people *overrides* the laws that would otherwise apply.

A prenuptial agreement that is carefully drafted usually protects both spouses in the event the marriage ends by death or divorce. Although some prenups do address non-financial matters (e.g. religious issues, where the couple will live, or whether the couple intends to have children), the vast majority of agreements deal with financial issues. These can include spousal support, life insurance, medical insurance, separate property and inheritances, retirement assets, and debts.

However, prenuptial agreements that limit child support, or deal with child custody issues are not enforceable under New York law. Issues that affect children are determined based upon the "*best interests of the child*", not a deal made between the child's parents. Further, child support calculations are based upon a formula set forth in New York's child support statute, the Child Support Standards Act. A custodial parent cannot waive his or her right to receive the appropriate amount of child support. The child's needs are paramount and for the most part, are non-negotiable.

Because parties agree in advance what their rights and obligations will be in the event the marriage fails, the couple avoids many financial disputes that occur upon divorce. Parties are able to negotiate agreements about financial matters more easily and amicably when they are getting along and about to be married. Conversely, when the marriage sours, angry feelings or the desire to "punish" the other spouse can lead to unreasonable positions with regard to support and dividing up assets. Without a prenuptial agreement, anything is fair game. A contested divorce proceeding

for even a short term marriage can last for years and cost tens of thousands of dollars in legal fees and court costs. In some prenups, the parties agree to be responsible for their own legal fees in the event of a divorce proceeding. This can be a strong disincentive to prolonged litigation.

A party challenging the validity of a prenuptial agreement in court has the burden of proof to show that the agreement was the product of fraud, duress, overreaching or other misconduct. Not every prenup will stand up to judicial scrutiny. In some circumstances, the agreement (or parts of the agreement) can be set aside by the courts or declared unenforceable. The conditions that can invalidate a prenup include:

- ◇ Coercion: e.g. the wedding is tomorrow and the groom presents the prenup to the bride as a "must" or threatens to cancel the wedding if it is not signed.
- ◇ Non disclosure, fraud/misrepresentation: The parties to the agreement must fully and accurately disclose all assets, debts and sources of the income at the time of signing the agreement. Failure to do so can invalidate the agreement.
- ◇ Unequal playing field: Each party should have their own lawyer, or at least the opportunity to consult with legal counsel. This will prevent a claim later on in court by a party stating "I didn't know what I was signing."
- ◇ Unconscionability: If the agreement is grossly unfair to one party, or there has been a material change of circumstances since the agreement was signed, e.g. one party is disabled or needs medical treatment, the agreement can be set aside.

Due to portrayals in the media, most people have preconceived ideas about prenuptial agreements. When the subject is broached for the first time, the "non-moneyed" party may feel offended, insulted and even angry, thinking, "I'm marrying you for love, not your money. Why do we need a prenup?" Certainly prenups are not the most romantic part of wedding planning. When a couple is in love, the end of the marriage is unthinkable. But divorce is a statistical reality in our society, and the financial stakes can be very high. Besides the significant savings of legal fees and financial assets, a written agreement can save enormously on time spent in court and the emotional toll of a court battle. The legal protection afforded by a prenup can be compared to the protection of flood or fire insurance. Hopefully, you will never need it, but if you do, you'll be glad it is in place. ❖

JACQUELINE HAROUNIAN, a partner of the firm, is a member of the NYS Bar Assn, and a former chair on the subcommittee for Women in the Law. She lectures on Domestic Violence, Divorce and Grand-parental Rights. She was recently honored by Soroptimist Int'l of Nassau County with the *Making a Difference for Women Award*, for her dedication to creating pathways for women. She handles all complex family and matrimonial issues, appearing on custody, divorce and support matters in the Family and Supreme Courts in Long Island and New York City.

Spotlight on Our Attorneys:

JOHN VIRDONE



John recently handled a custody dispute over a four-year old girl born out of wedlock. The mother had abandoned the child, and left her with the girl's father, his client. The father sued the mother in Family Court for custody, while the maternal

grandparent sued both parents for custody. The mother never participated in proceedings, so the father and the grandmother battled for custody. It is necessary for grandparents to first prove to the Court that *extraordinary circumstances* exist (e.g., the parent's mental unfitness, separation from the child, abandonment, or persistent neglect or abuse of the child) before they can try to gain custody of their grandchildren. Before our firm was retained by the father, measures had taken place that went against his favor. The Family Court incorrectly ruled *without* a hearing that the grandmother did prove extraordinary circumstances, since the child had lived in her home for several years, thus giving her the right to challenge custody. John appealed the Court's decision on behalf of the father and won a reversal. The Family Court then conducted a full and fair hearing to determine whether extraordinary circumstances had existed. After eleven days of trial, with the testimony of several witnesses and a forensic psychologist, John made a motion to dismiss the grandmother's case for her failure to prove extraordinary circumstances. After oral argument, his motion was granted, and the father was awarded custody.

The grandmother then wanted extensive visitation with the child - more than a parent would normally receive in similar circumstances. Instead, the father proposed a visitation schedule, which the Family Court stated was a reasonable and liberal one. The grandmother insisted she was entitled to another hearing on the "amount" of visitation. The Family Court denied her request and gave her visitation as proposed by the father. The grandmother then appealed the Family Court's decisions regarding custody and visitation, and after nearly four years, the father was finally vindicated when the Appellate Division affirmed the Family Court's decision in all respects.

If you have any questions about Matrimonial and Family law issues, please don't hesitate to call John at our office, and he will be glad to discuss any of your concerns at your convenience. Call 516-773-8300, or email him at info@lawjaw.com.

JOHN VIRDONE, an Associate of the firm, is admitted to both the New York and New Jersey Bars. His multifaceted background in complex civil litigation, real estate and business law gives him a unique ability to manage intricate matrimonial and family law cases requiring the expertise of crossover disciplines. Mr. Virdone concentrates on matrimonial and family law matters, including parental and grandparental rights, child custody and visitation, child support matters and family offense disputes.

The target parent often suffers heartbreaking loss of their children through no fault of their own. In addition, they oftentimes face false accusations from their alienated children that they cannot defend with facts. Sometimes there are charges of physical, sexual or emotional abuse, which must be investigated carefully to maintain and protect the safety of the child.

Parental Alienation Syndrome, is different from parental alienation. In the former, the brainwashing of the child by one parent is also accompanied by *severe opposition by the child towards having contact with the other parent*, and may even include an overt hatred toward that parent, though there is little and *often no logical reason* to explain the child's behavior.

It is difficult to use Parental Alienation Syndrome as a basis of argument in litigation disputes because PAS is not a listed diagnosis in the DSM-IV manual for mental health professionals. Without this listing, it is not admissible in the courts of law as a basis for argument.

One reason it has not gained this recognition is that there has not been a sufficient amount of empirical data about the condition that can be generalized, so as to identify whether it exists in a particular case. The nature of this phenomenon is so subjective, that it is often impossible to ascertain whether certain charges or statements against a parent are founded. This makes it very difficult for the Court to justify uniting the child with the target parent over the child's opposition, as their desire to safeguard the child from potential harm is paramount. As a result, the Court's desire to protect the child may interfere with the child's best interests of having a relationship with both of their parents.

Because PAS is not listed as a diagnosable disorder, it is all the more difficult for forensic evaluators to convince the court when they observe a case in which they do believe the condition exists and is interfering with the child's best interests of having a warm and loving relationship with both of their parents. While there are many judges who do not recognize PAS officially, there is no question that more and more courts of law are recognizing the disorder with increasing frequency. To date, there are currently over 50 cases in which PAS has been recognized and included in court decisions.

Hopefully, as more of these cases pass through the Courts, there will be greater knowledge and experience among professionals to help establish appropriate educational and therapeutic programs for assisting these high-conflict families. For in the end, it is in the child's best interest in having a relationship with both parents. ❖

JEROME A. WISSELMAN, Principal of the firm, has been practicing law for over 30 years. With degrees in accounting and law, he founded the firm in 1976 with the aim of protecting his clients' legal rights *and* their financial security. He has appeared on television and radio discussing family law issues, has lectured and trained attorneys on litigation techniques, and is on the Board of Editors for the Law Journal's Family Law Monthly. He also presents legal workshops for mental health professionals to help them navigate the legal system more effectively on behalf of their patients.

About Our Firm

WISSELMAN, HAROUNIAN & ASSOCIATES, P.C. is a full service Matrimonial and Family Law Firm, handling all legal matters that arise during the course of raising your family and growing your business.

HOW DO WE PROTECT YOU? Established in 1976, we've grown to become one of the leading matrimonial and Family Law Firms on Long Island.* Our attorneys have dealt with all aspects of matrimonial and family law and know how to stand up for your legal rights, particularly to protect your financial security and your right to be with your children.

NO MATTER HOW COMPLEX or sensitive the issue, you'll find us determined on your behalf, compassionate, and always mindful of your current and future needs.

OUR ATTORNEYS APPEAR IN ALL NEW YORK COURTS, including both Family and Supreme Courts of Long Island and New York City, and have over 100 years of collective experience in all types of matrimonial and family law matters, including:

**DIVORCE ♦ SEPARATION ♦ CUSTODY
♦ VISITATION ♦ CHILD AND SPOUSAL
SUPPORT ♦ FATHERS' RIGHTS ♦ ORDERS OF
PROTECTION ♦ EQUITABLE DISTRIBUTION
♦ SEPARATE PROPERTY ISSUES
♦ PRE AND POST NUPTIAL AGREEMENTS
♦ RELOCATION ♦ ANNULMENTS
♦ ADOPTION ♦ WOMEN'S DIVORCE ISSUES
♦ GRANDPARENTS' RIGHTS ♦ WILLS AND
ESTATE PLANNING ♦ RESIDENTIAL AND
COMMERCIAL REAL ESTATE ♦ PENSIONS
♦ PROTECTION OF BUSINESS ASSETS**

* Ranked as one of Top 3 Matrimonial Law Firms on Long Island, *L.I. Business News*, 2007.

Our Team Of Attorneys:

JEROME A. WISSELMAN, Partner
JACQUELINE HAROUNIAN, Partner
DERRICK A. RUBIN, Associate
LLOYD C. ROSEN, Associate
JOHN VIRDONE, Associate
RANDALL K. MALONE, Associate
EYAL TALASSAZAN, Associate

Bill of Rights for Children Whose Parents Are Separated or Divorced

(Applicable to Grandparent Proceedings as well)

Jerome A. Wisselman

Wisselman, Harounian & Associates, P.C.

Children are often caught in the middle of their parents' break-up and may become a pawn in the struggle between them. The list below summarizes a number of important ways the child can be protected from the struggle between parents:



1. The right not to be asked to Choose Sides between their parents.
2. The right not to be told the details of bitter or nasty legal proceedings going on between their parents.
3. The right not to be told >Bad Things= about the other parent=s personality or character.
4. The right to privacy when talking to either parent on the telephone.
5. The right not to be cross-examined by one parent after spending time with the other parent.
6. The right not to be asked to be a messenger from one parent to the other.
7. The right not to be asked by one parent to tell the other parent untruths.
8. The right not to be used as confidant regarding the legal proceedings between the parents.
9. The right to express feelings, whatever those feelings may be.
10. The right to choose not to express certain feelings.
11. The right to be protected from parental warfare.
12. The right not to be made to feel guilty for loving both parents.

Whatever issues exist between parents, these essential rights of children are critically important, and their happiness and security must be protected throughout this difficult process. ❖