

## The Freas Family and Short Maintenance Awards after Long Marriages

In *Freas v. Freas*, 33 AD 1069 (3<sup>rd</sup> Dept. 2006), the couple had been married for 34 years when the wife sued for divorce because her husband refused to sever a relationship with a woman at work. The wife had left the labor market for 17 years to care for the couple's three children, now grown. She had returned to work only to be forced to leave again when she was injured in a car accident. At the time of the trial she was working part-time and looking for full-time work that could be expected to pay her no more than \$17,000 a year. The husband had earned \$57,000 in the year before the divorce started, but he had voluntarily changed his schedule and reduced his income so that at the time of trial he was earning about \$39,000 a year plus an additional \$18,000 a year from moonlighting.

The court awarded the wife maintenance of \$5400 a year until she reaches the age of 62. Since the marriage lasted 34 years, the wife is probably in her mid-fifties and will reach 62 in less than 10 and quite possibly less than 5 years. If the wife gets a full-time job at the salary she anticipates, she will have an income of \$22,400 a year. Her husband will have more than \$33,600 with the capacity to make another \$18,000, or a total of \$51,600 a year, if he chooses.

Under the PMI guidelines, using the imputed incomes of \$17,000 for the wife and \$57,000 for the husband, the wife would have \$29,600 a year on which to live while the husband, if he goes back to the schedule he left when his divorce seemed imminent, would have \$44,400, plus a tax deduction for the post-marital income award of \$12,600 a year. More importantly, perhaps, the wife will be able to rely on maintenance through her sixties so that she will not be forced to take Social Security benefits at 62 and accept reduced payments for the rest of her life. Also, she may be able to accumulate some savings for a time when she is no longer able to work.

### SUMMARY OF FACTS

Husband's Income: \$57,000 (imputed)

Wife's Income: \$17,000 (imputed)

Length of Marriage: 34 years

Children: 3 grown children

### OUTCOME AFTER LITIGATION

Amount: **\$5400 per year**

Duration: **Until the wife reaches 62 years** (Probably less than 10 and maybe less than 5 years)

### OUTCOME UNDER PMI

Amount of PMI: **\$12,600 a year**

Duration: **Non-durational**

## Short Maintenance Awards after Long Marriages

These are all cases in which courts awarded short maintenance after lengthy marriages. In none of these outcomes did equitable distribution play a role in the decision. **In all of these cases, PMI guidelines would have recommended non-durational awards.**

*Wasserman v. Wasserman*, 66 AD 3d 880 (2<sup>nd</sup> Dept. 2009)

Length of Marriage  
**25 years**  
Length of Maintenance  
**8 years**  
Age of Wife  
57 years old

The Court said that the wife was capable of earning a living.

*Santana v. Santana*, 51 AD3d 542 (1<sup>st</sup> Dept. 2008)

Length of Marriage  
**25 years**  
Length of Maintenance  
**5 years** (increased by the Appellate Court from 3 years)  
Wife's income  
\$26,200 a year  
Husband's income  
Over \$130,000 a year

*Nichols v. Nichols*, 19 AD 775 (3<sup>rd</sup> Dept. 2005)

Length of Marriage  
**31 Years**  
Length of Maintenance  
**6 years**  
The judge noted that the wife's poor health would make her return to work unlikely.

*Saylor v. Saylor*, 32 AD 3d 1358 (4<sup>th</sup> Dept. 2006)

Length of marriage  
**30 years**  
Length of Maintenance  
**9 ½ years**

The judge noted that the wife had worked only minimally during the marriage and the disparity in incomes was large.