



MASSACHUSETTS FAMILY LAW A Periodic Review

By Jonathan E. Fields

Contempt for Anticipatory Breach Timing is everything. Mother could not be held in contempt for threatening not to allow the children to visit father for Christmas, according to the Appeals Court. Rejecting the father's claim of "anticipatory breach," the Appeals Court made clear that a contempt judgment cannot enter until "after the time for the mother's performance had come and gone." *Pederson v. Klare*, 74 Mass.App.Ct. 692 (July 23, 2009).

Child Who Becomes Parent Not Emancipated An unmarried child does not become emancipated as a matter of law by giving birth, the Appeals Court held in a case of first impression. The trial court had granted summary judgment for the father, holding that the child was emancipated because "she has a child, receives child support [for him], and has a family of her own." The Appeals Court pointed out that there were disputed facts that made such a judgment inappropriate – chief among them, whether the child was a full-time student and whether the child was still principally dependent on her mother for support. In other words: for questions about emancipation, look to the statute, G.L. c.208 §28. *LaBrecque v. Parsons*, 74 Mass.App.Ct. 766 (August 4, 2009).

Retained Earnings in a Sub-S Corporation The treatment of Sub-S retained earnings that pass-through to the parent-shareholder's tax return has long vexed mediators and lawyers in support cases. When calculating support, do we include the income that is taxable to the recipient but undistributed to him? In a case of first impression, the Supreme Judicial Court has weighed in with some useful guidance. Courts must now determine, on a case-by-case basis, "what portion (if any) of that pass-through income realistically and fairly is or should be deemed available to the shareholder for purposes of paying child support." Courts must (1) consider "a shareholder's level of corporate distributions;" (2) "evaluate the legitimate business interests justifying retaining corporate earnings;" (3) "weigh affirmative evidence of attempts to shield income by means of retained earnings . . . In that regard, the corporation's history of retained earnings and distributions may be relevant." *J.S. v. C.C.*, 454 Mass. 652 (9/10/09).



Jonathan E. Fields, Esq. is a partner at Fields and Dennis, LLP in Wellesley. Jon can be contacted at 781-489-6776, or at jfields@fieldsdennis.com