



MASSACHUSETTS FAMILY LAW A Quarterly Review

By Jonathan E. Fields

Prenuptial Agreement – The Appeals Court reversed a Probate Court judgment upholding a prenuptial agreement, the proponent of which was the husband, a biologist, who drafted it himself. The Appeals Court focused on a variety of factors in its decision to invalidate the agreement. Neither party had counsel. There was no evidence that the wife, also a biologist, had been advised to obtain counsel. There was no discussion of marital rights in the agreement, no discussion of how marital rights would be altered by the agreement – and, importantly, no demonstration of the parties’ understanding of those rights and the effect of the agreement. Most critical to the Appeals Court, however, was the absence of an express waiver of marital rights in the document, an explicit requirement since *Rosenberg v. Lipnick*, 377 Mass. 666 (1979). *Eyster v. Pechenik*, 71 Mass.App.Ct. 773 (May 23, 2008).

Litigation Exception to No Contact Order – The Appeals Court found that a woman violated a restraining order barring contact with her ex-lover by threatening, through his attorney, to release economically damaging information unless he agreed to certain demands related to the custody of their child. The woman had argued that her contact with the attorney was covered by the “litigation exception” to no

contact restraining orders. The Appeals Court, however, explained that the “litigation exception” entitled the woman to enter into negotiations with her ex-lover’s counsel but not to use those negotiations as a guise to harass her ex-lover. *L.F. v. L.J.*, 71 Mass.App.Ct. 813 (May 30, 2008).

Survived Agreement – Parties entered into a separation agreement which provided that the husband was to pay \$275 per week in alimony. The agreement did not mention merger or survival. The judgment nisi, however, stated that the agreement survived. Years later, when the ex-husband sought a modification, the ex-wife moved to dismiss his complaint on the grounds that the agreement survived and that the ex-husband could not meet the “countervailing equities” standard necessary to modify a survived agreement. The Probate Court judge allowed the motion to dismiss and the Appeals Court affirmed. The case reminds mediators of the general rule regarding survival – that is, unless the parties expressly provide otherwise, an agreement will be held to survive. Another reminder is that when the judgment nisi arrives in the mail, read it. If you don’t agree with it, avail yourself of the applicable post-judgment remedies before it is too late. *Thomas v. Thomas*, 71 Mass.App.Ct. 1126 (May 30, 2008).