

Enhanced Earning Capacity of a Partial Degree

Kuznetsov v. Kuznetsov

Appellate Division, Second Department

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Overview

In order to value the enhanced earning capacity attributable to an individual's license/degree/certification ("degree"), it is generally accepted that the "enhancing event" i.e. obtaining said degree occurred during the marriage. In other words, there is no value to "almost" getting a degree. This axiom never applied to the substantial completion argument where the requirements (e.g. classes or training) were all or mostly all completed during the marriage.

However, in *Kuznetsov* the Court opined that if a degree granted post-commencement is attributable to work completed during the marriage, the non-titled spouse may be entitled to a portion of the resulting enhanced earning capacity.

Kuznetsov

During the course of the marriage, the wife began taking classes to earn a Bachelor of Science and Doctorate degree in Physical Therapy. The date of commencement was August 2007 and the wife continued her studies and was granted both degrees in May 2009, nearly two years after the commencement date.

Kuznetsov (con't)

The Appellate Division opined that the Supreme Court "properly granted plaintiff's cross motion to appoint an appraiser to value the defendant's degrees for the purpose of equitable distribution." Citing *Mesbolam v. Mesbolam* (11 NY3d 24, 28, 892 N.E.2d 846, 862 N.Y.S.2d 453), "the definition of marital property should be construed broadly in order to give effect to the economic partnership concept of the marriage relationship recognized in the statute." The Appellate Court ruled that to the extent the wife's degrees are attributable to the courses completed during the marriage, the husband may be entitled to equitable distribution of a portion of her enhanced earning capacity.

Thus in the *Kuznetsov* case, a marital "enhancing event" was not required for a valuation and award of enhanced earning capacity as the degree was not obtained until well after the date of commencement.

Many attorneys have accepted the premise that there is no earnings enhancement for the partial completion of a degree and have waived on a valuation. In most cases, the subject is still attending college during the pendency of the action and completion is not guaranteed. Thus it would appear that the *Kuznetsov* decision opens the door to the valuation of a partial degree.

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