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The 20-Year Ditch: The Realities of Mid-Life Divorce

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Their names are familiar: Arnold Schwarzenegger and Maria Shriver; Al and Tipper Gore; Frank and Jamie McCourt. Besides fame, fortune and power, what do these couples have in common? They all chose to separate and divorce after more than 20 years of marriage.

This trend is not limited to movie stars and politicians. Now, it seems more than ever, couples are divorcing later in life. What is the cause of this? Is it the advent of Viagra? Social media? One can speculate as to why, but it appears that the "seven-year itch" is being replaced with the "20-year ditch."

Starting over after many years of marriage is certainly difficult from an emotional perspective, especially in situations where one party is blindsided by the divorce. Not only is being thrust back into the dating world daunting — and different, given the Internet's new role with dating sites and Facebook, Twitter, etc. — but what is also equally challenging is figuring out how to support oneself, manage finances, and deal with teenage or adult children and their financial expectations.

Even the party initiating the divorce does not have an easy path, especially if a third party is involved. There could be support and alimony obligations to a former spouse that deeply affect cash flow. Retirement may need to be postponed. And of course, there is the looming prospect of actually getting the divorce, and being faced with pressure to remarry and possibly start a new family.

What is certain is that the longer couples are married, the harder it is to unravel the relationship. From a financial perspective, there is more to gain and more to lose. Divorces are more complicated and often take longer because there is more at stake. Parties are concerned with how they will survive through retirement

and into their golden years. They are also worried about their children, who may be grown, but are often still devastated by the demise of the family unit. Both parties need to take the process seriously and do what is necessary to protect their interests, as certain aspects of the divorce, especially property division, are not modifiable.

The good news for a dependent spouse who has been supported throughout the majority of the marriage is that he or she will not be left destitute. In Pennsylvania, equitable division of assets is not always 50/50, and through a possible disparate division of property and, perhaps, alimony, a party may not be able to replicate the marital lifestyle, but hopefully they can maintain a standard of living that is somewhat similar. Obviously, when income and assets that were used to support one household are now spread over two households, both parties typically feel the effect. However, the benefit of being free from a difficult marriage usually outweighs any financial detriment.

In terms of alimony, although the court by Pennsylvania statute is obligated to consider 17 factors, those that remain the primary focus are reasonable need, length of marriage and the ability a party has for self-support. In cases in which a party gave up his or her career in order to care for children and the household, allowing their spouse to further his or her career, alimony is most often awarded.

Another area that must be addressed particularly in a mid-life divorce is health insurance. If a party has been out of the workforce and is unlikely to be able to obtain a job, albeit one with benefits, they need to consider how they will maintain health insurance, especially where the need for it is great. The astronomical expense of an individual private health insurance policy or perhaps a more economical alternative, if available, must be considered as part of reasonable need for purposes of alimony.

Alimony, however, is not liberally granted in Pennsylvania, and even if an award is made, the amount alone will likely not be enough to maintain the prior lifestyle. Thus, a party cannot view alimony in a vacuum. When crafting an overall settlement or thinking about a litigation strategy, it is important to look at the entire picture. Investment assets can earn interest, a home can be sold to free up equity, and retirement assets provide a nest egg for the not-so-far-distant use. In fact, at least from a tax standpoint, obtaining a higher percentage of marital assets for the recipient may be preferable, because they are not taxed when distributed unlike alimony which is taxed as income.

Thinking about receiving and investing these assets to maximize profit, however, is often daunting, especially for a party who has been financially dependent and who has not been involved in investing during the entirety of the marriage. This is where qualified counsel, financial experts and accounting experts can prove invaluable.

Interim support is typically available for the dependent party who is not being supported voluntarily by a spouse. To determine the proper amount of support, a party who is not employed is usually imputed an income consistent with his or her prior work history and educational level.

Clearly, in a mid-life divorce, this is an area replete with minefields. While a party may be highly educated and may have had a successful career at the outset of marriage, it is not appropriate to assign an earning capacity consistent with that past life if the person has been out of the workforce raising children and supporting his or her spouse's career during 20-plus years of marriage.

Conversely, if a person is able-bodied, educated and fit to be employed, it is inappropriate to assign them a minimal earning capacity just because during the marriage it was the couple's joint decision that one person stay home and one work.

There are even more issues that need to be considered when a divorce occurs at or around the time of retirement. If the parties decided during the marriage that one spouse takes early retirement, are they bound by that decision? Clearly, a court cannot force a person to work, but it can consider a party's ability to work, even though they may already be retired. Age and health — and perhaps the availability of work in the same field or another field where one has expertise — would be a consideration.

Sometimes, when parties divorce later in life, a pension is already in pay status and may be the primary source of income for a party. Given that a retirement asset, like a pension, is usually considered an asset subject to division in a divorce, it cannot then be counted twice as both income and asset.

When a mid-life divorce occurs, frequently children are already 18 or older and finished with high school. In Pennsylvania, this is the criteria for emancipation. There is no legal obligation for parents to support their children through college. However, if they agree to do so in a global settlement agreement, a court can enforce that agreement. In certain limited instances, "child support" can be awarded for an adult dependent child, but this is only where the "child" is so disabled that they are incapable of sustaining themselves.

Clearly custody is not a frequently litigated issue in a mid-life divorce, because children are customarily older when it occurs. However, sometimes divorcing spouses are dealing with teenage children who can take sides during a divorce to the detriment of one party. Parenting a teenager can be difficult for many parents who are still together and who will make decisions concerning their children in a united front. Parenting a teenager when the parents are at odds and will do anything to attack the other parent or get revenge on them becomes nearly impossible.

The division of marital property is usually more complex in a mid-life divorce because there are more marital assets to divide. An area often fraught with contentiousness is the division of a business that was started during the marriage. The business needs to be valued, and perquisites need to be added back as income. Sometimes the marital home needs to be sold, especially when children have left the abode. Parties can be emotionally attached to a home after years of living there and while they realize from an objective perspective that it makes economic sense to sell it, sometimes they fight to retain it for purely emotional reasons.

The Pennsylvania statute concerning equitable distribution highlights length of marriage as a factor to be considered in determining the division of assets. Similarly, the court has the ability to consider a party's time out of the workforce. These factors are viewed with great significance and will often tip the scales in favor of a disparate division of assets in favor of the dependent spouse. Although percentage distribution of the marital estate may be agreed upon, the parties then need to figure out the mix of assets that will comprise that percentage. This can be a catch-22. If assets were primarily in retirement, there may not be enough cash to go around, forcing an unwilling party back into the workforce which is frequently not accommodating to those who have not worked in 20 or more years. Conversely, if there are few retirement assets to be divided, both parties need to focus their attention on building quickly for retirement which may be around the corner.

Given the foregoing, going through a mid-life divorce is challenging but it is often worth the perseverance that it takes. Many clients who have faced this difficult time are much happier once they have been through it. Now, more than ever before, people are developing new interests, careers and relationships as they age. Thus, there is no excuse to stay in a bad situation no matter how much time has already elapsed.

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