

Family Law Today: Dynamic, Complex Cases Challenge Practitioners

by Edward D. Barnes

The practice of family law becomes more challenging every day. It is a dynamic and rapidly developing area that requires the practitioner to be aware of ever-changing law. In Virginia, between September 2003 and September 2004, there were 151 Court of Appeals cases and two Supreme Court cases that involved family law issues.

The Court of Appeals decision in *Smith v. Smith*, 41 Va. App. 742, 589 S.E.2d 439 (2003), is just one example of how family law evolves. *Virginia Code* § 20-109.1 allows a court to affirm, ratify and incorporate a property settlement agreement into the parties' final decree of divorce. The agreement then becomes "enforceable in the same manner as any provision of such decree." However, it remained unclear what effect merger had on a marital agreement. Before the decision in *Smith*, the debate among family law attorneys centered around the following question: If a property settlement agreement was merged into a final decree, did it become subject to modification by a court, or did the provisions of the agreement remain in effect despite later statutory amendments that would alter the parties' obligations under the agreement? The parties in *Smith* were divorced in 1990 and their property settlement agreement stated that spousal support would end only in the events of the wife's death, the husband's death or the wife's remarriage. The final decree affirmed, ratified and incorporated the agreement. The husband petitioned to terminate his support obligation in 2001 after statutory amendments allowed for the termination of support upon cohabitation. The husband argued that his wife was living

with another person, and therefore his support obligation should end. The trial court terminated the husband's support obligation, explaining that "the agreement ceased to exist as a separate contract immune from court interference." The Court of Appeals reversed, and said that merger "prescribes the methods of enforcing entitlements created by contract." However, merger does not make a contract subject to judicial modification.

Likewise, in *Newman v. Newman*, 42 Va. App. 557, 593 S.E.2d 553 (2004), the Court of Appeals held that the trial court could not modify or terminate the husband's support obligation because it was contained in a consent decree. The court held that "an agreement setting the amount of spousal support—embodied in a consent decree signed by counsel

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on behalf of the respective clients—qualifies as a stipulation or contract under *Code* § 20-109(C)." Therefore, the terms cannot be rewritten by the courts. The court order was held to be a nonmodifiable contract. So, in *Smith*, the husband's spousal support obligation remained nonmodifiable by the court because it was contained in a property settlement agreement that was incorporated into the par-

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ties' final decree; and in *Newman*, the husband's spousal support obligation was non-modifiable by the court because it was contained in a consent order negotiated by the parties.

The family law practitioner must be knowledgeable about the current status not only of family law, but also of many other practice areas. Family law issues are often intertwined with issues related to criminal law, tax law, estate planning and elder law. Brian M. Hirsch's article addresses insurance issues that arise in family law cases.

Family law also involves a variety of practical and strategic solutions that require the expertise of a family law attorney. Andrea Stiles's article addresses practical issues that arise when the parties have decided to separate, but neither wants to leave the house. Shelly James's article explores the court's power to deal with the day-to-day lives of parties by entering orders addressing school placement, the apportionment of educational expenses and other issues related to the education of the parties' children.

Virginia courts and the legislature are constantly facing new family law issues. Recent developments in other states concerning same-sex marriages and same-sex unions led to the passage here of House Bill 751 in 2004. This bill added *Virginia Code* § 20-45.3, which provides that: "[a] civil union, partnership contract or other arrangement between persons of the same sex purporting to bestow the privileges or obligations of marriage is prohibited. Any such civil union, partnership contract or other arrangement entered into by persons of the same sex in another state or jurisdiction shall be void in all respects in Virginia and any contractual rights created thereby shall be void and unenforceable." As evidenced by House Bill 751, family law practitioners must deal contin-

ually with new issues. In her article, Lynne Marie Kohm discusses the state of the law on marriage.

These are just a few of the subject areas that family law attorneys face on a daily basis. If you are interested in this exciting area of the law, we urge you to join the Family Law Section of the Virginia State Bar. The Family Law Section is the fourth largest section of the VSB. As a member, you will receive the *Family Law News* on recent trends in family law. The section also sponsors continuing legal education programs. The annual Family Law Seminar is held in October, and the Advanced Family Law Seminar is held in May. The section also sponsors a joint seminar with the Criminal Law Section in June and another joint seminar in January with the American Academy of Matrimonial Lawyers. For more information, please visit the Virginia State Bar's Web site at www.vsb.org and the new Family Law Section's Web site at <http://www.vsb.org/sections/fa/index.htm>.



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International Academy of Matrimonial Lawyers (London); past president of the Metro Richmond Family Law Bar Association; and past president of the Chesterfield-Colonial Heights Bar Association. He recently served on a regional committee of judges and lawyers to promulgate guidelines for handling family law matters in the Richmond, Chesterfield and Henrico Circuit Courts.