The Division of Spousal Student Loan Debt in Divorce

by Christopher Rade Musulin

In *Mahoney v. Mahoney*,[1] the New Jersey Supreme Court permitted a non-degreed spouse to recoup money for financial contributions toward the acquisition of an advanced degree by the other spouse. The restitution remedy was termed "reimbursement alimony" by Justice Morris Pashman, writing for a unanimous Court in an opinion also holding that an advanced degree—in this case, an MBA—was not property subject to equitable distribution. The opinion is now frequently cited and routinely applied in New Jersey family part litigation to compensate the non-degreed spouse for monies previously expended throughout the course of the marriage related to the acquisition of a college or advanced degree for the other spouse.

Since *Mahoney* was decided 33 years ago, long before the explosion of costs related to the acquisition of a college or advanced degree, the Supreme Court has not yet specifically addressed responsibility for spousal student loan debt existing at the time of a divorce. Trial courts and attorneys have since struggled with the issue due to the fact that New Jersey case law decided after *Mahoney* offers little direction or analysis. In fact, responsibility for such debt has been the subject of dozens of learned opinions in other jurisdictions across the country, with clear principles emerging to analyze and attribute responsibility for spousal student loan debt. The logic of *Mahoney*, when read in conjunction with these opinions, creates complementary restitutive standards to address both previous expenditures throughout the marriage as well as debt existing as of the date of the filing of the complaint related to the acquisition of a college or advanced degree.

The New Reality of Spousal Student Loan Debt in Divorce

The division of spousal student loan debt in divorce is largely a function of post-*Mahoney* socioeconomic trends. It is well established that people are now marrying later in life, more people are pursuing higher education, and the expense of attending a college or a university has increased dramatically.[2] It is not uncommon for litigants initiating a divorce to confront enormous student loan debt, upwards of $25,000, $50,000 or even $75,000. Next to a mortgage, student loan debt is often the most significant financial obligation incidental to the matrimonial estate.

Mahoney—A Restitutive Remedy for Monies Previously Expended During the Marriage

The *Mahoney* Court was presented with a very narrow issue: whether an MBA degree is considered property and, therefore, subject to equitable distribution in a divorce. For a number of important reasons, the New Jersey Supreme Court declined to treat professional degrees as marital property subject to distribution. However, in attempting to create a remedy for the non-degreed spouse, the Court surveyed decisions from many sister jurisdictions and recognized the existence of certain divorce-related remedies to compensate a spouse who supports another spouse in the acquisition of a learned degree during a marriage.

In fashioning a remedy, Justice Pashman wrote:

> Where a partner to marriage takes the benefits of his spouse's support in obtaining a professional degree or license with the understanding that future benefits will accrue and inure to both of them, and the marriage is then terminated without the supported spouse giving anything in return, an unfairness has occurred that calls for a remedy.
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> In this case, the supporting spouse made financial contributions towards her husband's professional education with the expectation that both parties would enjoy material benefits flowing from the professional license or degree. It is therefore patently unfair that the supporting spouse be denied the mutually anticipated

benefit while the supported spouse keeps not only the degree, but also all of the financial and material rewards flowing from it.[3]

The Court, therefore, specifically held as follows:

> To provide a fair and effective means of compensating a supporting spouse who has suffered a loss or reduction of support, or has incurred a lower standard of living, or has been deprived of a better standard of living in the future, the Court now introduces the concept of reimbursement alimony into divorce proceedings. The concept properly accords with the Court's belief that regardless of the appropriateness of permanent alimony or the presence or absence of marital property to be equitably distributed, there will be circumstances where a supporting spouse should be reimbursed for the financial contributions he or she made to the spouse's successful professional training. Such reimbursement alimony should cover all financial contributions towards the former spouse's education, including household expenses, educational costs, school travel expenses and any other contributions used by the supported spouse in obtaining his or her degree or license.[4]

The *Mahoney* Court articulated a restitutive remedy to compensate a non-degreed spouse for *past* expenditures made during the course of the marriage that either directly or indirectly assisted the degreed spouse in achieving his or her diploma. What the *Mahoney* Court did not specifically address (as the issue was not before it) was responsibility for spousal student loan debt existing as of the initiation of the divorce case. As discussed above, this is likely due to the fact that significant student loan debt was not a common circumstance at the time the opinion was authored in 1983.

Legal Principles from Sister Jurisdictions, Which Have Specifically Addressed Spousal Student Loan Debt in Divorce

Many United States jurisdictions apply community property principles to address the division of assets and debts in divorce. Presently, there are 10 community property jurisdictions in America: Alaska, Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin. Despite the difference between community property and equitable distribution concepts, similar principles and trends emerge to address spousal student loan debt.

Dozens of decisions from both community property and equitable distribution jurisdictions can be cited that identify three common principles utilized by the majority of American jurisdictions when addressing the issue.[5]

Use of the Loan Proceeds

Based upon a survey of case law in all United States jurisdictions, the primary inquiry advanced in each reported opinion relates to the *use* of the loan proceeds.[6] In the event the loan proceeds are used strictly for educational purposes such as payment of tuition, the degreed spouse is generally held responsible for the debt. However, in the event the loan proceeds are used for general living expenses such as housing, utilities, childcare, groceries, etc., the debt is almost always divided between the divorcing spouses.

In *Wharton v. Wharton*,[7] the Delaware court determined both parties should be responsible for the wife's student loan debt because the proceeds were used for non-educational purposes, including family living expenses. The same result was reached in *Eldrige v. Eldridge*,[8] where loan proceeds were used for childcare and household expenses.

Contrast these decisions with *Piotti v. Piotti*,[9] where the Pennsylvania Superior Court held the wife responsible for student loan debt utilized exclusively for her educational expenses.[10]

Date of Debt Creation and Length of Marriage[11]

A second principle that emerges from decisional authority surveyed concerns the timing of the debt in relation to the length of the marriage.[12] Specifically, if the debt attendant with the degree is created early in the marriage and the marriage is of a significant length where both spouses enjoy the fruits related to the advanced degree, the decisions surveyed generally require a division of the debt at the time of divorce. However, if the degree and attendant debt is acquired near the end of the marriage, the majority of reported decisions require the degree holder to be responsible for the obligation.

By way of example, the responsibility of the degreed spouse for late marriage spousal student loan debt was established by the Indiana Court of Appeals holding

the husband responsible for his student loans when the parties separated two months before his law school graduation, in *Roberts v. Roberts*.[13] Similarly, in *Spears v. Spears*,[14] the husband was required to assume $233,000 of student loan debt where he received his medical license in 2008 and the wife filed for divorce in 2009.

In *Warren v. Warren*,[15] on the other hand, the North Carolina Court of Appeals upheld a trial court decision classifying the wife's student loan as a marital obligation where the court found the debt was incurred during the marriage and the parties were together long enough to mutually enjoy the benefits of the wife's advanced degree.

In California, the state legislature codified a time-related protocol to address spousal student loan debt. Pursuant to Section 2641 of the California Family Code, a rebuttable presumption exists that a marriage of 10 years in length or longer substantially benefits from the acquisition of a college or advanced degree, rendering the student loan debt subject to community property division.

There is a slight variation on this theme. In the event premarital educational debt is paid off during the marriage, the majority of the jurisdictions surveyed addressed this in a fashion similar to the *Mahoney* Court, and offer some form of a restitutive remedy to the non-degreed spouse.

Ability to Pay[16]

In virtually every decision reviewed, irrespective of whether the state recognizes community property or equitable distribution, the courts almost always consider the ability of the parties to pay the debt when assigning responsibility for the obligation.[17] In several of the opinions this represents the dispositive criteria in addressing spousal student loan debt.

In *Spears v. Spears*,[18] the Arkansas Appellate Court held that no presumption regarding responsibility or spousal student loan debt exists, and the ability of the parties to pay represents the key consideration. The relative economic position of the parties and their ability to pay was likewise critical to the Supreme Court of Alaska in allocating student loan debt in the decision *McDougall v. Lumpkin*.[19] In Indiana, the *Love* Court held the degreed spouse's future earnings potential directly attributable to the degree was dispositive in assigning responsibility for the student loan debt.[20]

Conclusion

Mahoney remains viable law to compensate a non-degreed spouse for expenditures made throughout the course of the marriage. The principles identified above create a complementary restitutive remedy. Use of loan proceeds, the date of debt acquisition and length of marriage, and ability to pay represent useful criteria when determining responsibility for spousal student loan debt existing at the time of divorce complaint filing.

The three-part criteria described above is consistent with the analysis articulated by the Appellate Division in *Monte*,[21] recognized as the leading New Jersey decisional authority apportioning responsibility for debt incurred during the marriage.

In *Monte*, Judge Neil F. Deighan stated a liability will be subject to division where both parties are cognizant of the debt incursion and benefited from the encumbrance.[22] The court also determined the timing of the debt creation is an important factor.[23] If incurred at the break-up of the marriage, implicitly providing no benefit to the joint marital enterprise, it should not be apportioned between the parties.[24] The court further noted that, irrespective of the *bona fides* of the debt as a marital obligation, consistent with *Painter*,[25] it can be disproportionately allocated based upon ability to pay.[26]

Consistent with *Monte*, a party seeking the equitable distribution of spousal student loan debt existing at the time of complaint filing has the evidential burden of establishing traceable debt obligations subject to division. Counsel should be vigilant in fashioning discovery inquiries to specifically address all aspects of spousal student loan debt, including origination documentation, depository and bank statements, as well as the preparation of interrogatories and request for admissions specifically designed to identify and address the use of loan proceeds.

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Endnotes

1. *Mahoney v. Mahoney*, 91 N.J. 488 (1982).
2. *See Pew Research Ctr., the Decline of Marriage and Rise of New Families* 11 (2010), *available at* pewsocialtrends.org/files/2010/11/pew-social-trends-2010-families.pdf [perma.cc/XUS9-ESNN] (archived March 8, 2014). *See also* Alex Richards, Census Date Shows Rise in College Degrees, but also in Racial Gaps in Education, *Chron, Higher Educ.* (Jan. 23, 2011), chronicle.com/article/Census-Data-Reveal-Rise-in/126026/ [http://perma.cc/ZW5L-EXQ2] (archived March 8, 2014); Larry Doyle, Are Student Loans and Impending Bubble? Is Higher Education a Scam?, *Benzinga* (April 26, 2011, 9 a.m.), benzinga.com/11/04/1032314/are-student-loans-an-impending-bubble-is-higher-education-a-scam [http://perma.cc/UU4S-FSNM] (archived March 8, 2014).
3. *Mahoney*, *supra*, 91 N.J. at 500.
4. *Id*. at 501.
5. **Alaska** – *McDougall v. Lumpkin*, 2004 Alas. LEXIS 100 (Alaska Supreme Court, Aug. 4, 2004).
   Arizona – *Leas v. Leas*, 2013 Ariz. App. Unpub. LEXIS 780 (Arizona Appeals Court, Division 1, July 11, 2013); *Porter v. Porter*, 2008 Ariz. App. Unpub. LEXIS 456 (Arizona Appeals Court, Division 1, Sept. 30, 2008).
   Arkansas – *Adams v. Adams*, 2014 Ark. App. 67 (Arkansas Appeals Court, Jan. 22, 2014).
   Colorado – *In re Marriage of Speirs*, 956 P.2d 622 (Court of Appeals, Oct. 16, 1997).
   Delaware – *Wharton v. Wharton*, 2012 Del. LEXIS 228 (Family Court, April 25, 2012).
   Indiana – *J.R. v. M.R.*, 2010 Ind. App. Unpub. LEXIS 910 (Court of Appeals, July 1, 2010).
   Iowa – *In re Marriage of Schoepske*, 838 N.W.2d 868 (Court of Appeals, Aug. 7, 2013); *In re Marriage of Deol*, 2010 Iowa App. LEXIS 820 (Court of Appeals, July 28, 2010).
   Kansas – *In re Marriage of Bradshaw*, 792 P.2d 1077 (Court of Appeals, May 25, 1990).
   Kentucky – *Kelley v. Kelley*, 2014 Ky. App. Unpub. LEXIS 777 (Court of Appeals, Oct. 3, 2014).
   Minnesota – *Hlavac v. Hlavac*, 2012 Minn. App. Unpub. LEXIS 17 (Court of Appeals, Jan. 9, 2012).
   New Hampshire – *Bourdon v. Bourdon*, 119 N.H. 518 (Supreme Court, June 27, 1979).
   New York – *A.C. v. J.O.*, 40 Misc. 3d 1226(A) (Supreme Court, 2nd JD, Aug. 12, 2013).
   North Carolina – *Warren v. Warren*, 2015 N.C. App. LEXIS 517 (Court of Appeals, June 16, 2015).
   Ohio – *Daniel v. Daniel*, 2012 – Ohio-5129 (3rd District Ohio Court of Appeals, Nov. 5, 2012).
   Pennsylvania – *Piotti v. Piotti*, 2015 Pa. Super. Unpub. LEXIS 1795 (PA Superior Court, June 17, 2015); *Lucas v. Daum*, 2015 Pa. Super. Unpub. LEXIS 1738 (PA Superior Court, June 15, 2015).
   Tennessee – *Jannerbo v. Jannerbo*, 2012 Tenn. App. LEXIS 155 (Appeals Eastern Grand Division, March 9, 2012).
   Virginia – *Layne v. Layne*, 2009 Va. App. LEXIS 468 (Court of Appeals, Oct. 20, 2009); *Korku Damankah v. Katasha Spurlin Damankah*, 2011 Va. Cir. LEXIS 82 (Circuit Court, 23rd JC, July 5, 2011).
6. *See id*.
7. *Wharton v. Wharton,* 2012 Del. LEXIS 228 (DE 2012) (published in table format at 44 A.3d 923).
8. *Eldridge v. Eldridge*, 291 Ga. 762 (GA 2012).
9. *Piotti v. Piotti*, 2015 Pa. Super. Unpub. LEXIS 1795.
10. *Id*.
11. **Arkansas** – *Spears v. Spears*, 2013 Ark. App. 535 (Arkansas Appeals Court, Sept. 25, 2013).
    California – *In re Marriage of Sullivan*, 127 Cal.App.3d 656 (4th District Court of Appeals, Jan. 8, 1982).
    Connecticut – *Simmons v. Simmons*, 244 Conn. 158 (Supreme Court, March 24, 1998).
    Indiana - *
    Louisiana – *McConathy v. McConathy*, 632 So.2d 1200 (2nd Circuit Court of Appeal, Feb. 23, 1994).
    Minnesota – *Hlavac v. Hlavac*, 2012 Minn. App. Unpub. LEXIS 17 (Court of Appeals, Jan. 9, 2012).
    Montana – *
    Nebraska – *Ourada v. Ourada*, 2005 Neb. App.LEXIS 83 (Court of Appeals, April 12, 2005).
12. *See id*.
13. *Roberts v. Roberts*, 670 N.E. 2d 72 (Ind. App. 1996).
14. *Spears v. Spears*, 2013 Ark. App. 535 (2013).

15. *Warren v. Warren*, 773 S.E.2d. 135 (N.C. App. 2015).
16. **Alaska –** *McDougall v. Lumpkin*, 2004 Alas. LEXIS 100 (Alaska Supreme Court, Aug. 4, 2004).
    Arkansas – *Spears v. Spears*, 2013 Ark. App. 535 (Arkansas Appeals Court, Sept. 25, 2013).
    Delaware – *M.R. v. A.R.*, 2007 Del. Fam.Ct. LEXIS 179 (Family Court, Aug. 30, 2007); *Wharton v. Wharton*, 44A.3d 923 (Supreme Court, April 25, 2012).
    Indiana – *Love v. Love*, 10N.E.3d 1005 (Court of Appeals, Apr. 30, 2014); *Vanderwielen v. Vanderwielen*, 2015 Ind. App. Unpub. LEXIS 500 (May 7, 2015).
    Iowa – *In re Marriage of Deol*, 2010 Iowa App. LEXIS 820 (Court of Appeals, July 28, 2010).
    Maine – *Libby v. Libby*, 2001 ME 130 (Supreme Court, Aug. 8, 2001).
    Montana – *In re Marriage of Jamieson*, 1999 ML 32 (District Court, 13th JD, March 9, 1999).
    Vermont – *Hanson-Metayer v. Hanson-Metayer*, 111 A.3d 827 (Supreme Court, Feb. 6, 2015).
17. *See id*.
18. *Spears v. Spears*, 2013 Ark. App. 535.
19. *McDougall v. Lumpkin*, 2004 Alas. LEXIS 100 (Aug. 4, 2004).
20. *Love v. Love*, 10 N.E.3d 1005 (Ind. App. 2014).
21. *Monte v. Monte*, 212 N.J. Super. 557 (App. Div. 1986).
22. *Id*. at 566-67.
23. *Id*.
24. *Id*.
25. *Painter v. Painter*, 65 N.J. 196 (1974).
26. *Monte, supra*, 212 N.J Super. at 567, *citing id*.