



THE ENFORCER

BY DAVID FINDLING

IF WE SATISFY HIS ARREARAGE, HOW AM I GOING TO GET PAID IN THE FUTURE?

Solution

John Doe is chronically in arrears with his child support and only satisfies his debt when faced with a contempt charge. Doe is then injured on the job and qualifies for workers' compensation. Rather than continue to pay his wages and medical costs, Doe's employer offers him a lump sum settlement (redemption). Doe accepts.

Examples of lump sum receipts, other than workers' compensation, include:

- a. Sale of real property;
- b. Inheritance;
- c. Proceeds of a lawsuit; and
- d. Liquidation of a retirement account.

Typically, when a lump sum is collected, practitioners will satisfy the extant arrearage but make no provision for the satisfaction of future support. Doe is not only unemployed but, due to his injury, virtually unemployable. Future support collection is unlikely or extremely difficult.

Two potential solutions can help to resolve future support enforcement arrearage problems:

Law

First, the lump sum, after satisfaction of the arrearage, could be turned over to the former Mrs. Doe for application to future support. However, in some cases, this may create other problems: the former Mrs. Doe may quickly spend the lump sum, leaving nothing to benefit her children in subsequent years, or the tax consequences may reduce what she was actually due. It also raises issues related to changes in support.

Michigan law currently provides:

If alimony or an allowance for the support and education of the children is awarded to either party, the amount of alimony or allowance constitutes a lien upon the real and personal estate of the adverse party as provided in section 25a of the support and parenting time enforcement act . . . The court may do 1 or more of the following if the party defaults on the payment of the amount awarded:

(c) Order the sequestration of the real and personal estate of either party and may appoint a receiver of the real estate and personal estate, or both, and cause the personal estate and the rents and profits of the real estate to be applied to the payment of the judgment.

A long-term financially prudent solution involves having the court appoint a receiver over the workers' compensation settlement. The receiver will sequester the funds pursuant to MCL 552.27(c). The Receivers appointment unfortunately does not resolve the administrative and cost issues related to the ongoing payment of support.

To ensure the consistent payment of support, the purchase of an annuity provides a solution. This can be accomplished through a structured settlement company. The purchase of an annuity allows for numerous benefits:

- a. No administrative expense;
- b. Interest paid on the res; and
- c. The res is still in the hands of the annuity company in case of death or changes to the support obligation.

MCL 552.27(c) (emphasis added).

The annuity company may make monthly disbursements to the Michigan State Disbursement Unit ("MISDU"), allowing for accounting of the payments.

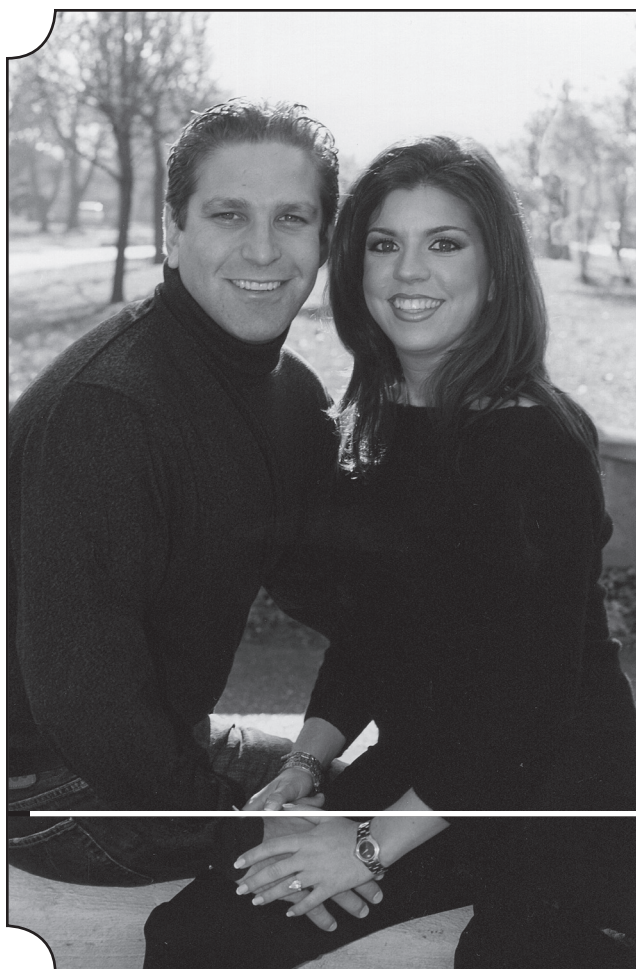
Additionally, Proceeds from workers' compensation settlements are subject to support judgments. *Petrie v Petrie*, 41 Mich App 80 (1972).

Having the sequestered funds placed into an annuity will guarantee the former Mrs. Doe monthly payments in the same



amount for a fixed period of time. A present value calculation would include the principal amount, the interest and the time period for the support obligation. Frequently, there is insufficient money to provide for the ordered support. This

does not mean that an annuity will not work. Rather, a payment from the annuity company, albeit at a reduced rate, will allow the support payee a consistent payment. Also, MiSDU will still show the remaining unpaid support as an arrearage.



Centerbrook

Mortgage Company

EXPERTS IN DIVORCE MORTGAGE SOLUTIONS

- Spousal Buy-Out & Cash-Out Programs
- Approvals in 24 Hours
- Limited & No-Documentation programs
- No Appointment Necessary
Complete process can be done by phone, fax, and email, for client convenience
- Turnaround 2-3 Weeks
- No Up-Front Costs
- All Credit Types
- Best Rates
- Client Satisfaction Guaranteed
(Attorney and client references available upon request)

AARON WASSERMAN

Owner

awasserman@centerbrookmortgage.com

NICHOLE LUMBERG

President

nlumberg@centerbrookmortgage.com

32781 Middlebeit Rd., Suite B
Farmington Hills, MI 48334

248-851-2111 Office
248-851-2115 Fax

