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Side Agreements To Court Orders: Are They Enforceable?
by Susan C. Ryan, Esq.

In October 1996, Joan Quinn filed a complaint for contempt, alleging her former husband, Sean Quinn, failed to pay the $350.00 weekly court ordered child support. Sean filed an answer stating that his former wife agreed to accept $275.00 per week as part of an April 9, 1993 "agreement." Although the "agreement" was never presented or approved by the Court, Sean felt it was a defense to the contempt. The trial judge modified the child support, and did not enter a judgment of contempt.

Joan filed an appeal, and the Massachusetts Appeals Court disagreed with Sean. The post divorce "agreement" predated the amendment to M.G.L. c. 9A, section 13(a), which does not permit a judge to reduce arrearages for child support, except when there is a pending complaint for modification. Stating "parents may not bargain away the rights of their children to support from either of them," the Court found that an agreement to accept less money than due was not a defense to the contempt. The trial court's original judgment was reversed, and the action remanded to the Probate Court for the purposes of establishing arrearages, or addressing the issue anew at such a hearing, unless Sean filed a complaint for modification.

The moral of this case is that parties can make agreements. However, to avoid a future filing of contempt, any post-divorce changes/agreements should be accomplished by filing a complaint for modification. These agreements must be presented and approved by the Court to determine that the terms of such a new agreement, if related to child support, are in the best interests of the children.

Despite being on good terms with an ex-spouse, with assurances that he/she agrees to the changes, unless and until the Court gives its approval, the existing Court order/judgment controls.

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