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Recent Developments: Shapiro v. Shapiro: Marital Settlement Agreements Containing Preconditions for Modification May Not Be Judicially Modified Absent Those Circumstances

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Shapiro v. Shapiro:

MARITAL SETTLEMENT AGREEMENTS CONTAINING PRECONDITIONS FOR MODIFICATION MAY NOT BE JUDICIALLY MODIFIED ABSENT THOSE CIRCUMSTANCES

By Amy B. Tate

Reversing precedent, the Court of Appeals of Maryland ruled on the interpretation of marital settlement agreements in *Shapiro v. Shapiro*, 346 Md. 648, 697 A.2d 1342 (1997). The court held that marital settlement agreement provisions that are subject to modification only under certain circumstances cannot be modified by a judge absent those requirements.

On May 4, 1988, Debra Shapiro and David Shapiro entered into a marital settlement agreement (the "Agreement"), which was later incorporated in their judgment of divorce, that provided for alimony and child support to be paid to Mrs. Shapiro. Section 5(e) of the Agreement stipulated that the alimony payments were not to be modified unless Mr. Shapiro became temporarily or permanently disabled, as defined by Mr. Shapiro's insurance policy.

Sixteen months after the divorce, Mr. Shapiro petitioned the Circuit Court for Howard County for a rescission or modification of the Agreement. The court refused to rescind the Agreement but held that the provisions regarding alimony were subject to court modification in spite of the express provision in the Agreement that permitted modification only if Mr. Shapiro became disabled.

The trial court based its holding on *Langley v. Langley*, 88 Md. App. 535, 596 A.2d 89 (1991), where the Court of Special Appeals of Maryland held that section 8-103(c)(2) of the Annotated Code of Maryland, Family Law Article required a specific provision stating that the marital settlement agreement is not subject to any court modification. Thus, any agreement without that specific language would be subject to judicial modification.

The court of special appeals ruled that section 5(e) of the marital settlement agreement did not comply with the *Langley* rule. The court of appeals granted certiorari to determine whether section 8-103(c)(2) requires spousal support provisions to be completely modifiable or completely non-modifiable and whether a court can rewrite a marital settlement agreement which is part of an enrolled judgment, absent fraud or mistake.

The court began its analysis by examining the text of section 8-103(c)(2), MD. CODE ANN., FAM. LAW (1991). The court noted that the term "provision" is used both in the singular and the plural. *Id.* at 655, 697 A.2d at 1345. Pursuant to the statute, a "provision" may be included in a marital settlement agreement for the purpose of addressing "provisions with respect to alimony or spousal support are not subject to any court modification." *Id.* at 656, 697 A.2d 1346 (citing MD. CODE ANN., FAM. LAW § 8-103(c)(2)(1991)). The circuit court interpreted the latter phrase to include all provisions regarding spousal support, a position which Mr. Shapiro said could be justified by the use of the singular in reference to the modification provision. *Id.* at 656, 697 A.2d at 1346.

While Mr. Shapiro advocated this bright line approach, Ms. Shapiro contended that modifiability should be determined provision by provision and that the lower courts should have adopted that construction. *Id.* Rather than choosing either version, the court referred to Article I, section 8 of the Rules of Interpretation which states that "[t]he singular always includes the plural, and vice versa." *Id.* at 657, 697 A.2d at 1346 (quoting MD. CODE. ANN. art. 1 § 8(1996)). The court found that either way, the statute is still ambiguous regarding court modification. *Id.*

The court then turned to the legislative history of section 8-103. It observed that subsections (b) and (c) of section 8-103 were enacted to correct technical barriers to divorcing parties that prevented inclusion of their express intent in marital

settlement agreements. *Id.* at 658, 697 A.2d 1347. Subsection 8-103(b) was enacted in 1975 to nullify the rule of *Simpson v. Simpson. Id.* (citing *Simpson v. Simpson*, 18 Md. App. 626, 308 A.2d 410 (1973)). In *Simpson*, the court of special appeals ruled that a court could modify technical alimony but not contractual spousal support. *Id.* The General Assembly responded with Chapter 849 of the Acts of 1975 which stated:

> "the court shall have the right to modify such deed or agreement . . . regardless of the manner in which the provisions are expressed or stated unless the provisions . . . specifically state that they are not subject to any court modification."

Id. at 659, 697 A.2d at 1347 (quoting MD. ANN CODE. art. 16 §28 (1973)).

This provision was in effect for the first three months of 1976, after which it was replaced by Chapter 170 of the Acts of 1976. *Id.* at 659, 697 A.2d at 1347-48. Unlike the prior statute, the 1976 Act restricted the court's ability to modify the settlement agreement provisions concerning spousal support to those agreements in which there were no express waiver or statements specifically precluding court modification. *Id.* at 660, 697 A.2d at1348.

In 1984, the Family Law Article was revised and the acts of 1975 and 1976 were adopted as sections 8-103(b) and 8-103(c). The court suggested that the 1984 code Revisors' use of the phrase "unless there is" in the sections addressing modification or waiver of spousal support necessitated a grammatical change from plural to singular. *Id.* at 661, 697 A.2d at 1349. As such, the court found no justification for the lower court's bright line construction of section 8-103(c)(2). *Id.* at 662, 697 A.2d at 1349. The court proffered that the grammatical change indicated the legislature did not consider the consequences of the new language. *Id.* In addition, the Revisor's Note indicated no substantive change was intended. *Id.* As a result, the court then focused on the General Assembly's intent in enacting the provision. *Id.* at 663, 697 A.2d at 1349.

In enacting section 8-103(c)(2), the court noted, the legislature sought to permit judicial modification of contractual support, unless otherwise agreed by the spouses. *Id.* The distinction between technical alimony and contractual support would no longer contradict the parties intent. *Id.* By requiring a "blanket provision" that prevents modification of spousal support provisions except in an all or nothing manner, the court opined, "the evil that the General Assembly sought to cure by 8-103(c)(2) is recreated." *Id.* at 663, 697 A.2d at 1349-50. In fact, the court found no support for the continuation of the all or nothing approach. *Id.*

The court supported its conclusion by referring to decades of public policy recognizing the ability of a husband and a wife to enter into an agreement relating to alimony and support. *Id.* at 663-64, 697 A.2d at 1350. It further stated that "[t]he broad, validating approach of § 8-101(a) is inconsistent with restrictively reading § 8-103(c)(2) to require that the contractual support provisions . . . be modifiable or non-modifiable as a class." *Id.* at 664, 697 A.2d at 1350.

The court of appeals refuted Mr. Shapiro's assertion that the legislature preferred the all or nothing approach so as to allow the application of factors for setting spousal support under section 11-106(b) of the Family Law Article. *Id.* at 665, 697 A.2d at 1350-51. Those factors include the existence of "any agreement between the parties" and "the financial resources and financial needs of each party". *Id.* (quoting MD. CODE. ANN., FAM. LAW §11-106(b)). The court pointed out that a court would be free to apply those factors "if and when that other circumstance occurs and the parties come to the court for modification." *Id.*

After applying the rules of statutory construction, the court found the legislative history to be inconsistent with the all or nothing approach. *Id.* The court held that the alimony provisions in the Shapiro agreement could not be judicially modified because Mr. Shapiro was not disabled. *Id.* at 665, 697 A.2d at 1351. As a result, the court overturned *Langley* as it was inconsistent with its present finding that provisions could be individually exempted from modification by the court. *Id.*

The court of appeals also addressed the circuit court's conversion of the Agreement's alimony provisions to child support provisions. *Id.* at 665-66, 697 A.2d at 1351. Because the Agreement was incorporated into the judgment for divorce, the court observed that it could only be

modified in the case of fraud, mistake, or irregularity. *Id.* at 666, 697 A.2d at 1351 (citing Maryland Rule 2-535(b)). While section 8-105(b) does permit retroactive modification of a divorce decree, the section only applies to provisions subject to modification under section 8-103. *Id.* Since the court's holding prevented modification of the alimony provision under section 8-103, the power to modify the Shapiro's decree could not be invoked under section 8-105(b). *Id.* The court remanded the case to the circuit court on the issue of child support because the decrease in child support was offset by alimony payments, now impermissible under the court's holding. *Id.*

The *Shapiro* decision represents a dramatic shift in the interpretation of family law. In overturning *Langley*, the Court of Appeals of Maryland created greater flexibility in the drafting of marital settlement agreements in Maryland. By removing the restrictive interpretation of *Langley*, spousal support provisions can be crafted to meet a number of contingencies under which modification of support may occur. In addition, the *Shapiro* decision is consistent with the legislative purpose of section 8-103(c)(2): to eliminate the technical difficulties of contracts between spouses. As a result, family law practitioners may consider future possibilities for the husband and wife, without fear that the product of their negotiations will be subject to judicial modification.