

O'Neil Attorneys Newsletter

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Dallas Divorce Attorney News Letter

July 14, 2011



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Testimonials

"Michelle was my angel at a time when I was in my darkest hour. She took my case, after leaving an unfavorable situation, in literally a day before trial and familiarized herself with the case and acquired the necessary support in hours, as if she had been part of the process from the beginning. She was victorious in court that day and continued to pursue the remainder of my case with the same tenacity. She exceeded my expectations and I would gladly recommend her without hesitation."

~M.T.

From our Blog...

A prenuptial agreement without the wedding?

Posted by Michelle May O'Neil on July 4, 2011

In a national news report by Ellen Levya at KABC-TV, it seems prenuptial agreements

are not just for people getting married anymore. Out of the more than 12 million unmarried couples living under the same roof in America, many of them are choosing to sign a pre-nup-like agreement in lieu of a marriage license.

Apparently, this is the latest legal trend aimed at protecting singles and their assets.

Why are all these unmarried couples taking this direction? In a poll of divorce attorneys, 48% said that they have seen an increase in unmarried couples headed to court over issues when there is a split.

Now a growing number of these couples are choosing to sign co-habitation agreements. These are legally binding agreements for couples that share a home, but aren't married in the traditional sense. They outline the couple's expectations for their relationship, and also what happens in the event that the relationship ends, either by death or by simply deciding they're not going to live together anymore.

These co-habitation agreements can range from simple to complex, covering everything from medical decisions and health insurance. They can even cover who's responsible for debt and what to do with a house, cars, furniture, even pets.

Dr. Anne-Renee Testa, a relationship coach, says these agreements are just a sign of the times. That's because over the last 20 years, the number of unmarried couples living under the same roof has skyrocketed by more than 85%.

Dr. Testa says, "Any couple that is interested in being intelligent about their relationship should do something like this because it absolutely clears the air." In my own practice as a Family Law attorney in Dallas, I have found these co-habitation agreements to be beneficial to same sex couples as well as traditional couples that live together without being married.

They even work for people living together who are not romantically involved, such as roommates.

The important thing is not to think of these agreements as a negative thing. It is not about control over the other person, or distrust in one another. It is really just a protection mechanism for both parties involved in the relationship, just like a prenuptial agreement for traditional married couples.

Supreme Court Finds No Automatic Right to Counsel in Child Support Contempt Proceedings

The U.S. Supreme Court has found no automatic right to counsel for indigent civil defendants facing jail time, though it ruled on behalf of a father who served a year in prison for failing to pay child support.

The father, Michael Turner, was deprived of his 14th Amendment right to due process, the Supreme Court ruled in a 5-4 decision.

Free lawyers aren't required in such situations, but states must have procedural safeguards in place to help determine whether the parent is able to comply with the support order, according to the majority opinion (PDF) by Justice Stephen G. Breyer.

Turner had told the trial judge who sentenced him to prison that he was unable to pay because "dope had a hold to me" until he broke his back and was laid up for two months. "And, now I'm off the dope and everything," he told the court. "I just hope that you give me a chance."

The judge sentenced Turner to a year in jail without making an express finding about his ability to pay. Turner's appeal, brought with the help of a pro bono lawyer, argued he had the right to counsel at his contempt hearing.

Breyer's opinion found that Turner did not get due process in his case, but said a lawyer was not an automatic requirement.

The 14th Amendment's due process clause allows a state to provide fewer procedural protections to civil contempt defendants than in a criminal case, which is governed by the Sixth Amendment, Breyer said. He noted that both parties in a child support case are often unrepresented by lawyers, and providing a lawyer to just the noncustodial parent "could create an asymmetry of representation" altering significantly the nature of the proceeding.

He also noted the argument of the Solicitor General that alternate procedural safeguards can help reduce the risk of wrongful incarceration. They include: notice that ability to pay is a critical issue, the use of a form to elicit financial information, an opportunity for the defendant to answer questions about his financial status, and an express finding by the court on ability to pay.

Breyer said his opinion does not address a situation where child support is owed to the state, possibly as reimbursement of welfare payments to the parent with custody. Nor does the opinion address the due-process requirement for counsel in a particularly complex case.

Four dissenting justices agreed there is no right to appointed counsel for indigent defendants facing incarceration in civil contempt proceedings. They would not have reached the issue of the need for alternative procedural safeguards.

The ABA had argued in an amicus brief that poor people should have the right to a lawyer in civil contempt proceedings carrying a threat of jail time. The case is *Turner v. Rogers*.

By Debra Cassens Weiss on June 20, 2011. ABA Journal

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At the Texas family law firm of [O'Neil Attorneys](#), we have one purpose in mind: providing men and women with compassionate and relentless advocacy from beginning to end in all [practice areas](#) of family law litigation and family law appeals in Texas courts. Whether defeating opponents in the courtroom or creating new law at the appellate level, we are committed to providing superior results to all of our clients.

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