

Carolyn A. Koegler

From: Joshua L. Gordon <jlgordon@appealslawyer.net>
Sent: Thursday, February 08, 2018 10:41 AM
To: Carolyn A. Koegler
Subject: Family rule 2.29 and Matter of Eckroate-Breagy, __ N.H. __ 168 A.3d 1148 (Aug. 1, 2017)

Carolyn:

Not that long ago, Family rule 2.29, regarding the finality of family court orders, was amended.

In August, the court decided Matter of Eckroate-Breagy, __ N.H. __ 168 A.3d 1148 (Aug. 1, 2017).

Rule 2.29(4) says: "If any party files an appeal, all orders described in subsection 1 shall continue in effect until the supreme court mandate or the conclusion of such further proceedings as the supreme court may order, whichever is last. During this period, no orders as to marital status or parentage OR AS TO PROPERTY DIVISION shall take effect."

In Eckroate-Breagy, the court held that property division goes into effect upon issuance of the decree, long before the appeal mandate: "The plain language of RSA 458:16-a makes clear that marital property shall be accrued up to the point when a "dissolution of a marriage is decreed." RSA 458:16-a, II. Although generally a decree issued by the trial court does not go to final judgment if a timely appeal is taken, In the Matter of Nyhan & Nyhan, 151 N.H. 739, 745, 867 A.2d 470 (2005), the plain language of the statute stops the accrual of marital property when a "dissolution of a marriage is decreed," not when the decree becomes final or effective. RSA 458:16-a, II (emphasis added)." Eckroate-Breagy, 168 A.3d at 1152.

Rule 2.29 is thus now at least sort of inaccurate. "Take effect" in the rule is arguably different than when "the marital estate closed," Eckroate-Breagy, 168 A.3d at 1152. The two can be reconciled by saying the marital estate closes upon family court issuance of the decree, but no

money or property pursuant to the decree changes hands until supreme court issuance of the mandate.

But probably for most practitioners and divorce parties that is a subtle difference, and thus the rule in my view should be amended. I do not have a proposal.

I would suggest distributing this to the Rules Committee now rather than immediately before the meeting, so that people have time to think about a proposal, but I'll leave that to you.

Thanks,

Joshua

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