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New Case Highlights How Mediation Can Craft Unique Child Support Solutions

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Divorce Mediator Carmela M. Miraglia reviews a recent Appeals Court decision highlighting how mediated agreements offer flexible solutions.



A new case from the Massachusetts Appeals Court allows judges to enforce divorce agreements that have retroactive components, providing [divorce mediation](#) another tool to create a separation agreement that is unique to the parties and mutually beneficial. The case is a clear demonstration how the [flexibility of mediation](#) allows

spouses and parents to craft unique solutions to child-related issues that stand the test of judicial review.

Separation Agreement Allows Retroactive Child Support Order

The case, [Calabria v. Calabria](#), involved a husband and wife who sought mediation to resolve their issues and presented a separation agreement to the court to be used in the judgment of divorce. Part of the separation agreement, which merged into the divorce judgment, required both parents to exchange tax documents every year and to notify the other if their employment status or income changed, so the [child support](#) could be reviewed. The agreement also stated that any modification to the child support order would be retroactive to the date that the employment or income changed. When the husband did not provide his tax information, the wife filed a complaint for contempt to compel the production of the tax return, and discovered that his income had increased. She filed for a [modification of the child support order](#), and the judge increased the husband's child support payments based on his increased income. More importantly, the judge also followed the separation agreement and applied those increased payments retroactively, ordering the husband to pay the higher amount from before the wife learned of his increased income. When the husband appealed the Probate judge's order, the Massachusetts Appeals Court confirmed that the judge had the power to order the retroactive payment because the parties' separation agreement allowed it.

Typically, Modification Orders Are Not Retroactive

The decision was important because Massachusetts' law, [G.L.c. 119A §13\(a\)](#), only allows child support modifications to apply as far into the past as the modification complaint. Under this statute, child support payments that were missed before the modification complaint was filed are gone, forever. The statute allows divorced parents to rest assured that they were not going to be forced to pay off a significant overdue payment.

Separation Agreement Effectively Trumps Statute

Contrast the [statute](#) with the recent case law. In [Calabria](#), the parties signed a separation agreement that expressly allowed child support modifications to apply retroactively; they were aware that such a situation could arise. Additionally, the husband failed to provide the financial documentation – effectively hiding his increased income – thereby creating his own problem of a steep payment to cover the arrearage.



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Case Highlights Ability of Divorce Mediation to Craft Unique Solutions

The [Calabria](#) case showcases the ability of the divorce mediation process to fashion solutions that are handcrafted to your unique situation. The husband and wife in [Calabria](#) knew that their professional lives would improve after the divorce – the wife was unemployed at the time of the separation; the husband was earning half the income he had during the marriage. The parties chose to make a separation agreement that looked to the future and accounted for the probability that they were going to return to their higher salaries. Not only did their agreement require their child support payments to be reviewed, it also provided an effective enforcement mechanism for either party to hold the other accountable should one of them try to get away with paying less in child support than they rightfully should. Unique solutions like this are the hallmark of the divorce mediation process. No two situations are alike; mediation allows you to craft an agreement specific to your circumstances which reflects your individual intentions as to how matters should be resolved moving forward. Like the parties in

Calabria, you too have the ability to direct your outcome through the use of mediation.

Carmela is a divorce mediator and mediation coach for South Shore Divorce Mediation, with offices in Hingham, Massachusetts and East Sandwich, Massachusetts. She is also a Senior Associate Attorney for Lynch & Owens, P.C., where she specializes in divorce and family law issues. Carmela is a statutory mediator under M.G.L. Ch. 233, s. 23C and a proud member of the Massachusetts Council on Family Mediation. To read more from Carmela Miraglia, check out her author page on the Lynch & Owens Blog. ***Disclaimer:*** *The information you obtain at this site is not, nor is it intended to be, legal advice. You should meet with an attorney for advice regarding your individual situation. You are invited to contact our office. Contacting the office does not create an attorney-client or mediator-client relationship. Please do not send any confidential information to the office until such time as an attorney-client or mediator-client relationship has been established. This blog is considered an advertisement for the Law Office of Lynch & Owens, P.C. d/b/a South Shore Divorce Mediation. The Massachusetts Rules of Professional Conduct broadly govern all advertisements and communications made by attorneys and law firms in the Commonwealth. Generally, legal websites and any other content published on the internet by lawyers are considered a type of communication and an advertisement, according to the Comments to Rule 7.2.*

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