

DISSIPATION: THE IMPORTANCE OF OBJECTING TO THE EXPENDITURE

A common defense to a claim of dissipation has been that the expenditures in question were simply a continuation of the pattern of expenditures in place prior to the breakdown of the marriage. Over the years, the courts have dealt with this defense differently --- with acceptance in some cases and rejection in others. A past article in this publication reviewed dissipation cases with regard to this issue (1993 Illinois Family Law Report 2).

This note suggests a further gloss on the “continuation of spending pattern” defense turning on whether there was an objection to the expenditures. A review of the cases addressing this defense reveals that the defense was sustained in the instances where the party raising the claim of dissipation had not objected to the expenditures, and that the defense was denied in the instances where the party raising the claim of dissipation did object to the expenditures. In three cases where the respective courts reviewed expenditures for the care of the husband’s mother, expenditures for the husband’s pleasure in bars, and expenditures for trips by family members, there was no finding of dissipation where the party raising the claim had not objected to the expenditures. See In Re The Marriage Of Aud, 142 Ill.App.3d 320, 491 N.E.2d 894 (5th Dist. 1986); In Re The Marriage of Adams, 183 Ill.App.3d 296, 538 N.E.2d 1286 (4th Dist. 1989); In Re The Marriage Of Davis, 215 Ill.App.3d 763, 576 N.E. 2nd 44 (1st Dist. 1991)*.

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On the other hand, the courts have found dissipation where there was an objection to the expenditures. In one case the funds were expended for gambling, and in the other case for tithing. In both cases the party raising the claim of dissipation objected to the expenditure, and in both cases the court found dissipation. See In Re The Marriage Of Hagshenas, 234 Ill.App.3d 178, 600 N.E.2d 437 (2nd Dist. 1992); In Re The Marriage Of Cerven, 317 Ill.App.3d 895, 742 N.E.2d 343 (2nd Dist. 2000).

In conclusion, simply asserting the defense of a “continuation of spending pattern” to a dissipation claim may not be sufficient. Counsel should also consider a showing that there was no objection to the expenditure.

*It appears, but is not entirely clear, that no objection was raised to the expenditures.