Fazio v. Fazio, 91 Mass. App. Ct. 82 (2017)

Summary by Katy Krywonis, Esq., CAFL Training Unit

This case provides a good breakdown of the Servicemembers Civil Relief Act (SCRA), 50 U.S.C. app. §§ 501 et seq., which provides that a person in military service is entitled to a stay in any child custody proceeding if that military service prevents them from appearing in court. In this appeal from an amended judgment for divorce nisi, the husband argued, inter alia, that the Probate and Family Court judge violated the SCRA by denying his request for a stay, holding a hearing, and issuing orders in his absence. The Appeals Court rejected this claim because his request for a stay did not satisfy the SCRA requirements, set forth below.

Facts: The husband was a major in the Army National Guard who repeatedly saw active duty over the course of the divorce proceedings. He sought a stay of the hearing in question by faxing a letter to the Probate and Family Court the afternoon before. The letter, written by his commanding officer, stated that the husband’s unit “will be conducting pre-deployment training from 1 October through 28 November 2010 in preparation for our mobilization which will occur on 29 November 2010.” The commanding officer stated that the deployment would last approximately one year and “request[ed] that court hearings be postponed due to the [husband’s] inability to defend his interests, in accordance with the Servicemembers Civil Relief Act.”

The SCRA: Under the SCRA, a person in military service is entitled to a stay in “any civil action or proceeding, including any child custody proceeding” upon a showing that military service prevents the person from appearing in court. It provides for a mandatory stay of at least 90 days upon a proper request by a qualifying servicemember. To make a proper request, the servicemember must set forth the factual basis for the request, and the date the servicemember will next be available. The request must also include the commanding officer’s statement “that the servicemember’s current military duty prevents appearance and that military leave is not authorized for the servicemember at the time of the letter.” Whether the request is adequate under the SCRA is a question of law, subject to de novo review on appeal.

Here, the Court stated that the commanding officer’s letter provided no details about the husband’s pre-deployment training and did not explain how the requirements of the training mission prevented the husband from taking part of one day to attend a court hearing. Additionally, the commanding officer did not state that the husband could not obtain leave to appear at the hearing at any time during the two months prior to mobilization. Although the judge, in her discretion, could have allowed the stay notwithstanding the incomplete request, the Appeals Court found no error in the judge’s denial of the stay.