**ALIMONY-IT’S ALL ABOUT THE MONEY**

**BY: WILLIAM G. MORRIS, ESQ.**

The manner in which a Florida courts deal with alimony has not changed much since the 1800s. Alimony continues to be based upon termination of a marriage under which one spouse has a need for support and the other has ability to pay. Need is not mere subsistence. Need is also based on the standard of living established during the marriage, particularly marriages of longer duration.

In the past few years, Florida’s legislators has seen bills introduced that try to bring more certainty to the alimony issue. Some of those bills are patterned after child support statutes. Child support statutes attempt to limit battle over the amount of child support by establishing a set amount of support based upon the combined incomes of the parents. In doing so, the legislature recognizes that parents with greater income will tend to spend more on their children. Only when a child has special needs or unusual circumstances is a judge supposed to vary from the child support set by statute by more than five percent. And when the judge varies, the judge must justify by explanation.

The legislature has refused to adopt that approach in alimony. The last major revision to the alimony statute was in 2010. That revision continued the requirement for courts to determine need of one spouse and ability to pay by the other and defined seven types of alimony that a judge could consider and award. Section 61.08 Fla. Stat. contains criteria for alimony awards and the types of alimony that can be awarded by a Florida judge.

The statute begins by confirming a judge may award alimony provided the judge considers the factors specified in the statute and states that the judge may consider adultery of either spouse in determining the amount of alimony to be awarded. Even though the judge can consider adultery, need and ability to pay remain the primary considerations.

The statute directs the judge to consider all relevant factors, including but not limited to (a) standard of living established during the marriage, (b) duration of the marriage, (c) age and physical and emotional condition of each party, (d) financial resources of each party, including both marital and nonmarital assets and liabilities each party will have after the divorce, (e) earning capacity, education level, skills and employability of the parties, (f) contribution of each party to the marriage, including services other than wages, (g) responsibilities each party will have the guarding any minor children they have been, (h) tax treatment consequences of any alimony award, (i) all sources of income available to either party and (j) any other factor necessary to do equity and justice.

The length and type of alimony to be awarded can depend on the length of the marriage. Length of the marriage is not much of a factor when the court is asked to award alimony pending final judgment of divorce. When the type of temporary alimony is requested while a divorce action is pending, it is known as alimony pendente lite. Spousal support can also be sought without filing an action for divorce through an action for separate maintenance.

When alimony is an issue, the big fight is generally over how much and how long one spouse must pay the other after they are divorced. In an effort to reduce that battle, the statute divides marriages into 3 categories. Marriages of less than 7 years are presumed short-term, between 7 and 17 years are presumed moderate-term and a marriage of 17 years or greater is presumed a long-term marriage. Length of the marriage is the period from date of the marriage until the date of filing the divorce action.

Length of the marriage is a big consideration in permanent alimony. Alimony and long-term marriages is presumptively permanent. Permanent alimony can be awarded in a moderate term marriage, but the evidence of need and ability to pay must be clear and convincing as opposed to a simple greater weight of the evidence. Alimony may be awarded in a short-term marriage only if the court finds exceptional circumstances. The rationale behind the statute making it harder for permanent alimony awards in shorter marriages is that a person’s ability to be self-supporting is more likely to be impacted by a long-term marriage.

The statute provides that judges can pick from a wide variety of alimony. Bridge-the-gap alimony is temporary alimony that is intended to help the recipient moved from marriage into self-support. It is usually limited to shorter-term marriages. Bridge-the-gap alimony may not exceed 2 years.

Rehabilitative alimony is another option, but rehabilitative alimony requires a specific goal and plan for training or education that will allow the receiving spouse to improve earning ability so they can be self-supporting. It is possible to obtain an award of rehabilitative alimony coupled with an award of permanent alimony at end of the rehabilitative.

Durational alimony is alimony with a specific term and by statute its duration may not exceed the length of the marriage. Durational alimony may be awarded when the judge finds permanent alimony is inappropriate and it may not be awarded in conjunction with an award of permanent alimony. Durational alimony can be modified.

Permanent alimony is to provide for the needs and necessities of life as established during the marriage for a recipient who lacks the financial ability to meet those needs and necessities of life following divorce. Long-term marriages will presumptively include an award of permanent alimony if need and ability to pay are established. The judge must include a finding that no other form of alimony would be sufficient. Permanent alimony may be modified or terminated based upon substantial change in circumstances and ends with the death of either party or the remarriage of the recipient.

The statute also authorizes award of lump-sum alimony. There are no real criteria included in the statute for lump-sum alimony. Historically, judges have used lump-sum alimony as a form of equitably dividing marital assets. Lump-sum alimony has also been used to reduce or eliminate permanent alimony. That is particularly true when assets awarded as lump-sum alimony generate income.

Alimony awards are not set forever. The statute leaves open the door for modification based upon substantial change in circumstances. That open-door often leads to continuation of battle between parties for decades.

Section 61.08 Fla. Stat. is the statute that tells judges what they can and must do in alimony cases. It does not include such detail as to prevent judge discretion. And, the statute does not abrogate a huge body of Florida case law upon which judges rely in considering the statutory factors. Alimony decisions continue to be as much art as statute.

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