

# Contemplating Alimony

By K. Dean Kantaras and Briana Texter

**W**hen parties begin a dissolution of marriage, there is no doubt that their lives are about to change.

During most marriages, finances are deeply intertwined to support the family. Upon dissolution, this support structure changes immensely. Sometimes in marriages, the parties will earn significantly different incomes. For instance, the wife might earn the income for the family, and the husband might support the family affairs as homemaker. Upon separation and divorce, sometimes an issue arises because all members of the family need support, but there is only one member of the family who earns an income.

In situations like these, there is a heavily litigated and argued concept called alimony. There are several forms of alimony, such as durational, rehabilitative, permanent, and bridge-the-gap. It is often the case that one spouse will be obliged to pay any of the above-listed forms of alimony as spousal support. However, there is a process the parties must go through to establish this alimony obligation.

According to Florida law, the trial court must determine that the party seeking alimony has a need for spousal support, and it must also establish that the party paying the alimony has the ability to pay support.

To determine the parties' needs and ability for alimony, the parties' financials (such as income, expenses, and assets) must be disclosed and reviewed. In addition, there are several factors the court can consider when determining the amount



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of alimony due. These factors include, but are not limited to, the standard of living during the marriage, the duration of the marriage, the age and physical condition of the parties, the mental health of the parties, earning capacities, and contribution to the marriage.

Surprisingly, in a recent case, the trial court awarded the wife retroactive alimony. This might seem odd to some of us, since Florida's alimony statute does not mention "retroactive" alimony.

The District Court of Appeals eventually examined this concept of retroactive alimony closer and started to strike down and reverse awards of retroactive alimony. In one case, the First District Court stated in its concurrence that "[r]etroactive alimony" is a creation of the courts, first in 1982 by the Fourth District. This refers to the trial court's creation of retroactive alimony in the 1982 case *Wright v. Wright*.

In 2022, two months after the court decided the retroactive alimony case,

the same District Court of Appeals heard another one. This pivotal case ended the concept of retroactive alimony, finding it unconstitutional under the Florida Constitution. "Trial court's award of retroactive alimony to wife in marital-dissolution proceeding violated state constitution's separation-of-powers principles; retroactive alimony was a creation of the courts prohibited by the state constitution's separation of powers."

In other words, the rationale behind this new ruling is that the judicial branch itself created "retroactive" alimony, as it was neither mentioned in the statute nor created by legislation, but it was ordered by the courts. The judicial branch functions by examining and interpreting laws which are already existing. However, it is a function of the legislative branch to create laws.

Although retroactive alimony is no longer a form of alimony enforceable by the courts, parties can still seek the other forms. ♦

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