

THE LAW CATCHES UP

By K. Dean Kantaras

HAVE FREQUENTLY SAID IN THESE articles that the law often lags behind societal changes, and it does. However, it eventually catches up with the times and corrects what some have perceived as illogical results. Child support was one of those areas. We currently have standardized guidelines that are based upon the respective incomes of the parties and certain specified deductions from that income. Courts didn't do that, the legislature did. The result is that child support is now calculated in the same way throughout the State of Florida.

For many years, lawyers had been struggling to advise our clients on the question of alimony. Will alimony be awarded? If so, for how long? What effect will the length of the marriage have? What will the court consider? One of the most difficult questions involves the length of the marriage. Was the marriage "short term"? If so, what is short term, and what is the effect of a short term marriage? Is the marriage somewhere between short term and long term and the "grey area" marriages? What is the definition of a long-term marriage?

Florida has five appellate districts. Each district, made up of several counties, has a District Court of Appeal. Those Courts are, for all practical purposes, the final say on most cases, because very few cases are accepted by the Florida Supreme Court. The Tampa Bay area is in the second district. The rulings of the Second District Court of Appeal control the manner in which a trial judge in this district is supposed to rule on all issues decided by the upper Court. If the Second District Court of Appeal has not ruled on an issue, then rulings by the other four District Courts may be considered by a trial judge. Unfortunately, the various



K. Dean Kantaras, Esq.

District Courts have not interpreted the questions about a short term, the grey area and long-term marriages the same way. They are close for the most part, but not the same. So, while the Second District may rule that a party in a particular "grey area" divorce was entitled to permanent alimony, the same facts may produce a different result in another district.

Lawyers and litigants were not happy with the disparate results this system produced. Last year, the legislature finally stepped in and attempted to resolve the definitional problem. The Florida alimony statute was amended effective January 1, 2011, so that we now know that a marriage will be considered short term if it lasted seven years or less. A "moderate term" marriage, the old grey area marriage, is from seven years to seventeen years, and a "long term" marriage is seventeen years or more. The length of the marriage is

determined from the date of the marriage to the date the petition is filed for dissolution of the marriage.

However, in its wisdom, the legislature wrote into these definitions that the time frames are not absolute, but are rebuttable. That is, if a party can show good reason why he or she should be entitled to a longer period of alimony, or permanent alimony, a trial judge can deviate from the statutory definitions in his decision. In addition to defining the term of a marriage, the new statute has added a new type of alimony. It is referred to as "durational" alimony. Durational alimony can be used when permanent alimony may not be appropriate, but a longer period of alimony is required by the circumstances. Durational alimony can be ordered for as many years as the marriage existed. Obviously, since the law is new, we don't have any appellate decisions to guide us. It will be interesting to see how trial judges deal with the new statute and how the Courts of Appeal interpret it. ■■■

EDITOR'S NOTE: K. Dean Kantaras is an attorney limiting his practice to family law matters, including custody, related appeals and immigration. He is a member of the bar of the Supreme Court of the United States, The Florida Bar, and Clearwater Bar Association Family Law Section. Mr. Kantaras is Board Certified by The Florida Bar in Marital and Family Law. His offices are located at 3531 Palm Harbor Boulevard in Palm Harbor, 1014 U.S. Highway 19 North, Suite 110 in Holiday and 1930 East Bay Drive in Largo. He can be reached at (727) 781-0000, fax: (727) 938-3939, and emailed at kdk@kalawgroup.com.