

ALIMONY

Health and Other Factors Matter

By K. Dean Kantaras

IN MAKING DECISIONS concerning alimony, a trial judge normally considers the needs of the requesting party and the ability of the other spouse to pay the alimony. Although it sounds simple, it quickly becomes much more complicated. Conditions, such as the health of the parties, can become a critical factor. If the paying spouse has significant health issues, which affect their ability to earn income, this may affect their ability to pay alimony. On the other hand, if the requesting spouse has health issues, so that spouse can't work or can only do limited work and doesn't have independent income, those circumstances may show a greater need for alimony. However, the judge will also want to know if the health issues of the parties pre-existed the marriage. If the marriage is what the courts define as "short term," that is, up to six or seven years and sometimes a little longer, the health problems are probably of much greater concern than if the marriage is "long term." Long term is usually, but not always, defined as one of at least fourteen or fifteen years. When a court is faced with a short term marriage and health problems that pre-existed the marriage, the chances of an alimony award lessens. However, health problems will generally not be as important in the consideration of alimony in a long term marriage.

There are many other factors that the court may consider, as an alimony decision is not a scientific nor a pure mathematical calculation. There are some who advocate that it should be, just as the law has for child support. However, Florida law has not gotten to that point up to now.

There was a case where the parties were married for eighteen months. The husband had significant assets and income, while the wife did not. The parties always kept their finances separate. The husband paid for housing and meals. The wife



K. Dean Kantaras, Esq.

contributed to the household, to some degree. Since the wife had serious medical problems, which predated the marriage, the court ruled that it was highly unlikely that the wife could be awarded even rehabilitative alimony.

Yet, in another case that involved a nine-year marriage, permanent alimony was awarded to the wife when the wife, who had no medical problems when the parties married, had developed several serious illnesses and needed surgery since the marriage. Alimony was awarded, in spite of the rather short marriage, due to the wife's decline in health.

In yet another case, a denial of permanent alimony was reversed for a fifteen-year marriage in a case where the wife had health problems, had been a stay-at-home mom and two of the three children had special needs. The trial judge was instructed

by an appellate court to consider all forms of alimony for the wife, which, of course, included permanent alimony.

The standard of living established by the marriage is another factor the court will consider. In another case, where the marriage was only nine years and the wife had medical problems, a child, and was a stay-at-home mom and the husband was a physician, the appellate court affirmed an award of permanent alimony in order to allow the wife to maintain the standard of living the parties enjoyed during the marriage.

Similarly, in another case where the wife had been awarded rehabilitative alimony by the trial judge (alimony paid for a short period to allow reentry into the job market), the appellate court reversed that decision and instructed the trial judge to award her permanent alimony, even though the couple was married for only six years, since the wife had mental health problems and only a high school diploma.

Each of the above instances demonstrates how difficult it is to predict the outcome of a trial, as often seemingly similar facts can produce different results. So, if you think you know what a judge will rule, think again. You may be surprised. ■■■

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.