

FAMILY LAW

Changes Have a Significant Impact

By K. Dean Kantaras

IN THE PAST, WE HAVE DISCUSSED changes to the Florida Statute regarding alimony. Only time will tell if they will bring more statewide uniformity, since the law is fluid and constantly changing. To describe the changes as good or bad is always debatable. In recent months, changes have occurred in the statutes, court rules and in case law which will impact divorce proceedings in this state.

One of the changes affects alimony with regard to imputed income, due to a decision by the Second District Court of Appeal. In one case, the Husband is a veterinarian, and the parties were married for 28 years. They signed a Marital Settlement Agreement in which the Husband agreed to pay the Wife \$11,000 per month in permanent alimony. Thereafter, the Husband's associates all resigned, thus requiring the Husband to work weekends, in addition to fifteen-hour days. A group offered to purchase the veterinary practice for \$2.3 million and to pay the Husband to work for the new owner for \$120,000.00 yearly (about 1/3 of his former income). The Husband's total income, from the practice and from investments, was now \$250,000.00, a substantial reduction from his prior income.

The trial court reduced the Husband's alimony obligation and the appellate court agreed. To be entitled to a reduction in alimony, the paying spouse has always been required to prove that the change in circumstances was involuntary and permanent. In this case, the Husband's sale of the practice was clearly voluntary. But the Second District Court has created a new theory to allow a reduction in alimony. The Court said that it may not be necessary to prove involuntariness of the reduction if the reduction was because of business necessity and there was good faith in the paying spouse's actions. The



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Court recognized the Husband's dilemma and held that involuntariness was not a necessary element.

Another change affected time sharing by military personnel. Now, when a person is activated, deployed or temporarily assigned away from home, they may designate one or more family members to have time sharing in his or her place. However, the other parent may object and show substituted time sharing would not be in the child's best interest. An expedited hearing may be required, and the service member can testify by telephone, teleconference, webcam, or by affidavit, if his or her duties interfere with their availability to be at the hearing. A new statute now makes it possible, but not automatic, for the service member's extended family or new Wife to continue a relationship with the child or children.

Effective October 1, 2010, a new statute provides that the heirs of a decedent are now permitted to challenge the validity of a marriage because of fraud, duress or undue influence. Until this statute took effect, the heirs or a decedent had no recourse, as a decedent's surviving spouse was entitled to all the rights of a surviving spouse without challenge. Under the new statute, any interested person may challenge a surviving spouse's rights. However, a defense to such an action is that the decedent knew about the fraud, duress or undue influence, but continued to live with their spouse, so as to ratify the marriage. In the event the challenge to the validity of the marriage is successful, then the surviving spouse would not receive the benefits and they would pass on – as if there had not been a marriage. A challenge to the validity of a marriage under this new statute must be brought within four years of the decedent's date of death. ■■■

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