

MAINTENANCE IN COLORADO

By Lorna H. Horton

In Colorado, maintenance, also known as alimony, has long been subject to the discretion of the Court based on a party's financial needs as compared to the other party's ability to pay. Colorado is currently considering adopting guidelines for the initial determination of spousal maintenance that would change how maintenance awards are determined. Specifically, pending House Bill 13-1058 creates a process, including guidelines as to amount and term, for determining an award for spousal maintenance at temporary or permanent orders in proceedings for dissolution of marriage, legal separation, dissolution of civil unions or declaration of invalidity filed on or after January 1, 2014.

The Bill maintains the overall threshold standard of need contained in current law that the court must consider before entering a maintenance award. The bill specifies that the maintenance guidelines as to the amount and term of maintenance do not create a presumption and the court maintains discretion to determine the maintenance award after making the required findings and considering all of the provisions of the law.

While it is presently unknown whether or not HB 13-1058 will become law, recently, the Colorado Court of Appeals addressed modification of maintenance in a post-dissolution proceeding in *In re the Marriage of Nelson*, 292 P3d. 1214 (Colo. App. 2012). In Colorado, maintenance can be modified in certain circumstances and the modification can be retroactive. A summary of the opinion is provided below.

In re the Marriage of Nelson **292 P3d. 1214 (Colo. App. 2012)**

Husband was ordered to pay wife \$1,932 in monthly maintenance for five years, beginning in November of 2004. A few days after the five years expired, Wife moved to modify maintenance, claiming an inability to be employed due to illness. The trial court granted Wife's motion to modify maintenance. The court reinstated the original award of maintenance (\$1,932 per month), until the death of either party, wife's remarriage, or her 65th birthday, and made the order retroactive to the filing date.

Husband appealed from the district court's Order extending the duration of maintenance payable to Wife. The appeal was dismissed in part and the Order was affirmed by the Court of Appeals.

On appeal, Husband contended that the District Court erred when it determined his income because the district court considered his income from his second job. However, the Court of Appeals disagreed with Husband and found that the district court did not err in including husband's income from his second job, because it was relevant to his ability to meet his needs, while also meeting the needs of the payee-spouse.

Husband also argued that the district court's conclusion that Wife established a substantial and continuing change of circumstances was unsupported by the evidence. In Colorado, maintenance

may be modified only on a showing of changed circumstances so substantial and continuing as to make the existing terms unfair. In the District Court, Wife testified that since the original Order, she had been diagnosed with a number of illnesses, including fibromyalgia, which caused her to miss substantial time from work. Wife further testified that these illnesses make it difficult for her to maintain steady employment. Wife's doctor also testified as to Wife's chronic medical condition. The Court of Appeals found that, based on these facts, the district court did not abuse its discretion in determining that Wife had met her burden to establish a substantial and continuing change of circumstances warranting a continuation of her maintenance payment.

Lastly, Husband contended that the District Court abused its discretion by making the maintenance modification retroactive to the date Wife filed her motion. However, the Court of Appeals held that there was no specific finding that a retroactive application would create a hardship for Husband, but rather that the evidence supported the finding that Husband had the ability to pay retroactive maintenance. Specifically, the Court of Appeals noted that the District Court found that Husband's income had increased and that Husband's gross income did not include his military pay or benefits. Therefore, the Court of Appeals found that the District Court's decision to order retroactive payments was not an abuse of discretion.

This case serves as an important reminder that a trial court maintains jurisdiction over the parties with respect to modifiable and non-contractual maintenance absent an agreement for contractual and/or nonmodifiable maintenance. Should either party move to modify maintenance, even after the original obligation to pay maintenance has expired, the court will continue to balance a party's financial needs as compared to the other party's ability to pay in considering whether to modify maintenance in light of a showing of a substantial and continuing change in circumstances that renders the initial maintenance award unconscionable.

Lorna has been lead counsel on numerous trials and arbitrations and is involved in all phases of the litigation process and has successfully handled numerous mediations and settlement conferences. Lorna provides aggressive family law representation and does everything that can be done to ensure that her clients are put in the best possible position to either negotiate a settlement or present a case at a contested trial. She handles a variety of family law cases including: divorce, allocation of parental responsibility, parenting time, child support, property division, modifications and post-dissolution matters, adoption and annulment.