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Family Law Practice Manual

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5.6.2 Basis for Alimony

In Nebraska, alimony is based on Neb. Rev. Stat. §42-365 (Reissue 2004) which provides:

When dissolution of a marriage is decreed, the court may order payment of such alimony by one party to the other and division of property as may be reasonable, having regard for the circumstances of the parties, duration of the marriage, a history of the contributions to the marriage by each party, including contributions to the care and education of the children, and interruption of personal careers or educational opportunities, and the ability of the supported party to engage in gainful employment without interfering with the interests of any minor children in the custody of such party. Reasonable security for payment may be required by the court. A proceeding to modify or revoke an order for alimony for good cause shall be commenced by filing a complaint to modify. Service of process and other procedure shall comply with the requirements for a dissolution action. Amounts accrued prior to the date of filing of the complaint to modify may not be modified or revoked. A decree may not be modified to award alimony if alimony was not allowed in the original decree dissolving a marriage. A decree may not be modified to award additional alimony if the entire amount of alimony allowed in the original decree had accrued before the date of filing of the complaint to modify. Except as otherwise agreed by the parties in writing or by order of the court, alimony orders shall terminate upon the death of either party or the remarriage of the recipient.

While the criteria for reaching a reasonable division of property and a reasonable award of alimony may overlap, the two serve different purposes and are to be considered separately. The purpose of a property division is to distribute the marital assets equitably between the parties. The purpose of alimony is to provide for the continued maintenance or support of one party by the other when the relative economic circumstances and the other criteria enumerated in this section make it appropriate.

In considering an award of alimony, in addition to the statutory factors, the appropriateness of alimony involves an analysis of four factors: (1) the earnings or earning capacity of the payor; (2) the earnings or earning capacity of the recipient; (3) the reasonable living expenses of the payor;

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and the (4) reasonable living expenses of the recipient. If minor children are involved, the child support will be determined pursuant to the Nebraska Child Support guidelines before the determination of alimony. *Kalkowski v. Kalkowski*, 258 Neb. 1035, 607 N.W.2d 517 (2000).

Alimony is to provide for the continued maintenance or support of one party by the other when the relative economic circumstances and other criteria in §42-365 make it appropriate. *Wiedel v. Wiedel*, 300 Neb. 13, 911 N.W.2d 582 (2018); *Bergmeier v. Bergmeier*, 296 Neb. 440, 894 N.W.2d 266 (2017). While disparity in incomes or potential income may partially justify an award of alimony it is error to award alimony if the sole reason for the award of alimony is disparity in the parties' incomes or potential incomes. See *Myhra v. Myhra*, 16 Neb. App. 920, 756 N.W.2d 528 (2008). In determining whether alimony should be awarded, in what amount, and over what period of time, the ultimate criterion is one of reasonableness. *Zoubenko v. Zoubenko*, 19 Neb.App. 582, 813 N.W.2d 506 (2012). The primary purpose of alimony is to assist an ex-spouse for a period of time necessary for that individual to secure his or her own means of support, and the duration of an alimony award must be reasonable in light of this purpose. *Gress v. Gress*, 274 Neb. 686, 743 N.W.2d 67 (2007).

5.6.3 Determining Patterns in Nebraska Cases

In 2015, at a Nebraska Bar Association Family Law Section continuing education seminar, I addressed the issue of alimony guidelines. Earlier that year, Marshal S. Willick published an article in the Journal of the American Academy of Matrimonial Lawyers wherein he made an analysis of alimony cases. *A Universal Approach to Alimony; How Alimony Should Be Calculated and Why*; Journal of the American Academy of Matrimonial Lawyers, Vol. 27, (2014-2015). Based loosely on that article I attempted to analyze Nebraska alimony cases to determine if there was a pattern to alimony cases. Included with this article is my analysis of some of the more significant Nebraska cases and my attempt to update that list. Not being able to develop any specific patterns, it appears that alimony awards are dependent upon the application of the statutory and other factors to the individual facts of the case before the Court making the lawyer's preparation of the case critical to the outcome.