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Florida Senate stalls attempt at alimony reform

Commentary by Christopher R. Bruce

A grass-roots bid to drastically limit alimony in Florida fizzled when the state Senate failed to vote on a bill matching legislation that passed 83-30 in the House several weeks before the close of the 2012 legislative session. The proposed legislation was sponsored by Miami-Dade Senator Miguel Diaz del la Portilla and gained national exposure after being highlighted in USA Today, The New York Times and featured by broadcast journalist Anderson Cooper.

The language of the proposed legislation receiving the most attention was the elimination of permanent alimony from Florida law. The proposed legislation stood to abolish permanent alimony and instead create a new form of alimony labeled long-term alimony. Under the proposed reform, long-term alimony would be awarded in marriages only longer than 20 years and only for a period of time not to exceed 60 percent of the length of the marriage. Furthermore, long-term alimony would automatically terminate upon the alimony payor reaching retirement age, regardless of the payor's actual ability to work.

By comparison, under Florida Statute 61.08, the state's alimony statute, divorce court judges have the discretion to award permanent alimony depending on the relative need of a spouse and the other spouse's ability to pay. The length of the marriage, while important, is not a dispositive factor for a judge evaluating a permanent alimony claim.

Although there is a statutory presumption in favor of permanent alimony in marriages lasting over 17 years, permanent alimony can only be awarded if one spouse has an actual need for alimony and the other has the ability to pay.

As far as duration, permanent alimony terminates upon the death of either spouse or the remarriage of the alimony recipient. Further, case law dictates that in most circumstances permanent alimony is eliminated or reduced when the alimony payor reaches a reasonable retirement age.

Bruce

Another highlight of the proposed legislation was a proposed limit on the amount of alimony a spouse can be required to pay. The reform sought to limit the amount of alimony to 20 percent of a payor's average monthly gross income over the last three years of the marriage. This proposal was more restrictive than the current law, which requires an alimony award to be fair and reasonable based upon the circumstances of the parties. Although judges are tasked with determining the amount of alimony, the current law provides an alimony award that should not leave the alimony payor with significantly less net income than the alimony recipient.

One of the least talked about but most significant aspects of the proposed legislation was its retroactivity. Language was included that would have allowed alimony payors to modify their alimony obligation to comply with the new statute. For many, this would have eliminated or substantially reduced the amount and duration of an alimony payor's support obligation.

FAMILY LAW

The charge for alimony change in Florida was led Floridians for Alimony Reform (FAR). The special interest group contends Florida's alimony laws are among the most draconian and out of date in the county, making it commonplace for healthy, employed women in their 30s and 40s to receive permanent alimony awards that can easily be destructive for an entire family. The group urges legislative changes, including the elimination of permanent alimony, are necessary to eliminate gender bias from the courts and prevent marriage rates from continuing to plummet.

The Florida Bar Family Law Section, an organization of over 4,000 family law attorneys, actively opposed FAR's efforts, calling them unnecessary. David Manz, Family Law Section Chair, issued an op-ed stating the preservation of Florida's alimony laws is good for spouses, families, and taxpayers. Manz contended changes to the current alimony laws would strain Florida's already overwhelmed court system and ultimately increase Floridians' dependence on social programs by forcing predominantly women and children into state-run programs and services. Many divorce lawyers and alimony recipients contended the alimony reform efforts were merely attempts of a narrow coalition of mostly male alimony payors to legislate their way out of paying alimony.

The push for Florida alimony reform reflects the growing national trend of alimony payors trying to change the laws pertaining to permanent alimony following the 2011 passage of alimony reform legislation in Massachusetts. The Massachusetts legislation, which allowed for permanent alimony and did not cap alimony at a percentage of income, passed virtually without opposition, even garnering the support of the Massachusetts Women's Bar Association.

Although the push for alimony reform died on the Senate floor, it is debatable whether the legislation that passed overwhelmingly in the House would have passed if not for redistricting and budget issues that dominated most of the legislative session. The future of alimony reform in Florida may well depend on nationwide reform efforts. Currently, alimony reform groups are making an active presence by proposing reform legislation in New Jersey, Connecticut, Arkansas, Oregon, West Virginia and several other states.

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BANKRUPTCY LAW

Dodgers bankruptcy plan to recognize divorce payments

by Amanda Bronstad
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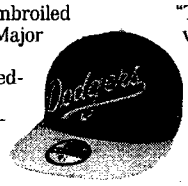
The Los Angeles Dodgers appeared to have made progress toward clearing up a couple of last-minute money disputes ahead of an April 13 hearing to confirm a bankruptcy reorganization plan that provides for selling the team for $2 billion.

In court documents filed Friday, the Dodgers sought to convince U.S. Bankruptcy Judge Kevin Gross in Wilmington, Del., to approve the plan, saying the sale would "provide more than sufficient capital to ensure the long-term financial success" of the team.

"By any measure, the plan is a remarkable outcome for the debtors, their estates and all parties in interest, especially taking into account where these cases began," wrote Dodgers attorney Donald Bowman of Young Conaway Stargatt & Taylor in Wilmington. "When the Debtors entered bankruptcy on June 27, 2011, they did not have enough cash to meet payroll that was due in three days, and they were embroiled in a bitter dispute with Major League Baseball."



The team's sale is scheduled to close by April 30.

The team filed its initial reorganization plan after McCourt settled various disputes with Major League Baseball last November. On March 27, McCourt agreed to sell the team to Guggenheim Partners, one of several members of an investor group led by former Los Angeles Lakers star Magic Johnson.

Appearing for Guggenheim on Monday was Foley & Lardner partner Michael Small of Chicago and Ashby & Geddes's William Bowden, who heads his firm's bankruptcy and insolvency practice, and associate Amanda Winfree. Foley advised an ownership group that bought the Texas Rangers in 2010 for $593 million in a similar deal.

The Dodgers also responded to concerns by team owner Frank McCourt's ex-wife, Jamie McCourt, that the plan failed to specify that she be paid $131 million to satisfy her divorce agreement. Bowman wrote that although the team was not a party to that agreement, the Dodgers would stipulate that Jamie McCourt should receive her money.

"That will avoid unnecessary controversy and facilitate a smooth closing process," Bowman wrote.

Jamie McCourt's attorney, Laura Davis Jones, a partner at Pachulski Stang Ziehl & Jones in Wilmington, did not respond to a request for comment.

Baseball commissioner Allan "Bud" Selig has objected to language declaring the Dodgers owe no payments to the league for its legal costs and fees. He argued that, under the league constitution, the Dodgers are liable for $7.6 million spent by the league on legal fees and costs associated with the bankruptcy. That money would go primarily to White & Case and Proskauer Rose.

In response, Bowman wrote: "The MLB objections are being addressed with the mediator and are anticipated to be resolved prior to the confirmation hearing." Retired U.S. District Judge Joseph Farnan is serving as mediator in that dispute.

Amanda Bronstad reports for the National Law Journal, an ALM affiliate of the Daily Business Review.