

Survey of Family Law Cases 2004-2013

2006 Family Law Survey

MAINTENANCE

Husband appeals from trial court's temporary orders requiring him to pay wife \$3000 per month in maintenance as well as pay two advances: \$75,000 in attorney fees and \$75,000 for appraisal costs in *In re the Marriage of Rose*.

Husband argues that the trial court abused its discretion when deciding that Wife was eligible for maintenance and in setting the amount of temporary maintenance. Absent an abuse of discretion, a maintenance award will not be reversed. To grant maintenance, the court must make a threshold finding that the requesting spouse lacks sufficient property, including marital property, to provide for her reasonable needs and is unable to support herself through appropriate employment. Once the threshold for maintenance is met, the amount and duration of the maintenance award are based on the parties' financial resources; the recipient's need for education or training; the standard of living established during the marriage; the age and condition, physical and emotional, of the recipient; and the payor spouse's ability to meet his own needs while meeting those of the recipient. The Court of Appeals found that the record supported Wife's eligibility for maintenance and the temporary amount.

Husband further contends that trial court lacked authority to advance Wife prospective fees and costs. After interpreting the statutory construction of the Uniform Dissolution of Marriage Act (UDMA), the Court determined that allowing prospective fees and costs may "diminish the advantage that one spouse may have over the other in litigation because of their respective financial circumstances."

In sum, "trial courts have authority under §14-10-119 to advance prospective fees and costs during the litigation of a dissolution of marriage action."