

## Survey of Family Law Cases 2004-2013

### 2012 Family Law Survey

## MAINTENANCE

In re the Marriage of Nelson, 2012 COA 205 (Colo. App. 2012) concerned a post-dissolution proceeding in which Husband appealed the district court's order extending the duration of maintenance payable to Wife. Commencing in November 2004, husband was ordered to pay wife \$1,932 in monthly maintenance for five years. A few days after the five years expired, wife moved to modify maintenance, citing an inability to continue to be employed due to illness.

Almost two years later, the district court held a hearing on wife's motion. At the conclusion of the hearing, wife requested an award of attorney fees under C.R.S. §14-10-119. Husband objected. The trial court reinstated the original award of maintenance (\$1,932 per month), until the death of either party, wife's remarriage, or her sixty-fifth birthday and made the order retroactive to the filing date, finding that husband owed wife an additional \$40,572 for maintenance arrears. The court did not rule on the issue of fees.

The court addressed the issue of jurisdiction over the appeal and held that although fees had not been addressed, in a post-decree modification motion, fees are an ancillary issue to the motion itself. Therefore, the order modifying maintenance was a final order and the Court of Appeals had jurisdiction over the appeal.

Husband argued that the district court erred when it determined his income stating that C.R.S. §14-10-114(2)(b)(IV)(A) requires that the court determine a party's gross income for maintenance in the same way it determines gross income for child support. The court held that for maintenance purposes, an obligor-spouse's income is relevant only to the extent it is indicative of the spouse's ability to meet his or her own needs while also meeting the needs of the payee-spouse. Therefore, the trial court did not err in considering husband's income from his second job.

Husband also argued that the court's conclusion that Wife established a substantial and continuing change of circumstances was unsupported by the evidence. The determination whether circumstances have changed is within the sound discretion of the district court. Once the movant shows the requisite changed circumstances, it is within the district court's discretion to modify the decree to meet the needs and abilities of the parties. Here, the district court found that wife had established a deterioration of her medical condition not diagnosed at the time of the original award of maintenance that made that prior award unfair, and determined that wife had met her burden to establish a substantial and continuing change of circumstances warranting a continuation of her maintenance payment.

Husband also argued that the court abused its discretion by making the maintenance modification retroactive to the date Wife filed her motion. Pursuant to C.R.S. §14-10-122(d), a modification of maintenance is effective as of the date of the filing of the motion, unless the court finds that it would cause undue hardship or substantial injustice. Here, there was no specific finding that a retroactive application would create a hardship for husband, and the court found that Husband had the ability to pay the retroactive maintenance. Therefore, the trial court did not err.