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RWS

L.D. 2276

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
119TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 1629, L.D. 2276, Bill, "An Act to Revise the Spousal Support Statute"

Amend the bill in section 3 in that part designated "§951-A." by striking out all of subsection 10 (page 5, lines 11 to 14 in L.D.) and inserting in its place the following:

'10. Application. This section applies to:

A. Orders granting or denying spousal support entered on or after September 1, 2000; and

B. The modification, termination and enforcement of orders granting spousal support entered on or after September 1, 2000.'

SUMMARY

This amendment clarifies the application subsection of the new section that establishes standards and guidelines for spousal support.

The bill as amended replaces the current law concerning spousal support.

1. Subsection 1 requires that all spousal support awards set forth the following 4 elements: (1) type of support; (2) method of payment, term and any limitations; (3) extent to which the award is not subject to modification; and (4) the factors relied upon by the court. There are several expected benefits from a uniform approach. First, it will ensure that the parties

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2 understand the reasons for the spousal support award and the
3 particulars of the award. Second, it will focus the parties and
4 the court on the rationale for the award of support. Third, it
5 will facilitate appellate review and will provide future guidance
6 if the trial court is called upon to modify or terminate the
award in a postjudgment proceeding.

8 2. Subsection 2 recognizes and defines 5 specific types of
9 spousal support: general, transitional, reimbursement, nominal
10 and interim. These are primarily drawn from decisions of the
11 Maine Law Court. See Melanson v. Melanson, 1998 ME 117; Williams
12 v. Williams, 1998 ME 32; Peters v. Peters, 1997 ME 134; Arey v.
13 Arey, 651 A.2d 351 (Me. 1994); Terison v. Terison, 600 A.2d 1123
14 (Me. 1992); Deditch v. Deditch, 584 A.2d 649 (Me. 1991); Sweeney
15 v. Sweeney, 534 A.2d 1290 (Me. 1987); Skelton v. Skelton, 490
16 A.2d 1204 (Me. 1985); Pelletier v. Pelletier, 597 A.2d 60 (Me.
17 1991); Prue v. Prue, 420 A.2d 257 (Me. 1980); Capron v. Capron,
18 403 A.2d 1217 (Me. 1979).

20 "General" support is the traditional reason for spousal support
21 and is most commonly associated with marriages of long duration.
22 Subsection 2 establishes two rebuttable presumptions regarding
23 the award of general support. In marriages of less than 10
24 years' duration it is presumed that general support should not be
25 awarded, and in marriages of less than 20 years' duration it is
26 presumed that spousal support should not exceed a term of 1/2 the
27 length of the marriage. These presumptions are rebuttable based
28 upon a finding that their application in a particular case would
29 be inequitable or unjust.

30 The use of statutory rebuttable presumptions in the determination
31 of family law disputes is not new to Maine family law. See the
32 Maine Revised Statutes, Title 19-A, section 953, subsection 3
33 concerning statutory presumption regarding marital property and
34 Title 19-A, section 2007, subsection 1 concerning statutory
35 presumption regarding child support determinations. The
36 rebuttable presumptions are designed to add a measure of
37 uniformity and predictability to spousal support determinations
38 and to reduce contested litigation. The absence of any statewide
39 standards has increased the unpredictability of spousal support
40 determinations that in turn promotes contested litigation. In
41 view of the high rate of divorce currently experienced, as well
42 as the great individual and social costs associated with
43 contested litigation, it is expected that the social benefits
44 associated with the employment of the presumptions will outweigh
45 the resulting modest loss of flexibility. The determination of
46 what, in the end, is an equitable and just spousal support award
47 is inextricably tied to the facts of each case. Subsection 2
48 does not therefore bind the courts to the rebuttable presumptions

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2 so long as sufficient evidence establishes that the presumptions
would result in an inequitable or unjust result.

4 The first rebuttable presumption relates to the award of general
support applicable to marriages of less than 10 years. This
6 reflects the commonly held view that when a marriage of
relatively short duration is dissolved, it is generally not fair
8 to require a party to financially support the other spouse
indefinitely, and potentially for life. Unlike in marriages of
10 long duration, short-term marital partners are not likely to have
dedicated a substantial portion of their adult lives to marital
12 responsibilities and as a consequence sacrificed the opportunity
to develop earning capacities that will enable them to become
14 totally self-supporting within a reasonable period following the
dissolution of the marriage.

16 Subsection 2 also establishes a rebuttable presumption regarding
the term of general spousal support awards for marriages of 10
18 years or more but less than 20 years. The standard of 1/2 the
20 length of the marriage is intended to provide preliminary
guidance to the parties and the courts when structuring spousal
22 support awards. It does not deprive the court of the discretion
to establish a shorter or longer period of support if the
24 application of the presumption would result in an inequitable or
unjust result.

26 It is important to note that general support is neither the
28 preferred nor exclusive basis for an award of spousal support.
The court may also award transitional, reimbursement, nominal or
30 interim spousal support as part of a divorce judgment.
"Transitional" support will most frequently apply in marriages of
32 shorter duration but may also apply in marriages of long
duration. The court may craft the transitional support award to
34 address the particular circumstances of the supported spouse.

36 "Reimbursement" support allows the court to provide compensatory
relief in limited circumstances, but only if an equitable result
38 can not otherwise be achieved through the court's distributive
order pursuant to Title 19-A, section 953. This will require the
40 court to first consider the equitable distribution of the
parties' property before it considers a request for reimbursement
42 support.

44 "Nominal" support continues the long-recognized principle that in
some cases the court should reserve jurisdiction to award spousal
46 support at a future time. The requirements set forth in
subsection 1 apply to court orders awarding nominal spousal
48 support.

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2 Spousal support awards made in interim court orders must comply with the section's other requirements.

4 3. Subsection 3 requires court orders to set forth the methods of payment, term and limitations of spousal support awards. The limits listed reflect existing practices and are not exclusive.

8 4. Subsection 4's modification provision is a substantial revision of the corresponding provision from the predecessor statute in order to make it consistent with the other provisions of the section. Subsection 4 permits the court's order to establish that all or a portion of a spousal support award, including, but not limited to, the limitations associated with the award, will not be subject to future modification. Under existing law, the question of whether a particular spousal support award may be modified has been difficult to answer with certainty, and can produce lengthy and expensive litigation even where the parties had previously entered into a written anti-modification agreement. See e.g., Lyon v. Lyon, 1999 ME 75; Day v. Day, 1998 ME 194, 717 A.2d 914.

22 5. Subsection 5 adds 2 new factors to be considered by the courts. Paragraph O establishes as a factor the "ability of the party seeking support to become self-supporting within a reasonable period of time." This factor recognizes that the ability of the payee to become self-supporting within a reasonable period is central to determining the need for support, the type of support, the term and limitations of the support and the extent to which the support should not be subject to future modification.

32 Paragraph P requires the court to consider income that may be available to a party resulting from the court's distribution of the parties' marital and nonmarital property, as well as from a child support award. This factor will ensure the courts do not treat the spousal support award as wholly separate from the division of the parties' property pursuant to Title 19-A, section 953 and the award of child support pursuant to Title 19-A, section 2001 et seq. The remedies are interrelated and an assessment of a party's ability to pay or need to receive spousal support should involve the consideration of other sources of available income.

44 6. Subsection 6 is a carryover from the predecessor statute.

46 7. Subsection 7 is a carryover from the predecessor statute, but has been expanded to include other property in addition to real estate. It also expressly recognizes that

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security may be required to ensure the future payment of spousal support.

8. Subsection 8 is a carryover from the predecessor statute.

9. Subsection 9 codifies the principles established by case law governing the effect of no award of spousal support or the termination of spousal support. See Spencer v. Spencer, 1998 ME 252, 720 A.2d 1159.

10. Subsection 10 is an application section. The provisions of the section do not apply to spousal support awards in effect prior to the effective date of this section. The enforcement, modification and termination of existing spousal support awards continue to be governed by the law in effect prior to the effective date of this Act.