

## ALIMONY FACTORS APPARENTLY RELIED UPON IN NEVADA SUPREME COURT

CASE NAME	SPRENGER 110 Nev. 855, 878 P.2d 284 (1994)	GARDNER 110 Nev.1053, 881 P.2d 645 (1994)	RUTAR 108 Nev. 203, 827 P.2d 829 (1992)	HEIM 104 Nev. 605, 763 P.2d 678 (1988)	FONDI 106 Nev. 856, 802 P.2d 1264 (1990)
AGE OF WIFE	44	At least 43? (not recited in opinion)	45	57	45?
PROPERTY TO WIFE	Unspecified, but including at least \$800,000 partnership interest	Not specified in opinion	Equal division of about \$1.5 Million; reserved jurisdiction ordered on remand	\$10-20,000 + future ½ interest in Husband's pension (amt. unknown)	\$91,000 + future part interest in Husband's pension (amt. unknown)
HUSBAND'S CAREER DEVELOPED WHEN	"Developed business acumen" during marriage; business was pre-marital	During marriage, military flight training, two degrees, and commercial pilot's license	Both completed technical school (dental technician) before marriage	During the Marriage (acquired Ph.D.)	Pre-marriage (law degree & "standing in the legal community")
HUSBAND'S INCOME	About \$100,000 per year	About \$75,000 per year	\$155,000 + expenses per year	\$60,000 per year	Not recited (but known to be over \$60,000)
WIFE'S PREMARITAL JOB TRAINING	Practical nurse license	None; couple married while in college	Dental technician school grad; 11 years work as dental technician	Very Little	As legal secretary; Wife has "marketable skills"
WIFE'S JOB & INCOME POTENTIAL	Wife stopped work about 20 years ago to raise kids; had 90 college credits	Wife a career teacher throughout the marriage; making about \$43,000	Not worked in 15 years; studying accounting, headed for law school	Unemployed. Could earn \$600.00 per month	Working at time of trial; \$1,383.00 per month
KIDS	Two; wife raised	None	2 Step-kids (H's) + 2 natural. Wife raised	Six; Wife raised	None; not "required" to care for stepson
MARRIAGE DURATION	21 years	27 years	18 Years	35 Years	17 Years
ALIMONY AWARDED	\$1,500 for 2 year maximum reversed and remanded "to increase and extend" alimony consistent with opinion; Wife to be placed as nearly as possible, for life, to station in life enjoyed before divorce	\$1,300 for 1 year and \$1,000 for second year reversed; extended by 10 years at \$1,000 with reservation of jurisdiction	\$1,000 rehabilitative for 3½ years reversed; \$1,700 for 8 years on remand, with reserved jurisdiction (H to pay upkeep, with reimbursement after sale)	\$500 Reversed; \$1,500 min. on remand	\$0 (\$3,000 rehabilitative)

In *Sprengr* (1994), the Nevada Supreme Court listed seven alimony factors as:

- (1) the wife's career prior to marriage;
- (2) the length of the marriage;
- (3) the husband's education during the marriage;
- (4) the wife's marketability;
- (5) the wife's ability to support herself;
- (6) whether the wife stayed home with the children; and
- (7) the wife's award, besides child support and alimony.

In *Rodriguez* (2000), the Nevada Supreme Court reasserted/expanded the earlier *Buchanan* (1974) factors:

- (1) the financial condition of the parties;
- (2) the nature and value of the parties' respective property;
- (3) the contribution of each to any property held by them as tenants by the entirety;
- (4) the duration of the marriage;
- (5) the husband's income, earning capacity, age, health, and ability to labor; and
- (6) the wife's age, health, station and ability to earn a living.

Noting the "archaic tenor" of the factors, the Court applauded them for being "common sense," and added "examples" of factors that "conceivably could from time to time be relevant as well" as "the existence of specialized education or training or level of marketable skills attained by each spouse," and "repetitive acts of physical or mental abuse" by one spouse "causing a condition in the injured spouse which generates expense or affects that person's ability to work." Simple marital misconduct or fault are expressly to not be alimony factors, so alimony is not "a sword to level the wrongdoer" or "a prize to reward virtue."

(CONTINUED ON REVERSE SIDE)

# ALIMONY FACTORS APPARENTLY RELIED UPON IN NEVADA SUPREME COURT--Continued

CASE NAME	ALBA 111 Nev. 426, 892 P.2d 574 (1995)	KERLEY 111 Nev. 462, 893 P.2d 358 (1995)	SHYDLER 114 Nev. 192, 954 P.2d 37 (1998)	WRIGHT v. OSBURN 114 Nev. 1367, 970 P.2d 1071 (1998)	RODRIGUEZ 116 Nev. 993, 13 P.3d 415 (2000)
AGE OF WIFE	Unspecified in opinion	Unspecified in opinion	Unspecified in opinion	Unspecified in opinion	42
PROPERTY TO WIFE	Unspecified, but probably not extensive from indications in opinion	Not fully specified in opinion, but Wife's \$32,000 distribution from one asset reversed as inadequate and remanded	Real property and chattels, and \$215,798, at \$5,000 per month for 38 months, total about \$750,000	Unspecified in opinion	Uncertain; apparently, \$6,000 from sale of home, but little detail
HUSBAND'S CAREER DEVELOPED WHEN	Unspecified, but it appears that Husband's career as general contractor was pre-marital	Unspecified in opinion; Husband a contractor	During marriage, Husband obtained contractor's license, began successful construction company	During marriage, Husband obtained B.S. and M.B.A., went to work for a bank	Unspecified; Husband was catering director for hotel
HUSBAND'S INCOME	Unspecified in opinion	Unspecified in opinion, except labeled by lower court as finding that Husband "has the ability, through his present skill and licensing, to generate income sufficient to pay [Wife] reasonable alimony."	Annual salaries ranging from \$60,000 to \$200,000 per year, documented earnings of >\$100,000 per year	\$62,124 per year	"at least" \$75,000 per year
WIFE'S PREMARITAL JOB TRAINING	Unspecified; at divorce, Wife was a blackjack dealer	Unspecified in opinion	Insurance underwriter	Bachelor's degree and some work time in design	Unspecified in opinion
WIFE'S JOB & INCOME POTENTIAL	Blackjack dealer who wanted to get education in graphic arts	Unspecified in opinion; lower court found that at Husband's request, Wife was unemployed during most of marriage	Owner of foundering insurance brokerage; income potential max of \$59,000 per year	Wife stopped working 13 years earlier to raise children; earning \$19,200 as secretary at divorce	At divorce, wife was school hall monitor earning \$14,000 per year; opinion notes she is ill
KIDS	Apparently none	Apparently none	Two; wife was primary custodian	Three; wife was primary, but joint and equal custody at divorce	Two; at divorce, one was emancipated and Husband had custody of 16-year old daughter
MARRIAGE DURATION	7 years	11 years	17 years	14 years	21 years
ALIMONY AWARDED	\$1,000 per month for 3 years affirmed. Rehabilitative alimony statute (NRS 125.150(8)) permits lower court reference to "any other factors the court considers relevant," so court's determination that earning potential of Wife should be enhanced where, at divorce, she was a blackjack dealer and he was a general contractor, was affirmed.	\$250 per month for 2 years affirmed. Whether and how long alimony should be paid is a matter of "wide discretion" not to be disturbed absent abuse of discretion. This award fit within the Heim dictates of "fair and equitable" under NRS 125.150(1) based on: findings as to both parties' current "capabilities"; Husband had the ability to generate income; Wife needed alimony because, at Husband's request, she was unemployed during most of the marriage. [NOTE: Apparently, the Court disregarded "rehabilitative" label, and treated award as general temporary alimony under subsection (1) rather than the restrictions of subsection (7).]	Denial of alimony below reversed; while case law "does not necessarily require the district court to effectively equalize salaries," remanded to determine "fair award." Property equalization payments do not act as alimony substitute, and pre-divorce support used to maintain later-divided assets does not obviate need for post-divorce spousal support. Supreme Court noted disparity in parties' earning capacities and applied <i>Sprenger</i> factors.	\$500 per month for 5 years reversed as abuse of discretion; remanded for an award that is "fair and equitable," having regard to the conditions in which the parties will be left by the divorce, and noting that "it appears very unlikely that in five years, [Wife] will be able to earn an income that will enable her to either maintain the lifestyle she enjoyed during the marriage or a lifestyle commensurate with, although not necessarily equal to, that of [Husband]."	Trial court's denial of alimony because of Wife's extra-marital affair reversed. Marital misconduct and fault are not to be considered, but <i>Buchanan</i> (economic) factors (disparity in incomes, earning capacity, age, health, value of property, etc.) approved for reference. "Alimony may not be awarded or denied in an arbitrary or uncontrolled abuse of discretion." Remanded for entry of "just and equitable" alimony award without consideration of fault.

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