IN SEARCH OF A COHERENT THEORETICAL MODEL FOR ALIMONY

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Alimony has been described as "the last great crapshoot in family law." More specifically, both legislative and judicial guidance on the topic is so vague as to be largely useless in predicting, or negotiating, actual cases. This, in turn, increases both the costs and uncertainties of all litigation touching on the subject. This article discusses a bit of where we have been on this topic, what has been tried, and suggests the apparent root of the problem, and where we might go from here.

I. UNDERLYING STATUTES

NRS 125.040 authorizes Nevada courts to make orders for "temporary maintenance for the other party" during the pendency of an action. No standards are provided. NRS 125.150(1) authorizes the court to award alimony at the conclusion of a divorce case "as appears just and equitable." No standards are provided there, either.

In 1989, the Nevada Legislature added NRS 125.150(8), requiring a court granting a divorce to "consider the need to grant alimony to a spouse for the purpose of obtaining training or education relating to a job, career or profession." This provision did add some language indicating what such an award would encompass, and at least two factors to consider in making such an award (whether the obligor obtained job skills or education during the marriage, and whether the recipient provided financial support while the obligor did so).

In 1993, the Legislature resolved the potential conflict between the concept of a no-fault divorce, on the one hand, and the consideration of marital misconduct, on the other hand, when determining an award of alimony, by deleting the phrase "having regard to the respective merits of the parties" from NRS 125.150(1).

II. BASIC CASE LAW

The Nevada Supreme Court has struggled with alimony cases for the entire time such cases have been decided; even the case lines developed since the "no fault" era began half a century ago have been inconsistent and unpredictable, in both approach and results.

For example, in a single year the Court issued back-to-back decisions, in one of which it remanded to the district court, stating that it was the function of the trial court to weigh the particular equities and make a specific award – and in the other of which the Court issued a specific dollar sum award for a specific length of time. *See Sprenger v. Sprenger*, 110 Nev. 855, 878 P.2d 284 (1994) (remanding for entry of a"just and equitable" award); *Gardner v. Gardner*, 110 Nev. 1053, 881 P.2d 645 (1994) (extending alimony by 10 years at $1,000 per month).

Even the Court's list of general "factors to be considered" has varied wildly and without explanation. For many years, the Court referenced a list of factors it posited in *Buchanan v. Buchanan*, 90 Nev.