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Summary of Schwartz v. Schwartz, 126 Nev. Adv. Op. No. 8

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FAMILY LAW: LUMP-SUM ALIMONY, APPROPRIATE ANALYSIS AND DETERMINATION

Summary

Appeal from an Eighth Judicial District Court divorce decree and post-decree orders denying motion for new trial in property distribution issues. The Supreme Court held that a district court should assess not only age disparity but also life expectancy and continuing health when conducting a full and proper analysis of whether lump-sum alimony awards are appropriate.

Disposition/Outcome

On appeal, the Nevada Supreme Court affirmed in part, reversed in part and remanded the case for the district court to perform a complete analysis of whether lump-sum alimony is appropriate when there is a disparity in the ages of the parties and where a short life expectancy of one of the parties makes the award illusory. The Court affirmed the district court's determination of the amount awarded. The Court reversed the lower court's order denying lump-sum alimony because it failed to fully consider the disparity in ages, the record of the husband's declining health and the rule that alimony terminates upon the death of the payor, making the award illusory.

Factual and Procedural History

Milton and Abigail met in May 1992 and married in 1993. At the time of their meeting, Abigail was a practicing registered nurse. She stopped working at the time of their marriage at Milton's request. Milton was 71 years old and Abigail was 41 years old at the time of their marriage.

In December 1994 Milton filed for divorce, and the parties separated for 19 months. The couple thereafter reconciled, made additional promises and memorialized their promises in a reconciliation agreement. Milton again filed for divorce again in April 2006 and this time the couple was granted a divorce following a bench trial. Shortly after the divorce, Milton and Abigail discussed reconciliation and remarriage on several occasions.

Following their discussions of reconciliation, Abigail filed motions for a new trial and to amend the district court's findings of fact, conclusions of law, and decree of divorce based upon Milton's reconciliatory statements. The court denied her motions in their entirety, and Abigail appealed.

Discussion

A. Standard of Review

The Nevada Supreme Court reviews dispositions of property and awards of alimony for abuse of discretion.² The Court will not substitute its judgment for that of the lower court given the district court's "opportunity to observe parties and evaluate the situation."³

¹ By Keith Pickard

² *Wolff v. Wolff*, 112 Nev. 1355, 1359, 929 P.2d 916, 918-19 (1996).

³ *Id.*, 112 Nev. at 1359, 929 P.2d at 919 (citing *Winn v. Winn*, 86 Nev. 18, 20, 467 P.2d 601, 602 (1970)).

B. *Lump-sum awards to be given where death of the payor may make the award illusory*

NRS 125.150(1)(a) provides that the district court may award alimony, including lump-sum awards,⁴ and the Court has established that such determinations are to be guided by seven factors.⁵ These factors include: (1) the career of the wife before marriage, (2) the duration of the marriage, (3) the education level of the husband during the marriage, (4) the marketability of the wife, (5) the ability of the wife to support herself, (6) whether the wife stayed home to care for the children, and (7) what the wife was awarded besides alimony and child support.⁶

Conclusion

The Court held that the district court appropriately analyzed the seven factors, as well as the parties' "station in life and gap in income," in determining the proper award. However, the Court concluded that failure to take into account Milton's 85 years of age and his own testimony of significant health issues⁷ was an abuse of discretion justifying reversal. The Court affirmed its prior ruling in *Daniel v. Baker*⁸ that the district court should look at the disparity in age, the earning potential of the spouse, and the life expectancy of the payor in determining whether a non-lump-sum alimony award is warranted."⁹ Additionally, the Court held that a district court should assess the payor's "medical condition and prospects for healthy living" as it considers life expectancy. By considering these factors together, the district court will avoid an illusory award when a payor is known to be suffering from failing health or is terminally ill, thereby assuring that the spouse will continue to be supported beyond the death of the payor.

⁴ Forrester v. Forrester, 99 Nev. 602, 606, 668 P.2d 275, 278 (1983).

⁵ Sprenger v. Sprenger, 110 Nev. 855, 859, 878 P.2d 284, 287 (1994).

⁶ *Id.*, 110 Nev. at 859, 878 P.2d at 287.

⁷ Milton testified that he suffered from end-stage kidney failure and was on dialysis three times per week and was otherwise in poor health. 126 Nev. Adv. Op. No. 8 at p. 6.

⁸ Daniel v. Baker, 106 Nev. 412, 794 P.2d 345 (1990)

⁹ *Id.*, 106 Nev. at 414, 794 P.2d at 346.