For Love and Money: The Effect of Cohabitation on Alimony

An important issue that arises after an alimony judgment or agreement is entered is the possible modification of the alimony. Once an alimony award is entered, it is a final award, but the law recognizes that this final award may be modifiable by the Court in the future.

There are different well-defined events under law that modify or terminate an alimony award. For example, the death of either spouse terminates alimony. The remarriage of the spouse receiving alimony terminates the obligor’s alimony obligation. Significant changes in income or expenses, or a good faith retirement at a certain age, are events that can modify or terminate the award. One of the more difficult issues that arises in considering the modification or termination of an alimony award is what happens to alimony when the spouse receiving alimony cohabitates with a significant other.

The Courts in New Jersey have provided several case precedents to apply in considering the issue of cohabitation on alimony.

In Garlinger v. Garlinger, 137 N.J. Super. 56 (App. Div. 1975), the Court found that modification of an alimony award may be proper if the ex-wife recipient of alimony was being supported in whole, or in part, by her paramour. The Court described that another concern when a party is cohabitating is that the significant other is receiving the benefit of the alimony. In those situations, the obligor is not only supporting the ex-spouse, but the significant other as well. This was viewed as unfair, and as such the alimony could be revisited.

The Supreme Court of New Jersey solidified the concepts in Garlinger in the decision of Gayet v. Gayet, 92 N.J. 149, 153 (1983). In this case, the Supreme Court of New Jersey found that cohabitation can be the basis for changed circumstances to modify the alimony obligation. The cohabitating parties must have some semblance of a single economic unit that is similar to marriage. In such an arrangement, the Court found modification is proper when the third party contributes to the former spouse’s expenses, or the third party lives in the home without contributing to expenses.

This economic test is essentially the concept. Cohabitation constitutes a change of circumstances only if coupled with economic circumstances and the economic benefit provided by the co-habitor that are materially significant to justify modification of alimony. See Konzelman v. Konzelman, 158 N.J. 185, 195 (1999).

Under this economic needs test, the reduction of alimony is granted in proportion to the contribution of the co-habitor to the dependent spouse’s needs. Importantly, it is more than two people being roommates, or occasionally sleeping at each other’s residence, that constitutes cohabitation for purposes of an alimony modification. Cohabitation for purposes of alimony modification is based on the factors that make the relationship close and enduring. While it may require more than a common residence, a single residence is obviously an important factor for the Court to consider in deciding whether there is cohabitation. See Konzelman at 202. Cohabitation involves an intimate relationship in which the couple has undertaken duties and privileges that are commonly associated with marriage, including intertwined finances such as joint bank accounts, sharing living expenses and household chores, and recognition of the relationship in the couple’s social and family circle. Also, the relationship must be shown to be serious and lasting. See Konzelman at 203.

Certainly, the manner in which we decide upon our personal relationships are personal, not financial, decisions. These personal decisions do, however, have financial consequences. If alimony is a source of your income, and you are thinking about moving in with your significant other, you must consider the potential effect on the alimony award and to what extent it may modify or terminate this income.

Contact: Steven P. Monaghan for all of your matrimonial law needs, 732-530-0095.