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Jessica Underwood of Schwartz, Sladkus, Reich, Greenberg and Atlas. Courtesy photo

COMMENTARY

## Appellate Considerations of Recent Family Law Reform

The governor signed the new laws on June 30, and they took effect on July 1. As with any statutory amendments, confusion arises as to when the amended statutes apply and what impact they have on pending cases, which leads to issues for appeal. This article considers the new amendments and their ramifications for appeals.

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Florida's legislature recently brought sweeping changes to alimony, time-sharing, and modifications of support and alimony through amendments to statutes governing those aspects of Florida family law. The governor signed the new laws on June 30, and they took effect on July 1. As with any statutory amendments, confusion arises as to when the amended statutes apply and what impact they have on pending cases, which leads to issues for appeal. This article considers the new amendments and their ramifications for appeals.

### Alimony Reform

In perhaps the most significant change, the legislature amended Section 61.08 of the Florida Statutes to eliminate permanent alimony. Alimony now may only be awarded in the form of temporary, durational, rehabilitative, or bridge-the-gap alimony. The statute requires the trial court to consider a list of factors to determine which type of alimony is appropriate. Further changes include limiting the length of an alimony award depending on the form awarded and redefining the lengths of marriages.

Section 61.08(11) specifically provides that "the court shall apply this section to all initial petitions for dissolution of marriage or support unconnected with dissolution of marriage pending or filed on or after July 1, 2023." Accordingly, based on its plain language, the changes in the alimony statute apply to any case pending as of July 1, 2023. Such language can place courts and parties in precarious positions and lead to potential appellate issues.

For example, if a final hearing in a dissolution of marriage proceeding occurs on June 29, 2023, but the court does not render an order until July 5, 2023, the statute instructs the court to apply the amended statute. This creates potential due process concerns for parties where they presented their case under one statute, yet a final judgment is issued applying an entirely new statute.

Under this scenario, a party should move for rehearing to preserve his or her rights under the amended statute and consider an appeal to challenge any denial of the opportunity to present a

case under the statute applied by the court. While the legislature provided guidance as to how to apply this amended statute, it also left room to challenge the statute on appeal in cases where a party was left in limbo between a hearing and final judgment.

## Time-Sharing Changes and Modifications of Support

Section 61.13 governing parental responsibility and timesharing was amended to begin with the presumption that children should spend equal time with their mother and father. This amendment now means that a parent must prove by the preponderance of the evidence that equal timesharing is not in the best interest of the child.

The legislature also took steps to codify into statute the ability to modify or reduce alimony. Instead of providing the court discretion, Section 61.14 was amended to provide that a court must reduce or terminate alimony upon a finding of a supportive relationship. Further, the statute provides that the court may reduce support upon finding the obligor has reached “normal retirement age as defined by the Social Security Administration or the customary retirement age for his or her profession” and has taken measurable efforts to retire or has actually retired. The court is to consider several factors, such as the obligor’s age and health and the needs of the obligee and ability of the obligee to contribute toward his or her own basic needs.

Unlike the amended alimony statute, neither Section 61.13, nor Section 61.14 contain language that the amendments apply to cases “pending or filed on or after July 1, 2023.” Rather, these statutes are silent on any retroactivity. These statutes give no indication that they are to apply to pending cases or retroactively. However, many individuals are now left wondering whether their existing alimony awards are subject to the modifications of the amended statute or if the rebuttable presumption of equal time for both the mother and father applies to a case pending as of July 1, 2023 involving timesharing.

With no clear intent from the legislature expressed within these statutes, the courts will be forced to answer whether the statutes apply to judgments already in place or to cases pending, thereby leading to many appellate challenges. Courts will examine whether the amendments are substantive changes that apply only prospectively to cases after July 1, 2023. Substantive law prescribes duties and rights.

Alternatively, courts may find that the amendments are procedural or remedial changes that relate to the means and methods to enforce existing rights. Procedural and remedial laws are applied retrospectively. This uncertainty as to the proper statutory interpretation will flow into the appellate courts to then instruct on the proper application.

While the reforms bring major changes to these family law divorce statutes and attempt to modernize the alimony statute, the reforms also bring uncertainty that may be left to the appellate courts to clarify.

*Jessica L. Underwood is an associate in the Florida office of Schwartz Sladkus Reich Greenberg Atlas. She focuses her practice on appellate law.*