

Clarifying Misconceptions of Family Law Reform

This article considers two sections of the recent family law reform that have drawn misconceptions and clarifies these statutory changes for practitioners, their clients, and all interested parties.

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Statutory changes often cause uncertainty and create misconceptions surrounding the revisions and enactments of the new statutes. The recent reform to portions of Florida's family law statutes is no exception to these misunderstandings. This article considers two sections of the recent family law reform that have drawn misconceptions and clarifies these statutory changes for practitioners, their clients, and all interested parties.

Adultery's Impact on Alimony

Florida's alimony statute underwent significant changes, including the elimination of permanent alimony. Section 61.08 of the Florida Statutes now permits an award of temporary, durational, rehabilitative, or bridge-the-gap alimony in periodic or lump sum payments. A court must make findings relating to the need for alimony and whether the other party has the ability to pay. Upon making findings of need and ability to pay, the court considers a list of factors to determine the proper form of alimony to award.

In the midst of the statutory changes to the alimony statute, a misconception may have spread regarding the impact of a spouse's adultery on the dissolution proceedings. At first glance, adultery stands out in the very first subsection of the statute causing some individuals to think that it is a statutory change. Promotional advertisements have even circulated highlighting the family law reform and the importance of now using surveillance or hiring private investigators to capture adultery to use as evidence in a dissolution proceeding. However, it must be clear that adultery is not a new

addition to the statute for the court's consideration in determining alimony.

In the prior version of the statute, section 61.08(1) provided in part that "[t]he court may consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded."

The newly amended statute simply breaks section one into two smaller subsections. As such, section 61.08(1)(a) states in part that "[t]he court may consider the adultery of either spouse and any resulting economic impact in determining the amount of alimony, if any, to be awarded."

In dividing the section into smaller subsections, the court's ability to take adultery into consideration takes only a more prominent position within the statute. It is not a newly added premise for the court's consideration, nor does it make Florida in any way a fault-based state. Florida remains a no-fault state. Attorneys should be aware of this misconception that may exist in the minds of clients or third parties that offer litigation support in dissolution proceedings and clarify that this is not a new concept for a trial court's consideration in setting alimony but is merely a restructuring of a statute.

Time-Sharing Presumption

Florida has long held that it is the state's public policy for each minor child to have frequent and continuing contact with both parents and to encourage parents to share rights and responsibilities. Up until the recent reform, no presumption for or against the mother or father, or for or against any specific time-sharing schedule, existed when creating the parenting plan.

However, the legislature amended section 61.13(2)(c)(1), to provide that "[u]nless otherwise provided in this section or agreed to by the parties, there is a rebuttable presumption that equal time-sharing of a minor child is in the best interests of the minor child." While this rebuttable presumption now exists, the court is still required to evaluate factors enumerated in the statute and make specific written

findings of fact when creating or modifying a time-sharing schedule, except when a schedule is agreed to by the parties and approved by the court.

Accordingly, in a dispute over time-sharing, the court cannot just state that time-sharing between the parents will be equal simply because a rebuttable presumption now exists that it is in the best interests of the child. The statute still requires the court to evaluate all of the factors in section 61.13(3) to determine the best interests of the child and make specific written findings of fact. Section 61.13(3) sets forth a non-exhaustive list of factors and instructs the court to evaluate all of the factors affecting the welfare and interests of the minor child and circumstances of the family. Evaluating these factors assists the court in determining a child's best interests in each individual case.

While this presumption exists, Florida courts have the ability to deviate from this presumption based on the circumstances of each individual case. Further, a party may rebut this presumption by proving by the preponderance of the evidence that equal time-sharing is not in the best interests of the minor child.

The legislature also amended the statute to alter the requirements for a later modification of time-sharing, parental responsibility, or a parenting plan. Previously, a party had to make a showing of a substantial, material, and unanticipated change in circumstances to seek a modification. The legislature eliminated the requirement that a change must be unanticipated. A party must now only establish a substantial and material change in circumstances. Accordingly, with a showing of a substantial and material change and a determination that the modification is in the best interests of the child, a prior determination of parental responsibility, a parenting plan, or a time-sharing schedule may be modified.

In sum, to best avoid confusion to parties in the middle of a divorce and to attorneys preparing for a dissolution proceeding, the family law reform must be carefully reviewed in its entirety to understand what significant changes actually occurred versus what may be a simple restructuring of an existing statute.

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