

The 2023 Alimony Reform Act

Everything You Need to Know about
Senate Bill 1416 / Chapter No. 2023-315
(Signed into Law on June 30th, 2023)



Presented by:

The Honorable Gilberto Perez
(Circuit Court Judge, 20th Jud. Circuit, Ft. Myers)

General Magistrate Philip Wartenberg
(Family Law GM, 13th Jud. Circuit, Tampa)

Today's Goals

- ✓ Briefly learn about the history of alimony reform (including previous failed attempts at reform since 2011);
- ✓ Learn about the recent changes made to the alimony laws of Florida in 2023 by the enactment of Chapter 2023-315;
- ✓ Learn about the changes to OTHER areas of family law practice made by this 2023 act;
- ✓ Consider what these changes mean to existing alimony awards (including permanent awards).

The Call for More Predictable Alimony Outcomes

- “Broad discretion in the award of alimony is no longer justifiable and should be discarded in favor of guidelines, if not an outright rule.” *Bacon v. Bacon*, 819 So.2d 950 (Fla. 4th DCA 2002) (Farmer, J., concurring specially)
- Majority opinion in Bacon held that the lower court’s alimony award was “within the ***parameters of reasonableness***,” and should not be disturbed on appeal.

The Alimony Reform “Wars”



Polling Question #1

Before July 1, 2023, a trial court could award a spouse “permanent alimony” which meant that spouse received alimony forever. True or False.

False

A Brief History of Recent Alimony Reform

- Prior to 2010, last changes to s. 61.08 occurred in 1991.
- **2010 Amendments:**
 - Creation of “Durational Alimony”
 - Codification of “Bridge-the-Gap Alimony”
 - Definitions/Purposes Given for Each Available Form of Alimony
 - Standardization of Measures of Time for Short-Term, Moderate-Term, and Long-Term Marriages
 - Codification of “Need” & “Ability to Pay” Factors as a Required Factor
- **2011 Amendments:**
 - Clarification of When Duration Alimony and Permanent Alimony are Appropriate
 - Permanent alimony only appropriate upon finding that “no other form of alimony is fair and reasonable under the circumstances of the parties.”
 - The court’s award “may not leave the payor with significantly less net income than the net income of the recipient unless there are written findings of exceptional circumstances.”

2023 Changes to Alimony / Ch. 2023-315:

- ✓ Signed into law June 30th, 2023
- ✓ Section 1: Amends Fla. Stat. §61.08
- ✓ Section 2: Amends Fla. Stat. §61.13(2) & (3)
- ✓ Section 3: Amends Fla. Stat. §61.14(1)
- ✓ Section 4: Amends Fla. Stat. §741.0306 –
“The Family Law Handbook”
- ✓ Section 5: The act shall take effect **July 1st, 2023**

Polling Question #2

Before July 1, 2023, the following were the four *statutory* types of alimony:

- A. Lump sum alimony, rehabilitative alimony, permanent and periodic.
- B. Temporary, bridge-the-gap, rehabilitative, durational.
- C. Bridge-the-gap, rehabilitative, durational and permanent.
- D. Temporary, lump sum, rehabilitative and permanent.

C. Bridge-the-gap,
rehabilitative, durational
and permanent.

Amendments to Fla. Stat. Section 61.08

BEFORE:

61.08 Alimony. - (1) In a proceeding for dissolution of marriage, the court may grant alimony to either party, which alimony may be bridge-the-gap, rehabilitative, durational or permanent in nature or any combination of these forms of alimony. In any award of alimony, the court may order periodic payments or payments in lump sum or both. [...]

Amendments to Fla. Stat. Section 61.08

AFTER:

61.08 Alimony. - (1) (a) In a proceeding for dissolution of marriage, the court may grant alimony to either party in the form or forms of temporary, ~~which alimony may be bridge-the-gap,~~ rehabilitative, or durational alimony, as is equitable ~~or permanent in nature or any combination of these forms of alimony.~~ In any award of alimony, the court may order periodic payments or payments in lump sum or both. [...]

Amendments to Fla. Stat. Section 61.08

BEFORE:

61.08 Alimony. - (1) [...] The court may consider the adultery of either spouse and the circumstances thereof in determining the amount of alimony, if any, to be awarded. [...]

AFTER: (1) (a) [...] The court may consider the adultery of either spouse **and any resulting economic impact** ~~the circumstances thereof~~ in determining the amount of alimony, if any, to be awarded. [...]

Amendments to Fla. Stat. Section 61.08

AFTER:

61.08 Alimony. - (1) (b) The court shall make written findings of fact regarding the basis for awarding a form or any combination of forms of alimony, including the type of alimony and the length of time for which the alimony is awarded. The court may award a combination of forms of alimony or forms of payment, including lump sum payments, to provide greater economic assistance in order to allow the obligee to achieve self-support.

Amendments to Fla. Stat. Section 61.08

BEFORE:

61.08 Alimony. - (2) In determining whether to award alimony, the court shall first make a specific factual determination as to whether either party has an actual need for alimony or maintenance and whether either party has the ability to pay alimony or maintenance.

Amendments to Fla. Stat. Section 61.08

AFTER:

61.08 Alimony. - (2) (a) In determining whether to award support, maintenance, or alimony, the court shall first make a specific, factual determination as to whether the ~~either~~ party seeking support, maintenance, or alimony has an actual need for it ~~alimony or maintenance~~ and whether the other ~~either~~ party has the ability to pay support, maintenance, or alimony or maintenance. The party seeking support, maintenance, or alimony has the burden of proving his or her need for support, maintenance, or alimony and the other party's ability to pay support, maintenance, or alimony.

Amendments to Fla. Stat. Section 61.08

AFTER:

61.08 Alimony. - (2) (b) When determining a support, maintenance, or alimony claim, the court shall include written findings of fact relative to the factors provided in subsection (3) supporting an award or denial of support, maintenance, or alimony, unless the denial is based upon a failure to establish a need for or ability to pay support, maintenance, or alimony. However, the court shall make written findings of fact as to the lack of need or lack of ability to pay in denying a request for support , maintenance, or alimony.

Amendments to Fla. Stat. Section 61.08

BEFORE:

61.08 Alimony. - (2) [...] If the court finds that a party has a need for alimony or maintenance and that the other party has the ability to pay alimony or maintenance, then in determining the proper type and amount of alimony or maintenance under subsections (5)-(8), the court shall consider all relevant factors, including, but not limited to:

Amendments to Fla. Stat. Section 61.08

AFTER:

61.08 Alimony. - (3) ~~(2)~~ [...] If the court finds that the a party seeking support, maintenance, or alimony has a need for it ~~alimony or maintenance~~ and that the other party has the ability to pay support, maintenance, or alimony, then in determining the proper form or forms ~~type and amount~~ of support, maintenance, or alimony ~~or maintenance~~ under subsections (5)-(8), or a deviation therefrom, the court shall consider all of the following relevant factors, including, but not limited to:

Amendments to Fla. Stat. Section 61.08

AFTER:

61.08 Alimony. - (3) ~~(2)~~ [...] If the court finds that the a party seeking support, maintenance, or alimony has a need for it ~~alimony or maintenance~~ and that the other party has the ability to pay support, maintenance, or alimony, then in determining the proper form or forms ~~type and amount~~ of support, maintenance, or alimony ~~or maintenance~~ under subsections (5)-(8), or a deviation therefrom, the court shall consider all of the following relevant factors, including, but not limited to:

Polling Question #3

Before July 1, 2023, “standard of living” was the first enumerated factor under F.S. 61.08(2). True or False.

True

Polling Question #4

Before July 1, 2023, whether either party had a physical or mental disability was an enumerated factor under F.S. 61.08(2). True or False.

False

Amendments to Fla. Stat. Section 61.08

BEFORE: THE STATUTORY FACTORS

61.08(2) - enumerated at (2)(a) - (j):

- (a) The standard of living established during the marriage.
- (b) The duration of the marriage.
- (c) The age and the physical and emotional condition of each party.
- (d) The financial resources of each party, including the nonmarital and marital assets and liabilities distributed to each.

Amendments to Fla. Stat. Section 61.08

61.08 Factors, enumerated (2)(a) - (j) (cont'd)

- (e) The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.
- (f) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party.
- (g) The responsibilities each party will have with regard to any minor children they have in common.

Amendments to Fla. Stat. Section 61.08

61.08 Factors, enumerated (2)(a) - (j) (cont'd)

- (h) The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a nontaxable, nondeductible payment.
- (I) All sources of income available to either party, including income available to either party through investments of any asset held by that party.
- (j) Any other factor necessary to do equity and justice between the parties.

Amendments to Fla. Stat. Section 61.08

AFTER: THE REVISED STATUTORY FACTORS

61.08(3) - enumerated at **(3)(a) - (h)**:

- (a) The duration of the marriage.
- (b) The standard of living established during the marriage **and the anticipated needs and necessities of life for each party after the entry of the final judgment.**
- (c) The age, physical, **mental,** and emotional condition of each party, **including whether either party is physically or mentally disabled and the resulting impact on either the obligee's ability to provide for her or her own needs or the obligor's ability to pay alimony and whether such conditions are expected to be temporary or permanent.**

Amendments to Fla. Stat. Section 61.08

61.08(3) - enumerated at **(3)(a) - (h) (cont'd):**

(d) The resources **and income** of each party, including the **income generated from both** nonmarital and marital assets.

(e) The earning capacities, educational levels, vocational skills, and employability of the parties, **including the ability of either party to obtain the necessary skills or education to become self-supporting or to contribute to his or her self-support prior to the termination of the support, maintenance, or alimony award.**

Amendments to Fla. Stat. Section 61.08

61.08(3) - enumerated at **(3)(a) - (h) (cont'd):**

- (f) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education, and career building of the other party.
- (g) The responsibilities each party will have with regard to any minor children **whom the parties** have in common, **with special consideration given to the need to care for a child with a mental or physical disability.**
- (h) Any other factor necessary **for** equity and justice between the parties, **which shall be specifically identified in the written findings of fact. This may include a finding of a supportive relationship as provided for in s. 61.14(1)(b) or a reasonable retirement as provided for in s. 61.14(1)(c)1.**

Polling Question #5

In order to require the payor spouse to obtain life insurance to secure alimony payment, the trial court must find special circumstances. True or False.

True

Amendments to Fla. Stat. Section 61.08

61.08(4): LIFE INSURANCE/BOND AS SECURITY -
Replaces the former s. 61.08(3):

BEFORE:

(3) To the extent necessary to protect an award of alimony, the court may order any party who is ordered to pay alimony to purchase or maintain a life insurance policy or a bond, or to otherwise secure such alimony award with any other assets which may be suitable for that purpose.

BUT: Sobelman v. Sobelman, 541 So.2d 1153 (Fla. 1989)

The Fla. S. Ct. found this s. 61.08(3) language to be "ambiguous"

Held that 61.08(3) permits a court to order an obligor to purchase life insurance or other security "to protect the financial well being of the other spouse." Rejected "post-mortem alimony" argument.

Amendments to Fla. Stat. Section 61.08

61.08(4): LIFE INSURANCE/BOND AS SECURITY -

Replaces the former s. 61.08(3):

AFTER: (4) To the extent necessary to protect an award of alimony, the court may order the obligor to purchase or maintain a life insurance policy or a bond, or to otherwise secure such alimony award with any other assets that may be suitable for that purpose. The court must make specific findings that there are special circumstances that warrant the purchase or maintenance of a life insurance policy or a bond to secure the alimony award. If the court orders a party to purchase or maintain a life insurance policy or a bond, the court may apportion the costs of such insurance or bond to either or both parties based upon a determination of the ability of the obligee and obligor to pay such costs.

Polling Question #6

Before July 1, 2023, the following statement was true with respect to the length of the marriage:

- A. Short-term—less than 4 years; Moderate-term—between 4 and 15 years; Long-term—more than 15 years.
- B. Short-term—less than 10 years; Moderate-term—between 10 and 20 years; Long-term—more than 20 years.
- C. Short-term—less than 8 years; Moderate-term—between 8 and 16 years; Long-term—more than 16 years.
- D. Short-term—less than 7 years; Moderate-term—between 7 and 17 years; Long-term—more than 17 years.

D. Short-term—less than 7 years;
Moderate-term—between 7 and
17 years; Long-term—more than
17 years.

Amendments to Fla. Stat. Section 61.08

61.08(5): What is Short-Term, Moderate-Term, and Long-Term? (Replaces the former s. 61.08(4))

BEFORE: (5) For purposes of determining alimony, there is a rebuttable presumption that a short-term marriage is a marriage having a duration of less than 7 years, a moderate-term marriage is a marriage having a duration of greater than 7 years but less than 17 years, and long-term marriage is a marriage having a duration of 17 years or greater. The length of a marriage is the period of time from the date of marriage until the date of filing of any action for dissolution of marriage.

Amendments to Fla. Stat. Section 61.08

61.08(5): What is Short-Term, Moderate-Term, and Long-Term? (Replaces the former s. 61.08(4))

AFTER: (5) For purposes of determining alimony, there is a rebuttable presumption that a short-term marriage is a marriage having a duration of less than 10 years, a moderate-term marriage is a marriage having a duration between 10 and 20 years, and a long-term marriage is a marriage having a duration of 20 years or longer. The length of a marriage is the period of time from the date of marriage until the date of filing of any action for dissolution of marriage.

Polling Question #7

Before July 1, 2023, bridge-the-gap alimony could not exceed:

- A. 2 years.
- B. 6 months.
- C. 10% of the total number of months of the marriage.
- D. 1 year.

A. 2 years.

Amendments to Fla. Stat. Section 61.08

61.08(6): What is Bridge-the Gap Alimony?

(Replaces the former s. 61.08(5))

BEFORE: (5) Bridge-the-gap alimony may be awarded to assist a party by providing support to allow the party to make a transition from being married to being single. Bridge-the-gap alimony is designed to assist a party with legitimate identifiable short-term needs, and the length of an award may not exceed 2 years. An award of bridge-the-gap alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. An award of bridge-the-gap shall not be modifiable in amount or duration.

Amendments to Fla. Stat. Section 61.08

61.08(6): What is Bridge-the Gap Alimony?

(Replaces the former s. 61.08(5))

AFTER: (6) Bridge-the-gap alimony may be awarded to provide support to a party in making the transition from being married to being single. Bridge-the-gap alimony assists a party with legitimate identifiable short-term needs. The length of an award of bridge-the-gap alimony may not exceed 2 years. An award of bridge-the-gap alimony terminates upon the death of either party or upon the remarriage of the obligee. An award of bridge-the-gap is not modifiable in amount or duration.

Polling Question #8

Before July 1, 2023, rehabilitative alimony could not be longer than:

- A. 5 years.
- B. 10 years.
- C. The length of the marriage.
- D. The length of the specific rehabilitative plan.

D. The length of the
specific rehabilitative
plan.

Amendments to Fla. Stat. Section 61.08

61.08(7)(a)-(d): What is Rehabilitative Alimony?
(Replaces the former s. 61.08(6))

BEFORE: (6)(a) Rehabilitative alimony may be awarded to assist a party in establishing the capacity for self-support through either:

1. The redevelopment of previous skills or credentials; or
2. The acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials.

(b) In order award rehabilitative alimony, there must be a specific and defined rehabilitative plan which shall be included as a part of any order awarding rehabilitative alimony.

Amendments to Fla. Stat. Section 61.08

61.08(7)(a)-(d): What is Rehabilitative Alimony?
(Replaces the former s. 61.08(6))

AFTER: (7)(a) Rehabilitative alimony may be awarded to assist a party in establishing the capacity for self-support through either:

1. The redevelopment of previous skills or credentials; or
2. The acquisition of education, training, or work experience necessary to develop appropriate employment skills or credentials.

(b) In order award rehabilitative alimony, there must be a specific and defined rehabilitative plan ~~which shall be~~ included as a part of any order awarding rehabilitative alimony.

Amendments to Fla. Stat. Section 61.08

61.08(7)(a)-(d): What is Rehabilitative Alimony?
(Replaces the former s. 61.08(6))

AFTER:

(7)(c) **The length of an award of rehabilitative alimony may not exceed 5 years.**

(d) An award of rehabilitative alimony may be modified or terminated in accordance with s. 61.14 based upon a substantial change in circumstances, upon noncompliance with the rehabilitative plan, or upon completion of the rehabilitative plan **if the plan is completed before the length of the award of rehabilitative alimony expires.**

Polling Question #9

Before July 1, 2023, you could award durational alimony in a two-year marriage. True or False.

True

Amendments to Fla. Stat. Section 61.08

61.08(8): What is Durational Alimony? (Replaces the former s. 61.08(7))

BEFORE: (7) Durational alimony may be awarded when permanent periodic alimony is inappropriate. The purpose of durational alimony is to provide a party with economic assistance for a set period of time following a marriage of short or moderate duration or following a marriage of long duration if there is no ongoing need for support on a permanent basis. [...]

Amendments to Fla. Stat. Section 61.08

61.08(8): What is Durational Alimony? (Replaces the former s. 61.08(7))

BEFORE: (7) (cont'd) [...] An award of durational alimony terminates upon the death of either party or upon the remarriage of the party receiving alimony. The amount of an award of durational alimony may be modified or terminated based upon a substantial change in circumstances in accordance with s. 61.14. However, the length of an award of durational alimony may not be modified except under exceptional circumstances and may not exceed the length of the marriage.

Amendments to Fla. Stat. Section 61.08

61.08(8): What is Durational Alimony? (Replaces the former s. 61.08(7))

AFTER: (8)(a) Durational alimony may be awarded ~~when permanent periodic alimony is inappropriate. The purpose of durational alimony is to provide a party with economic assistance for a set period of time following a marriage of short or moderate duration or following a marriage of long duration if there is no ongoing need for support on a permanent basis. [...]~~

Amendments to Fla. Stat. Section 61.08

61.08(8): What is Durational Alimony? (Replaces the former s. 61.08(7))

AFTER: (a) [...] An award of durational alimony terminates upon the death of either party or upon the remarriage of the **obligee**. The amount of an award of durational alimony may be modified or terminated based upon a substantial change in circumstances in accordance with s. 61.14.

Durational alimony may not be awarded following a marriage lasting less than 3 years. ~~However,~~ The length of an award of durational alimony may not be modified except under exceptional circumstances and may not exceed the length of the marriage **except as set forth in this subsection.**

Amendments to Fla. Stat. Section 61.08

61.08(8): What is Durational Alimony? (Replaces the former s. 61.08(7))

AFTER: (8)(b) An award of durational alimony may not exceed 50 percent of the length of a short-term marriage, 60 percent of the length of a moderate-term marriage, or 75 percent of the length of a long-term marriage. Under exceptional circumstances, the court may extend the term of durational alimony by a showing of clear and convincing evidence that it is necessary after application of the factors in subsection (3) and upon consideration of all of the following additional factors: [...]

SO WHAT ARE THESE NEW "SAFETY VALVE FACTORS"?

Amendments to Fla. Stat. Section 61.08

"SAFETY VALVE FACTORS" to EXTEND DURATIONAL AWARDS:

- (8)(b)1. The extent to which the obligee's age and employability limit the obligee's ability for self-support, either in whole or in part.
2. The extent to which the obligee's available financial resources limit the obligee's ability for self-support, either in whole or in part.
3. The extent to which the obligee is mentally or physically disabled or has been diagnosed with a mental or physical condition that has rendered, or will render, him or her incapable of self-support, either in whole or in part.
4. The extent to which the obligee is the caregiver to a mentally or physically disabled child, whether or not the child has attained the age of majority, who is common to the parties. Any extension terminates upon the child no longer requiring caregiving by the obligee, or upon death of the child, unless one of the other factors in this paragraph apply.

Amendments to Fla. Stat. Section 61.08

The Former 61.08(8): So What Happened to Permanent Alimony?

BEFORE: (8) Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage. [...]

Amendments to Fla. Stat. Section 61.08

The Former 61.08(8): So What Happened to Permanent Alimony?

BEFORE: (8) Permanent alimony may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage. [...]

AFTER:



Amendments to Fla. Stat. Section 61.08

Section 61.08(11): EFFECTIVE JULY 1st, 2023

(11) 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.

Polling Question #10

Before July 1, 2023, to modify a parenting plan and/or a time-sharing schedule, you must show:

- A. Substantial change of circumstances.
- B. Substantial, material and unanticipated change of circumstances.
- C. Substantial and material change of circumstances.
- D. Substantial and unanticipated change of circumstances.

B. Substantial, material and
unanticipated change of
circumstances.

Amendments to Fla. Stat. Section 61.13

Section 61.13(2)(c): The court shall determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, except that modification of a parenting plan and time-sharing schedule requires a showing of a substantial and, material, ~~and~~ ~~unanticipated~~ change of circumstances.

Polling Question #11

Before July 1, 2023, moving within fifty miles of the other parent in itself constitutes a substantial and material change of circumstance. True or False.

False

Amendments to Fla. Stat. Section 61.13

Section 61.13(3):

- "The best interest of the child shall be the primary consideration" replaced with "The best **interests** of the child **must** be the primary consideration."
- "If the parents of a child are residing greater than 50 miles apart at the time of the entry of the last order establishing time sharing and a parent moves within 50 miles of the other parent, then that move may be considered a substantial and material change in circumstances for the purpose of a modification to the time-sharing schedule, so long as there is a determination that the modification is in the best interests of the children."

Polling Question #12

Before July 1, 2023, the following were a *statutory* basis to modify alimony:

- A. Retirement of the payor spouse.
- B. The payee spouse living in a supportive relationship.
- C. B only.
- D. A and B.

B. The payee spouse is living in a supportive relationship.

Amendments to Fla. Stat. Section 61.14

SUPPORTIVE RELATIONSHIPS

BEFORE: S.61.14(1)(b)1.

- The court may reduce or terminate an award of alimony
- For supportive relationships between obligee "and a person with whom the obligee resides."

AFTER: The Court must reduce or terminate an award of support, maintenance, or alimony upon specific written findings by the court that a supportive relationship has existed between the obligee and a person who is not related to the obligee by consanguinity or affinity.

- Requirement that relationship existed "since the granting of a divorce and the award of alimony" **REMOVED.**

Amendments to Fla. Stat. Section 61.14

SUPPORTIVE RELATIONSHIPS

AFTER: S. 61.14(1)(b)2.

- The court shall make written findings of fact
- The **OBLIGOR** has the burden of proof "by a preponderance of the evidence."
- **TO PROVE WHAT?** "That a supportive relationship exists or has existed in the 365 days before the filing of the petition for DOM, separate maintenance, or supplemental petition for modification."
- If proven, the burden shifts to the **OBLIGEE** to prove that the court should not deny or reduce the initial or existing alimony award.

Amendments to Fla. Stat. Section 61.14

SUPPORTIVE RELATIONSHIPS

AFTER: The Court shall consider and make written findings of fact:

- All relevant factors in S. 61.08(3); and
- The already-existing factors in s. 61.14(1)(b)2. **[Factors A. through K.]**
- **Factor B:** no longer requires finding of "permanent place of abode"
- **Factor C:** Did they "*acquire or maintain a joint bank account or other financial accounts*"? (Not just "pool assets or income")
- **Factor D:** "*Payment of the other's debts, expenses, or liabilities*"

Amendments to Fla. Stat. Section 61.14

SUPPORTIVE RELATIONSHIPS

AFTER:

- **Factor F:** "The other's **company**" changed to "the other's ***business entity***"
- **Factor G:** Did they "**create or** enhance assets" changed to "***acquire or*** enhance assets"
- **Factor H:** Whether they jointly contributed to purchase of real property changed to "***the extent to which***" that was done

Amendments to Fla. Stat. Section 61.14

SUPPORTIVE RELATIONSHIPS

AFTER:

- **Factor I & J:** Express or Implied agreements re: property sharing or financial support combined
- **NEW Factor J:** ***"The extent to which the obligor has paid the existing alimony award or failed to do so and the existence and amount of any arrearage."***
- **Factor K:** Whether they provided support to their children changed to *"the extent to which"* support was provided *"to children or other family members"*

Amendments to Fla. Stat. Section 61.14

RETIREMENT AS A BASIS FOR MODIFICATION

BEFORE: S.61.14(1) was silent.

- *Pimm v. Pimm*, 601 So. 2d 534 (Fla. 1992) controlled.

AFTER: S. 61.14(1)(c)1.; 2.; & 3.

- The Court may reduce or terminate alimony "upon specific, written findings" that the obligor has reached:
 - Normal retirement age (as defined by SSA); or
 - Customary retirement age for the obligor's profession;
- **AND** that the obligor "has taken demonstrative and measurable efforts or actions to retire or has actually retired."

Amendments to Fla. Stat. Section 61.14

RETIREMENT AS A BASIS FOR MODIFICATION

AFTER: S. 61.14(1)(c)1.; 2.; & 3.

- The initial burden is on the Obligor to prove that the retirement reduces Obligor's ability to pay alimony.
- If proven, the burden shifts to the Obligee to prove that the alimony should not be terminated or reduced.
- **Burden of proof:** Preponderance of the Evidence

Amendments to Fla. Stat. Section 61.14

RETIREMENT AS A BASIS FOR MODIFICATION

AFTER:

In making its determination, the Court shall consider and make written findings of fact as to

Factors A through J:

- a. The age and health of the obligor.
- b. The nature and type of work performed by the obligor.
- c. The customary age of retirement in the obligor's profession.

Amendments to Fla. Stat. Section 61.14

RETIREMENT AS A BASIS FOR MODIFICATION

AFTER:

- d. The obligor's motivation for retirement and likelihood of returning to work.
- e. The needs of the obligee and the ability of the obligee to contribute toward his or her own basic needs.
- f. The economic impact that a termination or reduction of alimony would have on the obligee.

Amendments to Fla. Stat. Section 61.14

RETIREMENT AS A BASIS FOR MODIFICATION

AFTER:

- g. All assets of the obligee and the obligor accumulated or acquired prior to the marriage, during the marriage, or following the entry of the final judgment as well as the obligor and obligee's respective roles in the wasteful depletion of any marital assets received by him or her at the time of the entry of the final judgment.
- h. The income of the obligee and the obligor earned during the marriage or following the entry of the final judgment.

Amendments to Fla. Stat. Section 61.14

RETIREMENT AS A BASIS FOR MODIFICATION

AFTER:

- i. The social security benefits, retirement plan benefits, or pension benefits payable to the obligor and the obligee following the final judgment of dissolution.
- j. The obligor's compliance, in whole or in part, with the existing alimony obligation.

Amendments to Fla. Stat. Section 61.14

RETIREMENT AS A BASIS FOR MODIFICATION

AFTER: *An obligor can seek relief prior to actual retirement.*

- Q: When can a petition to modify be filed?
- A: "In reasonable anticipation of retirement, but not more than 6 months before retirement[...]"
- A successful modification "shall be effective" upon obligor's retirement.
- Consideration of and written findings required as to s. 61.14(1)(b)2. **AND** s. 61.08(3) "when granting or denying" a modification petition.

Are These Statutory Changes Retroactive or Prospective Only?

CHANGES TO TIMESHARING PROVISIONS:

Hahn v. Hahn, 42 So.3d 945 (Fla. 4th DCA 2010) --- Reaffirming that a statute is not operative as law until the date at which it takes effect[,] and it operates prospectively unless the intent that it operate retrospectively is clearly expressed

Trial court's retroactive application of these amendments to remove the former wife's designation as the "**primary residential parent**" and establish 50/50 time-sharing between the parties *"clearly impaired the former wife's existing rights over her children."* Further, the inclusion of a specific future 'effective date' for the 61.13 amendments also rebuts any argument that retroactive application of section 61.13, as amended, was intended by the Legislature. Thus, the Fourth District held that the trial court had erred in applying the 2008 amendments to section 61.13 in resolving the modification petitions brought by the parties in that case.

Bachman v. McLinn, 65 So.3d 71 (Fla. 2d DCA 2011) – The Second DCA reached the same conclusion as the Fourth DCA in Hahn. "Here, the Mother's rights were set forth in a contract that utilized then-existing statutory law. The retrospective application of the new statute would impair those rights."

Are These Statutory Changes Retroactive or Prospective Only?

CHANGES TO ALIMONY PROVISIONS:

See Hahn; Bachman

A substantive law that interferes with vested rights – and thus creates or imposes a new obligation or duty – will not be applied retroactively. **Gupton v. Village Key & Saw Shop, Inc.**, 656 So. 2d 475 (Fla. 1995); **Young v. Altenhaus**, 472 So. 2d 1152, 1154 (Fla. 1985).

It is a well-established rule of statutory construction that, in the absence of an express legislative statement to the contrary, an enactments that affects substantive rights or creates new obligations or liabilities is presumed to apply prospectively. **Hassen v. State Farm**, 674 So.2d 106 (Fla. 1996) (citing to **Arrow Air, Inc. v. Walsh**, 645 So.2d 422, 425 (Fla. 1994)).

Are These Statutory Changes Retroactive or Prospective Only?

QUESTION: If a Trial Court finds that the requirements for a modification of permanent periodic alimony award have been proven and met, can the Court modify the award so that it continues as a permanent periodic alimony award?

Compare: Valby v. Valby, 317 So.3d 147 (Fla. 4th DCA 2021): Affirming the TC's decision to modify the duration of an existing award (awarded pre-2010) to a durational award. "The fact that durational alimony did not exist at the time of the FJ is irrelevant. The TC did not modify alimony retroactive to the date of the FJ but rather to the date of the filing of the [...] supplemental petition."

Are These Statutory Changes Retroactive or Prospective Only?

CHANGES TO ALIMONY PROVISIONS RE: RETIREMENT PROVISIONS.

QUESTION: Are the 2023 Statutory Amendments regarding voluntary retirement as a basis for an alimony modification, **remedial/procedural** in nature (applicable to pending cases), or **substantive** (applicable only to future cases)?

Compare: Arrow Air, Inc. v. Walsh, 645 So.2d 422 (Fla. 1994): The private sector Whistle-Blower's act is "remedial." Thus, an intent that the new law be applied to pending cases should be presumed.

- See also Martin County v. Edenfield, 609 So.2d 27, 29 (Fla. 1992): Determining that the public sector Whistle-Blower's Act was remedial in nature.
- “We have recognized that the presumption in favor of prospective application generally does not apply to ‘remedial’ legislation; rather, whenever possible, such legislation should be applied to pending cases in order to fully effectuate the legislation's intended purpose. City of Orlando v. Desjardins, 493 So.2d 1027 (Fla. 1986). However, we have never classified a statute that accomplishes a remedial purpose by creating substantive new rights or imposing new legal burdens as the type of “remedial” legislation that should be presumptively applied in pending cases. See L. Ross, Inc. v. R.W. Roberts Const. Co., Inc., 481 So.2d 484 (Fla. 1986) (statute creating right to attorney's fees could not be applied retroactively); City of Lakeland v. Catinella, 129 So.2d 133, 136 (only statutes that do not create new or take away vested rights are exempt from the general rule against retrospective application.)” Arrow Air, Inc. at 424.

Thank you for your attention!

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