

§ 20-3-130. Award of alimony and other allowances.

(A) In proceedings for divorce from the bonds of matrimony, and in actions for separate maintenance and support, the court may grant alimony or separate maintenance and support in such amounts and for such term as the court considers appropriate as from the circumstances of the parties and the nature of case may be just, pendente lite, and permanently. No alimony may be awarded a spouse who commits adultery before the earliest of these two events: (1) the formal signing of a written property or marital settlement agreement or (2) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties.

(B) Alimony and separate maintenance and support awards may be granted pendente lite and permanently in such amounts and for periods of time subject to conditions as the court considers just including, but not limited to:

(1) Periodic alimony to be paid but terminating on the remarriage or continued cohabitation of the supported spouse or upon the death of either spouse (except as secured in subsection (D)) and terminable and modifiable based upon changed circumstances occurring in the future. The purpose of this form of support may include, but is not limited to, circumstances where the court finds it appropriate to order the payment of alimony on an ongoing basis where it is desirable to make a current determination and requirement for the ongoing support of a spouse to be reviewed and revised as circumstances may dictate in the future.

(2) Lump-sum alimony in a finite total sum to be paid in one installment, or periodically over a period of time, terminating only upon the death of the supported spouse, but not terminable or modifiable based upon remarriage or changed circumstances in the future. The purpose of this form of support may include, but not be limited to, circumstances where the court finds alimony appropriate but determines that such an award be of a finite and nonmodifiable nature.

(3) Rehabilitative alimony in a finite sum to be paid in one installment or periodically, terminable upon the remarriage or continued cohabitation of the supported spouse, the death of either spouse (except as secured in subsection (D)) or the occurrence of a specific event to occur in the future, or modifiable based upon unforeseen events frustrating the good faith efforts of the supported spouse to become self-supporting or the ability of the supporting spouse to pay the rehabilitative alimony. The purpose of this form of support may include, but is not limited to, circumstances where the court finds it appropriate to provide for the rehabilitation of the supported spouse, but to provide modifiable ending dates coinciding with events considered appropriate by the court such as the completion of job training or education and the like, and to require rehabilitative efforts by the supported spouse.

(4) Reimbursement alimony to be paid in a finite sum, to be paid in one installment or periodically, terminable on the remarriage or continued cohabitation of the supported spouse, or upon the death of either spouse (except as secured in subsection (D)) but not terminable or modifiable based upon changed circumstances in the future. The purpose of this form of support may include, but is not limited to, circumstances where the court finds it necessary and desirable to reimburse the supported spouse from the future earnings of the payor spouse based upon

circumstances or events that occurred during the marriage.

(5) Separate maintenance and support to be paid periodically, but terminating upon the continued cohabitation of the supported spouse, upon the divorce of the parties, or upon the death of either spouse (except as secured in subsection (D)) and terminable and modifiable based upon changed circumstances in the future. The purpose of this form of support may include, but is not limited to, circumstances where a divorce is not sought, but it is necessary to provide for support of the supported spouse by way of separate maintenance and support when the parties are living separate and apart.

(6) Such other form of spousal support, under terms and conditions as the court may consider just, as appropriate under the circumstances without limitation to grant more than one form of support.

For purposes of this subsection and unless otherwise agreed to in writing by the parties, "continued cohabitation" means the supported spouse resides with another person in a romantic relationship for a period of ninety or more consecutive days. The court may determine that a continued cohabitation exists if there is evidence that the supported spouse resides with another person in a romantic relationship for periods of less than ninety days and the two periodically separate in order to circumvent the ninety-day requirement.

(C) In making an award of alimony or separate maintenance and support, the court must consider and give weight in such proportion as it finds appropriate to all of the following factors:

(1) the duration of the marriage together with the ages of the parties at the time of the marriage and at the time of the divorce or separate maintenance action between the parties;

(2) the physical and emotional condition of each spouse;

(3) the educational background of each spouse, together with need of each spouse for additional training or education in order to achieve that spouse's income potential;

(4) the employment history and earning potential of each spouse;

(5) the standard of living established during the marriage;

(6) the current and reasonably anticipated earnings of both spouses;

(7) the current and reasonably anticipated expenses and needs of both spouses;

(8) the marital and nonmarital properties of the parties, including those apportioned to him or her in the divorce or separate maintenance action;

(9) custody of the children, particularly where conditions or circumstances render it appropriate that the custodian not be required to seek employment outside the home, or where the employment must be of a limited nature;

(10) marital misconduct or fault of either or both parties, whether or not used as a basis for a divorce or separate maintenance decree if the misconduct affects or has affected the economic circumstances of the parties, or contributed to the breakup of the marriage, except that no evidence of personal conduct which may otherwise be relevant and material for the purpose of this subsection may be considered with regard to this subsection if the conduct took place subsequent to the happening of the earliest of (a) the formal signing of a written property or marital settlement agreement or (b) entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between

the parties;

(11) the tax consequences to each party as a result of the particular form of support awarded;

(12) the existence and extent of any support obligation from a prior marriage or for any other reason of either party; and

(13) such other factors the court considers relevant.

(D) In making an award of alimony or separate maintenance and support, the court may make provision for security for the payment of the support including, but not limited to, requiring the posting of money, property, and bonds and may require a spouse, with due consideration of the cost of premiums, insurance plans carried by the parties during marriage, insurability of the payor spouse, the probable economic condition of the supported spouse upon the death of the payor spouse, and any other factors the court may deem relevant, to carry and maintain life insurance so as to assure support of a spouse beyond the death of the payor spouse.

(E) In making an award of alimony or separate maintenance and support, the court may order the direct payment to the supported spouse, or may require that the payments be made through the Family Court and allocate responsibility for the service fee in connection with the award. The court may require the payment of debts, obligations, and other matters on behalf of the supported spouse.

(F) The court may elect and determine the intended tax effect of the alimony and separate maintenance and support as provided by the Internal Revenue Code and any corresponding state tax provisions. The Family Court may allocate the right to claim dependency exemptions pursuant to the Internal Revenue Code and under corresponding state tax provisions and to require the execution and delivery of all necessary documents and tax filings in connection with the exemption.

(G) The Family Court may review and approve all agreements which bear on the issue of alimony or separate maintenance and support, whether brought before the court in actions for divorce from the bonds of matrimony, separate maintenance and support actions, or in actions to approve agreement where the parties are living separate and apart. The failure to seek a divorce, separate maintenance, or a legal separation does not deprive the court of its authority and jurisdiction to approve and enforce the agreements. The parties may agree in writing if properly approved by the court to make the payment of alimony as set forth in items (1) through (6) of subsection (B) nonmodifiable and not subject to subsequent modification by the court.

(H) The court, from time to time after considering the financial resources and marital fault of both parties, may order one party to pay a reasonable amount to the other for attorney fees, expert fees, investigation fees, costs, and suit money incurred in maintaining an action for divorce from the bonds of matrimony, as well as in actions for separate maintenance and support, including sums for services rendered and costs incurred before the commencement of the proceeding and after entry of judgment, pendente lite and permanently.