
Alimony Is Alive And Well

By Barbara E. Keon

A *LIMONY is alive and well, but the advent of the working woman and women's liberation have frequently eroded its award in court. This has made representation of the middle-aged homemaker displaced from a long-term marriage a problematic area for the divorce practitioner. The husband typically wants to move forward in life by dividing assets and paying alimony for a few years until his wife can be retrained and get a job, instead of subsidizing her needs for life. Aggressive and innovative legal representation, however, can win a substantial share of assets as well as long-term alimony for the female client, as the following case shows.*

A very gracious, intelligent and charming homemaker came to my office this past year. She is what many would refer to as a "deserving woman." She subsidized the family income in the early years of their 23-year marriage, but stopped working after the birth of the first of their two children and assumed full responsibility for all household duties and childrearing.

Her husband, a bright and driven workaholic, tenaciously pursued his career. At age 48 and at the pinnacle of his career, having reached the level of partner with one of the top six accounting firms, he had a handsome annual income of over \$300,000.00 and wanted to start life over. During their marriage, they accumulated a marital home, a summer home, retirement benefits, and life insurance and investment accounts. However, the liquidation of all these assets and their re-investment to generate income would not provide sufficient support for the wife.

The husband wanted to pay his estranged wife a few years of minimal alimony to meet a bare-bones budget until she could retrain in nursing and get a job. He wanted to sell the marital home and other tangible assets then divide equally,

after first deducting marital debts, such as the second mortgage on the house, lines of credit and current tax liabilities. He wanted everyone to ignore his nonvested retirement benefits and his earning capability or regard them as having no real value or as being too speculative to value.

The law permits awards of alimony based on ability to pay and need. Certainly, the husband in this case had an ability to pay alimony to sustain the wife's \$5,000.00 monthly budget in the marital home. Having been out of the workforce for almost 20 years, she certainly had a need for spousal support. The issue of how much support and for how long was hotly disputed and ultimately resulted in a contested temporary hearing and a contested trial.

As in any trial, mental ability and legal skill must be matched with common sense, and wants must be realistically evaluated. Utilizing his numerical dexterity, the husband pared down, or perhaps the better term would be "hacked down," his \$25,000.00 gross monthly income to only a few thousand dollars of spendable monthly income after payment of taxes, retirement, partnership loan, health and life insurance (all benefits to him), his living expenses and the living

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expenses of his college-aged son. His efforts were intended to show that he could not possibly pay more than he had proposed and his wife's demands were unreasonable and excessive.

Our strategy was to focus on his earning power as a marital asset in addition to an income stream for periodic alimony purposes. After all, he accumulated this earning capability during the marriage with the support and assistance of his wife. She took care of the children and the household responsibilities so that he could work 70-hour weeks. She attended functions in support of his career and entertained his colleagues and clients. Using an excess earnings approach, we assigned this asset a dollar value. He was then shown to have excess dollars each month after he paid his budget, his wife's budget, the children's budgets and taxes. These excess earnings were then projected out over his future work life expectancy and discounted to present value. In short, his professional expertise allowed him thousands of excess dollars each month, and he developed this expertise while married; therefore, it should be considered a marital asset, the value of which should be offset by awarding the wife more than 50 percent of the existing tangible assets.

In this particular case, there was another intangible marital asset — the non-vested retirement benefits. We assigned a value to this defined benefit plan using a formula based on partnership shares owned, projected out to retirement age and reduced to present value. The husband argued that this was a purely speculative value, since he would never benefit from this plan if he left the firm before retirement age and the value of the plan could not be accurately determined until retirement age. True enough. The court ordered, however, that the wife receive the marital home, subject to the first mortgage, all of his 401K, most of the cash assets of the marriage, and alimony until she turned age 62, when retirement income would be available. Her husband was ordered to pay most of her legal fees and all other marital debts from his income.

Obviously, results like this depend upon good judges, good facts, and effective courtroom presentation. Typically, courts award alimony for an amount less than a dependent spouse needs to maintain the marital lifestyle and usually only for a term of years, not for life. But, as this case illustrates, it is important not to discount the impact of future earning power on the issue of alimony and asset division. Thus, alimony is still alive and well and sometimes the court should be educated that equal division is not equitable division. ♦

VERDICT

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Barbara E. Keon graduated from Wake Forest University (B.A. cum laude 1975) and the University of South Carolina (J.D. 1979) and was admitted to practice in Georgia in 1985. She is a partner with the Atlanta firm of Land, Cohen & Keon, specializing in domestic relations.



Barbara Keon