

ALBUQUERQUE DIVORCE LAWYER BLOG

PUBLISHED BY
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March 10, 2010

Defined Non-Modifiable Alimony is Indeed Non-Modifiable in New Mexico Despite Wishful Thinking to the Contrary

Spousal support, which is also called alimony, is not mandatory in the State of New Mexico. In determining whether or not to award spousal support, the Courts in Albuquerque, and much of the rest of the state will typically refer to the Alimony Guidelines and Commentaries developed by the Second Judicial District Court.

The Alimony Guidelines provide a variety of considerations in the award of alimony including the length of the marriage, age of the parties, health of the parties, work histories of the parties and the earning capacity of each party. If the Court determines that spousal support is appropriate it will determine how long that support will be paid.

The New Mexico Court of Appeals recently reviewed the issue of spousal support in *Pruyn v. Lam*. The *Pruyn* case began in 2004 when the divorcing parties agreed to and filed a marital settlement agreement without the assistance of counsel. The Marital Settlement Agreement included a provision that the husband would pay the wife monthly spousal support beginning in the year 2005 and continuing until the year 2019.

The Marital Settlement Agreement stated that the spousal support/alimony was "Non-Modifiable" and set forth specific amounts to be paid to the wife each month over the term of the agreement. Nearly one year after the parties' divorce was complete, the husband filed a motion to modify the spousal support award based on a change in his financial circumstances alleging that he could no longer afford to pay the agreed upon spousal support.

After multiple hearings and motions, the trial court eventually granted husband's motion to modify support despite the language in the marital settlement agreement stating that the spousal support was non-modifiable. That decision relied on the language in New Mexico's Alimony Statute, NMSA §40-4-7(B), stating that an award of spousal support may be rehabilitative, transitional, indefinite and/or may be awarded as a single-sum to be paid in installments. The trial court appeared to find that the agreement of the parties was indefinite and therefore modifiable.

The New Mexico Court of Appeals overturned the trial court's decision and held that the Courts' power to modify spousal support is limited to cases of rehabilitative, transitional or indefinite support. The Court found that the spousal support award to the wife in *Pruyn* was a single-sum award due to its definite payment schedule over a defined period of time. Because it was a single-sum defined alimony award, the trial court did not have the authority to modify that provision of the marital settlement agreement.

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Alimony and spousal support can be quite confusing. The alimony guidelines themselves can be somewhat confusing. Whichever end you are on, paying or receiving, you should consult with an attorney before entering into a Marital Settlement Agreement. Perhaps Mr. Pruyn's first mistake was failing to seek the guidance of an attorney. Marital Settlement Agreements are contractual in nature, and it is very hard to back out of one. Few judges will entertain the argument that you did not understand what you were doing because you did not have an attorney.

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