

Spousal Support: Unconstitutional

Spousal support, or alimony, is defined as “a legal obligation on a person to provide financial support to his or her spouse before or after marital separation or divorce. The obligation arises from the divorce law or family law of each country.” [FN1] Basically, spousal support forces a financial burden on an ex-spouse, and this burden should not be imposed on anyone after ending a marriage. A former spouse should no longer be someone's financial responsibility, especially when both parties are able to work. An Order of Spousal Support is unconstitutional because it causes a financial burden on the supporting spouse.

There are different types of spousal supports, and each state has its own laws regarding this practice. The different types of spousal support are permanent, temporary, rehabilitative, and reimbursement spousal support. Permanent spousal support is defined as support paid to the lesser-earning spouse until the death of the payor, the death of the recipient, or the remarriage of the recipient. Temporary alimony is support ordered when the parties are separated prior to divorce. Rehabilitative spousal support is support given to a lesser-earning spouse for a period of time necessary to acquire work outside the home and become self-sufficient. Reimbursement spousal support is support given as a reimbursement for expenses incurred by a spouse during the marriage (such as educational expenses).

Spousal support is not always a bad thing. In cases where a spouse has been out of the work force due to disabilities, being the homemaker or staying home to raise the children, it is hard to become independent and begin to support yourself financially. It is also difficult to obtain a job with the economy at this time, especially for someone who has been out of the workforce for a long time and doesn't have much education to fall back on. And although all these reasons are good enough for a person to be awarded spousal support, there are many cases in which the spouse asking for the support is taking advantage of the system and the spouse being ordered to pay the support.

Although spousal support does help the relying party in circumstances where they cannot work, it should not apply to instances in which the spouse is able to work. Florida State Statute 61.08 [FN2] outlines some of the reasons as to why Alimony is awarded in that state. A few of these reasons considered when awarding alimony are the standard of living a person is accustomed to in a marriage, the length of the marriage, the financial resources of each party and the responsibilities taking care of their children, if any. First off, the reason stating that because a person has become accustomed to the standard of living being provided by their former spouse is completely ridiculous. This

should not and does not mean that because someone is accustomed to a higher standard of living that their former spouse needs to finance that standard. This shows that the spousal support system is not perfect.

There are cases in which spousal support was awarded when it should not have been. Placing the financial burden on the spouse that makes more money is unfair in instances where the other spouse has an education and is not handicapped and can work. The following case shows a circumstance in which the wife was awarded spousal support while she held a degree and no physical impairments that prevented her from obtaining a job with a higher salary. The case is further outlined below.

In one case, Crabtree v. Crabtree [FN3], the wife (Mrs. Crabtree) was awarded rehabilitative spousal support. In this case, Mrs. Crabtree had graduated with the highest honors from college and was a certified public accountant. She left her job at a firm to stay out home with her children, but still maintained to work about 30 hours a week and earning around \$41,000 per year, while her husband earned a net income around \$163,000 per year. Clearly, Mr. Crabtree's income was much greater than his wife's, thus allowing her to received rehabilitative spousal support (not including the child support that was to be paid to Mrs. Crabtree as well as the property she received out of the settlement). One may say that Mrs. Crabtree was entitled to receiving this amount in spousal support because she gave up her career at a firm to work from home to raise her children. Well, in this case here, her daughters were nineteen and sixteen years old. One daughter was attending college while another was attending private school. At these ages, it is not necessary to work from home just to stay and raise your children. Additionally, Mrs. Crabtree had graduated with the highest honors from the University of Tennessee at Knoxville and was a CPA, these facts alone support Mrs. Crabtree was able to work and Mr. Crabtree should not be legally obliged to support her financially more than he already was by paying her child support every month.

The reasons that spousal support should not be awarded are not only because the person on the receiving end of the award can work for it, but also because the payor of the award should not be burdened. The following case shows an example of where a court ruled in favor of the husband (who was ordered to pay the spousal support) when the husband argued that he had to work very long hours to earn a high income, and had he worked less hours, he would not be making so much money. The case is detailed below.

In the case of In re Marriage of Simpson, 4 Cal. 4th 225, the husband (Mr. Simpson) was ordered to pay a high amount of child support and spousal support to his wife. Mr. Simpson, at this time, was working 2 to 3 jobs a day to earn the wages that the courts initially based the spousal support off. After the order to pay the award in the initial amount was granted, Mr. Simpson testified that he made changes to his usual jobs

because it was becoming too stressful. He also stated that he was working so much to pay for his wife to go to school. The trial then concluded that his earning capacity is what the award should actually be based upon, versus his earning potential. This case shows how much burden is put on the spouse that is ordered to pay the support. Mr. Simpson was working 2 or 3 jobs and paying the price of them by having to pay a high amount of spousal support to Mrs. Simpson. In re Marriage of Simpson shows how the spousal support system is clearly flawed. If Mr. Simpson can work such an excess of hours to pay for this spousal support, Mrs. Simpson can be doing the same to earn a living for her and become independent from her ex-husband.

There are other cases that also show that spousal support should not have been awarded. In the case of Kirkendale v. Kirkendale [FN5], the husband was ordered to pay \$2,500 a month for 3 years to his ex-wife in spousal support. The husband took over the custody of their children because the ex-wife was unstable (had a history of alcohol abuse and psychological issues). The ex-wife was ordered to pay \$452 a month in permanent child support. In terms of the ex-wife's income, she had previously been a teacher and at the time of the divorce she was no longer teaching, but working part time. At the time Mr. and Mrs. Kirkendale were married, Mr. Kirkendale went through many career changes due to things such as the economy, and Mrs. Kirkendale went through changes due to the family having to move to different cities for her husband's job. But it does show that Mrs. Kirkendale did not renew her teaching license and therefore leads the court to believe that her alcohol dependency issues were the cause of this. Basically, the husband was being forced to pay spousal support to his ex-wife because she was mentally unstable, costing her her teaching career. This case illustrates a troubled marriage with a mentally and emotionally unstable ex-wife who lost custody of her children and is ordered to receive spousal support for three years, and pay child support permanently. The reason for this case being used as an example is because it clearly shows that Mr. Kirkendale is not responsible for Mrs. Kirkendale's issues, and he already had to split their marital assets evenly with her, and is also now taking care of their three children. The \$452 a month that Mrs. Kirkendale was ordered to pay in child support is hardly enough to support their three children, and if that wasn't enough already, Mr. Kirkendale is burdened with paying \$2,500 a month to Mrs. Kirkendale. Simply looking at the facts of this case, we see that Mr. Kirkendale is losing a significant amount of money in paying for spousal support and should not be ordered to pay such a large amount for that amount of time, especially because Mrs. Kirkendale needs to get another job and provide for herself financially and pay Mr. Kirkendale a higher amount in child support.

The spousal support system is clearly flawed and there are various cases in which an ex-spouse tries to take advantage of the spousal support system by actions such as seeking extensions for the length of time they will be awarded the support. A good

example of a case where the courts made a good decision not to modify spousal support any longer would be In re Marriage of Schaffer [FN6]. This case shows the spouse being awarded spousal support for about 2 year periods. The spouse being awarded the support, Ida, had initially been awarded 2 years of spousal support and had sought extension after extension, bringing her to 15 years of spousal support. After being dismissed from her social work job for inappropriate conduct against a coworker, the judge decided that “enough was enough” and did not award her any further spousal support. Ida was clearly taking advantage of the system, and who is not to say that there are not many others who do the same thing. Ida appealed to the trial judge’s decision and the courts upheld that the trial judge was correct in his decision that this behavior of continuously seeking extensions of spousal support was enough, was correct in his/her decision. It was not Ida’s ex-husband’s responsibility for her actions and in a way, he was being punished getting a longer sentence of spousal support due to Ida’s actions. In the end, when the courts affirmed the trial judge’s decision to stop the extension of spousal support, the “court held that given the appellant’s unwillingness to become self-supporting was best illustrated by looking at her conduct over the 15-year period since the divorce, it was unfathomable that the lower court's decision to examine the whole of that conduct could be an abuse of discretion” (In re Marriage of Schaffer).

Along with the reasoning that spousal support being awarded to a person who is able to work is wrong, the system is flawed on some of the information that it takes from the parties. In Oppenheimer v. Oppenheimer [FN7] the transcripts state that “evidence that the husband was involved in an extra-marital relationship after the parties separated should not have been admitted.” This statement in the court transcripts shows that there is other information being presented to the courts, and although it may have been said to be ignored, this evidence paints a negative picture of a spouse. Character of the person who is being sued for spousal support should not be shown unless there were instances of domestic violence which would leave the seeker of the spousal support traumatized or harmed.

All the cases above support that spousal support should not be awarded to people who have the ability to work and provide for themselves, and choose not to find a way to do so. The cases illustrate situations in which spousal support causes a burden to the spouse that is forced to provide it, and making their lives difficult financially when they are moving on from a relationship. The courts should not have jurisdiction to make sure someone is taken care of financially. Just like a minor turning 18 years old, the courts do not force the parents to continue to support them financially, and that is how it should be in marital separation. The court already does enough by forcing the couple to split their possessions and that should be where their authority ends.

Footnotes

FN1. Alimony. (2014, November 27). Retrieved November 29, 2014, from <http://en.wikipedia.org/wiki/Alimony>

FN2. Statutes & Constitution :View Statutes : Online Sunshine. (2014, November 28). Retrieved November 29, 2014, from http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&Search_String&URL=0000-0099/0061/Sections/0061.08.html

FN3. Crabtree v. Crabtree, 16 S.W.3d 356 (Tenn. 2000). (2000, April 24). Retrieved November 1, 2014.

FN4. In re Marriage of Simpson, 4 Cal. 4th 225, 14 Cal. Rptr. 2d 411, 841 P.2d 931 (1992). (1992, December 17). Retrieved November 10, 2014.

FN5 : Kirkendale v. Kirkendale, 2010 Va. Cir. LEXIS 2 (Va. Cir. Ct. Jan. 13, 2010)

FN6: In re Marriage of Schaffer, 69 Cal. App. 4th 801, 81 Cal. Rptr. 2d 797 (1999)

FN7: Oppenheimer v. Oppenheimer, 22 Ariz. App. 238, 526 P.2d 762 (1974)