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Recent Developments: Blaine v. Blaine: Indefinite Alimony May Be Awarded Pursuant to an Extension of Rehabilitative Alimony

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into evidence, and Ayers' conviction based on Section 470A(b)(3)(i) should have been overturned. *Id.* at 660, 645 A.2d at 50-51.

By holding that Maryland's "Hate Crimes" statute is not unconstitutional as applied to the facts in *Ayers v. State*, the

Court of Appeals of Maryland sent a warning to all Maryland citizens that crimes motivated by racial prejudice will not be tolerated. In so holding, the core of this opinion was that racial prejudice, by itself, will not be condoned, and when it is coupled with the commission of

a crime, it will be separately punished. The court spoke with a moral conscience, and charged all Maryland citizens to uphold this moral code by respecting the differences of all human-kind.

- *Andrea S. Holz*

Blaine v. Blaine:

***INDEFINITE
ALIMONY MAY BE
AWARDED
PURSUANT TO
AN EXTENSION OF
REHABILITATIVE
ALIMONY.***

Indefinite alimony may be granted upon the termination of a fixed period of rehabilitative alimony, if it is determined that circumstances have arisen since the divorce which would render termination inequitable. In so holding, the Court of Appeals of Maryland in *Blaine v. Blaine*, 336 Md. 49, 646 A.2d 413 (1994), broadened a trial court's discretion in extending indefinitely an original award of rehabilitative alimony under sections 11-106 and 11-107 of the Family Law Article of the Annotated Code of Maryland. Additionally, the court concluded that an award of indefinite alimony would be supported if the divorced parties' respective standards of living were found to be unconscionably disparate, and the formerly dependent spouse had made as much progress toward becoming self-

supporting as could reasonably be expected.

In November 1985, Ms. Blaine was granted an absolute divorce in the Circuit Court for Montgomery County, and was awarded rehabilitative alimony in the amount of \$800.00 per month for a period of sixty months. The alimony award was based on evidence that Dr. Blaine, Ms. Blaine's husband, earned a salary in excess of \$62,000.00 a year compared to Ms. Blaine's income which totaled \$10,000.00 a year. In granting a fixed period of alimony, the circuit court took into consideration the fact that Ms. Blaine was working towards a master's degree in health promotion counseling, which she anticipated would lead to a position earning \$40,000.00 a year.

Approximately five years later, Ms. Blaine made a

Motion to Extend and Increase Alimony. In the period since the original award of alimony, Ms. Blaine had earned a master's degree in health promotion, but had failed to gain employment in this field of training. A domestic relations master determined that her efforts to obtain employment in the health promotion field had been reasonable, but had been unsuccessful due to the static nature of the economy. He found that this was a change in circumstances the time of the divorce as provided for under section 11-107(a)(1) of the Family Law Article.

The master also concluded that under section 11-106(c)(2), Ms. Blaine had made as much progress as could be reasonably expected since she was employed in three jobs unrelated to her training, earning approximately \$31,000.00 per year. Due to the evidence that Dr. Blaine's income had increased to \$136,750.00 annually, the master found the parties' respective standards of living were unconscionably disparate under section 11-106(c)(2). Therefore, he recommended that the alimony payments of \$800.00 per month be extended indefinitely.

Dr. Blaine filed exceptions to the findings and recommendations made by the master. The exceptions were denied by the circuit court, which affirmed the master's recommendations and ordered the alimony payments of \$800.00 per month be extended indefinitely. Dr. Blaine

appealed to the Court of Special Appeals of Maryland, which upheld the circuit court's ruling. The Court of Appeals of Maryland subsequently granted Dr. Blaine's petition for certiorari.

On appeal to the court of appeals, Dr. Blaine argued that the lower courts erred in their application of section 11-107 of the Family Law Article. *Blaine*, 336 Md. at 61, 646 A.2d at 418-19. Section 11-107 provides for the extension of a period of alimony, or, in certain situations, for the modification of the amount. He further contended that the principles of res judicata and collateral estoppel barred the court from granting an award of indefinite alimony where it had earlier been determined that rehabilitative alimony was appropriate. *Id.* at 62, 646 A.2d at 419.

Dr. Blaine maintained that the primary purpose of the statute was to provide financial support for a fixed period of time, allowing the dependent spouse to acquire the skills and training to become self-supporting. Having noted that Ms. Blaine's financial condition had improved since the original award of alimony, he argued that her inability to achieve her particular career goal was not a change in circumstances which warranted the extension of alimony. *Id.* Dr. Blaine also objected to the fact that his improved economic condition since the divorce was considered evidence of the existence of an unconscionable disparity in the parties' respective stan-

dards of living. He claimed that the statute did not intend that the formerly dependent spouse should be entitled to have his or her standard of living conform to that of the other spouse. *Id.*

In addressing these issues, the court of appeals acknowledged that Maryland's alimony statute, codified as sections 11-101 through 11-111 of the Family Law Article, represents an important change in the approach to alimony in Maryland. The court agreed with Dr. Blaine that the underlying goal of the legislation was "not to provide a lifetime pension but to facilitate a transition for the parties from the joint married state to the separate single one" *Id.* at 64, 646 A.2d at 420 (quoting the *Report of the Governor's Commission on Domestic Relation Laws* (1980), at 4). However, the court noted that the interrelationship of sections 11-106 and 11-107 of the statute reserves discretion in the trial court to ensure that the appropriate degree of spousal support is awarded after the dissolution of a marriage. *Id.* at 65, 646 A.2d at 421.

Section 11-106 governs the determination of the duration and amount of an alimony award. A trial court may grant alimony under section 11-106(c)(2) for an indefinite period if "even after the party seeking alimony will have made as much progress toward becoming self-supporting as can reasonably be expected, the respective standards of living of the parties will be unconscionably

disparate." Md. Code Ann., Fam. Law § 11-106(c)(2) (1984).

The court of appeals recognized that in the majority of situations indefinite alimony is awarded at the time of the divorce. *Id.* at 65, 646 A.2d at 420. It noted that the language of section 11-106(c) is prospective, requiring a trial court to predict whether the dependent spouse will likely become self-sufficient in the future. The court, however, rejected the contention that an indefinite alimony award must always be granted at the time of the divorce. *Id.* Instead, it maintained that the language of section 11-106 could be applied retrospectively, when considering an extension of alimony under section 11-107, to determine if circumstances since the divorce had arisen which "would lead to a harsh and inequitable result without an extension." *Id.* at 70, 646 A.2d at 423.

Although the court found the language of the statute plain and unambiguous, it refused to accept an interpretation that would require a mechanical application of the perspective language of section 11-106(c), serving to limit the judicial flexibility of awarding alimony. Consequently, the court alternatively ascertained the legislative intent of the alimony statute by analyzing the proposed bill submitted by the Governor's Commission on Domestic Relation Laws, upon which the alimony statute was primarily based. It interpreted the

Commission's aim as one which sought to vest substantial discretion in the courts to ensure that the needs of the recipient spouse were balanced against the ability of the payor spouse to provide financial support. *Id.* at 66, 646 A.2d at 421.

Consistent with this reasoning, the court of appeals noted that in *Turrisi v. Sanzaro*, 308 Md. 515, 520 A.2d 1080 (1987), it held that while the use of rehabilitative alimony was desirable, its use did not mandate the elimination of the court's power to reserve future judgment. *Id.* at 68, 646 A.2d at 422. Quoting *Turrisi*, the court stated that, "facts before a court may demonstrate no present basis for either rehabilitative or indefinite alimony. But those same facts may show that a highly probable basis for awarding one or the other will exist in the immediate future." *Id.* (quoting *Turrisi*, 308 Md. at 527, 520 A.2d at 1086). Therefore, the court determined that reservation of future judgment was consistent with the purposes of the statute.

In applying this flexible interpretation, the court concluded that the existence of new circumstances justifying both an extension of alimony under section 11-107, and a possible basis for an award of indefinite alimony under section 11-106, call for the court to address whether the granting of indefinite alimony would be necessary to avert a harsh and inequitable result. *Id.* at 70, 646 A.2d at 423. It reasoned that in deter-

mining if an indefinite extension is warranted, the trial court should review section 11-106(b) factors which were considered at the time of the original award to assist in adjudicating an appropriate alimony award. *Id.* at 72, 646 A.2d at 424.

The court accordingly rejected Dr. Blaine's argument that his current salary should not have been considered by the lower court in its finding that there existed an unconscionable disparity between the two parties' standards of living. *Id.* The court of appeals maintained that section 11-107 did not limit the relevant circumstances to those pertaining solely to the dependent spouse. Assessing Ms. Blaine's increase in salary without also considering Dr. Blaine's current income, the court found, would thwart the equitable determinations which are inherent to section 11-107. *Id.* at 73, 646 A.2d at 425. Thus, the court determined that the application of the circuit court's findings in the original alimony award, viewed in light of the parties present income equation, provided "a framework for the application of equitable principles, consistent with the stated goals of the Commission Report and implicit in the language of [section] 11-106(c)(2) and [section] 11-107(a)(1)." *Id.* at 72, 646 A.2d at 424.

In the dissenting opinion, Judge Bell, with whom Judge Chasanow joined, argued that "[t]he achievement of equity and flexibility [would] not

[be] furthered by permitting the trial court, on the petition of a formerly dependent spouse pursuant to [section] 11-107, to revisit the duration of alimony issue long after it [had] determined that the appropriate form of alimony [was] rehabilitative." *Id.* at 82, 646 A.2d at 429. Bell insisted that if it was factually proven that rehabilitation could not be accomplished in the time predicted by the trial court judge, section 11-107 permits the court to correct what would "otherwise be a harsh and inequitable result," by extending the period of time in which rehabilitation was to occur. *Id.* He contended that section 11-107 was nev-

er intended by the Legislature to be a mechanism by which the formerly dependent spouse would be provided "with a second opportunity to prove what he or she was unable to prove the first time--that he or she [was] entitled to indefinite alimony." *Id.*

By holding that a trial court's awarding of rehabilitative alimony at the time of divorce does not necessarily preclude an award of indefinite alimony in the future, the Court of Appeals of Maryland in *Blaine v. Blaine* added additional judicial flexibility in the determination of the award of alimony. Although the court acknowl-

edged that the statute's underlying principle requires that the dependent spouse should become self-supporting, the court's overriding aim was to ensure that the appropriate degree of spousal support would adapt to circumstances that would otherwise result in inequitable standards of living between the parties. Hence, this decision should invite increased litigation, testing the degree of the court's commitment in upholding the statute's clear legislative preference for granting rehabilitative alimony over an award of indefinite alimony.

- Karen Tossey-Ardis

