



# Post-dissolution Maintenance Review in Trial Court Under CRS §§ 14-10-114 or -122

by Kathy A. Higby

The difficulty facing practitioners in the issue of maintenance is not limited to obtaining an appropriate award amidst the uncertainty of valuing the claim. Once an award is entered, the practitioner must be cognizant of how specific court findings will determine the applicable standard of review for later modifications. The specific findings necessary to preserve applicability of CRS § 14-10-114 are clearly established by case law. An understanding of the two standards available for a maintenance review is essential, whether the practitioner is establishing an initial maintenance award or modifying an established order.

## Establishing the Initial Order

At the time of entry of a decree of dissolution of marriage, the trial court has the following four options regarding a request for a maintenance award:

- 1) deny maintenance; or
- 2) award permanent maintenance; or
- 3) award maintenance, indicating a specific duration for maintenance; and/or
- 4) reserve jurisdiction to adjust its award of maintenance.

The trial court has wide discretion in this determination.<sup>1</sup>

## Denial of Maintenance

At the time a divorce decree enters, the denial of a maintenance request must be

based on the trial court's initial determination that a spouse did not qualify for maintenance. The threshold grounds for maintenance qualification are set forth in CRS § 14-10-114(1) and require that the spouse seeking maintenance:

- (a) Lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs; and
- (b) is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.

Even if the spouse qualifies for a maintenance award pursuant to CRS § 14-10-114(1)(a) and (b), the trial court may yet deny the request based on a finding under § 14-10-114(2)(f) that the payor spouse is incapable of meeting his needs while meeting those of the spouse seeking maintenance.

## Award of Maintenance

Should the court determine that maintenance is appropriate, the Colorado Court of Appeals, in *In re the Marriage of Fisher*,<sup>2</sup> requires the trial court to determine not only the amount, but also the duration of maintenance payments after considering relevant factors set forth in CRS § 14-10-114(2)(a) through (f). Consideration of these statutory factors will determine the type of maintenance appropriate for the case at bar—permanent or limited maintenance.

Permanent maintenance is generally appropriate when the marriage has been of a long duration and the dependent spouse has significant health problems, minimal employment skills, or significant disparity between the parties' incomes or earning capacity.<sup>3</sup> The court also may consider

a significant disparity between the parties' income or earning capacity when determining if permanent maintenance is appropriate. In those cases where permanent maintenance is inappropriate, but some maintenance for rehabilitative purposes is warranted, the court must determine a specific duration for the maintenance award.<sup>4</sup>

## Reservation of Jurisdiction

The receipt of certain money benefits in a known amount at a definite date in the future is a proper consideration in setting the amount and duration of maintenance.<sup>5</sup> However, if the court is aware of a definite future contingency, but its financial impact is unknown, the court may reserve jurisdiction to adjust its award of maintenance in accordance with *In re Marriage of Cauffman*.<sup>6</sup>

Definite future contingencies warranting a reservation of maintenance have been found to exist in War Widow's Pensions,<sup>7</sup> pension benefits,<sup>8</sup> reduced retirement income,<sup>9</sup> and completion of an educational degree.<sup>10</sup> These examples are by no means an exhaustive list of the types of benefits that may justify a reservation of maintenance under CRS § 14-10-114. If the financial impact of the contingency is unknown at the time of trial, but its outcome could significantly affect the amount or duration of an appropriate maintenance award, the practitioner should consider a trial court's reservation of jurisdiction over

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the maintenance issue. Otherwise, maintenance awards must be based on the parties' needs and circumstances at the time of the hearing rather than on speculation about future conditions.<sup>11</sup>

At the time the award is made, the practitioner must ensure that the appropriate court findings are placed on the record to protect the client's interests when the award is reviewed in the trial court for later adjustments or termination. If a specific ruling is not rendered regarding the applicable standard for review, the findings will determine whether the review is conducted pursuant to the provisions governing the initial award of maintenance set forth in CRS § 14-10-114, or pursuant to the provisions governing modification of maintenance awards set forth in CRS § 14-10-122.

### Modification of Established Orders

Maintenance awards are modifiable in all cases except those where the parties have expressly agreed to preclude modification under CRS § 14-10-112(6). The court retains jurisdiction to modify an award of determinable maintenance.<sup>12</sup>

This is true even though the specific period for payments for a set term of maintenance has expired. The issue on review becomes which standard applies: CRS § 14-10-114 or CRS § 14-10-122.

“Once an award is entered, the practitioner must be cognizant of how specific court findings will determine the applicable standard of review for later modifications.”

Under § 14-10-114, the basis for a modification of maintenance focuses on whether the court would have ordered the same amount of support, taking into consideration the now-current financial circumstances of the parties. The standard for modification under § 14-10-122 is whether the terms of the original award have become unfair due to changed circumstances of a continuing and substantial nature.<sup>13</sup>

The trial court may determine the modification of maintenance issue under CRS § 14-10-114 if, at the time of permanent orders, an important future contingency exists that can be resolved in a reasonable and specific period of time, and if the court explicitly states its intent to reserve jurisdiction, describes the future event on which the reservation of jurisdiction is based, and sets forth a reasonably specific future time within which maintenance may be considered under CRS § 14-10-114.<sup>14</sup>

Absent this retained jurisdiction, a motion to modify maintenance is governed by those standards set forth in CRS § 14-10-122(1)(a).<sup>15</sup> Case law is clear that a mere reservation of jurisdiction over the maintenance issue does not resolve the question as to which standard applies for a later modification.

If the trial court makes no provision to review maintenance, maintenance may be modified only if the standards of CRS § 14-10-122 are met.<sup>16</sup> If the trial court merely reserves jurisdiction for modification of maintenance “as provided by law,” or fails to establish any legal standard for later review whatsoever in its order, the statutory requirements of changed circumstances and unfairness of CRS § 14-10-122 also apply.<sup>17</sup>

Similarly, where the court orders maintenance to continue for twenty-four months or until further order of this court, the changed circumstances and unfairness standards of § 14-10-122 apply.<sup>18</sup> Conversely, if the trial court expressly reserves jurisdiction to review, adjust, or extend a maintenance award based on a specified future event, the applicable standard for that later court action is CRS § 14-10-114.<sup>19</sup>

Where a trial court specifically reserves jurisdiction to review and modify maintenance at a specific time in the future, but the court does not refer to a specific or detached future event, statutory requirements of changed circumstances and unfairness do not apply. Instead, the general statute providing for maintenance if one spouse lacks sufficient property and is unable to support himself or herself through appropriate employment applies, as well as all the considerations under CRS § 14-10-114.<sup>20</sup>

### Specific Findings

If the trial court intends to reserve jurisdiction over maintenance pursuant to the maintenance standard set forth in CRS § 14-10-114, the court must, at the time of entering permanent orders, state its intent to do so on the record; briefly outline its reasons for doing so by stating ascertainable future events on which the reservation of maintenance jurisdiction is based; and set forth a reasonably specific future time within which maintenance may be reconsidered under the statute.<sup>21</sup> Absent such specific findings by the trial court, the appellate court will presume that any further review of maintenance must be governed by the changed circumstances and unfairness standards that are set forth under CRS § 14-10-122.<sup>22</sup>

A comparison of the applicable standards for modification in the Colorado cases of *Sinn v. Sinn*<sup>23</sup> and *In re Marriage of Aldinger*<sup>24</sup> indicates the importance of the trial court making specific findings. In the *Sinn* case, the trial court specifically reserved jurisdiction to review a maintenance award of a six-month term. The applicable standard for review was determined to be CRS § 14-10-114. In the *Aldinger* case, the court likewise awarded maintenance for a specific period, but it did not specifically reserve jurisdiction over the issue. In *Aldinger*, the applicable standard was determined to be § 14-10-122, requiring a finding of substantial and continuing changed circumstances and unfairness.



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## Conclusion

The burden of establishing changed circumstances sufficient for a modification of maintenance under CRS § 14-10-122 is on the moving party. Under a CRS § 14-10-114 reservation of maintenance, the burden lies with the spouse receiving maintenance to demonstrate the need for continued maintenance under the then-current circumstances.<sup>25</sup> Ensuring the proper judicial findings in this regard determines the applicable standard for a future maintenance review in the trial court, and it may shift the burden of proof, thereby conferring a substantial benefit on the client.

Practitioners should attempt to ensure that proper judicial findings are placed on the record when establishing a maintenance award. Likewise, depending on the facts and circumstances of a particular case, it may be advisable for the practitioner to incorporate appropriate provisions in maintenance stipulations identifying the desired standard of review for future modifications. Additionally, a careful review of those findings should precede any motion to modify maintenance to ensure that the proper standard is applied. Taking advantage of this potential

benefit to the client may drastically alter the outcome of a maintenance modification.

## NOTES

1. *Carlson v. Carlson*, 497 P.2d 1006 (Colo. 1972).
2. 26 Colo.Law. 154 (Feb. 1997) (App.No. 96CA0211, *ann'd* 12/12/96).
3. *Sinn v. Sinn*, 696 P.2d 333, 337 (Colo. 1985).
4. *Fisher*, *supra*, note 2.
5. *In Re Marriage of Kelm*, 878 P.2d 34, 38 (Colo.App. 1994).
6. 829 P.2d 501, 504 (Colo.App. 1992).
7. *In Re Marriage of Mirise*, 673 P.2d 803, 804 (Colo.App. 1983).
8. *Kelm*, *supra*, note 5 at 38.
9. *In Re Marriage of Folwell*, 910 P.2d 91, 93 (Colo.App. 1983).

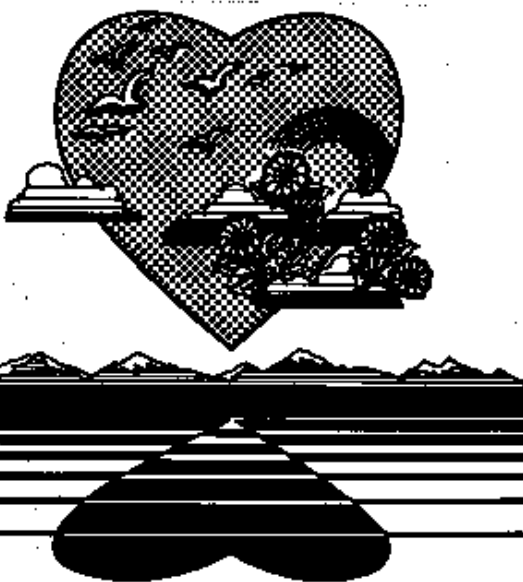
10. *Caufman*, *supra*, note 6 at 504.
11. *In re Marriage of Nevil*, 809 P.2d 1122, 1123 (Colo.App. 1991).
12. *In re Marriage of Aldinger*, 813 P.2d 836, 838 (Colo.App. 1991).
13. *Id.* at 840.
14. *Caufman*, *supra*, note 6 at 504.
15. *Folwell*, *supra*, note 9 at 93.
16. *Caufman*, *supra*, note 6 at 502.
17. *Id.* at 502.
18. *Aldinger*, *supra*, note 12 at 840.
19. *Mirise*, *supra*, note 7 at 804.
20. *In re Marriage of Sinn*, 674 P.2d 988 (Colo. App. 1983), *rev'd on other grounds*, *supra*, note 3.
21. *Caufman*, *supra*, note 6 at 504.
22. *Id.*
23. *Supra*, note 3.
24. *Supra*, note 12.
25. *Caufman*, *supra*, note 6 at 504.

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