

Colorado Statutes

Title 14. DOMESTIC MATTERS

DISSOLUTION OF MARRIAGE - PARENTAL RESPONSIBILITIES

Article 10. Uniform Dissolution of Marriage Act

Current through Chapter 189, Second Regular Session 2010

§ 14-10-114.Maintenance

(1) **Legislative declaration.** The general assembly hereby finds that the economic lives of spouses are frequently closely intertwined in marriage and that it is often impossible to later segregate the respective decisions and contributions of the spouses. The general assembly further finds that when a dissolution of marriage or legal separation action has been filed and temporary orders are to be determined pursuant to section 14-10-108, it is generally appropriate to utilize the period of temporary orders as a period of adjustment during which the marital arrangements of the parties may be recognized through a temporary blending of the parties' incomes. Accordingly, the general assembly declares that for purposes of temporary orders, it is appropriate in most cases to apply a presumptive formula to the determination of temporary maintenance.

(2) (a) In every proceeding for dissolution of marriage or legal separation when temporary maintenance is requested by a party and when the combined annual gross income of the two parties is seventy-five thousand dollars or less, there shall be a rebuttable presumption in favor of a specific award of temporary maintenance from the higher income party to the lower income party based upon the formula set forth in paragraph (b) of this subsection (2). In those cases in which the combined annual gross income of the parties exceeds seventy-five thousand dollars, the court may award a monthly amount of temporary maintenance pursuant to the provisions of subsections (3) and (4) of this section.

(b) (I) (A) The monthly amount of temporary maintenance in cases in which the parties' combined annual gross income is seventy-five thousand dollars or less shall be equal to forty percent of the higher income party's monthly adjusted gross income less fifty percent of the lower income party's monthly adjusted gross income. If the remainder of such calculation is the number zero or a negative number, the presumption shall be that temporary maintenance shall not be awarded. If the remainder of such calculation is more than zero, that amount shall be the amount of the monthly temporary

maintenance.

(B) In any action to establish or modify temporary maintenance pursuant to this subsection (2), the formula set forth in sub-subparagraph (A) of this subparagraph (I) shall be used as a rebuttable presumption for the establishment or modification of the amount of temporary maintenance. Courts shall deviate from the formula where its application would be inequitable or unjust. Any such deviation shall be accompanied by written or oral findings by the court specifying the reasons for the deviation and the presumed amount under the formula without deviation.

(C) The parties may agree in writing to waive temporary maintenance under this subsection (2) where one party is otherwise entitled to temporary maintenance under the formula or the parties may agree in writing to deviate from the presumptive amount of temporary maintenance. Any such agreement to waive temporary maintenance or to deviate from the presumptive amount shall include the reason or consideration for the waiver or deviation. The court shall have jurisdiction to review such agreement and to decline to approve such agreement if the court determines that the agreement is unconscionable.

(II) At the time of the initial establishment of temporary maintenance pursuant to this subsection (2), or in any proceeding to modify a temporary maintenance order pursuant to this subsection (2), if a party is under an obligation to pay maintenance or alimony pursuant to a prior valid court order, an adjustment shall be made revising such party's income by the amount of such maintenance or alimony actually paid prior to calculating the amount of temporary maintenance.

(III) At the time of the initial establishment of temporary maintenance pursuant to this subsection (2), or in any proceeding to modify a temporary maintenance order pursuant to this subsection (2), if a party is legally responsible for the support of other children who are not the children of the parties and for whom the parties do not share joint legal responsibility, an adjustment shall be made revising such party's income by the amount of such child support paid prior to calculating the amount of temporary maintenance.

(IV) (A) For purposes of this section, "income" shall have the same meaning as that term is described in section 14-10-115(3).

(B) For purposes of calculating the formula set forth in this paragraph (b), "monthly adjusted gross income" means gross income less preexisting maintenance or alimony obligations actually paid by a party as described in subparagraph (II) of this paragraph (b) and less the amount of child support paid by a party, as described in

subparagraph (III) of this paragraph (b).

(c) The period of time covered by any temporary maintenance ordered pursuant to this subsection (2), upon the request of a party, shall begin at the time of the parties' physical separation or filing of the petition or service upon the respondent, whichever occurs last, taking into consideration payments made by either party during such period.

(d) Because spousal maintenance awards entered at temporary orders pursuant to this subsection (2) are made under different standards and for different reasons than spousal maintenance awards entered at permanent orders, the temporary maintenance formula set forth in this subsection (2) shall not be used for the determination of spousal maintenance orders to be entered at permanent orders and any temporary maintenance order entered pursuant to this subsection (2) shall not prejudice the rights of either party at permanent orders.

(e) After determining the presumptive amount of temporary maintenance pursuant to this subsection (2) and the amount of temporary child support pursuant to section 14-10-115, the court shall consider the respective financial resources of each party and determine the temporary payment of marital debt and the temporary allocation of marital property.

(3) In a proceeding for dissolution of marriage or legal separation or a proceeding for maintenance following dissolution of marriage by a court, the court may grant a temporary maintenance order when the parties' combined annual gross income is more than seventy-five thousand dollars or a maintenance order at the time of permanent orders for either spouse only if it finds that the spouse seeking maintenance:

(a) Lacks sufficient property, including marital property apportioned to him or her, to provide for his or her reasonable needs; and

(b) Is unable to support himself or herself 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.

(4) A temporary maintenance order in those circumstances in which the parties' combined annual gross income is more than seventy-five thousand dollars or a maintenance order entered at the time of permanent orders shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct, and after considering all relevant factors including:

(a) The financial resources of the party seeking maintenance, including marital property apportioned to such party, and the party's ability to meet his or her needs independently, including the extent to which a provision

for support of a child living with the party includes a sum for that party;

(b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment and that party's future earning capacity;

(c) The standard of living established during the marriage;

(d) The duration of the marriage;

(e) The age and the physical and emotional condition of the spouse seeking maintenance; and

(f) The ability of the spouse from whom maintenance is sought to meet his or her needs while meeting those of the spouse seeking maintenance.

History. L. 71: R&RE, p. 526, § 1. C.R.S. 1963: § 46-1-14. L. 79: (2)(b) amended, p. 644, § 1, effective July 1. L. 98: (2)(a) amended, p. 1397, § 41, effective February 1, 1999. L. 2001: Entire section amended, p. 481, § 1, effective July 1. L. 2007: (2)(b)(IV)(A) amended, p. 107, § 2, effective March 16.

Case Notes:

ANNOTATION

I. GENERAL CONSIDERATION.

Am. Jur.2d. See 24 Am. Jur.2d, Divorce and Separation, §§ 607, 612-620, 750-752, 756-764, 786-791, 794, 795, 797- 803.

C.J.S. See 27B C.J.S., Divorce, §§ 591-660.

Law reviews. For article, "Legislation Which Should Interest the Bar", see 20 Dicta 217 (1943). For article, "Forms Committee Presents Standard Pleading Samples to Be Used in Divorce Litigation", see 29 Dicta 94 (1952). For note, "The Effect of a Divorce Decree on a Subsequent Claim for Alimony", see 35 U. Colo. L. Rev. 402 (1963). For note on divorce, separation, and the federal income tax, see 39 U. Colo. L. Rev. 544 (1967). For note, "Legislation: Domestic Relations -- New Colorado Statutes Govern Procedure in Contested Child Custody Cases", see 40 U. Colo. L. Rev. 485 (1968). For article, "Due Process in Involuntary Civil Commitment and Incompetency Adjudication Proceedings: Where Does Colorado Stand?", see 46 Den. L.J. 516 (1969). For article, "Pre-Nuptial Agreements Revisited", see 11 Colo. Law. 1882 (1982). For article, "Automatic Escalation Clauses Relating to Maintenance and Child Support", see 12 Colo. Law. 1083 (1983). For article, "The Continued Jurisdiction of the Court to Modify Maintenance", see 13 Colo. Law. 62 (1984). For article, "Taxation", which discusses a recent Tenth Circuit decision dealing with periodic payments as alimony or property settlement, see

61 Den. L.J. 392 (1984). For article, "Domestic Case Update", see 14 Colo. Law. 209 (1985). For article, "Marital Agreements", see 18 Colo. Law. 31 (1989). For article, "The Case For Maintenance Reform", see 23 Colo. Law. 53 (1994). For article, "Voluntary Early Retirement as a Factor in Modifying Maintenance", see 25 Colo. Law. 43 (April 1996). For article, "Post-dissolution Maintenance Review in Trial Court Under CRS §§ 14-10-114 or -122", see 26 Colo. Law. 93 (July 1997). For article, "New Temporary Formulaic Spousal Maintenance in Colorado: An Overview", see 30 Colo. Law. 87 (August 2001). For article, "Complex Financial Issues in Family Law Cases", see 37 Colo. Law. 53 (October 2008).

Annotator's note. Since § 14-10-114 is similar to repealed § 46-1-5 (1)(d), C.R.S. 1963, § 46-1-5, CRS 53, CSA, C. 56, § 8, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

Any award of maintenance to a spouse in Colorado is a personal statutory right and not a property right. In re Wise, 264 B.R. 701 (Bankr. D. Colo. 2001), aff'd, 285 B.R. 8 (Bankr. D. Colo. 2002), aff'd, 346 F.3d 1239 (10th Cir. 2003).

The spirit of this section was comprehensive enough to cover a case where there might be some question as to whether a marriage was one de jure, provided there was a marriage de facto. Eickhoff v. Eickhoff, 29 Colo. 295, 68 P. 237 (1902).

Uniform Dissolution of Marriage Act provides separate sections that govern the different elements of a dissolution order, specifically property disposition, maintenance, child support, and attorney fees. The court is required to make separate orders regarding these elements based on separate considerations and may not commingle one element with another. In re Huff, 834 P.2d 244 (Colo. 1992).

There is a distinction between maintenance awards and property settlements. Property divisions are intended to accomplish a just apportionment of marital property over time, whereas maintenance is intended be a substitute for marital support that can be used, for example, to ease a spouse's transition into the work force and prevent the spouse from becoming dependent on public assistance. In re Wise, 264 B.R. 701 (Bankr. D. Colo. 2001).

Division of property is mandatory under § 14-10-113, whereas an award of maintenance is discretionary under this section. In re Wise, 264 B.R. 701 (Bankr. D. Colo. 2001).

Maintenance used to balance equities. A trial court may use an award of maintenance as a tool to balance equities and compensate a spouse whose work has enabled the other spouse to obtain an education; however,

this tool is available for use only where the spouse seeking maintenance meets the statutory threshold requirements of need. In re McVey, 641 P.2d 300 (Colo. App. 1981).

Trial court did not abuse its discretion in determining that it would be equitable in view of the division of property for the income of husband and wife to be relatively equal. In re Martin, 707 P.2d 1035 (Colo. App. 1985).

The divorce decree was the principal thing and the judgment for alimony was incidental, and whether they were entered separately or together, they were treated as part of the same decree. Miller v. Miller, 129 Colo. 462, 271 P.2d 411 (1954).

Matters of maintenance and property division are inextricably interwoven. In re McVey, 641 P.2d 300 (Colo. App. 1981).

It was well-established in Colorado that the courts viewed the testimony in alimony and property settlement matters in the light most favorable to the prevailing party. Gleason v. Gleason, 162 Colo. 212, 425 P.2d 688 (1967).

Alimony was defined generally as payments necessary for food, clothing, habitation, and other necessities for the support of the wife. Magarrell v. Magarrell, 144 Colo. 228, 355 P.2d 946 (1960).

Insurance policies and the premiums necessary to maintain them in full force were not in any sense to provide for food, clothing, habitation, or other necessities for the support of the wife. Magarrell v. Magarrell, 144 Colo. 228, 355 P.2d 946 (1960).

An award to the wife of the use, possession, and income of the real estate did not constitute an award of alimony, because the right to use and possession and the income of real property were but incidents of the ownership of that property. McDonald v. McDonald, 150 Colo. 492, 374 P.2d 690 (1962).

When parties availed themselves of the good offices of the court to fix the amounts of alimony to be paid from time to time and themselves changed the action from one for separate maintenance to one for divorce, it was assumed that they submitted themselves to the jurisdiction of the court for the entry of such orders as it deemed just and fair in accordance. Gavette v. Gavette, 104 Colo. 71, 88 P.2d 964 (1939).

Where the parties made a good faith although unsuccessful attempt at reconciliation and where the husband supported the family during this time, the support paid and contributed by the husband constituted payment of the maintenance installments accruing during the period they were living together. In re Peterson, 40 Colo. App. 115, 572 P.2d 849 (1977).

For the effect of an invalidity of marriage determination on maintenance payments which were terminated upon remarriage, see *Torgan v. Torgan*, 159 Colo. 93, 410 P.2d 167 (1966).

Applied in *In re Thompson*, 39 Colo. App. 400, 568 P.2d 98 (1977); *In re Mitchell*, 195 Colo. 399, 579 P.2d 613 (1978); *In re Wagner*, 44 Colo. App. 114, 612 P.2d 1147 (1980); *In re Angerman*, 44 Colo. App. 298, 612 P.2d 1166 (1980); *In re Hartford*, 44 Colo. App. 303, 612 P.2d 1163 (1980); *In re Davis*, 44 Colo. App. 355, 618 P.2d 692 (1980); *In re Carney*, 631 P.2d 1173 (Colo. 1981); *Faris v. Rothenberg*, 648 P.2d 1089 (Colo. 1982); *In re Dickey*, 658 P.2d 276 (Colo. App. 1982); *In re Manzo*, 659 P.2d 669 (Colo. 1983); *In re Westlake*, 674 P.2d 1386 (Colo. App. 1983); *In re Dixon*, 683 P.2d 803, (Colo. App. 1983); *In re Wormell*, 697 P.2d 812 (Colo. App. 1985); *In re Thompson*, 706 P.2d 428 (Colo. App. 1985); *In re Martin*, 707 P.2d 1035 (Colo. App. 1985); *People in Interest of V.H.*, 749 P.2d 460 (Colo. App. 1987); *In re Micaletti*, 796 P.2d 54 (Colo. App. 1990); *In re Sim*, 939 P.2d 504 (Colo. App. 1997); *In re Lafaye*, 89 P.3d 455 (Colo. App. 2003).

II. AWARD OF MAINTENANCE.

A. Prerequisites.

Maintenance must be requested in petition. Under the uniform act, maintenance must be requested in the petition for dissolution. *In re Boyd*, 643 P.2d 804 (Colo. App. 1982).

Property division must precede consideration of maintenance. *In re Jones*, 627 P.2d 248 (Colo. 1981). *In re Huff*, 834 P.2d 244 (Colo. 1992).

Application of subsection (1)(a) presupposes dividing marital property after setting apart separate property. The application of subsection (1)(a) presupposes that the court has first set apart to each spouse his or her respective separate property and has divided the marital property. *In re Jones*, 627 P.2d 248 (Colo. 1981).

Alimony being consequent upon obtaining a divorce, there could be no judgment for alimony without a divorce decree, though they may have been and generally were entered together, the incident could not exist without the principal. *Miller v. Miller*, 129 Colo. 462, 271 P.2d 411 (1954).

Where no cause of action was stated in a complaint for divorce, no allowance of alimony or attorney fees could have been made. *Oates v. Oates*, 72 Colo. 195, 210 P. 325 (1922).

No personal judgment for alimony could be entered against the husband where service was by publication, but such alimony could be made a charge on land over which the court acquired jurisdiction by such service.

Fowler v. Fowler, 74 Colo. 231, 220 P. 988 (1923).

Awards of maintenance are non-dischargeable in bankruptcy and the question of whether a domestic obligation is in the nature of maintenance must be determined based on federal bankruptcy standards, taking into account the substance of the obligation and the intent of the parties at the time of dissolution. *In re Wilson*, 888 P.2d 365 (Colo. App. 1994).

The parties' designation of a debt in the decree of dissolution as either a maintenance award that is non-dischargeable in bankruptcy or a property settlement that is dischargeable is not dispositive and in determining the intent of the parties and the substance of the obligation, the trial court must look beyond the language of the decree and may consider extrinsic evidence. *In re Wilson*, 888 P.2d 365 (Colo. App. 1994).

Trial court improperly found that husband's obligation to pay a street improvement debt was a nondischargeable lump sum maintenance obligation since, although an obligation to pay such a debt can be in the nature of maintenance, there was no evidence in the record that the parties intended that the obligation be in the nature of maintenance. *In re Wilson*, 888 P.2d 365 (Colo. App. 1994).

B. Determination of Right or Need for Maintenance.

This section leaves to the trial court the determination under the particular facts of each case whether to award alimony. *Reap v. Reap*, 142 Colo. 354, 350 P.2d 1063 (1960).

This section does not compel a court to grant alimony in a divorce case; it is merely permissive. *Schleiger v. Schleiger*, 137 Colo. 279, 324 P.2d 370 (1958); *Int'l. Trust Co. v. Liebhardt*, 111 Colo. 208, 139 P.2d 264 (1943).

Alimony could be waived, and the right to seek alimony could be surrendered for a valuable consideration. *Newey v. Newey*, 161 Colo. 395, 421 P.2d 464, 422 P.2d 641 (1966).

Court must make findings of fact which demonstrate the basis of its award of maintenance. *In re Laychak*, 704 P.2d 874 (Colo. App. 1985).

Evidence relevant to issue of "need". While evidence that husband allegedly inflicted the injuries which resulted in wife's medical expenses and decreased her earning capacity is irrelevant, evidence of wife's medical expenses and earning capacity are relevant to establishing statutory requirements of need and trial court's exclusion of such evidence adversely affected wife's rights regarding maintenance. *In re Hulse*, 727 P.2d 876 (Colo. App. 1986).

Determination of spouse's reasonable needs depends

on the particular facts and circumstances of the parties' marriage, and court should consider the reasonable expectations of the parties in determining whether the a party should be granted maintenance. In re Marshall, 781 P.2d 177 (Colo. App. 1989), cert. denied, 794 P.2d 1011 (Colo. 1990).

The wife is not required to consume her portion of the marital property before being entitled to maintenance. In re Eller, 38 Colo. App. 74, 552 P.2d 30 (1976); In re Sewell, 817 P.2d 594 (Colo. App. 1991); In re Nordahl, 834 P.2d 838 (Colo. App. 1992); In re Bartolo, 971 P.2d 699 (Colo. App. 1998).

A court awarding maintenance need not make explicit findings that the wife has insufficient property to meet reasonable needs or is unable to support herself through appropriate employment. In re Lee, 781 P.2d 102 (Colo. App. 1989).

All that is required is that the court consider the wife's share of the marital property in arriving at its maintenance award. In re Eller, 38 Colo. App. 74, 552 P.2d 30 (1976).

In determining whether to award maintenance, the court must make a threshold determination that the spouse requesting it lacks sufficient property, including marital property, to provide for her reasonable needs and is unable to support herself through appropriate employment. In re Renier, 854 P.2d 1382 (Colo. App. 1993); In re Fisher, 931 P.2d 558 (Colo. App. 1996); In re Bartolo, 971 P.2d 699 (Colo. App. 1998); In re Rose, 134 P.3d 559 (Colo. App. 2006).

The trial court properly determined questions of alimony and support basing its findings on the financial conditions, abilities, and needs of the parties as they appeared at the time of the hearing rather than on what those conditions might have been in the past or may be in the future. Watson v. Watson, 135 Colo. 296, 310 P.2d 554 (1957).

Because an award of permanent alimony must be based upon the circumstances existing at the time of the hearing thereon, including, but not limited to, the duration of the marriage, the financial condition of the parties, their needs and their abilities. Boyer v. Boyer, 148 Colo. 535, 366 P.2d 661 (1961).

Highly relevant factor to be considered by court in effecting just division of marital property is the extent to which the division will promote the objective of providing for each party's financial needs without maintenance. In re Jones, 627 P.2d 248 (Colo. 1981).

Fact that parties are in debt and having serious financial problems at time of dissolution does not preclude a nominal award of maintenance, if there is reason to believe that one party may rebound financially and may again be in the position to assist the other spouse

in obtaining a standard of living nearer to that enjoyed during their marriage. In re Fernstrum, 820 P.2d 1149 (Colo. App. 1991).

Under subsection (1)(a) propriety of award of maintenance depends upon the inadequacy of the property and earning capacity possessed by the party seeking the award. In re Jones, 627 P.2d 248 (Colo. 1981); In re Olar, 747 P.2d 676 (Colo. 1987).

Husband's rights in discretionary trust are to be considered as "economic circumstance" of the husband in determining a just division of the marital property pursuant to § 14-10-113 (1)(c) and as a "relevant factor" in making an award of maintenance under subsection (2). In re Rosenblum, 43 Colo. App. 144, 602 P.2d 892 (1979).

Contribution to education of spouse. Among the relevant factors to be considered in a division of marital property is the contribution of the spouse seeking maintenance to the education of the other spouse from whom the maintenance is sought. In re Graham, 194 Colo. 429, 574 P.2d 75 (1977); In re Olar, 747 P.2d 676 (Colo. 1987).

Voluntary financial contributions to wife by adult children, which are not based upon any legal obligation, are not appropriate factors for the trial court to consider in determining the amount of a maintenance award. In re Serdinsky, 740 P.2d 521 (Colo. 1987).

Limited consideration of a third party's resources, such as a current spouse's income, is not absolutely prohibited if the existence or use of such assets is directly relevant to an allegation by the payor spouse of a substantial and continuing change of circumstances. In re Bowles, 916 P.2d 615 (Colo. App. 1995).

The conduct of the party seeking alimony was formerly to be examined closely by the trial court, and evidence of moral delinquency or complete disregard of the marital vows and duties would be viewed as a bar to alimony. Reap v. Reap, 142 Colo. 354, 350 P.2d 1063 (1960).

In Colorado, fault was not the sole standard in determining whether alimony would be awarded. Reap v. Reap, 142 Colo. 354, 350 P.2d 1063 (1960).

Permanent alimony could be awarded the divorced wife although the decree may have been granted the husband for her fault. Neander v. Neander, 35 Colo. 495, 84 P. 69 (1906); Vigil v. Vigil, 49 Colo. 156, 111 P. 833 (1910); Bock v. Bock, 154 Colo. 408, 390 P.2d 956 (1964).

The fact that a person is without funds and without profitable employment has been held not to preclude the allowance of reasonable alimony and support where nothing but a disinclination to work, regardless of the

motive therefor, interferes with his ability to earn a reasonable living. *Rapson v. Rapson*, 165 Colo. 188, 437 P.2d 780 (1968); *Berge v. Berge*, 33 Colo. App. 376, 522 P.2d 752 (1974), *aff'd*, 189 Colo. 103, 536 P.2d 1135 (1975).

The fact that defendant decided to quit his employment and return to college did not preclude the allowance of a reasonable support order based on his demonstrated earning capacity. *Rapson v. Rapson*, 165 Colo. 188, 437 P.2d 780 (1968).

Even though husband was out of work through no fault of his own and despite his good faith efforts to obtain work, award of monthly maintenance to wife was not an abuse of discretion because the husband retained a significant earning capacity. *In re Gray*, 813 P.2d 819 (Colo. App. 1991).

"Appropriate employment" means the employment is suited to the individual, including the individual's expectations and intentions as expressed during marriage. *In re Olar*, 747 P.2d 676 (Colo. 1987).

What constitutes "appropriate employment" requires consideration of the party's economic circumstances and reasonable expectations established during the marriage. The terms "reasonable needs" and "appropriate employment" should not be interpreted narrowly. *Aldinger v. Aldinger*, 813 P.2d 836 (Colo. App. 1991).

The determination of what constitutes "appropriate employment" and "reasonable needs" under subsection (1) is dependent upon the particular facts and circumstances of each case. *In re Sewell*, 817 P.2d 594 (Colo. App. 1991).

It is a defense to an action by a wife for alimony, support, maintenance, or separate maintenance that the husband already is making her a suitable and regular allowance, provided that allowance is a sufficient one. *Vines v. Vines*, 137 Colo. 449, 326 P.2d 662 (1958).

A claim that a trial court failed to rule on the issue of granting or denying alimony in a divorce action was not supported by a record which showed an interlocutory decree providing for monthly support payments for a minor child until further order of the court, together with fees for defendant's counsel. *Schleiger v. Schleiger*, 137 Colo. 279, 324 P.2d 370 (1958).

A spouse who accepts maintenance payments or an attorney fee award is not precluded from appealing such order. *In re Lee*, 781 P.2d 102 (Colo. App. 1989).

Court must reconsider the amount and duration of maintenance awarded upon correcting the property division. *In re Antuna*, 8 P.3d 589 (Colo. App. 2000).

C. Amount and Form of Maintenance.

There is no mathematical formula for establishing a just and equitable property settlement or alimony or support. *Carlson v. Carlson*, 178 Colo. 283, 497 P.2d 1006 (1972).

In the absence of special circumstances, an order for the support of a wife in a divorce case should be a reasonable sum, based on the necessities of the wife and the husband's ability to pay. *Elmer v. Elmer*, 132 Colo. 57, 285 P.2d 601 (1955); *Moss v. Moss*, 190 Colo. 491, 549 P.2d 404 (1976).

Alimony in gross will not normally be awarded unless special circumstances are present which support such award. *Rayer v. Rayer*, 32 Colo. App. 400, 512 P.2d 637 (1973).

While the needs of a divorced wife remaining unmarried are not controlling on the amount of alimony to be awarded, they are deserving of careful consideration. *Rodgers v. Rodgers*, 102 Colo. 94, 76 P.2d 1104 (1938).

A personal judgment against a husband in a divorce action for alimony in a sum not justified by the record should not be entered simply on the ground of possible indefinite future increase in income, because if his financial situation improves so as to justify an increase in alimony, the power of the court to make additional appropriate orders may be invoked at the wife's pleasure. *Gourley v. Gourley*, 101 Colo. 430, 73 P.2d 1375 (1937).

In the absence of special circumstances which require or make a lump-sum award of alimony proper, or a compelling reason that necessitates the desirability for such an award, a lump-sum or gross award of alimony should not be made. *Carlson v. Carlson*, 178 Colo. 283, 497 P.2d 1006 (1972).

Absent extraordinary circumstances, court may not order one party to use property awarded in a dissolution proceeding to pay maintenance to the other party. *In re Gray*, 813 P.2d 819 (Colo. App. 1991).

Each case depends on own facts. As to the determination as to whether to make a lump-sum award of alimony, each case depends upon its own peculiar facts and circumstances. *Moss v. Moss*, 190 Colo. 491, 549 P.2d 404 (1976).

Alimony in gross is not unacceptable per se. *Moss v. Moss*, 190 Colo. 491, 549 P.2d 404 (1976).

While maintenance in gross is not favored, nevertheless, in a proper case it may be awarded. *In re McVey*, 641 P.2d 300 (Colo. App. 1981).

Since the granting of alimony in gross, or lump-sum alimony, as it is sometimes called, provides a definite and final judgment which the court cannot later modify, periodic payments are preferred, because such payments

can be modified if a change in circumstances occurs. *Carlson v. Carlson*, 178 Colo. 283, 497 P.2d 1006 (1972).

Whether the court should award periodic alimony or alimony in gross is generally held to be a matter within the sound discretion of the court. *Carlson v. Carlson*, 178 Colo. 283, 497 P.2d 1006 (1972); *Rayer v. Rayer*, 32 Colo. App. 400, 512 P.2d 637 (1973); *Moss v. Moss*, 35 Colo. App. 53, 531 P.2d 635 (1974), *aff'd*, 190 Colo. 491, 549 P.2d 404 (1976); *In re Icke*, 35 Colo. App. 60, 530 P.2d 1001 (1974), *aff'd*, 189 Colo. 319, 540 P.2d 1076 (1975).

The trial court has broad discretion in determining the amount of alimony and the form of the award, i.e., periodic payments or alimony in gross. *Moss v. Moss*, 190 Colo. 491, 549 P.2d 404 (1976).

Although alimony could consist of periodic payments, indefinite in time and certain in amount, it was not necessarily true that all such payments in fixed amounts constituted alimony. *Magarrell v. Magarrell*, 144 Colo. 228, 355 P.2d 946 (1960).

Periodic alimony is generally favored because the court retains jurisdiction of the matter and may later modify the award. *Rayer v. Rayer*, 32 Colo. App. 400, 512 P.2d 637 (1973).

Awards of periodic payments of alimony are preferred over awards of alimony in gross because an award of alimony in gross is a final judgment which is not modifiable at a later time while an award of periodic payments may be modified to adjust for changes in the circumstances of the parties. *Moss v. Moss*, 190 Colo. 491, 549 P.2d 404 (1976).

A decree giving land as alimony was not ipso facto erroneous, because entered after the interlocutory and before the final decree of divorce, there being a prayer for alimony. *Wigton v. Wigton*, 73 Colo. 337, 216 P. 1055 (1923); *Fowler v. Fowler*, 74 Colo. 231, 220 P. 988 (1923).

In awarding permanent alimony, care should be taken that it does not amount to an appropriation of the entire estate of the husband. *Elmer v. Elmer*, 132 Colo. 57, 285 P.2d 601 (1955).

An order for "permanent alimony" cannot amount to confiscation of the assets of the husband. *Elmer v. Elmer*, 132 Colo. 57, 285 P.2d 601 (1955).

Moreover, a court cannot make an award which will impoverish the husband. *Santilli v. Santilli*, 169 Colo. 49, 453 P.2d 606 (1969).

In setting the amount of maintenance to be awarded, the court must consider all relevant factors including the ability of the spouse paying maintenance to meet his own needs and the needs of the spouse receiving

maintenance. The court may also consider the future earning potential of the spouse. *In re Gray*, 813 P.2d 819 (Colo. App. 1991).

Trial court was required to balance all of the factors of subsection (4), including the mother's needs and abilities, her future earning capacity, the duration of the marriage and standard of living established throughout, and the parties' financial restrictions, and absent an abuse of discretion, court's award will not be reversed and, when the order is supported by competent evidence, it should not be disturbed on review. *In re Atencio*, 47 P.3d 718 (Colo. App. 2002).

No income is imputed to the wife for choice of a retirement option that resulted in a smaller payment, for delaying payment in another plan, or for requesting that the court ignore the equity in her home. A decision that income should be imputed to the wife for not choosing differing retirement options or for not using equity in the house for living expenses would be tantamount to requiring her to exhaust her portion of the marital property before she is entitled to maintenance. *In re Folwell*, 910 P.2d 91 (Colo. App. 1995).

Court may not incorporate attorney fees into maintenance award. While award of attorney fees must be reviewed in light of parties' resources following property division and award of maintenance, standards for the different elements of the order are separate and distinct; tax consequences also may differ. *In re Huff*, 834 P.2d 244 (Colo. 1992).

Unliquidated workers' compensation award held to be different from pension. Whether award is marital property depends on extent to which award compensates for loss of earning capacity and medical expenses incurred during the marriage. If award compensates the spouse for post-dissolution loss of earning capacity, it is not marital property even if the compensable injury occurred during the marriage. If workers' compensation claim is pending on date of dissolution and will likely include indemnification for loss of marital earnings or medical expenses, trial court may reserve jurisdiction to apportion marital interest upon receipt of award. *In re Smith*, 817 P.2d 641 (Colo. App. 1991).

Where trial court's errors in making its property division with respect to stock options, interspousal gifts to wife, and wife's interest in the family trust impacted a substantial portion of the total marital assets, on remand the trial court should reconsider its maintenance award in light of its new property division and in light of the significant decrease in the value of one of the parties' investment accounts. *In re Balanson*, 25 P.3d 28 (Colo. 2001).

Court may rely on a previous allowance paid and other expenses paid by one party as evidence of the other party's reasonable needs for purposes of

calculating the amount of temporary orders. In re Rose, 134 P.3d 559 (Colo. App. 2006).

D. Discretion of Court.

The awarding of alimony and fixing the amount thereof rested in the sound discretion of the trial court and unless an abuse of discretion was shown its judgment in such cases was not disturbed. Rodgers v. Rodgers, 102 Colo. 94, 76 P.2d 1104 (1938); Kleiger v. Kleiger, 127 Colo. 86, 254 P.2d 426 (1953); Bieler v. Bieler, 130 Colo. 17, 272 P.2d 636 (1954); Nunemacher v. Nunemacher, 132 Colo. 300, 287 P.2d 662 (1955); Schleiger v. Schleiger, 137 Colo. 279, 324 P.2d 370 (1958); Green v. Green, 139 Colo. 551, 342 P.2d 659 (1959); Brigham v. Brigham, 141 Colo. 41, 346 P.2d 302 (1959); Lanz v. Lanz, 143 Colo. 73, 351 P.2d 845 (1960); Brownfield v. Brownfield, 143 Colo. 262, 352 P.2d 674 (1960); Walden v. Walden, 147 Colo. 221, 363 P.2d 168 (1961); Flor v. Flor, 148 Colo. 514, 366 P.2d 664 (1961); McMichael v. McMichael, 152 Colo. 65, 380 P.2d 233 (1963); Hayutin v. Hayutin, 152 Colo. 261, 381 P.2d 272 (1963); Alden v. Alden, 155 Colo. 51, 393 P.2d 5 (1964); Kraus v. Kraus, 159 Colo. 331, 411 P.2d 240 (1966); MacReynolds v. MacReynolds, 29 Colo. App. 267, 482 P.2d 407 (1971); Thompson v. Thompson, 30 Colo. App. 57, 489 P.2d 1062 (1971); Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972); Jekot v. Jekot, 32 Colo. App. 118, 507 P.2d 473 (1973); In re Icke, 35 Colo. App. 60, 530 P.2d 1001 (1974), aff'd, 189 Colo. 319, 540 P.2d 1076 (1975); In re Martin, 707 P.2d 1035 (Colo. App. 1985); In re Gray, 813 P.2d 819 (Colo. App. 1991); In re Bartolo, 971 P.2d 699 (Colo. App. 1998); In re Balanson, 996 P.2d 213 (Colo. App. 1999), aff'd in part and rev'd in part on other grounds, 25 P.3d 28 (Colo. 2001); In re Lafaye, 89 P.3d 455 (Colo. App. 2003).

Awards of child support and maintenance are matters generally within the sound discretion of the trial court and will not be set aside on appellate review in the absence of an abuse of discretion. In re Krise, 660 P.2d 920 (Colo. App. 1983).

Although a wife did not request alimony in her answer, once the trial court decided the issue of divorce, it was within its power under this section to determine whether the circumstances required additional orders for alimony and support. Reap v. Reap, 142 Colo. 354, 350 P.2d 1063 (1960).

A trial court certainly could, if so inclined, consider the effect of state and federal income taxes on its contemplated award. Cohan v. Cohan, 150 Colo. 249, 372 P.2d 149 (1962).

The task of a trial court in a divorce action was to make a fair and equitable award of alimony and support, letting the taxes, and tax deductions, fall where they may. Cohan v. Cohan, 150 Colo. 249, 372 P.2d 149 (1962).

The supreme court cannot say as matter of law that a trial court abuses its discretion in limiting the period of time during which alimony should be paid by the husband where the trial court awards alimony in a definite sum payable in monthly installments based on the finding that the award meets the reasonable needs of the wife in light of her present condition. Liggett v. Liggett, 152 Colo. 110, 380 P.2d 673 (1963).

Trial court erred in determining that it did not have discretion to determine the duration of maintenance and that it was therefore required to provide for maintenance for an unspecified period of time. In re Fisher, 931 P.2d 558 (Colo. App. 1996).

Alimony, support, and property settlement issues were formally considered together to determine whether the court had abused its discretion, and in making the determination, the court would consider a variety of factors, including whether the property was acquired before or after marriage, the efforts and attitudes of the parties toward its accumulation, the respective ages and earning abilities of the parties, the conduct of the parties during the marriage, the duration of the marriage, their stations in life, their health and physical condition, the necessities of the parties, their financial condition, and all other relevant circumstances. Carlson v. Carlson, 178 Colo. 283, 497 P.2d 1006 (1972).

In determining whether the trial court abused its discretion in awarding maintenance, the property and maintenance awards must be considered together. In re Huff, 834 P.2d 244 (Colo. 1992).

Where the maintenance award reflected a thorough consideration of the family's standard of living, the length of the marriage, the husband's ability to pay, the wife's age and earning capacity, and the wife's responsibilities as residential custodian of five children, the award was amply supported by the evidence and would not be overturned. In re Hunt, 868 P.2d 1140 (Colo. App. 1993).

The age of the parties, in conjunction with the relative earning potential each of the parties can reasonably anticipate, and also their relative wealth will be considered in determining whether the trial judge abused his discretion in the alimony award. Smith v. Smith, 172 Colo. 516, 474 P.2d 619 (1970).

Consideration of maintenance and attorney fees to determine whether court abused its discretion. In cases where an appeal has been taken from the property division, maintenance, and attorney fee provisions of a dissolution of marriage decree as a whole, they must be considered together to determine whether the trial court abused its discretion. In re Jones, 627 P.2d 248 (Colo. 1981); In re Seewald, 22 P.3d 580 (Colo. App. 2001).

Finding as to earning capacity not confiscatory. Where the evidence supported the court's finding that the husband was capable of earning sums greatly in excess of

his present net salary, although it appeared that the court based its order on the present net income of the husband, the orders were not confiscatory. In re Anderson, 37 Colo. App. 55, 541 P.2d 1274 (1975).

Where the amount of property the trial court ordered the defendant to pay the plaintiff restored the plaintiff substantially to the same asset position she had occupied prior to the marriage, since the plaintiff's ability to support herself was substantially the same as it had been prior to the marriage, the trial court did not abuse its discretion. Cohan v. Cohan, 172 Colo. 563, 474 P.2d 792 (1970).

Where the husband's income was not stable but fluctuated from month to month, the trial court did not abuse its discretion in directing payments of support and alimony on a percentage of the husband's income. Reap v. Reap, 142 Colo. 354, 350 P.2d 1063 (1960).

Where the wife had contributed her own funds to the purchase of the family home, and there was a comparatively small amount of property owned by the parties, and the wife was left without any right to receive alimony payments, the trial court did not abuse its discretion in awarding the jointly owned home to the wife in its order amended after the husband's death. Sarno v. Sarno, 28 Colo. App. 598, 478 P.2d 711 (1970).

Awarding maintenance to wife on decreasing schedule held abuse of discretion. In re Lodholm, 35 Colo. App. 411, 536 P.2d 842 (1975).

Trial court has discretion to award maintenance that decreases incrementally on a future date when wife's earning potential is expected to increase and again on a future date when wife is expected to begin receiving pension benefits. In re Balanson, 996 P.2d 213 (Colo. App. 1999), *aff'd in part and rev'd in part* on other grounds, 25 P.3d 28 (Colo. 2001).

E. Modification and Scope of Review.

That the court has continuing jurisdiction over the payment of alimony may be assumed as the settled law of this state. Zlaten v. Zlaten, 117 Colo. 296, 186 P.2d 583 (1947).

A trial court may expressly reserve jurisdiction to review, adjust, or extend a maintenance award if: (1) An important contingency exists, the outcome of which may significantly affect the amount or duration of the maintenance award; (2) the contingency is based upon an ascertainable, future event or events; (3) the contingency can be resolved within a reasonable and specific period of time. In re Cauffman, 829 P.2d 501 (Colo. App. 1992).

If a trial court intends to reserve jurisdiction over maintenance pursuant to this section it should: (1) State its intent to do so on the record; (2) briefly outline its reasons for doing so, stating what the ascertainable future

event upon which the reservation of maintenance jurisdiction is based; and (3) set forth a reasonably specific future time within which maintenance may be reconsidered under this section. In re Cauffman, 829 P.2d 501 (Colo. App. 1992).

A trial court may retain jurisdiction over maintenance 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, and sets forth a reasonably specific future time within which maintenance may be considered. In re Folwell, 910 P.2d 91 (Colo. App. 1995); In re Lafaye, 89 P.3d 455 (Colo. App. 2003).

The phrase "a proceeding for maintenance following dissolution of marriage by a court" in subsection (3) applies only to those circumstances where the court issuing the decree of dissolution initially lacked personal jurisdiction over the absent spouse and, therefore, could not have ordered one spouse to pay maintenance. It does not provide an alternative for a party to request maintenance at a subsequent date even though he or she waived maintenance at permanent orders. In re Ebel, 116 P.3d 1254 (Colo. App. 2005).

The trial court erred in providing for future adjustments to maintenance. The assumptions made constitute improper speculation upon which to base future changes in maintenance. In re Folwell, 910 P.2d 91 (Colo. App. 1995).

Court not required to reserve jurisdiction over the issue of maintenance when, after sale of residence and an additional period in which to reacclimate to working, wife would have sufficient means to satisfy her own needs. In re Lafaye, 89 P.3d 455 (Colo. App. 2003).

In modifying provision for maintenance, burden is on party seeking modification to prove a substantial and continuing change of circumstances. Malmgren v. Malmgren, 628 P.2d 164 (Colo. App. 1981); In re DaFoe, 677 P.2d 426 (Colo. App. 1983).

Reconsideration of maintenance and attorney fees unnecessary absent contest. When neither party contests a trial court's division of property it is not necessary that the court be able to reconsider the property division in order to correct error in the provisions for maintenance and attorney fees. In re Jones, 627 P.2d 248 (Colo. 1981).

Award of further maintenance upheld. The trial court neither abused its discretion nor exceeded its jurisdiction in awarding further maintenance to the wife where a separation agreement, having been incorporated into the divorce decree, became part of the final order when the decree was entered, and allowed a court to "review the issue" of spousal maintenance at end of six months. In re Sinn, 674 P.2d 988 (Colo. App. 1983); In re Woodman,

676 P.2d 1232 (Colo. App. 1983).

A provision of divorce decree retaining jurisdiction to award such alimony as may be just, did not alter the finality of that portion of the decree determining the rights and interests of the parties in real estate involved. *McDonald v. McDonald*, 150 Colo. 492, 374 P.2d 690 (1962).

Where it appeared from the record in a divorce case that both parties intended that a court retain jurisdiction of a question of permanent alimony and related matters after the entry of a final decree of divorce, orders entered determining such matters after entry of the decree were not void for want of jurisdiction. *Rodgers v. Rodgers*, 137 Colo. 74, 323 P.2d 892 (1958).

To correct an order for support directing payments in excess of defendant's ability to pay, required formal action by the one thus burdened, since to reduce support payments required by an order of the trial court necessitated a motion by him who sought relief. *Lopez v. Lopez*, 148 Colo. 404, 366 P.2d 373 (1961).

One who has accepted benefits of judgment may not seek reversal of that judgment on appeal. In *re Jones*, 627 P.2d 248 (Colo. 1981).

Awarding of attorney fees is discretionary with trial court and will not be disturbed on review if supported by the evidence. In *re Newman*, 44 Colo. App. 307, 616 P.2d 982 (1980), *aff'd in part, rev'd on other grounds*, 653 P.2d 728 (Colo. 1982); In *re DaFoe*, 677 P.2d 426 (Colo. App. 1983).

Fixing permanent alimony, and readjusting a property settlement was a function of the trial court and could not be assumed by the supreme court. *Nunemacher v. Nunemacher*, 132 Colo. 300, 287 P.2d 662 (1955); *Brigham v. Brigham*, 141 Colo. 41, 346 P.2d 302 (1959).

A trial court award to a plaintiff of permanent alimony was subject to review by a trial court in the event a changed condition arises. *Nunemacher v. Nunemacher*, 132 Colo. 300, 287 P.2d 662 (1955).

Limited consideration of a third party's resources, such as a current spouse's income, is not absolutely prohibited if the existence or use of such assets is directly relevant to an allegation by the payor spouse of a substantial and continuing change of circumstances. In *re Bowles*, 916 P.2d 615 (Colo. App. 1995).

III. SEPARATE MAINTENANCE.

An allowance for separate maintenance was not alimony within the strict definition of that term. *Weston v. Weston*, 79 Colo. 478, 246 P. 790 (1926).

When an original divorce action was dismissed, the

parties were still husband and wife, and the wife was at liberty to institute a separate maintenance action against the husband, just as though there had been no former litigation between the parties. *Morgan v. Morgan*, 139 Colo. 545, 340 P.2d 1060 (1959).

In determining the amount of support to be awarded in a separate maintenance action, the trial court could have considered the ability of the husband, the value of his estate; and his earning capacity, and adjudication could not result in appropriation of his entire estate or impoverishment to the extent of rendering him unable to maintain himself. *Lopez v. Lopez*, 148 Colo. 404, 366 P.2d 373 (1961); *Fahey v. Fahey*, 43 Colo. 354, 96 P. 251 (1908).

In a separate maintenance action only such alimony and support could be awarded as was necessary to adequately maintain a family in the manner to which it was accustomed and suitable to their station, and a husband could be divested of a reasonable proportion of his earnings and, if need be, of his property, that his wife and children could have reasonable support. *Morgan v. Morgan*, 139 Colo. 545, 340 P.2d 1060 (1959).

In all cases there was a factor to consider, and that was the ability of a husband and father to meet the reasonable needs of his wife and children. *Vines v. Vines*, 137 Colo. 449, 326 P.2d 662 (1958).

The purpose was not to enrich the wife, but to provide suitable support and maintenance for her, taking into consideration the manner in which she is accustomed to living with him, and his ability to provide support. *Vines v. Vines*, 137 Colo. 449, 326 P.2d 662 (1958).

A reasonable amount for her maintenance during coverture, or until reconciliation, estimated with reference to the means of her husband, and payable out of his estate, was the relief to which a wife was entitled, if the case made by her complaint should be established. *Vines v. Vines*, 137 Colo. 449, 326 P.2d 662 (1958).

In the absence of very special circumstances a lump-sum award could not be made in a separate maintenance suit, and the considerations which supported a lump-sum award or division of property in a divorce action that terminate property rights, were not present in separate maintenance suits where property rights were retained. *Vines v. Vines*, 137 Colo. 449, 326 P.2d 662 (1958).

It was an abuse of discretion, to award a wife the equivalent of one-third of the husband's estate, instead of a periodical payment for her support. *Vines v. Vines*, 137 Colo. 449, 326 P.2d 662 (1958).

Where trial court's errors in making its property division with respect to stock options, interspousal gifts to wife, and wife's interest in the family trust

impacted a substantial portion of the total marital assets, on remand the trial court should reconsider its maintenance award in light of its new property division and in light of the significant decrease in the value of one of the parties' investment accounts. In re Balanson, 25 P.3d 28 (Colo. 2001).

IV. ANTENUPTIAL AGREEMENTS.

There is no statutory proscription against contracting for maintenance in an antenuptial agreement. In re Newman v. Newman, 653 P.2d 728 (Colo. 1982).

Separation agreements and antenuptial agreements are separate and distinct legal documents. In re Newman, 44 Colo. App. 307, 616 P.2d 982 (1980), aff'd in part, rev'd on other grounds, 653 P.2d 728 (Colo. 1982).

Spouses-to-be have right to enter into antenuptial agreements which contemplate the possibility of dissolution. In re Newman, 44 Colo. App. 307, 616 P.2d 982 (1980), aff'd in part, rev'd on other grounds, 653 P.2d 728 (Colo. 1982).

Antenuptial agreement no bar to maintenance unless specifically stated. In the absence of any reference in an antenuptial agreement to a relinquishment of the right to maintenance, the agreement does not bar the wife's claim for maintenance. In re Stokes, 43 Colo. App. 461, 608 P.2d 824 (1979).

Antenuptial agreement did not preclude an award of maintenance or reflect any waiver of maintenance by wife. In re Meisner, 715 P.2d 1273 (Colo. App. 1985).

Antenuptial maintenance agreement is subject to judicial scrutiny for conscionability. In re Newman v. Newman, 653 P.2d 728 (Colo. 1982); In re Meisner, 715 P.2d 1273 (Colo. App. 1985).

"**Unconscionability**", as applied to a maintenance agreement, exists when enforcement of the terms of the agreement results in a spouse having insufficient property to provide for his reasonable needs and who is otherwise unable to support himself through appropriate employment. In re Newman v. Newman, 653 P.2d 728 (Colo. 1982); In re Meisner, 715 P.2d 1273 (Colo. App. 1985).

Maintenance agreement may become unconscionable because of circumstances at time of dissolution. Even though an antenuptial agreement is entered into in good faith, with full disclosure and without any element of fraud or overreaching, the maintenance provisions thereof may become voidable for unconscionability occasioned by circumstances existing at the time of the marriage dissolution. In re Newman v. Newman, 653 P.2d 728 (Colo. 1982); In re Meisner, 715 P.2d 1273 (Colo. App. 1985).

Burden of proof of unconscionability. One who claims that an antenuptial maintenance agreement is unconscionable must prove that at the time of the marriage dissolution the maintenance agreement rendered the spouse without a means of reasonable support, either because of a lack of property resources or a condition of unemployability. In re Newman v. Newman, 653 P.2d 728 (Colo. 1982).

Where antenuptial agreement was silent on matter of attorney fees, the awarding of such fees was controlled by § 14-10-119. In re Newman, 44 Colo. App. 307, 616 P.2d 982 (1980), aff'd in part, rev'd on other grounds, 653 P.2d 728 (Colo. 1982).