

Connecticut Divorce: Factors Affecting Property Distribution and Alimony Awards

Introduction

How do courts evaluate the way marital property is to be divided between divorcing spouses? What factors should the parties consider when trying to negotiate an agreement? The answer is the same for both questions. Connecticut law spells out the factors that determine how the marital assets should be divided.

Factors Affecting Property Distribution and Alimony Awards

- **Length of the Marriage.** The length of the marriage is one of the factors that the court must consider in making its determination of how the marital property will be distributed. The duration of the marriage, however, is only one of the factors that the court must consider and is not likely to be controlling by itself. That being said, the length of the marriage is an important consideration affecting distribution of premarital assets, gifts, and inheritances, for example. In the absence of unusual circumstances, in a very short marriage it could be expected that the court would either not award or significantly reduce the award of premarital assets to the other spouse.
- **Causes for the Dissolution.** The cause for the breakdown of the marriage is one of the factors the court must consider in determining equitable distribution. Although Connecticut is a "no-fault" state, in terms of the grounds for the dissolution of the marriage, the issue of fault can still be relevant to the equitable distribution of marital property. This is so even if the parties are seeking dissolution based on no-fault grounds. Although the court will consider the cause of the dissolution, the comparative fault of the parties is only one factor used in determining equitable distribution. In the case of adultery, for example, an assignment of property is not to be considered either as a reward for virtue or as a punishment for wrongdoing. *Venuti v. Venuti*, 185 Conn. 156, 440 A.2d 878 (1981).
- **Age of the Parties.** The age of the parties is taken into account in making property distributions. The court will consider the amount of time left to the party to accumulate other assets after the dissolution. This factor becomes more important if there is an age disparity between the parties. It also may become important when considered with other factors affecting distribution. For example, a fifty-five year old with no employment history or occupational skills will be viewed differently than a twenty-five year old.
- **Health of the Parties.** The court will consider the health of each of the parties in making its awards and determinations. Health is one of the criteria that may not have a significant impact if both the parties appear healthy. By contrast, the matter would become more significant if there is some major difference in the health of the parties.
- **Station of the Parties.** The "station" of the parties has to do with "social standing." See *Blake v. Blake*, 207 Conn. 217, 541 A.2d 1201 (1988). Along with other factors, a

person's social standing is strongly correlated to his or her standard of living. The court may consider the standard of living enjoyed by the spouses in dividing marital property.

- **Occupation, vocational skills, employability and income.** These factors must be considered by the court in determining property distribution. Issues concerning occupation, vocational skills, employability and income are interrelated. Although the party need not be engaged full-time in the occupation at the time of the decree, the occupation of a party should be one which the party has pursued at least at some point during the marriage, rather than one that the party theoretically may be able to pursue in the future.

The income available to a spouse has to do with net income, not gross income or earnings. However, the courts are aware that parties may attempt to reduce their net earnings by having various obligations or other amounts withheld directly from their earnings. It is clear that only statutory deductions, such as federal income taxes, social security, wage garnishment, union dues or contractually mandated obligations of the employee are to be deducted. Optional deductions, such as profit sharing plans, IRAs, stock purchases and credit union deposits are not proper reductions from earnings for determination of financial orders.

The issue of whether to include gifts and loans from family members as income depends on whether and to what extent the funds will be actually available to the spouse. There is also the possibility that one or the other spouse would voluntarily reduce or deplete his or her earnings in order to gain a more favorable distribution. In such situations financial awards may be based on the spouse's earning capacity rather than on the party's actual earned income. See the section where I discuss alimony (ctfamilaw.com) for a more detailed treatment of earning capacity as a basis for financial awards.

Vocational skills and employability are additional factors the court must consider in determining financial orders. Matters related to occupation and income may require evidence of present employment and/or recent employment history. Such information would not be available with respect to spouses who have not been employed outside the home during much of the marriage. In such cases individuals may have acquired vocational skills prior to or during the marriage and might be employable at the present time or in the future.

- **Estates of the Parties.** The court is obligated to consider the estate of each of the parties. The term "estate" in this context does not have to do with wills or inheritances. It refers to the respective assets and entitlements of each of the spouses. The amount to be considered is the size of the estate at the time of the divorce. Included in the estate of the party are assets which the party has an immediate right to receive. For example, certain pensions and certain kinds of deferred compensation may be considered even though the party may not be entitled to receive those benefits until some time in the future.

Connecticut law is consistent that a spouse's potential future inheritance may not be considered. Evidence of a spouse's possible future inheritance is not admissible for the

purpose of a property assignment or alimony award. *Rubin v. Rubin*, 204 Conn. 224, 527 A.2d 1184 (1987).

- **Liabilities and Needs of the Parties.** [The liabilities and needs of the parties apply to property distribution. For alimony, the Court considers only the "needs" of the parties--not the liabilities.] The court must evaluate the liabilities and needs of the parties when fashioning a financial order. The court will consider both the immediate present needs and their probable future needs as long as there is a basis for estimating those future needs. This does not mean, however, that the court will guarantee that the dependent spouse maintains the lifestyle established during the marriage if the payor spouse's income and assets do not warrant such an award. Nevertheless, there may be situations in which the needs of a spouse are accorded greater weight, such as where a spouse is disabled and not likely to be employable.

With respect to the liabilities of the parties, the court may order one or other of the parties to assume and pay liabilities that are seen as joint obligations of the parties. It is appropriate when evaluating the debts, that the court consider whether the obligations were incurred primarily by one or the other spouse.

- **Opportunity for Future Acquisition of Assets and Income.** [This factor applies to property distribution only.] Generally, this criteria refers to the parties' respective ability to build for the future, rather than the ability to satisfy current needs. It is clear that Connecticut does not consider possible future inheritance in evaluating this factor, but in situations in which a spouse regularly has received gifts and income from relative the court might assume that such contributions will continue.
- **The Contribution of Each Party to the Acquisition, Preservation or Appreciation of Assets.** [This factor applies to property distribution only.] This criteria is not limited to monetary contributions made by one or the other spouse. It also cannot be assumed that the spouse who made the greatest financial contribution to the acquisition of assets, will necessarily receive that asset. When evaluating the nonmonetary contributions that a spouse may have made toward the acquisition of an asset the standards to consider are (1) whether the spouse's nonmonetary contribution made it possible for the other spouse to acquire or retain the property, and (2) whether the spouse's nonmonetary contributions had the effect of preserving or appreciating the value of already acquired property. See *O'Neill v. O'Neill*, 13 Conn. App. 300 (1988). The nonmonetary contributions include homemaking activities and primary caretaking responsibilities.

Additional Resources

Connecticut General Statutes Annotated §§ 46b-81 (property) & 46b-82 (alimony).