Rehabilitative Alimony -- A Matter of Discretion or Direction?

James S. Ford
COMMENTS

REHABILITATIVE ALIMONY—A MATTER OF DISCRETION OR DIRECTION?

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I. INTRODUCTION

With the passage of the Dissolution of Marriage Act\(^1\) in 1971, the Florida legislature for the first time statutorily provided for the awarding of rehabilitative alimony. The enactment, sometimes referred to as the “no-fault” divorce act,\(^2\) was hailed as creating a “new day,” transforming husband and wife into “tru[e] partners in the marital venture sharing equal rights and obligations.”\(^3\)

Laudable though it may have been, the statute was deficient in that it contained no indication of what the rehabilitative alimony concept was to embody or what criteria were to be used in making the determination of which \textit{type} of alimony to award.\(^4\) It was left to the courts “to construe the term [rehabilitative alimony] by reference to its ordinary definition and common usage.”\(^5\)

An attempt to remedy the ambiguities the trial courts faced occurred in 1978 when the statute was amended to enumerate certain factors which a court may consider in reaching its final determination of an award.\(^6\) The addition of these factors, which did nothing

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1. Ch. 71-241, 1971 Fla. Laws 1319 (current version at \textsc{Fla. Stat.} ch. 61 (1983)).
2. The passage of the dissolution act followed the then-current legislative trend of states to eliminate or at least diminish the importance of fault in the dissolution process. \textit{See} Weitzman & Dixon, \textit{The Alimony Myth: Does No-Fault Divorce Make a Difference?}, 14 \textsc{Fam. L.Q.} 141, 147-48 (1980).
4. The statute stated in part: “In a proceeding for dissolution of marriage, the court may grant alimony to either party, which alimony may be rehabilitative or permanent in nature.” \textsc{Fla. Stat.} § 61.08(1) (1971).
5. \textit{Reback v. Reback}, 296 So. 2d 541, 543 (Fla. 3d DCA 1974).
6. \textsc{Fla. Stat.} § 61.08(2) (1983) provides:

   In determining a proper award of alimony or maintenance, the court shall consider all relevant economic factors, including but not limited to:
   
   (a) The standard of living established during the marriage.
   (b) The duration of the marriage.
   (c) The age and the physical and emotional condition of both parties.
   (d) The financial resources of each party.
   (e) Where applicable, the time necessary for either party to acquire sufficient education or training to enable him or her to find appropriate employment.
   (f) The contribution of each party to the marriage, including, but not limited to, services rendered in homemaking, child care, education and career building of the other party.
more than codify the principles the courts had established since the Act's passage, did little to abate the haze surrounding the rehabilitative alimony alternative. The statute still failed to adequately define the rehabilitative alimony concept or to give guidance as to when it is the appropriate award. Furthermore, courts continued to establish conflicting rules of law despite the amendments.

Much of the judicial dissonance, however, can be attributed to the tremendous amount of discretion vesting in the trial court and not solely to the lack of adequate guidelines in the statute. It is the interplay between the legislative direction and the judicial discretion in dissolution cases that is the topic of this comment, using the recent case of Kuvin v. Kuvin7 as an example. The discussion focuses primarily on the conflict between awarding permanent alimony versus rehabilitative alimony, while recognizing that these are not the only dissolution remedies available.8

In Kuvin, the Florida Supreme Court rejected the proposition that, as a rule of law, a wife with a capacity for self-support who is awarded custody of minor children but desires to forego rehabilitation and remain at home has a right to do so if her former husband can afford to support her.9 The decision presents the issue of what effect a spouse's desire to remain at home to care for minor children should have on the type of award.10

Before that issue can be explored, it is necessary to lay the groundwork for discussion by way of a review of the following: 1) the criteria to be used in determining the type of alimony to be awarded; 2) the discretion afforded a trial judge in making that determination; and 3) the scope of review afforded appellate courts. This analysis will be accomplished by a survey of the pertinent cases and the enunciation of guidelines distilled from those cases.

The case most relevant to a discussion of alimony in Florida is

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7. 442 So. 2d 203 (Fla. 1983).
8. For a discussion of special equity and exclusive possession of property, see Duncan v. Duncan, 379 So. 2d 949 (Fla. 1980).
9. According to a study of one county in central Florida, the wife received child custody in 98.47% of the cases. White & Stone, A Study of Alimony and Child Support Rulings with Some Recommendations, 10 Fam. L.Q. 75, 82 (1976).
10. Although the court referred to a husband supporting a wife, Florida's dissolution statute is gender-neutral. See FLA. STAT. § 61.08(1) (1983) (providing the court "may grant alimony to either party"). See, e.g., Lefler v. Lefler, 264 So. 2d 112 (Fla. 4th DCA 1972). See generally Note, Alimony for Men—The Changing Law, 7 Fla. St. U.L. Rev. 687 (1979). Hence the spouse making this claim could be a father rather than a mother. See Ruhnau v. Ruhnau, 299 So. 2d 61, 64-65 (Fla. 1st DCA 1974).
the watershed 1980 case of Canakaris v. Canakaris. This opinion, an attempt by the supreme court to bring some clarity to the area, defined and differentiated the various types of alimony. It also established the "reasonableness test" for review of a trial court's use of discretion. Canakaris remains the single most important case in the area of alimony for Florida practitioners.

II. REHABILITATIVE ALIMONY V. PERMANENT ALIMONY

We do not construe the marriage status, once achieved, as conferring on the former wife of a ship-wrecked marriage the right to live a life of veritable ease with no effort and little incentive on her part to apply such talent as she may possess to making her own way.

Justice B.K. Roberts

The concept of alimony, which can be traced to the English ecclesiastical courts, was originally an effort to enforce the husband's continuing obligation for support of his wife. The English courts did not allow the dissolution of the marriage but rather granted a divorce from "bed and board," referred to in contemporary terms as a legal separation. Even after the separation occurred, the husband retained control of his wife's property and income which he acquired upon entering the marriage. Thus, he also retained the responsibility for the support of his spouse.

American law adopted the English practice of granting alimony incident to divorce, without regard to the fact that American courts did allow for absolute dissolution rather than mere separation. The awarding of alimony was traditionally based on several factors, such as whether the husband had committed "adultery, cruelty, desertion or some other marital misconduct," or whether

11. 382 So. 2d 1197 (Fla. 1980).
12. Id. at 1200-02.
13. Id. at 1203.
15. Weitzman & Dixon, supra note 2, at 146.
16. Id. A legal separation is not permitted in Florida: "No dissolution of marriage is from bed and board, but is from bonds of matrimony." Fla. Stat. § 61.031 (1983).
17. Weitzman & Dixon, supra note 2, at 146.
the wife was an "innocent spouse." However, with the advent of no-fault divorce statutes, some form of which now exists in all but three states, the justifications for alimony began to change. According to one commentator, "alimony is now reserved for those [ex-spouses] who cannot support themselves." In Florida, this support may take the form of rehabilitative alimony, permanent alimony, a lump-sum payment, exclusive possession of property, or any combination thereof.

It is important to bear in mind that Florida law neither mandates alimony nor specifies which spouse shall receive it. Rather, the dissolution statute gives the court the discretion to "grant alimony to either party." Contrary to what has been called "the alimony myth," alimony is only awarded in a small percentage of divorces. One study indicates that alimony was awarded in only twenty-four percent of the divorce cases in two Florida counties between 1971 and 1974. Other studies reach similar conclusions.

The Divorce Act of 1828 provided that the court shall make such allowance for alimony to the wife "as from the circumstances of the parties and nature of the case may be fit, equitable and just." Early Florida courts interpreted this language to base alimony awards on the needs of the wife and the husband's "pecuniary means to supply that necessity." These two elements are still

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20. Under Florida's no-fault divorce statute, the relative "guilt" or "innocence" of the parties is irrelevant. The previous fault-oriented grounds for divorce are replaced with a requirement that the marriage be "irretrievably broken" or that one of the parties be mentally incompetent. FLA. STAT. § 61.052 (1983).
21. As of April 1, 1982, only Illinois and South Dakota still limited divorce to traditional fault grounds. Freed & Foster, Family Law in the Fifty States: An Overview, 16 FAM. L.Q. 289, 315 (1983). Texas is the only state which fails to provide for alimony altogether (absent a contractual provision calling for it). Id. at 340.
23. Canakaris v. Canakaris, 382 So. 2d 1197, 1202 (Fla. 1980). The court was careful to point out that determination that a spouse is entitled to a "special equity" is not considered alimony. Special equity describes a vested interest in property brought into the marriage or acquired during the marriage through a contribution of services or funds over and above normal marital duties. Id. at 1200.
25. Weitzman & Dixon, supra note 2, at 142.
26. Id. at 143 n.6.
27. Other studies suggest that the figure may be as low as 14% in some parts of the country. Id.
28. See FLA. STAT. § 65.08 (1941).
29. Haddon v. Haddon, 18 So. 779, 780 (Fla. 1895). See also Jacobs v. Jacobs, 50 So. 2d 169 (Fla. 1951); Welsh v. Welsh, 35 So. 2d 6 (Fla. 1948); Leifer v. Leifer, 264 So. 2d 112 (Fla. 4th DCA 1972); Pendleton v. Pendleton, 189 So. 2d 499 (Fla. 4th DCA 1966).
cited by the courts—although now in gender-neutral terms—as a basis for assessing the propriety of an alimony award.\(^{30}\)

Once a court has made the threshold determination that granting alimony in a given case is appropriate, the court must decide which type of alimony is proper. This would be a simpler task if the legislature had written into the statute which cases warranted which type(s) of alimony. While a statutory scheme setting forth the appropriateness of a particular type of alimony in a certain situation is conceivable, it is not feasible. There are far too many differing factual situations for any fixed classification system to be practical. Moreover, any such system would rob the courts of the broad discretion necessary to truly achieve equity between the parties.\(^{31}\) Thus, the ideal statute, while providing guidelines and considerations, must leave to the courts adequate discretion to do justice between the parties.\(^{32}\)

A. General Principles for Determining the Type of Award

1. Capacity for Self-Support

Although the concepts upon which rehabilitative alimony is based were recognized as early as 1955 by the Florida courts, they were not codified until 1971. In Kahn v. Kahn\(^{33}\) the Florida Supreme Court first explained the rationale for continued support of the wife by the husband: "[U]ntil recent years, a divorced wife had little prospect of being able to work and earn a livelihood, and it was essential to a well-ordered society that she be appropriately maintained by her estranged husband so that she would not become a charge on the community."\(^{34}\) The court then explained the role that changing societal factors would play in the alimony scenario, foreshadowing the coming of rehabilitative alimony:

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30. Canakaris, 382 So. 2d at 1201. In Whitehead v. Whitehead, 189 So. 2d 397 (Fla. 1st DCA 1966), the district court recognized that the trial court had erred in failing to consider factors other than the wife's need for support and the husband's ability to provide it. In Whitehead, the wife was awarded $610 per month permanent alimony. At the time of the marriage the wife was 21 years old and had been earning $300 per month. The marriage lasted less than four days. The district court reversed, holding that the court below should have considered the wife's age, health, education, and demonstrated ability to earn a livelihood, as well as the short duration of the marriage and the minimal change in her circumstances. Id. at 401.

31. Canakaris, 382 So. 2d at 1200.

32. See FLA. STAT. § 61.08(2) (1983), which provides: "The court may consider any . . . factor necessary to do equity and justice between the parties."

33. 78 So. 2d 367 (Fla. 1955).

34. Id. at 368.
Times have now changed. The broad, practically unlimited opportunities for women in the business world of today are a matter of common knowledge. Thus, in an era where the opportunities for self-support by the wife are so abundant, the fact that the marriage has been brought to an end . . . does not necessarily entitle the wife to be forever supported by a former husband who has little, if any, more economic advantages than she has.35

Rehabilitative alimony has been deemed appropriate "in those situations where it is possible for the person to develop anew [or] redevelop a capacity for self-support."36 This support "should be limited in amount and duration to what is necessary to maintain that person through his [or her] training or education, or until he or she obtains employment or otherwise becomes self-supporting."37 Thus the principal purpose of rehabilitative alimony "is to establish the capacity for self-support of the receiving spouse."38

While the transitional support principles embodied in rehabilitative alimony are changing the duration, amount, and type of alimony awards, permanent alimony has not been eradicated.39 If, after a dissolution, a spouse is incapable of self-support or too old or unable to be retrained, that spouse is entitled to an award of permanent alimony.40 The First District Court of Appeal in Cann v. Cann41 defined permanent alimony as "an allowance for the support and maintenance of a spouse during his or her lifetime. Its purpose is to provide nourishment, sustenance and the necessities of life to a former spouse who has neither the resources nor ability to be self-sustaining."42

Given that the purpose of rehabilitative alimony is to establish a capacity for self-support and that the purpose of permanent alimony is to sustain those who lack a capacity for self-support, courts should begin with the presumption that rehabilitative alimony will take precedence when it has been established that the attainment of self-support is possible on the part of the receiving spouse.

35. Id.
36. Reback v. Reback, 296 So. 2d 541, 543 (Fla. 3d DCA 1974).
37. Id.
38. Canakaris, 382 So. 2d at 1202.
40. Weitzman & Dixon, supra note 2, at 149.
41. 334 So. 2d 325 (Fla. 1st DCA 1976).
42. Id. at 329 (emphasis added) (quoting Lefler v. Lefler, 264 So. 2d 112 (Fla. 4th DCA 1972)).
spouse. The First District in Roberts v. Roberts\(^43\) interpreted the new legislation as a mandate, stating, "[I]f the spouse has the capacity to make her own way through the remainder of her life unassisted by the former husband, then the courts cannot require him to pay alimony other than for rehabilitative purposes."

Other courts opt for greater discretion and do not see the presumption in favor of the award of rehabilitative alimony as a mandate at all. For example, the Fourth District Court of Appeal holds the view that a capacity for self-support does not require a "ritualistic incantation" of the rehabilitative alimony principle.\(^44\) Thus, it is not clear in Florida that the presence of capacity for self-support requires an award of rehabilitative alimony. The converse, however, is clear—an award of rehabilitative alimony requires the presence of capacity for self-support.

In Ruszala v. Ruszala,\(^46\) the Second District Court of Appeal reversed an award of rehabilitative alimony to an ex-wife who was legally blind, who could not drive or read except with great difficulty, who qualified as totally disabled under social security, and whose only work experience was that of a waitress some fifteen years earlier. The court pointed out that "[r]ehabilitative alimony presupposes the potential for self-support. . . . Without this capacity there is nothing to which one can be rehabilitated."\(^47\) These facts clearly demonstrated a situation where permanent alimony was called for, keeping in mind that, ideally, permanent alimony should be awarded when a spouse is incapable of self-support or retraining.

Using capacity for self-support as the determinative factor, a situation where permanent alimony clearly was not called for arose in

43. 283 So. 2d 396 (Fla. 1st DCA 1973) (district court held it was error for trial court to award permanent alimony where the husband's earnings from his business and navy retirement pay were no greater than his wife's own earnings from her well-established employment).

44. Id. at 397. The First District later softened this view to some extent in Quick v. Quick, 400 So. 2d 1297 (Fla. 1st DCA 1981). In Quick the lower court awarded rehabilitative alimony, and the district court in upholding that decision implied that an award of permanent alimony would have been upheld as well. In fact, the appellate court found the chancellor's decision not to award permanent alimony "problematic" yet within the range of discretionary alternatives under the circumstances. Id. at 1298-99. This equivocation could have been in part a response to the "reasonableness" standard of review set forth in Canakaris.

45. Herbert, 304 So. 2d at 466 (district court held that the lower court should not have terminated an award of permanent alimony where the petition alleging a substantial change in circumstances only requested a reduction in payments).

46. 360 So. 2d 1288 (Fla. 2d DCA 1978).

47. Id. at 1289 (quoting Lash v. Lash, 307 So. 2d 241, 243 (Fla. 2d DCA 1975)).
the case of Peck v. Peck. The wife in Peck was a licensed medical doctor who had been practicing for twenty-five years at the time of the dissolution. She had a substantial earning capacity and was able to support herself "by almost any standard." The court held that it was an abuse of discretion for the trial court to award permanent alimony. The most the wife could be awarded would be rehabilitative alimony, but only for a short period to afford the wife an "adequate opportunity to adjust to her new circumstances."

Another situation where permanent alimony would be wholly inappropriate would be where the spouse has not only the capacity for self-support, but also the desire to be self-supporting. In the case of Cann v. Cann the court suggested that an award of permanent alimony in such a case would be a violation of public policy.

Between these two well established extremes, where there is patently no capacity for self-support and where there is obvious capacity for self-support, lies the vast majority of cases, and hence the conflict. Few cases fit neatly into one fact pattern or the other; thus the courts have the difficult task of determining to which side the facts will tip the scale.

2. Elements of Self-Support

Another factor adding to this conflict is that capacity for self-support cannot always be isolated as the one determinative criterion. The dissolution statute allows the court to consider any factor "necessary to do equity and justice between the parties." Leaving this aside for the moment and assuming that capacity for self-support is the predominant factor, it is still necessary to determine what constitutes a capacity for self-support. The statute provides that the court shall consider "[t]he age and the physical and emotional condition of both parties; [t]he financial resources of each party; [and] [w]here applicable, the time necessary for either party to acquire sufficient education or training to enable him or her to

48. 291 So. 2d 211 (Fla. 4th DCA 1974). For the consideration of factors other than capacity for self-support, see infra notes 69-80 and accompanying text.
49. Id. at 213. The evidence showed she was capable of earning $30,000 per year.
50. Id.
51. Cann, 334 So. 2d at 329-30. The court held it was error to award permanent alimony where the wife was in good health, had a bachelor's degree in English, was employed prior to the marriage, and had both the capacity for self-support and the desire to be self-supporting. Id.
52. Id.
find appropriate employment.\textsuperscript{54}

In West v. West,\textsuperscript{55} the Fourth District reversed an award of rehabilitative alimony and ordered an award of permanent alimony to a fifty-seven-year-old wife (who had not worked during the thirty-five-year marriage) because there was no evidence in the record indicating a potential or actual capacity for self-support.\textsuperscript{56} In the absence of facts presented to the court regarding education, financial resources, health, or employment potential, the court had no choice but to strike down the award of rehabilitative alimony. On the other hand, where it can be shown that the recipient spouse is young, in good health, and qualified in a profession, an award of rehabilitative alimony is proper.\textsuperscript{57} Consistent with this view, the court in Hair v. Hair upheld an award of rehabilitative alimony where the wife was relatively young, of high average intelligence, and—by the wife’s own testimony—indicated a “capacity for independence and initiative.”\textsuperscript{58}

The absence of any one of these factors (youth, good health, education, and marketable skills) does not necessarily trigger the grant of permanent alimony. As the court in Volosin v. Volosin\textsuperscript{59} noted, despite the fact that the wife in that case was sixty-one years old, if the evidence demonstrated that the wife could reasonably be expected to become self-supporting, then an award of rehabilitative alimony should be approved. The court took into consideration “the totality of the evidence.”\textsuperscript{60}

In reviewing an award of rehabilitative alimony to a fifty-five-year-old wife, the Second District in Jassy v. Jassy\textsuperscript{61} commented that courts ordinarily think of rehabilitative alimony in regard to a younger spouse. However, in view of the spouse’s good health and considering the increased longevity of the female sex the court con-

\textsuperscript{54} Id. § 61.08(2)(c)-(e).
\textsuperscript{55} 345 So. 2d 756 (Fla. 4th DCA 1977).
\textsuperscript{56} Id.
\textsuperscript{57} Parks v. Parks, 407 So. 2d 304, 305 (Fla. 4th DCA 1981). The appeal was not predicated on the contention that it was error to award rehabilitative alimony but rather that the award given was inadequate.
\textsuperscript{58} Hair v. Hair, 402 So. 2d 1201, 1204 (Fla. 5th DCA 1981).
\textsuperscript{59} 382 So. 2d 733 (Fla. 2d DCA 1980).
\textsuperscript{60} Id. at 735. The court determined that where the wife was 61 years old, in questionable health, had few financial resources, and had presented herself as a poor candidate for employment, she was entitled to an award of permanent alimony. The court stated that age alone would not be sufficient for the awarding of permanent alimony, if the wife had been shown to have a capacity for self-support. Id. at 736.
\textsuperscript{61} 347 So. 2d 478 (Fla. 2d DCA 1977).
cluded the award was an appropriate one.\textsuperscript{62} The court also considered that the wife intended to work towards a business/finance degree and that she had the potential to achieve that objective.

To reiterate the point in \textit{Volosin}, if, in light of all the relevant factors the spouse can be shown to possess a capacity for self-support or a potential for that capacity which can be developed through retraining, then an award of rehabilitative alimony would be proper.\textsuperscript{63} No longer will the mere fact that a spouse is of advanced age, or suffers from a physical infirmity, or lacks training in a marketable skill be conclusive standing alone. Hence, for an award of rehabilitative alimony to be inappropriate, there should be evidence that one of these factors, or a combination thereof, renders the spouse incapable of becoming self-supporting. Such a case was \textit{Goss v. Goss},\textsuperscript{64} where the Fourth District ruled that permanent alimony rather than rehabilitative alimony should have been awarded to a wife who was fifty-two years old, had an eleventh grade education, and who had not worked during her twenty-nine-year marriage. After filing for dissolution, the wife had been denied employment with nine different employers and had to settle for babysitting or sewing positions which produced only meager income. The appellate court also cited evidence that she was in poor health—suffering from a bad back, high blood pressure, and nervous conditions.\textsuperscript{65}

Similarly, the Fifth District Court of Appeal in \textit{Holland v. Holland}\textsuperscript{66} held permanent alimony was appropriate where the wife was forty-three years old, had a tenth-grade education, and had no marketable skills or talents. While her health was generally good, her only employment had been as a telegraph clerk prior to her marriage of sixteen years. The court reversed the award of periodic alimony and remanded for a hearing on the amount of permanent alimony to be awarded the wife “upon reexamination of the parties’ needs and abilities.”\textsuperscript{67}

\textsuperscript{62} Id. at 480.
\textsuperscript{63} Arguably, if the spouse \textit{already} has the capacity for self-support then even an award of rehabilitative alimony is improper, since the purpose of rehabilitative alimony is to develop that capacity. \textit{See supra} notes 36-38 and accompanying text. However, as the court in \textit{Peck} noted, it may be necessary to award a spouse rehabilitative alimony to allow him or her to adjust to the new circumstances. \textit{See supra} notes 48-50 and accompanying text.

\textsuperscript{64} 400 So. 2d 518 (Fla. 4th DCA 1981).
\textsuperscript{65} Id. at 519.
\textsuperscript{66} 406 So. 2d 496 (Fla. 5th DCA 1981).
\textsuperscript{67} Id. at 499. For cases with similar fact patterns, see Reisman v. Reisman, 314 So. 2d 783 (Fla. 3d DCA 1975) (rehabilitative alimony improper where wife had never been gain-
A synthesis of these cases supports the proposition that capacity for self-support is determined by a consideration of the requesting spouse's age, physical and emotional state, potential for employment, and financial resources in light of the totality of the circumstances. The significance of the evolvement of the totality of the circumstances standard is that no single factor can be considered dispositive unless extraordinary in nature. Consequently, counsel for each party must broaden their focus on the background and prospective future of the alimony-seeking spouse. Once the court has made the determination of whether a capacity for self-support exists, it then must decide if other factors should be taken into consideration.

B. Consideration of Other Factors

1. Standard of Living

After a showing that a wife earning $3,627 yearly as a part-time teacher would not be able to obtain a full-time position, and therefore was unable to become self-supporting, the Second District in *Thomas v. Thomas* went on to consider the fact that the wife's standard of living would be substantially lower than she had enjoyed during marriage. The previous award of rehabilitative alimony was reversed in favor of permanent alimony. The court easily could have rested its decision on the finding that there was no capacity for self-support but chose to introduce the "standard of living" factor into its determination. The court held that the husband should be required to supplement the wife's earnings so long as he has the means to do so and there was no substantial increase in her earning potential. The implication is that the husband is obligated to support the wife (or vice versa) at a standard to which she had become accustomed during the marriage.

Other courts have also given credence to the standard of living
factor. The Third District Court of Appeal expressly includes standard of living in its determination of an alimony award.\textsuperscript{71} Similarly, the Fourth District in \textit{McAllister v. McAllister} placed considerable weight on the standard of living factor, stating that trial courts "must allow a wife to continue with some semblance of her former standards."\textsuperscript{72} The trial court in \textit{McAllister} awarded the wife $6,000 per year as permanent alimony with an additional $500 per month for five years as rehabilitative alimony. The husband, who engaged in a glamorous lifestyle,\textsuperscript{73} was a successful physician who had a gross income of $200,000 annually. The appellate court, noting the financial disparity which would exist between the parties if the award were upheld, eliminated the award of rehabilitative alimony and increased the award of permanent alimony to $1,000 per month.\textsuperscript{74} The court seemed unimpressed that the forty-eight-year-old, able-bodied wife was a former pharmacist and held a degree in anthropology, suggesting that a wife is entitled to permanent support from her husband regardless of her ability to support herself.

With the 1978 amendment of Florida’s dissolution statute, the standard of living factor was expressly added to the list of criteria a court must consider in determining a proper award of alimony.\textsuperscript{75}

\begin{itemize}
  \item[71.] See, e.g., \textit{Forster v. Forster}, 436 So. 2d 966, 967 (Fla. 3d DCA 1983); \textit{Hawkesworth v. Hawkesworth}, 345 So. 2d 359, 360 (Fla. 3d DCA 1977).
  \item[72.] \textit{McAllister v. McAllister}, 345 So. 2d 352, 355 (Fla. 4th DCA 1977). The court in \textit{McAllister} outlined the following comprehensive list of nine factors to be considered in making an alimony award:
    \begin{enumerate}
      \item[1)] The ability of the husband to pay;
      \item[2)] the needs of the wife compared to reasonable expectations from her own income;
      \item[3)] the standard of living enjoyed by the wife during marriage;
      \item[4)] the length of the marriage;
      \item[5)] the number of children;
      \item[6)] the relative health and physical condition of both the wife and the husband;
      \item[7)] the extent of the contribution by the wife to her husband’s successful career;
      \item[8)] the conduct, or misconduct, of the parties during the marriage; and,
      \item[9)] a catch-all to avoid the spouse from experiencing a gross change in financial circumstances. \textit{Id.} at 354-55.
    \end{enumerate}
  \item[73.] The court seemed disturbed by the fact that the husband’s lifestyle was so glamorous. He enjoyed elk hunting in Wyoming, dove shooting in Mexico, fishing, skiing, and vacationing in places such as the Bahamas, Canada, and Europe. The court stated that the award given by the trial court would "hardly discomfit his lifestyle by more than the sacrifice of one elk hunting trip to Wyoming a year," whereas the wife would be "devastated" and "left with little but her memories." \textit{Id.}
  \item[74.] The court reasoned that to rule to the contrary "would require society to re-classify the traditional all-American concept of Mom and apple pie and re-label it a most hazardous occupation that all young girls should be dissuaded from." \textit{Id.}
  \item[75.] \textit{FLA. STAT.} § 61.08(2)(a) (1983).\
\end{itemize}
However, ambiguity, rather than clarity, persists because the statute lends itself to the following four possible interpretations: 1) these are factors to be used in making the initial determination of whether alimony is to be awarded at all; 2) these are factors to be used in determining the type of alimony to be awarded; 3) these are factors to be used in determining the amount of alimony to be awarded; 4) these factors serve all three purposes, to be used interchangeably depending on which question needs to be resolved. The statute provides no guidance as to which of the four interpretations the legislature intended, and the courts have failed to unravel the confusion. They generally refer to the statute as being the basis of their decisions but give scant suggestion as to how the statute was discerned.  

The Florida Supreme Court has twice indicated that the parties' standard of living should be considered when determining the amount of permanent alimony to be paid. This lends support to the theory that standard of living is an appropriate consideration after the determination of type has been made, but not necessarily before. It would make no sense to consider standard of living with regard to an award of rehabilitative alimony since its purpose is to provide the spouse with funds to develop or redevelop a capacity for self-support, thus making the divorcee financially independent from the former spouse.

Notwithstanding this hypothesis, an argument can be made that standard of living should be considered in determining the type of award. If the standard of living during the marriage was high, as in McAllister and Firestone, and one spouse has contributed to the education or "career building" of the other party, it would seem inequitable to consider only the spouse's capacity for self-support. A court faced with such a situation could award rehabilitative alimony to allow the dependent spouse to become self-supporting to a degree and thereafter award permanent alimony in an amount

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76. At least one court has suggested that the criteria are used to determine the type of award. In Lynch v. Lynch, 437 So. 2d 234 (Fla. 5th DCA 1983), the court stated it was using the criteria in § 61.08(2) to determine whether the trial court properly awarded lump-sum alimony. Id. at 236-37. Another court has suggested that the criteria are used to determine both type and amount. Vandergriff v. Vandergriff, 438 So. 2d 452, 455 (Fla. 1st DCA 1983) (Smith, J., concurring and dissenting).

77. Canakaris, 382 So. 2d at 1201-02; Firestone v. Firestone, 263 So. 2d 223 (Fla. 1972) (this decision predated the 1978 amendments to the Florida dissolution statute regarding the standard of living criterion).

78. One of the factors listed in the statute is the contribution of one party to the "career building of the other party." Fla. Stat. § 61.08(2)(f) (1983).
necessary to allow the spouse some semblance of his or her lifestyle during marriage. The court, to achieve a more equitable dissolution, could also consider lump-sum alimony or exclusive possession of property as compensation for services during the marriage.

2. Duration of the Marriage

In addition to standard of living, the current statute lists the duration of the marriage as a factor for the court's consideration.\(^7\) This factor falls prey to the same defect as does the standard of living factor—for which determination is the factor to be used? In Hawkesworth the Third District asserted that duration of marriage is a consideration for determining the type of award, stating that rehabilitative alimony is more appropriate where the marriage is of short duration.\(^8\) Presumably, it follows that permanent alimony would be more appropriate where the marriage was of long duration. This argument has appeal. Where the wife has spent years as a homemaker and mother, bypassing her own career aspirations, it seems equitable that she receive some recompense in the form of continued support after dissolution. However, this would seem to disregard the rationale behind rehabilitative alimony and the recognition by courts of the changing norms in society towards equality and independence. In either situation, there is still ambiguity surrounding the proper use of these factors.

C. Other Important Aspects of Rehabilitative and Permanent Alimony

As pointed out in Ruhnau v. Ruhnau, the word "permanent" in permanent alimony does not necessarily mean "forever."\(^{81}\) As a general rule, permanent alimony is terminated upon the death of either spouse or the remarriage of the receiving spouse.\(^{82}\) Once awarded, it is subject to modification upon a substantial change of circumstances and may be converted to rehabilitative alimony; conversely, rehabilitative alimony may be converted to permanent alimony.\(^{83}\) This rule embodies one significant distinction between

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79. Id. § 61.08(2)(b).
81. Ruhnau v. Ruhnau, 299 So. 2d 61, 65 (Fla. 1st DCA 1974). The word "permanent" is used to distinguish it from that type of alimony known as temporary alimony, which is support from the time of separation until the date of the decree. Duss v. Duss, 111 So. 382, 384 (Fla. 1926).
82. Canakaris, 382 So. 2d at 1202.
83. Id.
Rehabilitative alimony and permanent alimony—the manner by which it is terminated.84 Rehabilitative alimony automatically terminates at the end of a fixed period established in the final judgment or by such subsequent order as may modify the period, whereas permanent alimony requires a showing of a “substantial change in the circumstances” to be terminated.85

Any award of alimony may be in either periodic payments or payments in lump sum or both.86 If permanent alimony is granted, the court may choose to modify the award if the paying spouse can show changed circumstances.87 Also, rehabilitative alimony and permanent alimony may be awarded concurrently.88 Importantly, although no regard is given to fault in granting a dissolution, the court “may consider the adultery of a spouse and the circumstances thereof in determining whether alimony shall be awarded to such spouse and the amount of alimony, if any, to be awarded.”89

III. DISCRETION OF THE TRIAL COURT AND THE SCOPE OF REVIEW

Discretion without a criterion for its exercise is authorization of arbitrariness.

Felix Frankfurter80

The field of domestic relations in general, and alimony in particular, inures to a “freer rein” of judicial discretion than probably any other area of the law.81 Such a large degree of discretion is considered essential in order to do equity between the parties. As stated in Canakaris, “Dissolution proceedings present a trial judge with the difficult problem of apportioning assets acquired by the parties and providing necessary support.”82 To accomplish this, the trial judge possesses broad discretionary authority,83 defined as

84. Cann v. Cann, 334 So. 2d 325, 329 (Fla. 1st DCA 1976).
85. Id.
87. Colucci v. Colucci, 392 So. 2d 577, 579-80 (Fla. 3d DCA 1980) (citing Garrison v. Garrison, 351 So. 2d 1104, 1105 (Fla. 4th DCA 1977)).
88. See, e.g., McAllister v. McAllister, 345 So. 2d 352 (Fla. 4th DCA 1977).
92. Canakaris, 382 So. 2d at 1202.
93. Id. See also Bosem v. Bosem, 279 So. 2d 863, 864 (Fla. 1973); King v. King, 271 So. 2d 159, 160 (Fla. 1st DCA 1973); Weston v. Weston, 251 So. 2d 315 (Fla. 4th DCA 1971).
"[t]he power exercised by courts to determine questions to which no strict rule of law is applicable but which, from their nature, and the circumstances of the case, are controlled by the personal judgment of the court." 94 Such deference to the trial court's discretion is justified because the establishment of strict rules of law would be "impossible . . . for every conceivable situation which could arise in the course of a domestic relation proceeding." 95 The reasoning is that the trial judge is in the best position to determine what is just and appropriate because he has personally observed the parties, heard the testimony, and witnessed the events of the trial. The trial judge sits at a "superior vantage point" to that of the appellate courts, which have only the bare trial record to review. 96

It is readily apparent that broad discretion is essential, but questions necessarily arise as to the limits of this discretion, what constitutes an abuse of discretion, and what is the scope of review for appellate courts. The Canakaris decision is helpful. Attempting to establish some parameters with regard to the breadth of discretion, the Florida Supreme Court stated that a trial court's discretionary power is not without limitation.97 Evidently, the only limitation is a prohibition on substantial disparities in judgments resulting from basically similar factual patterns. The standard is further refined by the requirement that there be "logic and justification for the result." 98 The trial court is not to exercise its discretionary power "in accordance with whim or caprice . . . nor in an inconsistent manner." 99 The court suggested, in citing to a treatise by Justice Cardozo, that trial courts are bound to some extent by precedent and analogy to other cases.100 Likewise, attorneys can look for guidance to the run of cases bearing a similarity of facts and the factors discussed infra.

Yet, despite the pronouncement of these limitations, the court's discretion remains inordinately broad, as evidenced by the standard on review. In order for an appellate court to reverse an alimony award of a lower court, it must be shown that there was an

94. Canakaris, 382 So. 2d at 1202 (citing 1 Bouvier's Law Dictionary and Concise Encyclopedia 804 (8th ed. 1914)).
95. Canakaris, 382 So. 2d at 1202.
96. Id. at 1202-03.
97. Id. at 1203.
98. Id.
99. Id.
100. Id. (citing B. Cardozo, The Nature of the Judicial Process 141 (1921)).
abuse of discretion.\textsuperscript{101} The \textit{Canakaris} court adopted the "reasonableness test" for determining when an abuse has occurred:

Discretion, in this sense, is abused when the judicial action is arbitrary, fanciful, or unreasonable, which is another way of saying that discretion is abused only where no reasonable man would take the view adopted by the trial court. If reasonable men could differ as to the propriety of the action taken by the trial court, then it cannot be said that the trial court abused its discretion.\textsuperscript{102}

To effect a reversal on appeal, there can be no question but that the trial court's action was improper. This is a deferential test indeed. Seemingly, it makes the possibility of reversal almost nonexistent. While the award of rehabilitative alimony to a blind, disabled spouse with little work experience, as in \textit{Ruszala v. Ruszala},\textsuperscript{103} presented an obvious example of a view "no reasonable man would take," the majority of cases are not so clear-cut.

In \textit{Forster v. Forster}\textsuperscript{104} the Third District failed to even mention the reasonableness test in reversing the trial court's award of rehabilitative alimony. Instead, because the wife had been "short-changed" (based on the district court's findings), the trial court's order constituted an abuse of discretion.\textsuperscript{105} In \textit{Besley v. Besley},\textsuperscript{106} decided by the Third District two months after \textit{Forster}, Judge Baskin in his dissent admonished the majority for reversing the trial court's decision without stating a reason and thus designating itself as the factfinder. Judge Baskin urged that the district court should have affirmed the trial court's ruling because no abuse of discretion was demonstrated.\textsuperscript{107}

\textsuperscript{101} Smorag v. Smorag, 400 So. 2d 176 (Fla. 4th DCA 1981). The challenging party has the burden of proof of abuse of discretion. Baker v. Baker, 299 So. 2d 138, 139 (Fla. 3d DCA), cert. denied, 307 So. 2d 186 (Fla. 1974).

\textsuperscript{102} \textit{Canakaris}, 382 So. 2d at 1203 (citing to Delno v. Market St. Ry., 124 F.2d 965, 967 (9th Cir. 1942)).

\textsuperscript{103} 360 So. 2d 1288 (Fla. 2d DCA 1978).

\textsuperscript{104} 436 So. 2d 966 (Fla. 3d DCA 1983).

\textsuperscript{105} \textit{Id.} at 967. The Third District wavers between adherence to and disregard of the reasonableness test. \textit{Compare} Colucci v. Colucci, 392 So. 2d 577, 580 (Fla. 3d DCA 1980) (reasonableness test expressly applied) with Weiner v. Weiner, 386 So. 2d 1251, 1253 (Fla. 3d DCA 1980), rev'd, 403 So. 2d 408 (Fla. 1981) (district court held an award of permanent alimony of $750 per week was an abuse of discretion in light of the sums of money the wife was accustomed to spending during the marriage; Florida Supreme Court reversed, stating that no abuse of discretion had been shown and that district court had "improperly substituted its judgment for that of the trial court," \textit{id.} at 409).

\textsuperscript{106} 437 So. 2d 247 (Fla. 3d DCA 1983).

\textsuperscript{107} \textit{Id.} at 247 (Baskin, J., dissenting).
The Third District cases rely heavily on whether the spouse has been, in the court’s opinion, short-changed,\textsuperscript{108} rather than on whether the decision was one with which no reasonable man could agree. In \textit{Griffin v. Griffin},\textsuperscript{109} decided the same day as \textit{Forster}, the court upheld an award of lump-sum and rehabilitative alimony where the parties had been married for less than three years, evidently concluding that the wife had not been short-changed.

Other districts cite and follow the reasonableness test. For example, the Fifth District in \textit{Hair v. Hair} stated, "It is not necessary that we agree with the trial court, only that we find that reasonable men could agree with him, in order to affirm."\textsuperscript{110} Other districts cite to \textit{Canakaris} in asserting an abuse of discretion, but do not follow the reasonableness test outlined therein. The First District in \textit{Golden v. Golden}\textsuperscript{111} reversed an award of rehabilitative alimony on the basis that the wife of the twenty-three-year marriage had only a tenth-grade education, was in poor physical condition, and had, at her husband’s wish, devoted her married life endeavors to him and their children and home. Based on the factors listed in the dissolution statute and the general principles outlined earlier, there is a compelling argument that the trial court should have awarded permanent rather than rehabilitative alimony. Judge Joanos, in his dissent, argued that the lower court had not abused its discretion as measured by the \textit{Canakaris} reasonableness test. He reviewed the medical evidence and the evidence relating to the wife’s employment potential and concluded that reasonable men could conclude as the trial court had.\textsuperscript{112} The majority made no reference to the reasonableness test.

In sum, the majority of cases reveal that, ordinarily, the reasonableness test is not the basis for reversal of trial court orders despite the Florida Supreme Court’s mandate that it be the only basis for finding an abuse of discretion.\textsuperscript{113}

Both the Fourth and Fifth Districts, in \textit{Wagner v. Wagner}\textsuperscript{114}

\textsuperscript{108} The term “short-changed” was coined by the First District in Brown \textit{v. Brown}, 300 So. 2d 719, 726 (Fla. 1st DCA 1974). In this pre-\textit{Canakaris} case, the district court set aside the trial court’s alimony award and declared it a “pittance” of the assets accumulated during the marriage.

\textsuperscript{109} 436 So. 2d 968 (Fla. 3d DCA 1983).

\textsuperscript{110} Hair \textit{v. Hair}, 402 So. 2d 1201, 1205 (Fla. 5th DCA 1981). But see Hinebaugh \textit{v. Hinebaugh}, 403 So. 2d 451 (Fla. 5th DCA 1981).

\textsuperscript{111} 395 So. 2d 1255 (Fla. 1st DCA 1981).

\textsuperscript{112} \textit{Id.} at 1256 (Joanos, J., dissenting).

\textsuperscript{113} \textit{Canakaris}, 382 So. 2d at 1203.

\textsuperscript{114} 383 So. 2d 987 (Fla. 4th DCA 1980).
and Hair respectively, have circumvented the reasonableness test by asserting that the decision to award permanent or rehabilitative alimony is a question of law and not a matter of discretion. Therefore, these courts conclude, the review of such a decision is not subject to the reasonableness test. This analysis, if correct, would permit appellate courts to reverse a trial court's decision on the basis of rules of law rather than solely for abuse of discretion. However, the Florida Supreme Court in Kuvin v. Kuvin settled this question in holding that the decision whether to award permanent or rehabilitative alimony is a matter within the trial court's discretion, impliedly rejecting the analyses of the Fourth and Fifth Districts.115

IV. The Kuvin Issue

Alimony was never intended to secure a perpetual state of secured indolence. It should not be suffered to convert a host of physically and mentally competent young women into an army of alimony drones, who neither toil nor spin, and become a drain on society and a menace to themselves.

Samuel Hofstadter.116

The issue presented on appeal in Kuvin was "whether the wife may choose to remain at home as a full-time mother or must 'rehabilitate herself' by working outside the home."117 The parties in Kuvin were married in 1968 and had two minor children at the time of dissolution in 1980. The husband, a forty-seven-year-old attorney, had a net income of $49,500. The wife, thirty-six years old, did not work outside of the home during the marriage except for a year and a half when she worked part-time as a legal secretary. Mr. Kuvin approved of his wife's decision to remain at home and not work. The trial court awarded Mrs. Kuvin $1,000 per month for a period of three years as rehabilitative alimony. The court also required the sale of the marital home and division of the proceeds between the parties, with the wife receiving $20,000 from the husband's share as lump-sum alimony.118 Mrs. Kuvin appealed

118. Kuvin, 412 So. 2d at 901. The judgment also included the sale of property owned in Colorado with the proceeds divided, and child support payments of $950 a month to be paid by the husband. These rulings were not challenged on appeal.
the judgment on the theory that her husband had approved of her
decision to remain at home during the marriage and was
financially able to continue to provide for his family. The Third
District agreed and replaced the award of rehabilitative alimony
with permanent alimony.\textsuperscript{119}

Perhaps the issue in \textit{Kuvin} can be best understood by analyzing
the various factors involved and determining the possible awards
based on the statutory guidelines and the principles established by
case law. At the time of the dissolution, Mrs. Kuvin was a rela-
tively young and healthy woman with some postsecondary educa-
tion and a demonstrated ability to hold a job. The evidence
showed that she could earn $250 a week as a legal secretary and
had a $200 monthly income from farm property.\textsuperscript{120} Based on these
facts alone, an award of rehabilitative alimony would have been
most appropriate. A combination of youth, education, vocational
skill, and demonstrated ability to be self-supportive presents a
textbook case for the award of rehabilitative alimony.

However, a trial judge may choose to consider other factors, such
as duration of marriage and the standard of living to which the
spouse was accustomed. The Kuvin’s marriage had lasted the rela-
tively long period of twelve years and their standard of living was
based on the ability to spend approximately $40,000 per year. With
the presence of these additional factors, it is entirely plausible that
a trial judge could rule that permanent alimony should be awarded
in the interest of equity. Although this ruling would conflict with
the holdings of some cases,\textsuperscript{121} it likely would not be held
unreasonable.

The \textit{Kuvin} case involved the additional factor of the wife’s de-
sire to remain at home to care for the children and the husband’s
acquiescence to this arrangement during the marriage. The view
that this additional factor favors an award of permanent alimony is
not without precedent. In \textit{Ruhnau v. Ruhnau} the court upheld an
award of permanent alimony to a mother of four, based on the rea-
soning that “there is no substitute for the guiding hand of a
mother in the rearing of children. . . . We do not now intend, and
never have intended, to discourage the role of a mother by the few
remaining women in our society who are willing to fulfill that obli-
gation and purpose.”\textsuperscript{122} The court recognized that the evidence

\textsuperscript{119} Id. at 902.
\textsuperscript{120} Kuvin, 442 So. 2d at 204.
\textsuperscript{121} See, e.g., Roberts v. Roberts, 283 So. 2d 396 (Fla. 1st DCA 1973).
\textsuperscript{122} Ruhnau v. Ruhnau, 299 So. 2d 61, 64 (Fla. 1st DCA 1974).
must support the award, and that when considering the evidence the courts should look at "the whole marital picture" and not limit themselves solely to economics.\textsuperscript{123}

Cases following \textit{Ruhnau}, dealing specifically with the issue of caring for children, gave even more weight to maternal considerations. Expressly taking into consideration the wife’s desire to remain in the home to care for children during their formative years, the court in \textit{King v. King} reversed an award of rehabilitative alimony and ruled that permanent alimony was more appropriate.\textsuperscript{124} Interestingly, the wife in \textit{King} was relatively young and the marriage was of short duration—two factors which could have supported an award of rehabilitative alimony.\textsuperscript{125}

In \textit{McNaughton v. McNaughton}, a case cited to and relied on by the district court in \textit{Kuvin}, the Third District held that a forty-three-year-old mother with no other income or training should not be required to work to support herself and her children when the husband had the ability to support them.\textsuperscript{126} The husband in \textit{McNaughton}, like the husband in \textit{Kuvin}, had previously approved of the stay-at-home role of the wife. However, \textit{McNaughton}, \textit{Ruhnau}, and \textit{King} differ drastically from \textit{Kuvin} in that the wife in each of these cases had no independent income or vocational skills. The wife in \textit{Kuvin} had both an independent income and a marketable skill. It is unclear whether the wife's desire to remain at home with the children, coupled with the husband’s approval during marriage, should override the wife’s capacity for self-support, a factor which ordinarily suggests the award of rehabilitative alimony.

As previously discussed, the courts are split on the issue of whether a capacity for self-support mandates an award of rehabilitative alimony. Given the statutory authority to consider all factors “necessary to do equity and justice between the parties,” the more convincing argument is that it does not automatically mandate such an award. As the court in \textit{Ruhnau} said, “Alimony is not determined by some iron clad formula that can be applied with sharp certainty. The equities, circumstances and the whole marital picture furnish and form the fabric from which the award is to be

\textsuperscript{123} Id. at 65. The court was careful to point out that its statements regarding a mother and wife are equally applicable to the father and husband.

\textsuperscript{124} King v. King, 316 So. 2d 322, 323 (Fla. 4th DCA 1975).

\textsuperscript{125} King was a pre-\textit{Canakaris} case; therefore, the district court in reversing the lower court’s award was not required to follow the reasonableness test.

\textsuperscript{126} McNaughton v. McNaughton, 332 So. 2d 673, 675 (Fla. 3d DCA 1976), \textit{cert. denied}, 345 So. 2d 424 (Fla. 1977).
This is not to say that a showing of potential capacity for self-support does not present strong evidence in favor of rehabilitative alimony. It is only to say that the capacity for self-support is but one factor to be taken into account among many in determining an appropriate award. It may carry more weight than other factors, but it should not be conclusive.

An alternative approach was employed by the First District in *Smithwick v. Smithwick,* an a case involving a thirty-eight-year-old wife who had training and experience as an x-ray technician, but who had devoted herself full-time to the care of the couple’s three children. Recognizing the children’s need for the attention of their mother on the one hand and the wife’s youth and vocational skills on the other, the court reached the compromise of awarding rehabilitative alimony during the period of the minority of the children and during a reasonable rehabilitative period thereafter.

This same approach was utilized by the Third District in *Dominik v. Dominik.* Although the wife was fully employable and capable of earning $800 per month the court awarded rehabilitative alimony for a period of ten years to allow the wife to care for the couple’s children.

The cases that have been outlined in this comment suggest that based on the factors in *Kuvin* (the wife’s youth, independent income and marketable skills, the duration of the marriage, as well as the standard of living established by the parties, the wife’s role of full-time mother during the marriage, and her desire to continue that role and the husband’s approval of that role), the trial court could have justifiably awarded either rehabilitative or permanent alimony or followed the approach of the *Smithwick* court and awarded rehabilitative alimony until the youngest child reached majority.

In *Kuvin* the Florida Supreme Court flatly rejected the proposition that a rehabilitatable wife who has been awarded custody of minor children may choose to forego rehabilitation and remain at home to care for the children if the former husband can afford to support her. The court further admonished the district court for only considering the ability of the husband to pay and not the needs of the wife. The decision to award rehabilitative alimony was within the trial court’s discretion. In order for the district

127. *Ruhnau,* 299 So. 2d at 65.
128. 353 So. 2d 572 (Fla. 1st DCA 1977).
129. 390 So. 2d 81 (Fla. 3d DCA 1980).
130. *Kuvin,* 442 So. 2d at 204-05.
court to reverse the trial court’s award, it had to find an abuse of discretion. The supreme court held that reasonable persons could differ as to the propriety of the trial court’s action, and therefore found no abuse of discretion.\textsuperscript{131}

\textit{Kuvin} does not stand for the proposition that, notwithstanding her desire to remain at home with the children, a wife is entitled only to rehabilitative alimony if she is rehabilitatable. Rather, the case holds that she is not \textit{entitled} to permanent alimony \textit{as a rule of law}. Such a decision is within the discretion of the trial court after a consideration of all the relevant factors.

\section*{V. CONCLUSION}

As the law now stands, in view of \textit{Canakaris} and recent cases such as \textit{Kuvin}, the decision of the trial court is subject to reversal only if there is an abuse of discretion as defined by the reasonableness test. The district court is not to substitute its judgment for that of the trial court.\textsuperscript{132} In addition, district courts will not be able to avoid the reasonableness test by declaring that the decision whether to award permanent or rehabilitative alimony is a question of law. \textit{Kuvin} makes it clear that the decision is one within the trial court’s discretion.\textsuperscript{133} In exercising that discretion, a trial court is guided by the general principles established by case law and by the limitation that there not be substantial disparities in judgments resulting from cases with similar facts. There is some ambiguity as to the purpose the statutory factors are to serve; whether to determine the type of alimony, or amount, or both. The better argument is that they serve both purposes, particularly since the purpose of broad discretion is to achieve equity between the parties.

In making its determination of an award, the trial court should initially determine whether there is a capacity for self-support. If so, the court should give special regard to awarding rehabilitative alimony. However, a court should not become so enamored with the virtues of rehabilitative alimony that it reaches an inequitable result.

The duration of the marriage, the standard of living during the

\textsuperscript{131} \textit{Id.} at 205-06. The supreme court speculated that the trial court may have reasoned that rehabilitation would be more likely if the wife were to begin immediately rather than 14 years later (when the youngest child would reach majority). \textit{Id.} at 205.

\textsuperscript{132} \textit{Id.} at 206.

\textsuperscript{133} \textit{Id.} at 205.
marriage, and the custody of minor children may suggest that an award of permanent alimony is more proper, notwithstanding a capacity for self-support. The type of award granted is a "judgment call" on the part of the trial court, due to its "superior vantage point."

With this in mind, the Florida Supreme Court has chosen to limit an appellate court's ability to reverse a trial court to cases evidencing the most blatant of abuses—those awards with which no reasonable man could agree. Whatever direction exists in the law of alimony exists exclusively for the benefit of the trial court. And, even then, it is not mandated that the trial courts follow that direction immutably.

On the one hand, allowing such broad parameters creates the opportunity for judicial arbitrariness and caprice. On the other, such deference is considered necessary for the achievement of equity in an area of law with so many intricate factors. Whichever is the case in the field of alimony law in Florida, discretion rules the day.