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Maintenance in Gross: A Lack of Statutory Authorization Is Finally Recognized

*Cates v. Cates*¹

I. INTRODUCTION

When the Missouri Legislature passed the Divorce Reform Act in 1973 it was the first change in Missouri divorce law in ninety-five years.² The resulting law was a response to a changing population and its social attitudes. The legislature created a no-fault³ dissolution of marriage law that changed the basic underlying ideology of alimony, an award which was granted as damages for the husband's breach of the marriage contract, to one of maintenance, award requires the requesting party to show *need* for support.⁴ This basic difference between pre-Reform Act alimony and post-Reform Act maintenance lies at the heart of the problem in *Cates*. Whether intentional or not, the Missouri Legislature failed to repeal a portion of the pre-Reform Act law that allowed for the allocation of "alimony in gross," an award of alimony in a lump sum payment in a decree in favor of the wife.⁵

Since the 1973 Reform Act, courts have continued the practice of decreeing maintenance in gross, a lump sum payment of maintenance.⁶ Courts' opinions (both pre- and post-Reform Act) frequently allowed payment of these "in gross" awards to be made in installments.⁷ This practice created

1. 819 S.W.2d 731 (Mo. 1991) (en banc).

2. Charlotte P. Thayer, *Symposium on Dissolution of Marriage: Introduction*, 29 J. Mo. B. 496, 496 (1973).

3. This term of art is misleading because the "conduct of a party seeking maintenance during the marriage" is a factor in determining the amount and length of a maintenance order. MO. REV. STAT. § 452.335.2(7) (1986); *see also* MO. REV. STAT. § 452.330 (including conduct of parties as a factor in determining division of marital property). The relevant "no-fault" aspect is the basic ground for dissolution of marriage. *See* MO. REV. STAT. § 452.305 (1986).

4. Robert G. Ruhland, *Symposium on Dissolution of Marriage: Maintenance and Support*, 29 J. Mo. B. 516, 516 (1973).

5. MO. REV. STAT. § 452.080 (1986). The pertinent part of the statute reads:

Upon a decree of divorce in favor of the wife, the court may, in its discretion, decree alimony in gross or from year to year. When alimony is decreed in gross, such decree shall be a general lien on the realty of the party against whom the decree may be rendered, as in the case of other judgements.

Id.

6. *See generally* Leitz v. Moore, 703 S.W.2d 54 (Mo. Ct. App. 1985); Brown v. Brown, 673 S.W.2d 113 (Mo. Ct. App. 1984); Mottel v. Mottel, 664 S.W.2d 25 (Mo. Ct. App. 1984); Gunkel v. Gunkel, 633 S.W.2d 108 (Mo. Ct. App. 1982); D.E.W. v. M.W., 552 S.W.2d 280 (Mo. Ct. App. 1977).

7. *See, e.g.*, Mottel v. Mottel, 664 S.W.2d 25, 27 (Mo. Ct. App. 1984); Phelps v. Phelps, 620 S.W.2d 462, 464 (Mo. Ct. App. 1981); Warren v. Warren, 601 S.W.2d 683, 685 (Mo. Ct. App. 1980); *In re* Marriage of Arnett, 598 S.W.2d 166, 167 (Mo. Ct. App. 1980); Carr v. Carr, 556 S.W.2d 511, 512 (Mo. Ct. App. 1977); Laney v. Laney, 535 S.W.2d 510, 512-13 (Mo. Ct.

a problem of uncertainty in interpreting when, or even if, these awards terminate upon remarriage of the recipient spouse.⁸ Courts have taken two different paths⁹ and *Cates* is the Missouri Supreme Court's resolution of this issue.¹⁰

This Note will analyze the result reached in the instant decision as well as the practical implications the decision will have on numerous in gross awards being paid today. After outlining the statutory framework under which the court operated, this Note will briefly discuss the history of the application of in gross alimony awards and the divergent path that Missouri courts have taken, either terminating or sustaining the award upon the recipient spouse's remarriage. This Note will then discuss the implications of the *Cates* decision on past maintenance awards and make suggestions for structuring future ones.

II. FACTS AND HOLDING

The Greene County Circuit Court dissolved the marriage of Rochelle and Larry Cates on May 24, 1988.¹¹ In addition, the trial court's decree approved and incorporated the property settlement and separation agreement of the parties, finding it was "fair and not unconscionable."¹² The court found it necessary to make an award of "maintenance in gross" to Ms. Cates in the amount of \$7,800, payable at the rate of \$325 per month as set out in the separation agreement.¹³ The court incorporated this into the decree.¹⁴

App. 1976).

8. See MO. REV. STAT. § 452.370.3 (1991 Supp.).

9. See *Mika v. Mika*, 728 S.W.2d 280, 285 (Mo. Ct. App. 1987) (lump sum or in gross award payable in installments survives death or remarriage). *Contra* *Nelson v. Nelson*, 720 S.W.2d 947, 954 (Mo. Ct. App. 1986) (unaccrued installments of in gross awards payable by installment are terminated when recipient's dependency ended by death or remarriage), *overruled* by *Cates v. Cates*, 819 S.W.2d 731 (Mo. 1991) (en banc).

10. *Cates*, 819 S.W.2d at 738.

11. *Id.* at 732.

12. *Id.* at 732-33.

13. *Id.*

14. *Id.* The separation agreement as quoted in the text of the case stated in part:

5. Maintenance. Husband acknowledges certain obligations to Wife that have arisen from the marital relationship, and the parties, after giving due consideration to all relevant factors for the award of maintenance, including those set forth in RSMo. 453.335, the difference in earning power between them, the need for maintenance and the benefits that would have accrued to Wife from the continuation of the marriage, agree that the Wife is entitled to maintenance. Accordingly, Husband shall pay to wife, as maintenance in gross, the sum of Seven Thousand Eight Hundred (\$7,800.00) Dollars, payable at the rate of Three Hundred Twenty Five (\$325.00) Dollars per month . . .

* * * * *

The parties acknowledge that the above described maintenance provisions are intended to constitute "alimony" within the meaning of Section 71(a) of the Internal Revenue Code of 1954 . . . thus constituting gross income to Wife and a deductible

Ms. Cates remarried on June 1, 1989, after which Mr. Cates stopped making his requisite monthly payments.¹⁵ Ms. Cates attempted to garnish Mr. Cates' wages and he responded by filing a motion to quash garnishment.¹⁶ The trial court sustained Mr. Cates' motion.¹⁷ Ms. Cates filed an appeal, alleging that her remarriage did not terminate an obligation to pay the remaining lump sum maintenance installments.¹⁸

The Missouri Supreme Court held that an award of maintenance "in gross" will no longer be recognized as a tool for providing maintenance awards under *Missouri Revised Statute* section 452.335, directly overruling Missouri case law in conflict with this decision.¹⁹ The court also held that in the future, when the decree specifies that the in gross award is to effectuate a distribution of property, the payments will not be terminated by death or remarriage.²⁰ When the instrument granting an in gross award (1) is ambiguous or (2) clearly states it is based on the *economic need* of the spouse, but is in lieu of an actual award of maintenance as defined by statute, courts "will determine the continued obligation of the paying party to pay maintenance following remarriage or death upon the language (or silence) of the separation agreement or the court's decree."²¹ The court remanded the case to determine whether or not the parties intended payments to continue upon the remarriage of Ms. Cates, because "the ambiguity of the parties' intent is created by reliance on this Court's prior (but now overruled in part) decisions."²²

expense to Husband

* * * * *

This support obligation is not related to the division of property and is not intended in any way to constitute a form of payment for any rights or interests of the Wife.

The maintenance hereinbefore provided shall be deemed contractual in nature, not subject to modification by the Court and subject to modification by the parties in writing.

Id. at 733.

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.* at 732.

19. *Id.* at 738.

20. *Id.*

21. *Id.* The language the court was referring to was language indicating an agreement by the parties to extend the obligation beyond death or remarriage.

22. *Id.*

III. LEGAL HISTORY

A. Statutory Framework

The Divorce Reform Act was written with very specific provisions for the award of maintenance, its subsequent modification, and specific events that terminate the payor spouse's obligation to continue payments. In keeping with the gender-neutral nature of the Reform Act, either spouse can receive an award of maintenance.²³ The spouse seeking such an award must show he or she:

- (1) Lacks sufficient property, including marital property apportioned to him, to provide for his reasonable needs; and
- (2) Is unable to support himself through appropriate employment or is the custodian of a child whose condition or circumstances make it appropriate that the custodian not be required to seek employment outside the home.²⁴

The requirement to show either *need* or young children requiring an "at-home" custodian must be met before a spouse will be given a maintenance award. The same section defines how the court may structure the award by providing for modification and eventual termination.²⁵ A court is allowed to award maintenance for an indefinite or specific period of time.²⁶ The statute requires that the parties designate whether the award is modifiable or not modifiable.²⁷ If the award is modifiable, the party requesting modification must show a "substantial and continuing change of circumstances."²⁸

The Reform Act is very specific in stating what will terminate an award of maintenance. Section 452.370 (the "Maintenance Termination Statute")²⁹ states that "[u]nless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future statutory maintenance is terminated upon

23. MO. REV. STAT. § 452.335.1 (1986).

24. *Id.*

25. MO. REV. STAT. § 452.335.3 (Supp. 1990). The statute reads:

3. The maintenance order shall state if it is modifiable or nonmodifiable. The court may order maintenance which includes a termination date. Unless the maintenance order which includes a termination date is nonmodifiable, the court may order the maintenance decreased, increased, terminated, extended, or otherwise modified based upon a substantial and continuing change of circumstances which occurred prior to the termination date of the original order.

Id.

26. *Id.* An award of maintenance for a definite period is logically made with the knowledge that the recipient spouse will be self-sufficient after a certain time or event, or that she will not be required to stay home and care for small children after a certain time.

27. *Id.*

28. *Id.*

29. Because the discussion in this Note frequently refers to three different statutes, the author has chosen to title them as they are used in the context of the Note to avoid confusion. These titles in no way reflect the entire purpose of each statute, but are merely for convenience of reference.

the death of either party or the remarriage of the party receiving maintenance."³⁰ The Maintenance Termination Statute is the provision the *Cates* court applied to terminate an award of maintenance in gross payable in installments.³¹

B. *Judicial Interpretation*

1. Pre-Reform Act

The origin of "in gross" alimony dates back to some of the earliest codification of divorce law in Missouri and is reflected in section 452.080 (the "Alimony Authorization Statute").³² The underlying rationale of alimony awards at that time was to grant the innocent wife a sum of money, in gross or in installments, that would fairly compensate her for the loss of support by the husband's breach and subsequent termination of the marriage contract.³³ Courts preferred a lump sum payment up front when possible, for the "welfare and happiness" of the couple.³⁴ They reasoned that this would allow a complete and clean break, because the estranged wife would not be dependent upon her husband for sustenance after the marriage was ended.³⁵ In *Wright v. Wright*,³⁶ however, the St. Louis Court of Appeals stated that if an award was to be given in gross, it should be an amount large enough to allow the wife to live off its income in a fashion comparable to what the husband could have provided in an award of alimony from year to year.³⁷ If an in gross award would fail to achieve an equal level of income, then the court should award an allowance from year to year, payable on certain dates.³⁸ This authorized Missouri courts to make either a lump sum award of alimony or an indefinite award with periodic payments.

30. MO. REV. STAT. § 452.370.3 (1991 Supp.).

31. *Cates*, 819 S.W.2d at 738. The court refers to § 452.370.2 (instead of § 452.370.3) in its decision because it was referring to the pre-1990 statute. The pertinent provision is the same except for the renumbering.

32. See MO. REV. STAT. § 452.080 (1986 & 1991 Supp.). The historical note dates the original enactment of this section to 1868. *Id.*

33. Ruhland, *supra* note 4, at 516; see also *Cates*, 819 S.W.2d at 734; *Nelson v. Nelson*, 221 S.W. 1066, 1067 (Mo. 1920) (*Nelson J.*).

34. *Wright v. Wright*, 179 S.W. 950, 951 (Mo. Ct. App. 1915); see also *Lemp v. Lemp*, 155 S.W. 1057, 1061 (Mo. 1914). The court eloquently stated:

It is just and humane, and lies at the very foundation of the policy of absolute divorce, that the innocent and injured woman be delivered from the body of her dead injury, and not be required for life to live in its atmosphere and taste its flavor with her daily bread.

Id.

35. See *supra* note 33.

36. 179 S.W. 950 (Mo. Ct. App. 1915).

37. *Id.* at 952.

38. *Id.*

The next question that arose in the application of the Alimony Authorization Statute was whether the former wife's remarriage terminated an indefinite award of alimony with periodic payments. The Missouri Supreme Court decided this issue for the first time in *Nelson v. Nelson* (*Nelson I*).³⁹ The court held that if the wife remarried and obtained support insuring the lifestyle to which she was accustomed from her second husband, then it was illogical and "unseemly" for her to get the double benefit of payments from her ex-husband and support from her current husband.⁴⁰ The court held, however, that remarriage did not ipso facto end the obligation to pay alimony and that only court action could terminate the award.⁴¹ The legislature codified part of this judicial rule in section 452.075 of the *Missouri Revised Statutes* in 1957.⁴² However, the legislature reversed the *Nelson I* holding that court action was required to terminate the husband's obligations and instead provided that the remarriage does ipso facto relieve the obligation as of the date of the wife's remarriage.⁴³ The legislature did not extend the automatic termination to lump sum, in gross awards or accrued past due periodic payments because these were considered the wife's vested property right as of the date of the in gross award or as of the time the payments accrued.⁴⁴

After the *Nelson I* decision, problems began to arise when courts started allowing the lump sum, in gross alimony award to be paid out in installments over a definite period of time. Specifically, the question arose whether a husband's obligation to make such installment payments terminated under the judicial rule codified in section 452.075. The first cases authorizing installment payments appeared in the late 1950s and early 1960s. These cases held that even though an award of alimony in gross was allowed to be paid in installments, it would retain the status of an award in gross insofar as it would not be subject to subsequent modification or termination.⁴⁵ In

39. 221 S.W. 1066 (Mo. 1920).

40. *Id.* at 1067.

41. *Id.* at 1068.

42. MO. REV. STAT. § 452.075 (1986) (enacted in 1957).

43. *Id.* The statute reads:

When a divorce has been granted, and the court has made an order or decree providing for the payment of alimony and maintenance of the wife, the remarriage of the former wife shall relieve the former husband from further payment of alimony to the former wife from the date of the remarriage, *without the necessity of further court action*, but the remarriage shall not relieve the former husband from the provisions of any judgment or decree or order providing for the support of any minor children.

Id. (emphasis added). This section, which predates the Divorce Reform Act, has also stayed intact along with MO. REV. STAT. § 452.080 (1986).

44. See *Leutzinger v. McNeely*, 273 S.W. 241, 243 (Mo. Ct. App. 1925) ("We are of the opinion that the decree awarding the alimony in gross to the wife becomes a vested property right. . ."); see also *Nelson I*, 221 S.W. at 1069.

45. *Laney v. Laney*, 535 S.W.2d 510, 512-13 (Mo. Ct. App. 1977) (citing *Backy v. Backy*, 355 S.W.2d 389, 394 (Mo. Ct. App. 1962); *Carl v. Carl*, 284 S.W.2d 41, 43 (Mo. Ct. App. 1955)).

Swanson v. Swanson,⁴⁶ the Missouri Supreme Court stated that the Alimony Authorization Statute provides special status to the in gross award even if payable in installments because it becomes an automatic lien on the husband's realty.⁴⁷ The court applied this provision, holding that an in gross award of any kind survives the wife's death or remarriage, and that an in gross award is not subject to modification.⁴⁸

2. Post-Reform Act

The legislature's failure to repeal or qualify the Alimony Authorization Statute when it enacted the Divorce Reform Act in 1973⁴⁹ was the beginning of a confusing era for in gross awards. Robert Ruhland, in an article examining the new Act, stated that "[i]t does not appear to me . . . that 'in gross' orders for maintenance are contemplated under the Act."⁵⁰ He believed that the new Act's no-fault element, the requirement for a showing of need for an award of maintenance, and the difference in the underlying philosophies of alimony (a breach of marital contract remedy) and maintenance (an award based on reasonable needs) precluded the use of in gross awards in aiding a dependent spouse.⁵¹ However, courts have disagreed with this conclusion for almost twenty years.

In *D.E.W. v. M.W.*,⁵² the Missouri Court of Appeals, St. Louis District, specifically held that the new Dissolution of Marriage Act did not preclude the court from awarding an in gross amount of *maintenance*,⁵³ noting that the legislature had failed to repeal the Alimony Authorization Statute, which allows for such.⁵⁴ The court also stated that the new provisions authorizing maintenance did not preclude an in gross award.⁵⁵ It pointed to the specific language of the new statute that stated: "The maintenance order shall be . . . for such *periods* of time as the court deems just . . ." ⁵⁶ By interpreting the Maintenance Authorization Statute and the Alimony Authorization Statute together, the court held that the specific intent of the Missouri Legislature to retain in gross awards remained in the divorce statute.⁵⁷ The court reasoned

46. 464 S.W.2d 225 (Mo. 1971).

47. *Id.* at 228.

48. *Id.*

49. MO. REV. STAT. §§ 452.300-415 (1986).

50. Ruhland, *supra* note 4, at 517.

51. *Id.*

52. 552 S.W.2d 280 (Mo. Ct. App. 1977).

53. *Id.* at 282; *see also* *Hawkins v. Hawkins*, 511 S.W.2d 811 (Mo. 1974); *Grotjan v. Grotjan*, 519 S.W.2d 350 (Mo. Ct. App. 1975); *Staab v. Staab*, 515 S.W.2d 787 (Mo. Ct. App. 1974).

54. *D.E.W.*, 552 S.W.2d at 282-83.

55. *Id.* at 283.

56. *Id.* (quoting MO. REV. STAT. § 452.335 (Supp. 1973) (court's emphasis)).

57. *Id.* Note that *Cates* found this reasoning flawed because an award of maintenance based on need cannot be inferred from a statute that awards alimony as damages for breach of the marriage contract. *Cates*, 819 S.W.2d at 734-35.

that in gross awards were consistent with the intent of the new law to encourage self-sufficiency in the recipient spouse because the awards allowed the needy spouse to get a new start, while at the same time severing dependency.⁵⁸ The court placed one limitation on granting in gross awards payable in installments, namely that such awards should only be granted if it was unlikely that the parties' conditions would go unchanged for the duration of the award.⁵⁹ This limitation was based on the rationale in prior decisions that in gross awards were not modifiable. Although unstated, the underlying assumption was that because in gross awards were not modifiable, they should not be extended beyond actual need as required by section 452.335 (the "Maintenance Authorization Statute").⁶⁰

Until recent years, Missouri courts consistently had held that the revised statutes authorized maintenance in gross, that it was not modifiable, and that an award as such survived either spouse's death or the recipient spouse's remarriage.⁶¹ The Missouri Supreme Court, prior to *Cates*, addressed all but the termination issue in *Doerflinger v. Doerflinger*.⁶² *Doerflinger* involved a wife who was seeking modification of a fixed-term maintenance award (an amount payable for a fixed period of time without a lump sum amount being specified) based on a change of circumstances.⁶³ The court held that the Maintenance Authorization Statute does allow for an award in gross as part of the full range of support payments to the needy spouse, thereby refusing to rely on the rationale of *D.E.W. v. M.W.*, which used the Alimony Authorization Statute as partial authority for this award.⁶⁴ It stated that because of the new no-fault divorce laws, the Alimony Authorization Statute could rarely be applied, since the section is limited to an award based on fault to an "injured and innocent" wife.⁶⁵

The *Doerflinger* court held that a fixed-term award and an award in gross payable in installments were one and the same because both were essentially a determination of a certain sum necessary for the recipient spouse to achieve independence.⁶⁶ The court also held that neither of these types of awards

58. *Id.* The court referred to the rationale in *Lemp v. Lemp*, 155 S.W. 1057, 1061 (Mo. 1914). See *supra* notes 33-38 and accompanying text. It is necessary to note that this decision was made long before the Divorce Reform Act and really related more to the underlying reason for awarding alimony as a remedy for breach of the marriage contract and *not* the Reform Act's requirement of a showing of need.

59. *D.E.W.*, 552 S.W.2d at 283.

60. MO. REV. STAT. § 452.335 (1986 & 1991 Supp.); see also *supra* note 24 and accompanying text.

61. See, e.g., *Gunkel v. Gunkel*, 633 S.W.2d 108 (Mo. Ct. App. 1982); *Jacobs v. Jacobs*, 628 S.W.2d 729 (Mo. Ct. App. 1982); *In re Marriage of Arnett*, 598 S.W.2d 166 (Mo. Ct. App. 1980); *Carr v. Carr*, 556 S.W.2d 511 (Mo. Ct. App. 1977).

62. 646 S.W.2d 798 (Mo. 1983).

63. *Id.* at 799.

64. *Id.* at 800 n.3. (The court stated that § 452.080 "inexplicably was not repealed" when the Divorce Reform Act was enacted.)

65. *Id.* at 800.

66. *Id.* at 800-01.

were subject to modification upon a change in circumstances because they were *final adjudications* of the financial need of the recipient spouse.⁶⁷ Final adjudications can only be reviewed by appeal of the original judgment.⁶⁸ The language in the Maintenance Termination Statute which limits modification "only as to installments accruing subsequent to the motion," meant that application to in gross awards was foreclosed, because no future payments accrued upon which this section could operate.⁶⁹ The unstated assumption of the *Doerflinger* court was that the installments were already due and owing once the decree had been entered. Therefore, the right to payment immediately became vested in the recipient spouse. The court's only stated rationale for this conclusion, however, was limited to reliance on language in prior cases seeming to allow modification only if the award was for an unlimited duration.⁷⁰

After *Doerflinger*, Missouri courts continued to hold that in gross and fixed-term maintenance were not terminated upon death or remarriage.⁷¹ These courts' rationale is reflected in the holding of *Mottel v. Mottel*.⁷² In that case, the Missouri Court of Appeals, Eastern District, first declared that *Doerflinger* had held lump sum and fixed-term awards were the same in character as in gross awards and thus were not modifiable.⁷³ The court then stated that *D.E.W. v. M.W.* precluded termination based on death or remarriage for these types of awards.⁷⁴ The *Mottel* court and many other courts have uniformly failed to recognize that *Doerflinger* based its authorization for an award of maintenance in gross upon the Maintenance Authorization Statute, refusing to apply the Alimony Authorization Statute in the no-fault divorce framework of the Reform Act.⁷⁵ The court in *D.E.W. v. M.W.*, on the other hand, based its authorization for in gross awards, and thus its rationale for nontermination, on the Alimony Authorization Statute.⁷⁶ While this was a

67. *Id.*

68. *Id.*

69. *Id.* at 800.

70. *Id.* at 801. The court determined that the statement in *Poague v. Poague* assumed that a maintenance award of limited duration was not modifiable. The statement was: "[maintenance] should then be of unlimited duration, the amount of which might be subject to modification if appellant's financial condition should in fact improve." *Id.* (quoting *Poague v. Poague*, 479 S.W.2d 822, 824 (Mo. Ct. App. 1979)). The court also referred to the holding in *Royal v. Royal* for support: "an award of maintenance for an indefinite term was required to preserve entitlement of the wife to relief by modification under Section 452.370." *Id.* at 802 (citing *Royal v. Royal*, 617 S.W.2d 615 (Mo. Ct. App. 1981)).

71. See, e.g., *Mika v. Mika*, 728 S.W.2d 280, 285 (Mo. Ct. App. 1987); *Lietz v. Moore*, 703 S.W.2d 54, 56 (Mo. Ct. App. 1985); *Mottel v. Mottel*, 664 S.W.2d 25, 27 (Mo. Ct. App. 1984).

72. 664 S.W.2d 25 (Mo. Ct. App. 1984).

73. *Id.* at 27.

74. *Id.*

75. *Doerflinger*, 646 S.W.2d at 800.

76. *D.E.W.*, 552 S.W.2d at 282-83.

In *Nelson v. Nelson*⁷⁷ (*Nelson II*), the Missouri Court of Appeals, Western District, came to a different conclusion.⁷⁸ The court refused to hold that the trial court had erred in including an express clause in the decree of dissolution terminating the installment payments of an in gross award if either party died or the recipient spouse remarried.⁷⁹ The court restricted the *Doerflinger* holding to the prohibition of *modification* of in gross or fixed-term awards.⁸⁰ The court then held that the Maintenance Termination Statute did apply to in gross awards authorized under the Maintenance Authorization Statute. Thus, such awards terminated upon death or remarriage absent written agreement or an express decree to the contrary.⁸¹

The *Nelson II* court stated that because *Doerflinger* decided that maintenance in gross was authorized by the Maintenance Authorization Statute and not the Alimony Authorization Statute, it was "imbued with the purposes of section 452.335 [the Maintenance Authorization Statute]."⁸² The *Nelson II* court ruled that maintenance is awarded only when a spouse shows a need for reasonable support not fulfilled by an apportionment of marital property, and then only for a period of time until the dependent spouse reaches reasonable self-sufficiency.⁸³ "That the maintenance continues to a spouse only until the need and dependency for support remain is [the] theme" of the statute and decisions that follow it.⁸⁴ The decision to award maintenance in gross is a final adjudication of the spouse's need and dependency, and therefore is the reason for barring modification of the award as to amount or duration.⁸⁵ But *Nelson II* noted that the trial court's decision that a gross award is payable in installments is a decision that the full sum is not immediately necessary, leaving the unaccrued installments subject to termination.⁸⁶ However, should the trial court's estimation of need and dependency be reduced by death or remarriage, the court reasoned that

77. 720 S.W.2d 947 (Mo. Ct. App. 1986).

78. *Id.* at 955.

79. *Id.* at 948. The terms of the trial court's decree were:

IT IS FURTHER ORDERED, ADJUDGED and DECREED that Petitioner [husband] shall pay Respondent [wife] as maintenance-in-gross the sum of \$49,500.00, payable in installments of \$1,500.00 per month, with the first such payment to be due on the 1st day of June, 1985 and on the same date each month thereafter until fully paid, same to terminate earlier in the event of the death of either party or remarriage of Respondent [husband (sic)].

Id. (court's emphasis).

80. *Id.* at 954.

81. *Id.*; see also *supra* text accompanying note 30.

82. *Nelson II*, 720 S.W.2d at 954.

83. *Id.* at 952. See *supra* text accompanying note 24 for the text of § 452.335.

84. 720 S.W.2d at 952 (citing *Sansone v. Sansone*, 615 S.W.2d 670, 671 (Mo. Ct. App. 1981); *Pederson v. Pederson*, 599 S.W.2d 51, 54 (Mo. Ct. App. 1980); *Raines v. Raines*, 583 S.W.2d 564, 567 (Mo. Ct. App. 1979)).

85. *Id.* at 953-54 (quoting *Doerflinger*, 646 S.W.2d at 801).

86. *Id.* at 954.

continuance of the obligation would be a direct conflict of the stated purpose of the statutes.⁸⁷

In trying to reconcile *Doerflinger* with its holding, the *Nelson II* court left a large gap in logic: non-specific changed circumstances that end dependency would not be allowed to modify the decree, yet other specific events such as marriage or death ending the dependency could terminate it. *Cates* resolves this problem as well as the conflict between *Doerflinger* and *D.E.W.*

The basic misunderstanding of the difference between alimony and maintenance underlies the confusion created by the legislature's failure to repeal the Alimony Authorization Statute. In order to resolve the conflicts between the courts of appeals, the *Cates* court had to decide whether the Maintenance Termination Statute applied to in gross maintenance awards payable in installments when the recipient spouse remarried or when either of the parties died. In reaching a decision, the court also had to determine whether in gross awards were authorized under the Reform Act's Maintenance Authorization Statute. The web of confusing logic created by the desire of the lower courts to uphold this award beyond the statutory termination events had to be untangled.

IV. INSTANT DECISION

The Missouri Supreme Court granted transfer of the *Cates* decision to resolve the conflict in Missouri courts on the question of whether the remarriage of the recipient spouse terminates the remaining obligation to pay installments of a lump sum award.⁸⁸ The court began by acknowledging the presumption created by the Maintenance Termination Statute that future statutory maintenance obligations terminate upon the death of either party or the remarriage of the recipient spouse, rebuttable only by an agreement in writing or an express clause in the decree of dissolution that the obligation extends beyond the statutory cut-off.⁸⁹ The court outlined three levels of inquiry to determine the issues of the instant case:

1. Whether the maintenance award under scrutiny is "statutory maintenance" as defined under the Maintenance Authorization Statute.
2. If so, whether payments yet to be made on the in gross award are "future payments" so as to be subject to the Maintenance Termination Statute.
3. If both of these questions are answered affirmatively, then the final inquiry is whether the decree of dissolution, the separation agreement, or a separate written agreement expressly provide for continuation of payments beyond remarriage.⁹⁰

87. *Id.*

88. *Cates*, 819 S.W.2d at 732.

89. *Id.* at 734. The court noted that the legislature had amended § 452.370 in 1987 and 1990, but the provision referred to remains substantially the same in its application to this case. *Id.* at 734 n.1.

90. *Id.* at 734.

In analyzing the first level of inquiry, the court began by distinguishing the policies underlying pre-Reform Act alimony and post-Reform Act maintenance.⁹¹ "Alimony served 'as the equivalent of that obligation for support which arises in favor of the wife out of the marriage contract,'" and thus was deemed an assessment of damages for breach of contract by the husband.⁹² In contrast, maintenance "proceeds from 'the need for reasonable support by one spouse after the disruption of the marriage,'" and because of these statutory requirements, "'maintenance issues for support and *only* for support—and then, until the dependent spouse achieves a reasonable self-sufficiency."⁹³

The court stated that their previous decision in *Doerflinger* misstated the law by recognizing maintenance in gross under the Maintenance Authorization Statute absent express statutory authorization.⁹⁴ The *Cates* court speculated that the Alimony Authorization Statute providing for "alimony in gross" was not repealed when the 1973 amendments were enacted in order to permit enforcement of judgments entered under that section prior to the effective date of the 1973 Reform Act.⁹⁵ The phrase "maintenance in gross" does not appear anywhere in the Reform Act provisions and the court stated that it was illogical, without express statutory authority, to allow lump sum maintenance awards based on need that were not subject to modification in light of the underlying policy of *maintenance*.⁹⁶ Maintenance is based on need "only so long as the need exists."⁹⁷ The assumption is that a nonmodifiable lump sum award would never be able to take into account changes in circumstances that end the "need" of the dependent spouse. The court reasoned that these factors supported the conclusion that the Reform Act could only contemplate a non-modifiable lump sum award as a division of property.⁹⁸

The *Cates* court did uphold the conclusion in *Doerflinger* that maintenance in gross finds its origin in the Maintenance Authorization Statute.⁹⁹ In addition, the language of the parties' separation agreement expressly stated that the award of maintenance was not a division of property but was determined by consideration of all the relevant factors set forth in the Maintenance Authorization Statute.¹⁰⁰ The court concluded that the

91. *Id.*

92. *Id.* (quoting *Nelson I*, 221 S.W. 1066, 1067 (Mo. 1920)).

93. *Id.* (quoting *Nelson II*, 720 S.W.2d 947, 952 (Mo. Ct. App. 1986)). See *supra* notes 24-25 and accompanying text for a discussion of the statutory requirements of an award of maintenance under MO. REV. STAT. § 452.335 (1986 & 1991 Supp.).

94. *Cates*, 819 S.W.2d at 735.

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.*

99. *Id.* See also *supra* note 24-25 and accompanying text for a discussion of the statute.

100. *Id.* The factors to be considered in the amount of the award of maintenance are set forth in MO. REV. STAT. § 452.335.2 (1991 Supp.):

2. The maintenance order shall be in such amounts and for such periods of time as the court deems just, and after considering all relevant factors including:

maintenance award under consideration was "statutory maintenance" and thus subject to the termination provisions of the Maintenance Termination Statute.¹⁰¹

After answering the statutory maintenance question affirmatively, the court then addressed the second level of inquiry to examine whether the monthly payments not yet accrued were "future" payments as contemplated by the Maintenance Termination Statute.¹⁰² Ms. Cates argued that the decisions in *Doerflinger* and *Mika v. Mika*¹⁰³ precluded termination of installment payments from a lump sum award upon the recipient spouse's remarriage.¹⁰⁴ The court pointed out that Ms. Cates' reliance on *Doerflinger* was misplaced because that decision only held that an award of maintenance in gross was a final adjudication of financial need, the amount of which was nonmodifiable; the case did not address the specific issue of termination upon remarriage.¹⁰⁵ In addition, the court had already held that the underlying rationale of *Doerflinger* was flawed in assuming that need continues for the life of the award because it was in direct conflict with the Maintenance Termination Statute's presumption that need terminates upon remarriage of the receiving spouse.¹⁰⁶

The court then declared that the decision in *Mika*, expressly holding an award of maintenance in gross survives remarriage, was erroneous because it had assumed that alimony and maintenance were the same thing.¹⁰⁷ There is only one kind of maintenance, the court reasoned, and it is based on need, only lasting until the recipient spouse can achieve a sufficient level of independence.¹⁰⁸ The court stated that it would require a prescience of mind to determine exactly how far into the future the spouse's need would continue in order to justify a nonmodifiable in gross award—a prescience that the modification and termination provisions do not permit.¹⁰⁹ The court agreed

-
- (1) The financial resources of the party seeking maintenance, including . . . ;
 - (2) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;
 - (3) The standard of living established during the marriage;
 - (4) The duration of the marriage;
 - (5) The age, and the physical and emotional condition of the spouse seeking maintenance;
 - (6) The ability of the spouse from whom maintenance is sought to meet his needs while meeting those of the spouse seeking maintenance; and
 - (7) The conduct of a party seeking maintenance during the marriage.

Id. See also *supra* note 14 for the terms of the separation agreement and decree.

101. *Cates*, 819 S.W.2d at 735. See *supra* text accompanying note 30 for a portion of the text of MO. REV. STAT. § 452.370 (1986 & 1991 Supp.).

102. *Cates*, 819 S.W.2d at 735.

103. 728 S.W.2d 280 (Mo. Ct. App. 1987).

104. *Cates*, 819 S.W.2d at 735-36.

105. *Id.* at 736.

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

with the conclusion in *Nelson II* that the trial court's decision to permit monthly installment payments on an in gross award was a determination that the spouse's need continued into the future requiring *future* maintenance payments.¹¹⁰ Therefore, the court held that the payments not yet due under the award at issue are "future payments" of statutory maintenance within the meaning of the Maintenance Termination Statute.¹¹¹ Since the Maintenance Termination Statute was applicable to an award of future maintenance, the remarriage of Ms. Cates was held to have terminated Mr. Cates' obligation to pay the future installments of the decree of maintenance absent an agreement to the contrary.¹¹²

This decision moved the court into the third level of inquiry to examine whether the statutory presumption of termination upon remarriage was rebutted by the decree of dissolution, the separation agreement, or a separate written agreement to the contrary.¹¹³ The court found no language in the decree or separation agreement which expressly extended Mr. Cates' obligation to continue monthly payments after Ms. Cates' remarriage.¹¹⁴ In addition, the court did not find any ambiguity in the language of the decree or separation agreement upon which they could resort to extrinsic evidence to clarify the parties' intent.¹¹⁵ The court then pointed out that there were no separate written agreements between the Cates providing for this situation.¹¹⁶

Despite the previous findings of the court, Ms. Cates persisted in arguing that the Maintenance Termination Statute did not apply to the award at issue because the parties had expressly agreed that the maintenance was contractual and not decretal under the Maintenance Authorization Statute,¹¹⁷ and thus it was not subject to modification by the trial court.¹¹⁸ The court held that

110. *Id.* (citing *Nelson II*, 720 S.W.2d 947, 957 (Mo. Ct. App. 1986)).

111. *Id.*

112. *Id.*

113. *Id.*

114. *Id.* See *supra* note 14 for the specific language of the decree and separation agreement.

115. *Cates*, 819 S.W.2d at 736. The court noted that pursuant to a prior decision where the parties had agreed that maintenance would continue for as long as the wife lived, that if the language of the agreement created an ambiguity with respect to termination, "the completeness and integration of the agreement will not prevent resort to extrinsic evidence in order to determine the parties' true intent." *Id.* at 736-37 (quoting *LaBarge v. Berndsen*, 681 S.W.2d 441, 445 (Mo. 1984) (en banc)).

116. *Id.* at 737.

117. The statute reads in pertinent part that "the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement so provides." MO. REV. STAT. § 452.325.6 (1986).

118. *Cates*, 819 S.W.2d at 737. The distinction between decretal and contractual maintenance provisions lies within the methods of enforcement and modification. If an award is decretal, it has been incorporated into the decree and is enforceable by all remedies available to enforcement of other judgments and modifiable by the court. If an award is contractual, it is not incorporated into the decree and is only enforceable in a separate action for breach of contract. In addition, it can only be modified upon agreement of the parties. Where the award is incorporated into the decree, but the parties stipulate that it is a contractual award, the courts will read it as decretal for purposes of enforcement and contractual for purposes of modification.

although the award was nonmodifiable due to the distinction, it was otherwise irrelevant as to whether the Maintenance Termination Statute applied, since the parties had not expressly provided for nontermination upon death or remarriage to rebut the statutory presumption.¹¹⁹ The court stated, "Both contractual and decretal maintenance are statutory as they derive their origin in Section 452.335 [the Maintenance Authorization Statute]."¹²⁰ The court noted that the Maintenance Termination Statute treats modification and termination differently—modification adjusts a continuing obligation by judicial determination; termination ends an obligation by occurrence of a specified event—the result being that the court could not "turn termination into modification to support [Ms. Cates'] position."¹²¹

The court hesitated to absolutely deny Ms. Cates' claim because of its previous decision in *Doerflinger*.¹²² It vacated the judgment and remanded the case to determine if the parties relied on precedent and assumed that because it was "in gross" it would not be terminated by remarriage, thereby eliminating the need for any specific language in the decree on this issue.¹²³ The court admonished drafters of decrees and separation agreements to supply unambiguous language regarding any continuing obligations to pay maintenance beyond the statutory presumptions of termination.¹²⁴ The court expressly held that decisions in conflict with this holding should no longer be followed.¹²⁵ The court also held that:

[f]or the future, where parties have assumed that maintenance in gross provides a method for the distribution of *property* of a marriage over time, and have so stated without ambiguity, such agreements must be upheld. But where agreements either clearly indicate that a maintenance "in gross" award is founded on the economic need of a spouse, or are ambiguous, courts will determine the continued obligation of the paying party to pay maintenance following remarriage or death upon the language (or silence) of the separation agreement or the court's decree.¹²⁶

The court required that in the future, specific language extending a spouse's obligation to pay maintenance beyond death or remarriage must be included in the decree or separation agreement in order to rebut the statutory presumption set forth in the Maintenance Termination Statute.¹²⁷

After the *Cates* decision, courts *must* recognize that in gross maintenance awards payable in installments are terminated upon the remarriage of the recipient spouse, or the death of either party. The only authorization

Id.

119. *Id.*

120. *Id.*

121. *Id.* at 738.

122. *Id.*

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

remaining for ignoring this statutory presumption is either an express agreement by the parties, or a designation that the award is actually a part of the property settlement. The *Cates* court has removed the assumptions underlying the use of "maintenance in gross" as a term of art.

V. COMMENT

It is doubtful whether the Missouri Legislature contemplated the confusion that would be created by the failure to repeal section 452.080, the Alimony Authorization Statute, upon enactment of the progressive and much needed "no-fault" dissolution of marriage laws. The *Nelson II* court referred to this failure as "inexplicable" in light of the change of principles underlying continuing payments to a former spouse.¹²⁸ The *Cates* court explained the continued existence of the inconsistency was due to the need for an enforcement mechanism for alimony awards granted prior to the Reform Act.¹²⁹ Whatever the reason, the instant decision has completely abrogated use of this section as authorization for an award of "alimony in gross" under the current dissolution of marriage laws.¹³⁰ The Missouri Supreme Court reconciled the obvious inconsistency of the statutes by restricting future application of the Alimony Authorization Statute to enforcement of awards of alimony decreed before 1973 that may still exist.¹³¹

The *Cates* decision also precludes Missouri courts from interpreting the Maintenance Authorization Statute as allowing an award of maintenance in gross as a means of providing "support" to a dependent spouse.¹³² The only use for a lump sum payment that the court would countenance is to aid in the division of marital property and never as a form of maintenance based on need, regardless of how the parties designate it.¹³³ Problems will arise because courts and practitioners commonly have used the term "maintenance in gross" loosely in the past, assuming the term itself would supply the intent of the parties if the issue of termination should arise. When a court has granted such an award, whether or not it will be terminated at death or remarriage will be determined differently dependent only on the *express* intention of the parties. *Cates* directed trial and appellate courts to:

1. Uphold agreements that clearly express an intention to use the award of "maintenance in gross" to distribute the marital property regardless of the confusion created by the terms used; and
2. If the parties intended an award of "maintenance in gross" to work as a form of maintenance or the intent is unclear, then the court must look to

128. *Nelson II*, 720 S.W.2d 947, 955 n.7 (Mo. Ct. App. 1986).

129. *Cates*, 819 S.W.2d at 735.

130. *Id.* at 738.

131. It is possible that some of these awards still remain in force in the 20 years that have passed since the change in Missouri divorce laws.

132. *Cates*, 819 S.W.2d at 738.

133. *Id.* at 735.

the express language in the decree or written agreements for a statement granting authority to extend the obligation beyond death or remarriage.¹³⁴

The *Cates* court allowed the instant case to be remanded to determine if the parties relied on its decision in *Doerflinger* to prevent termination of the award.¹³⁵ Generally, when a judicial decision changes the previous interpretation of a statute, the new interpretation will only be applied prospectively if the parties can show reliance on the law as it previously stood.¹³⁶ While this may prevent unfairness in application, the losing party still has the burden of showing reliance on the previous construction. It seems logical to conclude that this burden may be difficult to satisfy when a term such as "maintenance in gross" is used as loosely as it has been. The court clearly stated that future cases involving interpretation of an in gross award must be decided according to the mandate outlined in their decision absent a showing of this reliance.¹³⁷

A problem stemming from this decision that will cause legitimate concern is the result in cases where a spouse has been given an award of maintenance in gross to compensate for his or her support of the former spouse through graduate or professional school. It is well settled in Missouri that advanced degrees are not considered "property" and thus are not subject to "division" in a dissolution proceeding.¹³⁸ *Rapp v. Rapp*¹³⁹ also held that future earning capacity resulting from advanced degrees is *not* marital property.¹⁴⁰ No particular theory for compensating a spouse for supporting his or her former spouse through professional school has been advanced. In *Scott v. Scott*,¹⁴¹ the court refused to "pigeonhole" support for education into any theory of compensation or recovery, but instead left the trial court to strike an appropriate balance by giving the court the "flexibility to fashion their decrees to meet the variety of circumstances presented by the cases."¹⁴² The *Scott* court specifically held that in this instance, a lump sum maintenance award was an appropriate means for compensating the wife's contribution.¹⁴³

Although a lump sum in gross award does not itself create problems concerning termination, problems do arise when the courts allow that lump sum award to be paid in installments.¹⁴⁴ The spouse who sacrificed to put

134. *Id.*

135. *Id.* at 738.

136. *Sumners v. Sumners*, 701 S.W.2d 720, 723 (Mo. 1985) (en banc).

137. *Cates*, 819 S.W.2d at 738.

138. *See, e.g., Riaz v. Riaz*, 789 S.W.2d 224, 227 (Mo. Ct. App. 1990) (citing *Roark v. Roark*, 694 S.W.2d 912, 915 (Mo. Ct. App. 1985); *In re Marriage of Dusing*, 654 S.W.2d 938, 946 (Mo. Ct. App. 1983)).

139. 789 S.W.2d 148 (Mo. Ct. App. 1990).

140. *Id.* at 149 (citing *Hanson v. Hanson*, 738 S.W.2d 429, 435 (Mo. 1987) (en banc) (future earning capacity from husband's business investment is not marital property)).

141. 645 S.W.2d 193 (Mo. Ct. App. 1982).

142. *Id.* at 197.

143. *Id.* at 197-98.

144. This will have logically occurred frequently when a divorce is granted not long after

his or her former spouse through school may be compensated for that sacrifice through such an award, and because of the holding in *Cates*, may lose the compensation prematurely. Since educational degrees are not regarded as property, even if the in gross award states it is compensation for support for the acquisition of an education, termination will not be precluded because it is not deemed a property division. Thus, although the spouse has already committed the time, sacrifice, and expense to put the former spouse through school, the compensation for this will be cut short if either of them die or the recipient decides to remarry, unless the parties expressly agreed otherwise. What is due and owing to the sacrificing spouse will be lost in this nebulous area of "not property division, not maintenance." While practitioners can avoid this dilemma in the future through careful drafting with express statements that the award does not terminate upon remarriage or death, such future caution does not help the many divorced people who have been given this award.

Another potentially problematic issue concerns the *Internal Revenue Code*. Although it is beyond the scope of this Note to discuss tax ramifications in detail, it is interesting to note that despite what the parties call an award, if they provide that it does not terminate upon remarriage or death, then the payor spouse will not be able to deduct the payment from income and the payee spouse will not be allowed to include it as income.¹⁴⁵

A different problem may arise if the payor spouse declares bankruptcy. The court may determine that the nontermination language deems the payments to be part of the property settlement; therefore, the payments will be debt that will be discharged in bankruptcy.¹⁴⁶ These are only a few of the problems of interpretation encountered in areas outside of dissolution proceedings.¹⁴⁷

Another ramification of this decision relates to judicial misperception that a determination of maintenance in gross is necessary to "balance the distribution of marital property in view of the valuations found by the trial court."¹⁴⁸ The court in *Schatz* found that prior decisions suggested, without holding directly, "that an award of maintenance in gross may be used as a sort of 'equalizer' to balance the equities between the parties in dividing the marital and nonmarital property."¹⁴⁹ Courts have tended not to include language of the nature of property division in a decree of maintenance in

the spouse has earned his or her professional degree; years of schooling have probably depleted the assets of the family and the graduate has not had an opportunity to build them back yet.

145. See I.R.C. § 71 (1988).

146. See 11 U.S.C. § 541(a)(5) (1988).

147. As stated in the text, an extensive discussion of these are matters well beyond the scope of this Note, but are nonetheless interesting to note. Before drafting a separation agreement, practitioners are well advised to investigate these matters further.

148. *In re Marriage of Schatz*, 768 S.W.2d 607, 613 (Mo. Ct. App. 1989); see also *Scott v. Scott*, 645 S.W.2d 193, 196 (Mo. Ct. App. 1982).

149. *Schatz*, 768 S.W.2d at 613. The court pointed to decisions in *Doerflinger v. Doerflinger*, 646 S.W.2d 798 (Mo. 1983) (en banc); *Scott v. Scott*, 645 S.W.2d 193 (Mo. Ct. App. 1982); *Warren v. Warren*, 601 S.W.2d 683 (Mo. Ct. App. 1980). See also *Moody v. Moody*, 725 S.W.2d 625, 626 (Mo. Ct. App. 1987).

gross. This would again cut off the recipient spouse's right to the award solely because of the label attached. The payor spouse would, in effect, get a windfall. Perhaps, in light of the previous case law holding that awards of maintenance in gross cannot be terminated, the parties will be allowed to demonstrate reliance on the meaning of this term of art as an implied intention of nontermination, as the *Cates* court did.

The advantage of the *Cates* decision is the certainty with which courts can now approach awards of maintenance in gross. The court and statutes provide a clear method to continue payment of a maintenance obligation beyond death or remarriage.¹⁵⁰ The parties may provide through express language in a decree or a separate written agreement that the obligation varies from the statutory presumptions. Otherwise, the court may terminate or modify the award as provided by statute.

VI. CONCLUSION

It will be interesting to observe how strictly trial courts apply the decision in *Cates*. It may be that Missouri courts will try to get around terminating awards when they feel it would be inequitable to do so by finding an ambiguity in the language of the decree, separation agreement, or separate written agreement of the parties, thus allowing extrinsic evidence to be introduced to discern their "true intent."¹⁵¹ The courts may find property division elements in lump sum awards payable over time where none were apparent before, or allow the parties to prove this. If these are the interpretive choices made by future courts, then *Cates* will be of less significance and applied only in limited situations. Finally, in light of the unambiguous mandate in the *Cates* opinion, courts may strictly apply the holding and require that only express or clearly implied terms will negate the circumstances for termination of an award of maintenance in gross.

Undoubtedly, attorneys will get the message to expressly include the intent of the parties if it in any way deviates from the statutory presumptions set forth in the Maintenance Termination Statute.¹⁵² Careful drafting will likely be the rule, not the exception. The Missouri Supreme Court has

150. *Cates*, 819 S.W.2d at 736; see also MO. REV. STAT. § 452.370.2 (1986 & 1991 Supp.).

151. As expressed *supra* text accompanying notes 122-23, the *Cates* court remanded the decision to determine if the parties had detrimentally relied on precedent. *Cates*, 819 S.W.2d at 738. Presumably, this means the parties will be entitled to present evidence on what they thought the term of art "maintenance in gross" meant when it was applied to termination.

Where the ambiguity of the parties' intent is created by reliance on this Court's prior (but now overruled in part) decisions, we deem it wise to remand the case to permit the trial court to determine whether the parties intended the maintenance obligation to meet Rochelle's economic needs for period of readjustment or to serve some purpose outside Section 452.335 [the Maintenance Authorization Statute].

Id.

152. The *Cates* court's admonishment was that "[g]iven the unambiguous language of Section 452.370.2 [the Maintenance Termination Statute] it is difficult to imagine the careful drafter would fail to state the intent of the parties when failure to do so results in termination of maintenance." *Id.*

declared that a term of art used by attorneys and courts no longer has any meaning in future awards of maintenance.

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