WEST VIRGINIA CODE: §48-5-707

§48-5-707. Reduction or termination of spousal support because of de facto marriage.

(a)(1) In the discretion of the court, an award of spousal support may be reduced or terminated upon specific written findings by the court that since the granting of a divorce and the award of spousal support a de facto marriage has existed between the spousal support payee and another person.

(2) In determining whether an existing award of spousal support should be reduced or terminated because of an alleged de facto marriage between a payee and another person, the court should elicit the nature and extent of the relationship in question. The court should give consideration, without limitation, to circumstances such as the following in determining the relationship of an ex-spouse to another person:

(A) The extent to which the ex-spouse and the other person have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other in terms such as "my husband" or "my wife", or otherwise conducting themselves in a manner that evidences a stable marriage-like relationship;

(B) The period of time that the ex-spouse has resided with another person not related by consanguinity or affinity in a permanent place of abode;

(C) The duration and circumstances under which the ex-spouse has maintained a continuing conjugal relationship with the other person;

(D) The extent to which the ex-spouse and the other person have pooled their assets or income or otherwise exhibited financial interdependence;

(E) The extent to which the ex-spouse or the other person has supported the other, in whole or in part;

(F) The extent to which the ex-spouse or the other person has performed valuable services for the other;

(G) The extent to which the ex-spouse or the other person has performed valuable services for the other's company or employer;

(H) Whether the ex-spouse and the other person have worked together to create or enhance anything of value;

(I) Whether the ex-spouse and the other person have jointly contributed to the purchase of any real or personal property;

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(J) Evidence in support of a claim that the ex-spouse and the other person have an express agreement regarding property sharing or support; or

(K) Evidence in support of a claim that the ex-spouse and the other person have an implied agreement regarding property sharing or support.

(3) On the issue of whether spousal support should be reduced or terminated under this subsection, the burden is on the payor to prove by a preponderance of the evidence that a de facto marriage exists. If the court finds that the payor has failed to meet burden of proof on the issue, the court may award reasonable attorney's fees to a payee who prevails in an action that sought to reduce or terminate spousal support on the ground that a de facto marriage exists.

(4) The court shall order that a reduction or termination of spousal support is retroactive to the date of service of the petition on the payee, unless the court finds that reimbursement of amounts already paid would cause an undue hardship on the payee.

(5) An award of rehabilitative spousal support shall not be reduced or terminated because of the existence of a de facto marriage between the spousal support payee and another person.

(6) An award of spousal support in gross shall not be reduced or terminated because of the existence of a de facto marriage between the spousal support payee and another person.

(7) An award of spousal support shall not be reduced or terminated under the provisions of this subsection for conduct by a spousal support payee that occurred before October 1, 1999.

(b) Nothing in this subsection shall be construed to abrogate the requirement that every marriage in this state be solemnized under a license or construed to recognize a common law marriage as valid.

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