

§ 14-10-119. Attorney's fees.

Colorado Statutes

Title 14. DOMESTIC MATTERS

DISSOLUTION OF MARRIAGE - PARENTAL RESPONSIBILITIES

Article 10. Uniform Dissolution of Marriage Act

Current through Chapter 420 of the 2014 Legislative Session

§ 14-10-119. Attorney's fees

The court from time to time, after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this article and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

Cite as C.R.S. § 14-10-119

History. L. 71: R&RE, p. 528, § 1. C.R.S. 1963: § 46-1-19.

Case Notes:

ANNOTATION

I. GENERAL CONSIDERATION.

Law reviews. For note, "Payment of the Wife's Attorney Fee in Colorado Divorce Cases", see 34 Rocky Mt. L. Rev. 481 (1962). For article, "Attorney's Fees", see 11 Colo. Law. 411 (1982). For article, "Domestic Case Update", see 14 Colo. Law. 209 (1985). For article, "Attorney Fees at Temporary Orders: Reality or Illusion?", see 24 Colo. Law. 2185 (1995).

Annotator's note. Since § 14-10-119 is similar to repealed § 46-1-5 (1)(e), C.R.S. 1963, § 46-1-5, CRS 53, CSA, C. 56, § 8, and laws antecedent thereto, relevant cases construing those provisions have been included in the annotations to this section.

The former divorce act was silent on the subject of counsel fees and suit money, but in discussing the power of the district court to make allowance for these items, the supreme court held that notwithstanding the silence of the

statute with respect to these matters, it had the authority to order such allowances because its jurisdiction as to such items did not depend upon the statute. *Pleyte v. Pleyte*, 15 Colo. 125, 25 P. 25 (1890); *Hart v. Hart*, 31 Colo. 333, 73 P. 35 (1903).

Attorney fees are not a non-challengeable marital debt under § 14-10-113. *In re Rieger*, 827 P.2d 625 (Colo. App. 1992).

Debts incurred during the marriage but which are dissolution litigation costs should be allocated pursuant to this section, not § 14-10-113. *In re Burford*, 26 P.3d 550 (Colo. App. 2001).

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

This section inapplicable to wife's independent action seeking to reopen dissolution decree. *In re Burns*, 717 P.2d 991 (Colo. App. 1985); cert. denied, *Burns v. Burns*, 745 P.2d 1391 (Colo. 1987).

Intent to equalize status. The provision in the dissolution of marriage statute which sanctions the assessment of attorney fees was intended to equalize the status of the parties to the dissolution proceeding. *In re Franks*, 189 Colo. 499, 542 P.2d 845 (1975).

The purpose of allowing the court discretion as to attorney fees is to equalize the status of the parties by enabling the court to ensure that neither party is forced to suffer unduly as a consequence of the termination of the marriage. *In re Mitchell*, 195 Colo. 399, 579 P.2d 613 (1978); *In re Meisner*, 715 P.2d 1273 (Colo. App. 1985).

This section is designed to allow the court to apportion costs and fees equitably between the parties. *In re Nichols*, 38 Colo. App. 82, 553 P.2d 77 (1976); *In re Hauger*, 679 P.2d 604 (Colo. App. 1984).

This section empowers the trial court to equitably apportion costs and fees between parties based on relative ability to pay. Section 5-12-106(1)(a) mandates interest on such an order and C.A.R. 37 specifies the trial court's authority to mandate interest. *In re Gutfreund*, 148 P.3d 136 (Colo. 2006).

Attorney fees are to be awarded primarily to equalize the financial positions of the parties. *In re Trout*, 897 P.2d 838 (Colo. App. 1994); *In re Bregar*, 952 P.2d 783 (Colo. App. 1997).

Primary purpose of award of attorney fees under this section is to equalize the parties' financial positions. Although mother deceived father by failing to disclose disability benefits received on behalf of the minor child, the court reduced father's child support arrearages in payment of father's attorney fees to punish mother without making the proper findings pursuant to this section for an award of attorney fees and without considering the policies relating to child support and the best interests of the child before reducing child support arrearages. *In re Anthony-Guillar*, 207 P.3d 934 (Colo. App. 2009).

The principle that in maintenance and divorce proceedings a wife had a right to be placed on an equal footing with her husband was particularly applicable where the facts show that the wife's absence from the state is due to being unable to afford the expenses of litigation without her fault, and where she may have meritorious claims difficult to pursue in absentia. *McMillion v. McMillion*, 31 Colo. App. 33, 497 P.2d 331 (1972).

Fairness in domestic relations cases seeks to place the wife on a plane of equality with the husband in such litigation by allowing her suit money and attorney fees out of the husband's estate or earnings, where such appears necessary to bring about such parity, but such allowance will not be granted unless it is shown that the wife is destitute in whole or in part of the means necessary to maintain herself and carry on the litigation, and a concomitant to this condition for relief is a showing of the husband's present ability to pay such allowance. *Tower v. Tower*, 147 Colo. 480, 364 P.2d 565 (1961); *Peercy v. Peercy*, 154 Colo. 575, 392 P.2d 609 (1964).

Provision in agreement granting parties remedies at law and in equity for enforcement of agreement gave court jurisdiction to hear motion for attorney fees. *In re Meisner*, 807 P.2d 1205 (Colo. App. 1990).

By the allowance of attorney fees, full and complete adjudication of all claims in the one action will result; otherwise, a multiplicity of suits will ensue, forcing the attorney to sue the wife, and she in turn to join the husband under his indemnity agreement. *Tower v. Tower*, 147 Colo. 480, 364 P.2d 565 (1961).

The power of the court to allow attorney fees to the wife for the purpose of prosecuting her suit or defending the husband's suit was an incident to the court's powers to award alimony and divide property. *Krall v. Krall*, 31 Colo. App. 538, 504 P.2d 681 (1972).

If there is a wide disparity in the parties' earning capacities, an award of attorney fees is permissible. *In re Renier*, 854 P.2d 1382 (Colo. App. 1993).

An allowance for counsel fees, being for the benefit of the wife to put her in a position to litigate on the same footing as the husband, was made on the same basis as alimony or other forms of support by the husband to the wife. *Allison v. Allison*, 150 Colo. 377, 372 P.2d 946 (1962).

Trial court has the authority to advance prospective fees and costs during the litigation of a dissolution of marriage action if necessary to diminish the advantage that one spouse may have over the other in litigation because of their respective financial circumstances. *In re Rose*, 134 P.3d 559 (Colo. App. 2006).

The purpose of an award of attorney fees is to apportion equitably the costs of dissolution, based on the current resources of the parties. *In re Renier*, 854 P.2d 1382 (Colo. App. 1993); *In re Footitt*, 903 P.2d 1209 (Colo. App. 1995); *In re Aldrich*, 945 P.2d 1370 (Colo. 1997).

Waiver of attorney fee provision in an antenuptial agreement is voidable on the grounds of unconscionability. *In re Dechant*, 867 P.2d 193 (Colo. App. 1993) (decided under law in effect prior to amendment effective July 1, 1986).

The allowance to a wife was based upon the same underlying thought as is an allowance to her to buy food,

shelter, and clothing. Allison v. Allison, 150 Colo. 377, 372 P.2d 946 (1962).

Payment of attorney fees is a substantive aspect of a dissolution action, and permanent orders are not final until the court addresses that issue. Unlike statutory and contractual fee-shifting provisions that premise the award of attorney fees on the merits of the claims and a determination of who prevailed in the action, the apportionment of attorney fees in a dissolution action is inextricably intertwined with the other issues to be resolved by the court in determining permanent orders. In re Hill, 166 P.3d 269 (Colo. App. 2007).

Attorney fee request sought in a post-decree modification motion is no longer an integral and substantive part of the proceeding but is ancillary to the motion and may be decided independently of the modification motion. The underlying motion, once decided, is a final appealable order, notwithstanding the unresolved request for attorney fees. In re Nelson, 2012 COA 205, 292 P.3d 1214.

Where an attorney withdrew as counsel for the wife in a divorce action and his motion for fees was ordered held in abeyance until final settlement of the action, a subsequent property settlement agreement providing that each of the parties would pay his own counsel fees was not binding on the counsel if services rendered prior to withdrawal entitled him to additional fees. Morrison v. Peck, 151 Colo. 83, 376 P.2d 58 (1962).

Withdrawal of wife's counsel before determination of attorney fees issue cannot be construed as a waiver by wife regarding payment of the fees. In re Hill, 166 P.3d 269 (Colo. App. 2007).

Reconciliation did not deprive the court of jurisdiction to award attorney fees. Pacheco v. Pacheco, 156 Colo. 356, 398 P.2d 978 (1965).

The trial court was in error when it concluded that it was without jurisdiction to grant an allowance of attorney fees. Tower v. Tower, 147 Colo. 480, 364 P.2d 565 (1961).

On review of an order adjudging a defendant in a divorce case guilty of contempt for failure to pay alimony, under the facts disclosed, it was held that the trial court had jurisdiction to make an order allowing counsel fees to the wife for the hearing on review. Miller v. Miller, 79 Colo. 609, 247 P. 567 (1926); Watson v. Watson, 135 Colo. 296, 310 P.2d 554 (1957).

No violation of involuntary servitude proscription. The assertion in a divorce that one may be forced to work for the benefit of the other spouse's attorney, despite the fact that the burdened party is without "fault", cannot be equated with slavery or involuntary servitude within the meaning of § 26 of art. II, Colo. Const. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

Because the dissolution of marriage statute, in an effort to eliminate the inequities resulting from the termination of the relationship, provides for attorney fees, as well as maintenance and child support, when the relative status of the parties involved indicates the need of such, it does not constitute involuntary servitude. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

Applied in *In re Deines*, 44 Colo. App. 98, 608 P.2d 375 (1980); *Gann v. Gann*, 616 P.2d 1000 (Colo. App. 1980); *In re Davis*, 44 Colo. App. 355, 618 P.2d 692 (1980); *In re Kiefer*, 738 P.2d 54 (Colo. App. 1987).

II. AWARD OF ATTORNEY FEES.

A. Right and Need for Award.

When a husband desires the luxury of a divorce from his wife, he should be compelled to pay the expenses of his wife pending the litigation, and, in cases where the wife is a nonresident of the state, if she desires to come to the state of Colorado to make a defense, she should be given an opportunity to do so, and the courts should require plaintiff to deposit in court a sum sufficient to pay the expenses of the wife from her home to the state of Colorado, to be paid to her upon her arrival here within a reasonable time, with such additional sum as may be necessary to properly defend the suit, and in case the plaintiff is unable to make reasonable provision for his wife during the pendency of the suit, the suit should be abated until he is able to do so. *McMillion v. McMillion*, 31 Colo. App. 33, 497 P.2d 331 (1972).

On the question of allowance of attorney fees for the wife, the court should take into consideration, among other things, the financial condition of the parties, their income, and necessities of the case. *Miller v. Miller*, 79 Colo. 609, 247 P. 567 (1926).

In awarding fees and costs under this section, the district court must consider the relative financial status of each party by making findings concerning their relative incomes, assets, and liabilities. *In re Aldrich*, 945 P.2d 1370 (Colo. 1997); *In re Chalot*, 94 P.3d 1191 (Colo. App. 2004), *aff'd in part and rev'd in part on other grounds*, 112 P.3d 47 (Colo. 2005).

The financial resources of the husband were greater than those of the wife and that disparity supports the order for attorney fees. *In re Lishnevsky*, 981 P.2d 609 (Colo. App. 1999).

An order providing for the father to pay attorney fees for the mother could not stand in view of the favorable financial condition of the mother, since the purpose of providing an allowance for attorney fees is to place the wife on an equal footing with the husband. *Andrews v. Andrews*, 161 Colo. 529, 423 P.2d 573 (1967).

Where defendant initiated the circumstances making attorney fees necessary, an allowance to plaintiff therefor was proper. *Parker v. Parker*, 142 Colo. 416, 350 P.2d 1067 (1960).

Where a wife's estate is small, she is not required to impair her capital in order to litigate properly her side of the controversy, especially is this true where the value of the assets of the parties are grossly disproportionate. *Smith v. Smith*, 172 Colo. 516, 474 P.2d 619 (1970).

Additional expert testimony was unnecessary to support award of attorney fees to mother in child support modification action where testimony of the mother, her attorney, and the attorney's affidavit adequately supported the award. *In re Pollock*, 881 P.2d 470 (Colo. App. 1994).

Husband is not liable for deceased wife's attorney fees where the wife dies during the pendency of the action and prior to the entry of an order making permanent property disposition. In re Benjamin, 740 P.2d 532 (Colo. App. 1987).

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

Plaintiff not entitled to attorney fees under this section when the statutory basis for grandparents' visitation request was § 19-1-117. Additionally, because the attorney fee provision contained in § 19-1-117 (3) was the more specific provision, it should control. In re Gallegos, 251 P.3d 1086 (Colo. App. 2010).

B. Amount.

This section cannot be construed as a general grant of authority to determine the amount of fees to which an attorney is entitled. In re Nichols, 38 Colo. App. 82, 553 P.2d 77 (1976); In re Shapard, 129 P.3d 1007 (Colo. App. 2004).

The trial court's duty is to determine what reasonable fee a party should be responsible for under all the circumstances of the case. The effect of an order granting fees to a party less than the amount actually billed by the attorney is not to modify the fee contract between the attorney and client. In re Seely, 689 P.2d 1154 (Colo. App. 1984); In re Bowles, 916 P.2d 615 (Colo. App. 1995).

Enforcement of attorney's charging lien raises separate issues. Nothing in this section allows a spouse's attorney, as lienholder or otherwise, to litigate a claim for fees against the other spouse. In re Shapard, 129 P.3d 1007 (Colo. App. 2004).

Predicate to an award of attorney fees. There must be proof of reasonableness premised upon considerations of the amount of the fees charged, the time spent by the attorney, the services rendered, and the prevailing rates in the community. In re Sarvis, 695 P.2d 772 (Colo. App. 1984).

On application for allowance of attorney fees in a divorce suit, it may be that no evidence is required as to the amount to be allowed, where all the facts are within the knowledge of the court. Miller v. Miller, 79 Colo. 609, 247 P. 567 (1926).

Where the same judge had heard various aspects of this case over a period of several months and was thoroughly familiar with the file and with the financial resources of the parties, it was not necessary that evidence be presented as to the current situation unless there was a claim of change of circumstances. In re Peterson, 40 Colo. App. 115, 572 P.2d 849 (1977).

C. Discretion of Court.

Before or after the issuance of a decree in a divorce action, the trial court could make such orders as the circumstances warrant for suit money, court costs, and attorney fees. Morrison v. Peck, 151 Colo. 83, 376 P.2d 58 (1962).

The allowance of attorney fees and suit money is within the sound discretion of the trial court, and unless that discretion has been abused, the allowance made or denied will not be disturbed. *Morgan v. Morgan*, 139 Colo. 545, 340 P.2d 1060 (1959); *Allison v. Allison*, 150 Colo. 377, 372 P.2d 946 (1962); *Berglund v. Berglund*, 28 Colo. App. 382, 474 P.2d 800 (1970); *Krall v. Krall*, 31 Colo. App. 538, 504 P.2d 681 (1972); *In re Peterson*, 40 Colo. App. 115, 572 P.2d 849 (1977); *In re DaFoe*, 677 P.2d 426 (Colo. App. 1983); *In re Connell*, 831 P.2d 913 (Colo. App. 1992); *In re LeBlanc*, 944 P.2d 686 (Colo. App. 1997); *In re Lishnevsky*, 981 P.2d 609 (Colo. App. 1999).

This section confers significant discretion on the trial court, and permits consideration of the financial resources of both parties, so that where the husband has limited income and substantial financial obligations including payment of child support and the children's attorney fees, there is no abuse of discretion in the court's denial of the wife's motion for attorney fees. *In re Parker*, 41 Colo. App. 287, 584 P.2d 103 (1978); *In re Rieger*, 827 P.2d 625 (Colo. App. 1992).

The awarding of attorney fees is discretionary with the trial court and will not be disturbed on review if supported by the evidence. *In re Icke*, 35 Colo. App. 60, 530 P.2d 1001 (1974), *aff'd*, 189 Colo. 319, 540 P.2d 1076 (1975); *In re Newman*, 44 Colo. App. 307, 616 P.2d 982 (1980), *aff'd in part, rev'd on other grounds*, 653 P.2d 728 (Colo. 1982).

An award of attorney fees in subsequent litigation to enforce a separation agreement is within the trial court's discretion. *Baker v. Baker*, 667 P.2d 767 (Colo. App. 1983).

Notwithstanding the trial court's discretion in the allowance of fees, such discretion is a judicial one, and requires and presupposes a hearing together with a presentation of facts upon which to base the exercise of such discretion. *Tower v. Tower*, 147 Colo. 480, 364 P.2d 565 (1961).

Court must conduct a hearing, on the reasonableness of an award of attorney fees if a party requests a hearing. *In re Aldrich*, 945 P.2d 1370 (Colo. 1997).

But a court need not conduct a hearing *sua sponte* if a hearing is not timely requested by a party. *In re Aldrich*, 945 P.2d 1370 (Colo. 1997).

This section does not limit the authority of the trial court to award counsel fees only as against a defendant, but such fees may be assessed against either or both of the parties. *Morrison v. Peck*, 151 Colo. 83, 376 P.2d 58 (1962).

It is within the trial court's discretion to award only a portion of the attorney fees. *In re Schwaab*, 794 P.2d 1112 (Colo. App. 1990); *In re Connell*, 831 P.2d 913 (Colo. App. 1992).

Where trial court's errors in making its property division with respect to stock options, interspousal gifts to wife, and wife's interest in the family trust impacted a substantial portion of the total marital assets, on remand the trial court should reconsider its attorney fee award, since in making an attorney fee award, the court must consider the financial resources of both parties. *In re Balanson*, 25 P.3d 28 (Colo. 2001).

On a final property settlement, if it developed that the wife had ample assets of her own to pay for the

services of her attorneys, then any additional fees, including the services of counsel on a writ of error and other related matters, may have or may not have been awarded against the husband as the court determines. Kane v. Kane, 154 Colo. 440, 391 P.2d 361 (1964).

The trial court erred in not affording the plaintiff an opportunity to present evidence as to the services rendered by her attorneys, and the reasonable value of such services. Hoffman v. Hoffman, 167 Colo. 432, 447 P.2d 1005 (1968).

The trial court in a separate maintenance action had no authority to award counsel fees to the wife in a divorce action instituted by the husband and pending in another state, such fees being a matter for determination by the courts of the state where the divorce action is pending. Morgan v. Morgan, 139 Colo. 545, 340 P.2d 1060 (1959).

Order for defendant to pay portion of plaintiff's attorney fees upheld. Krall v. Krall, 31 Colo. App. 538, 504 P.2d 681 (1972).

Abuse of discretion. Where the wife not only earned more than husband, but had assets worth substantially more than husband's, and, moreover, initiated the proceedings making attorney fees necessary, the trial court abused its discretion in awarding attorney fees to wife. In re Corbin, 42 Colo. App. 200, 591 P.2d 1046 (1979).

Because family owned corporations were not parties to the dissolution action and because wife instituted post-decree proceedings that were groundless for lack of jurisdiction over the corporations against which relief was sought, court abused its discretion in imposing attorney fees against corporation and divorced husband. In re Noon, 735 P.2d 884 (Colo. App. 1986).

Where the trial court's property division order was an attempt to place the wife in the same financial position insofar as her separate property was concerned as she had been prior to the two-year-old marriage, but after the wife deducted her attorney fees, she was left with less than she had when she was married, the supreme court held that the portion of that order requiring the wife to pay her attorney fees constituted an abuse of discretion. Smith v. Smith, 172 Colo. 516, 474 P.2d 619 (1970).

Denial of wife's motion for expenses held abuse of discretion. McMillion v. McMillion, 31 Colo. App. 33, 497 P.2d 331 (1972).

There is no abuse of discretion where trial court does not take into account the resources of wife's new husband in concluding that she is entitled to attorney fees. In re Erickson, 43 Colo. App. 319, 602 P.2d 909 (1979).

Where wife is unemployed and has no income, there is no abuse of discretion in an order for partial payment of her attorney fees. In re Erickson, 43 Colo. App. 319, 602 P.2d 909 (1979).

Where husband was temporarily unemployed at the time of the hearing and wife's assets were substantially greater than husband's, trial court did not abuse its discretion in denying wife's request for attorney fees. In re McKendry, 735 P.2d 908 (Colo. App. 1986).

Trial court did not err in awarding attorneys fees in a nonparent custody proceeding authorized by § 14-10-123. The award was neither punitive nor inequitable and did not constitute an abuse of discretion. In re Custody of C.J.S., 37 P.3d 479 (Colo. App. 2001).

Where the agreement which provided that each party bear its own legal fees did not contemplate efforts to change the agreement after it was finally approved by the court and incorporated into the decree of divorce, the award of attorney fees by the trial court was within its discretion. Lay v. Lay, 162 Colo. 43, 425 P.2d 704 (1967).

Because the issue as to whether special separation benefits received by former husband upon his voluntary discharge from the Air Force constituted marital property was one of first impression, trial court did not abuse its discretion in denying wife attorney fees. In re McElroy, 905 P.2d 1016 (Colo. App. 1995).

Award of attorney fees to attorney appearing on pro bono basis is allowable under statute. In re Swink, 807 P.2d 1245 (Colo. App. 1991).

Trial court has wide discretion in awarding fees and costs and is not bound by the general provisions for recovery of costs for a prevailing party. In re Pickering, 967 P.2d 164 (Colo. App. 1997).

Trial court considering the award of attorney fees under this section must consider not only the reasonableness of the charge per hour but also the necessity for incurring the hours billed. In re Rieger, 827 P.2d 625 (Colo. App. 1992).

Trial court erred in denying husband's request for hearing on the reasonableness and necessity of wife's attorney fees and other costs. In re Mockelmann, 944 P.2d 670 (Colo. App. 1997).

This section allows for the award of attorney fees in subsequent proceedings even though the spouse was denied attorney fees in the original dissolution proceeding. Thus, it was an abuse of discretion for the court to deny attorney fees on a subsequent motion where the denial was based on the denial of fees in the original proceeding. In re Plesich, 881 P.2d 379 (Colo. App. 1994).

Trial court may review a waiver of attorney fees in a marital agreement for unconscionability at the time of dissolution, because an unconscionable waiver violates the public policy interest behind protecting spouses and thus is not a valid contract term under § 14-2-304. In re Ikeler, 161 P.3d 663 (Colo. 2007).

D. Enforcement.

The allowance to a wife was enforceable by contempt. Allison v. Allison, 150 Colo. 377, 372 P.2d 946 (1962).

An order for payment of counsel fees decreed by the court to a wife in a divorce action was not a debt dischargeable in bankruptcy. Allison v. Allison, 150 Colo. 377, 372 P.2d 946 (1962).

Award of attorney fees may not be enforced by an assignment under § 14-10-118. In re McCue, 645 P.2d 854 (Colo. App. 1982).

E. Modification and Scope of Review.

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

Despite a disparity of income, when the court found that the spouse receiving maintenance had considerable assets and ordered her to pay her own attorney fees, there was no abuse of discretion. *In re Weibel*, 965 P.2d 126 (Colo. App. 1998).

Issues on review whether attorney fees should have been awarded must depend upon whether the record reflects that the property settlement order contemplated attorney fees and whether as a whole it was fair and equitable. *Rayer v. Rayer*, 32 Colo. App. 400, 512 P.2d 637 (1973).

Lack of written findings of facts leaves no basis for review. Where a trial court makes no written findings of fact in support of its denial of an award of attorney fees, a reviewing court has no basis on which to review the ruling. *In re Pilcher*, 628 P.2d 126 (Colo. App. 1980).

Where the motion of an attorney, who had withdrawn as counsel for the wife in a divorce action, for allowance of fees was denied, and record disclosed no evidence or offer of proof to show value of services rendered prior to withdrawal, the action was remanded for findings on the value of his services rendered, if any, for which he had not been compensated, and for judgment pursuant thereto. *Morrison v. Peck*, 151 Colo. 83, 376 P.2d 58 (1962).

A finding by the trial court that under the circumstances shown each party should pay his or her own costs and attorney fees, supported by the record, will not be disturbed. *Jensen v. Jensen*, 142 Colo. 420, 351 P.2d 387 (1960).

Under the circumstances shown, the trial court's order was adequate to permit appellate review. *In re Woolley*, 25 P.3d 1284 (Colo. App. 2001).

Where an order requiring a husband to pay attorney fees for his wife was a means of paying off her indebtedness rather than of enabling her to prosecute, it could properly be considered by the court as part of the division of property settlement and the question on review would have been whether the property settlement as a whole was fair and equitable, not whether the wife had the financial ability to pay her own fees. *Krall v. Krall*, 31 Colo. App. 538, 504 P.2d 681 (1972).

The supreme court has, in the exercise of its appellate jurisdiction, power to act on applications for attorney fees, costs, alimony, etc., in matters pending on error; however, under ordinary circumstances all of these matters should be presented to the trial court for the reason that the trial court has already had the case before it and is better equipped to determine questions of fact and to make a full and complete investigation and adjudication. *Watson v. Watson*, 135 Colo. 296, 310 P.2d 554 (1957).

An order granting attorney fees was reviewable even though there had been no final judgment in the case.

Daniels v. Daniels, 9 Colo. 133, 10 P. 657 (1886); Bagot v. Bagot, 68 Colo. 562, 191 P. 96 (1920); Benham v. Willmer, 71 Colo. 451, 207 P. 592 (1922); Hobbs v. Hobbs, 72 Colo. 190, 210 P. 398 (1922); Stockham v. Stockham, 145 Colo. 376, 358 P.2d 1026 (1961).

III. ANTENUPTIAL AGREEMENTS.

Section controls awarding of attorney fees where antenuptial agreement was silent on the matter. In re Newman, 44 Colo. App. 307, 616 P.2d 982 (1980), aff'd in part, rev'd on other grounds, 653 P.2d 728 (Colo. 1982).

No unconstitutional impairment of antenuptial contract by award. Where the matter of attorney fees was left open by an antenuptial contract, there was therefore no unconstitutional impairment of that contract by the award of such. In re Franks, 189 Colo. 499, 542 P.2d 845 (1975).

Cross References:

For allowance of attorney fees generally, see C.R.C.P. 3(a), 30(g), 37(a), 37(c), 56(g), and 107(d); for awarding of attorney fees in civil actions generally, see § 13-17-102 .