

1Alimony/Maintenance Enforcement by Contempt
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Can a person be jailed for failure to pay post-divorce support to a former spouse? This question is a hot topic in family law presently, and the answer remains muddled.

Until 1995, Texas had no provision for support of a spouse after divorce. Parties could contract for such an obligation under the Internal Revenue Service Code, but no judge could compel it. In 1995, Texas became the last state to make provisions for support of a former spouse, called "maintenance". See TEX. FAM. CODE CH. 8. Even so, Texas' new law is very limited in scope. A person is only eligible for post-divorce support if the obligor has been convicted of a crime constituting domestic violence, or if the parties have been married more than ten years, the obligee lacks property or job skills to support his or her minimum reasonable needs, or the obligee or a child in the obligee's custody have disabilities which prevents the obligee from maintaining employment. TEX. FAM. CODE §8.051. The statute limits the amount and duration of a maintenance obligation. TEX. FAM. CODE §§8.054, 8.055.

Prior to and notwithstanding the maintenance statute, parties can voluntarily contract for a post-divorce support obligation, called "alimony" under the provisions of the Internal Revenue Code, and not be bound by the strictures of the maintenance statute's eligibility, amount and duration requirements.

The current debate centers around the enforcement of maintenance and/or alimony obligations. The maintenance statute allows for enforcement of a maintenance obligation by contempt of court. TEX. FAM. CODE §8.059(a). However, the statute's vague language leaves unclear whether contractual alimony obligations fall within the purview of the statute's scope.

The Dallas Court of Appeals recently considered whether a contractual alimony provision could be enforced by contempt of court. *In re Dupree*, 118 S.W.3d 911 (Tex.App.–Dallas 2003, pet. denied). The former wife sought to have the husband held in contempt for failure to make contractual alimony payments. The decree clearly stated that the alimony obligation was contractual in nature and entered under the provisions of the Internal Revenue Code. The decree made no reference to the statutory maintenance provisions. In addition, the alimony provisions failed to contain any order or command language compelling the former husband to make the required payments. The trial court held the former husband in contempt and committed him to jail pending payment of the entire amounts due.

The Dallas court held that the obligation was undertaken as an agreement between the parties, unenforceable by contempt. It did not qualify as statutory maintenance because the amount and duration exceeded the scope permitted by the statute and the decree failed to contain any findings that the former wife was eligible for maintenance. Further, the court distinguished that the alimony obligation failed to contain the command language necessary to make it enforceable as part of the trial court's judgment. Therefore, the Dallas Court of Appeals held that the alimony obligation was not enforceable by contempt and granted the writ of habeas corpus, releasing the former spouse from confinement.

The Texarkana Court of Appeals has recently distinguished the *Dupree* case. *In re Taylor*, __ S.W.3d __, 2004 WL 432485 (Tex.App.–Texarkana 2004, no pet. history). In *Taylor*, the divorce decree provided that the former husband would pay “contractual maintenance” to the former wife. The Texarkana court held that because the decree contained order language and because the obligation was termed “maintenance”, that the case was distinguishable from *Dupree*, and the writ of habeas corpus was denied. However, the *Taylor* court failed to address the absence of findings regarding the former spouse’s eligibility and that the duration of the maintenance agreement exceeded the statutory provisions.

Many questions remain regarding the availability of contempt remedies for enforcement of a maintenance or alimony obligation. Alimony or maintenance agreements are frequently used by divorcing parties as a way to offset property divisions and encourage settlement of cases. However, the enforcement debate underscores the importance of careful drafting of divorce decrees and other family law court orders and judgments. The inclusion or omission of a few words can change whether a person can be denied his liberty for failing to comply with the agreement.

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