

The Three-Legged Stool Approach for Evaluating a Marvin Action Claim

For a plaintiff pursuing a claim in a Marvin Action, much like a personal injury action for that matter, there is a three-pronged analysis that should be considered in deciding whether or not to pursue the case. It is like a stool with three legs, if there is a weak leg, the stool will collapse.

1. **Liability:** The first leg is whether the defendant is liable. This means whether under the law, there is admissible evidence that can prove that the defendant is legally responsible to the plaintiff for damages. This will depend upon the legal theory. For example, in a car crash case, the plaintiff must prove that as a result of the defendant's negligence, the defendant crashed his car into the plaintiff's car. In a Marvin Action, one must generally prove that the plaintiff and defendant had an express or implied agreement for support (palimony) and/or sharing of assets and defendant failed to honor, i.e., breached, that agreement.
2. **Damage:** The second leg is damages. This means there is admissible evidence to prove that plaintiff suffered actual damages for which the court can award monetary compensation. For example, in a car crash case, this means that the plaintiff's car will need repairs as a result of the accident, that plaintiff required medical care, and/or that the plaintiff suffered from pain and fear as a result of the accident. In a Marvin Action, damages may be the support (palimony) and/or property that the plaintiff lost by defendant breaching the agreement.
3. **Collectability:** The third leg is the ability to actually collect the damages if the plaintiff wins the case. In short, there is little point in pursuing the case if at the end of the day the judgment will be useless because there is no property or money to be able to collect from the defendant. If it will be difficult to collect any damages awarded to the plaintiff then that should significantly affect the plaintiff's decision on whether to invest his/her time, money, and emotional well-being into pursuing stressful litigation. It will also have a significant impact on whether an attorney is willing to represent a plaintiff in such litigation. Property to look for in terms of collectability would be significant assets that can't be hidden and can be seized. A large amount of cash in an investment account that is not protected by a trust instrument, or significant physical assets such as real property with significant net equity, are good examples. Attempting to garnish a defendant's wages is generally not as attractive because the total damages can't be collected in a lump sum, but rather must be slowly collected over time. The defendant is more likely to attempt to file bankruptcy, change jobs, or otherwise attempt to figure out a way to avoid payment over the long term.