



MASSACHUSETTS FAMILY LAW

A Periodic Review

By Jonathan E. Fields

Pierce Redux While we're all waiting for the Legislature to act on the new alimony bill, it pays to remember that *Pierce* is still good law. The controversial 2009 decision held that a modification or termination of alimony "should not be *solely premised* on a supporting spouse's retirement." A recent appellate decision clarifies *Pierce* further. A sixty-five year old ex-husband filed a complaint to terminate his alimony because he had retired. The Probate judge allowed the ex-husband's complaint and the ex-wife appealed, asserting in her appeal that the judge's order was inconsistent with *Pierce*. The Appeals Court affirmed, noting that the judge properly based her decision on an analysis of the recipient's need and the payor's ability to pay and not *solely* on the fact of the ex-husband's retirement. Importantly, the court also noted that the ex-husband's retirement was in "good faith" and at the "customary retirement age of 65." *Ross v. Ross*, 2011 Mass. Unpub. LEXIS 434 (April 6, 2011)

Agreement to Divide Future Social Security Void Continuing the senior-citizen theme, a recent Colorado decision about social security piqued my interest. A

divorce judgment incorporating an agreement of the parties required the husband to pay a portion of his future Social Security benefits to the wife as part of a *property division*. The husband later moved to set aside this provision of the judgment, the motion was denied, and the husband appealed. The appellate court reversed, setting aside the provision and finding that it violated the anti-assignment clause of the Social Security Act. The court also noted that the anti-assignment clause does not prohibit payments for *child support and alimony* – meaning that better research and creative drafting could have prevented the problem. *In re Anderson*, Colo. Ct. App. No. 09CA2592 (December 23, 2010)

Can Bernie Madoff Ruin Your Divorce? Steve Simkin might have thought it shrewd to keep the Madoff investments in his divorce from Laura Blank (after all, where else do you get that kind of interest?) After the Ponzi king confessed his sins, however, and Mr. Simkin discovered his "assets" were worthless, he asked the New York trial court to set aside the property division. The trial court denied Simkin's petition and he appealed. The appellate court

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reversed the denial. At the appellate court, Ms. Blank argued that he could have redeemed what he believed to be his account in excess of its supposed value as of the 2004 valuation date the parties had chosen. The court was unpersuaded – pointing out that Mr. Simkin never had an “account” with Madoff. Indeed, by Madoff’s own admission, “there were no accounts within which trades were made on behalf of investors.” Poor Simkin.

Next time he gets divorced, I bet he bargains to keep the marital home. *Simkin v. Blank*, N.Y. App.Div. No 3016101501/09 (January 4, 2011)



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**“No man or woman
really knows what
perfect love is until
they have been married
a quarter of a century.”**

Mark Twain