MASSACHUSETTS FAMILY LAW: A PERIODIC REVIEW

By Jonathan E. Fields

Retirement Age and Cohabitation Provisions Not Apply to Pre-ARA Judgments A trio of SJC cases about the Alimony Reform Act (ARA) addressed alimony modification and, in so doing, made a distinction between judgments entered before March 1, 2012 (pre-ARA) and those decided after March 1, 2012 (post-ARA).

Specifically, the ex-husbands (whose judgments were all pre-ARA) sought an end to their alimony because of the ARA's provision regarding termination of payments upon the attainment of social security retirement age. One of the ex-husbands also argued for a prospective application of the cohabitation provisions in the ARA.

All of the ex-husbands lost. As a result of these cases, pre-ARA payors with merged alimony judgments do not have the benefit of the new termination and modification rights set forth in the ARA, with two exceptions: the presumptive general term alimony durational limits for marriages under 20 years and the cohabitation provisions.

A recap of the law of alimony modification may be useful in order to contextualize the changing landscape. First, *merged* alimony orders are modifiable if there has been a material change in circumstances pursuant to G.L. c.208 s.37. That was the law pre-ARA and the ARA did not change that. Second, the ARA provides that the duration of old orders can be modified based solely on the *durational limits* in the new Act, even if there hasn't been a change in circumstances. Third, the *amount* of the alimony order cannot be modified under the ARA if there have been no material and significant changes since the order. Fourth, modifications of *survived* alimony provisions are still subject to the almost-impossible-to-meet "countervailing equities" standard that has been in effect for over 35 years.

Finally, interested readers should check out Bill and Chouteau Levine's blog posts on the recent cases. From the punchy titles, like "No Country for Old Men," (which, as a Coen Brothers fan, I love,) to the thoughtful and provocative analysis, I think readers will be both entertained and engaged. See generally www.levinedisputeresolution.com. Another terrific resource that you may want to print out for clients is the colorful graphical flow chart about alimony modification that Justin Kelsey created. I refer to it constantly. See generally www.skylarklaw.com.

Chin v. Merriot, 470 Mass. 527; *Rodman v. Rodman*, 470 Mass. 539; *Doktor v. Doktor*, 470 Mass. 547 (all decided January 30, 2015)

Court Cannot Compel Parties to Mediate. The Appeals Court vacated

a Probate and Family Court decision that included a provision requiring that the parties enter into mandatory paid mediation before either of them could file another action in the matter. The appellate court characterized this requirement as "an unconstitutional burden to the parties because it delays an objecting party's right to file a complaint in our courts and also because it forces the parties to bear a likely costly expense for court ordered mediation services." Of course, this decision (correctly decided, in my view) is a limit on what a *judge* can order parties to do *after* a hearing. Mediators should remember, however, that the parties are still free to bind themselves to mediation clauses in their agreements. *Ventrice v. Ventrice*, 87 Mass.App.Ct. 190 (March 19, 2015)

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"If you spend your time hoping someone will suffer the consequences for what they did to your heart, then you're allowing them to hurt you a second time in your mind."

Shannon L. Alder