



MASSACHUSETTS FAMILY LAW: A PERIODIC REVIEW

By Jonathan E. Fields

Changed Circumstances Not Measured from Most Recent Judgment but from Divorce Judgment. The divorce judgment provided that the husband pay child support to the wife. Both parties were employed. The parties reserved rights to future alimony. Subsequently, husband brought a modification action seeking a termination of his child support obligation. As a basis for the modification, he cited his job loss, psychiatric disability, and the availability of SSDI dependent benefits. The modification was allowed; his child support obligation was terminated.

About a year later, the husband brought a second modification seeking alimony. The second modification was allowed; the wife was ordered to pay to the husband rehabilitative alimony. The wife, at the trial level and on appeal, argued that the modification should have been dismissed because of a change in circumstances. She argued that the changed circumstances should be measured from the time of the first modification; since, at that time, he was unemployed and receiving disability, she argued, there is no changed circumstance.

The Appeals Court disagreed; it held that the changed circumstances should not be measured from the first modification because that judgment did not address the issue of alimony. Changed circumstances, the Appeals Court held, must be measured from the divorce judgment which addressed the issue of alimony.

Although not raised in the decision, query whether a modification would lie on the theory that the husband's *continued* unemployment and disability constituted a material change in circumstances. *Vedensky v. Vedensky*, 86 Mass.App.Ct. 768 (December 30, 2014)

Second Job Income not Factored in Support. The other issue in *Vedensky*, above, concerned income from the wife's second job. Because she took it after the divorce judgment entered, income from that job was presumed to be immaterial for support purposes, pursuant to s.54(b) - an issue not raised by the parties below. The Appeals Court, in vacating the alimony award, remanded the issue so that the trial court could consider the wife's second job income in light of the s.54(b) presumption.

Alimony Reform Act No Relief with Survived Obligation. The 1992 divorce agreement of the parties contained a survived provision requiring the husband to pay the wife alimony until either of them dies or the wife remarries. The husband brought a modification action under the Alimony Reform Act, arguing that because he had reached retirement age, alimony should terminate. The Appeals Court held that the new act could not be used to modify survived obligations. *Lalchandanni v. Roddy*, 86 Mass.App.Ct 819 (January 5, 2015)



Jonathan E. Fields, Esq. is a partner at Fields and Dennis, LLP in Wellesley. Jon can be contacted at 781-489-6776, or at jfields@fieldsdennis.com