

Lifetime Alimony Still Exists for Some in Massachusetts

By Marisa W. Higgins, Esq.

The Massachusetts Supreme Judicial Court (“SJC”) recently decided three cases (*Rodman v. Rodman*, *Doktor v. Doktor*, and *Chin v. Merriot*) that significantly impact a payor’s right to seek modification of alimony orders issued prior to the enactment of the Alimony Reform Act (“Act”) on March 1, 2012. In short, the SJC determined that the retirement and cohabitation sections of the Act apply prospectively and not retroactively. In other words, payors divorced prior to March 1, 2012, cannot seek to terminate alimony based on the retirement or cohabitation sections of the Act.

BACKGROUND

The Act represents a sweeping overhaul of alimony laws in Massachusetts. Pursuant to the Act, any alimony obligations in existence prior to the Act are deemed general term alimony. With respect to retirement, the Act provides that general term alimony shall terminate upon the payor attaining full social security retirement age. With respect to cohabitation, the Act provides that general term alimony shall be suspended, reduced or terminated upon cohabitation of the recipient if the payor is able to show that the recipient has maintained a common household with another person for at least three continuous months. The Act further establishes durational limits for the payment of alimony for marriages of less than 20 years (50% of marriages up to 5 years long, 60% of marriages 5-plus to 10 years long, 70% of marriages 10-plus to 15 years long and 80% of marriages 15-plus to 20 years long).

RODMAN V. RODMAN

After a marriage of 39 years, George and Roberta Rodman were divorced in 2008, prior to the enactment of the Alimony Reform Act. A separation agreement of the parties was incorporated and merged into the Judgment of Divorce. Pursuant to the Judgment, George was ordered to pay Roberta alimony of \$1,539 per week until Roberta’s remarriage or either party’s death. In 2013, George filed a Complaint for Modification seeking to terminate his alimony obligation on the basis that he had attained full social security retirement age and that Roberta was cohabitating with a third party. The trial court determined the Act was not to be applied retroactively to judgments entered prior to the Act. George appealed to the Appeals Court, arguing that because his separation agreement was merged into the Judgment of Divorce, it was always subject to modification based on a material change of circumstances. The case was transferred to the SJC on direct review.

The SJC determined that the Legislature intended that the retirement and cohabitation provisions of the Act apply only prospectively. As such, the retirement and cohabitation provisions of the Act are not material changes of circumstance with regard to modifying alimony judgments entered prior to March 1, 2012. Only a Complaint for Modification based on exceeding the durational limits set forth in the Act applies retroactively.

DOKTOR V. DOKTOR

In 1992, after a marriage of more than 20 years, Joe and Dorothy Doktor were divorced. At the time of the divorce, the parties executed a separation agreement which was incorporated and merged into the Judgment of Divorce. The Judgment required Joe to pay Dorothy \$200 per week in alimony until her death or remarriage. In 2013, Joe filed a Complaint for Modification alleging that he had attained full social security retirement age and was, in fact, retired and that Dorothy no longer needed alimony. Joe cited M.G.L. c. 208, sec. 49(f), which provides that general term alimony terminates upon the payor attaining full social security retirement age, in support of his request to terminate his alimony obligation.

After trial, the trial court dismissed Joe’s Complaint for Modification, finding that the retirement provision of the Act does not apply to cases decided before March 1, 2012, and that Dorothy continued to need alimony. Joe appealed and the SJC affirmed the trial court’s decision. Relying upon Section 4 of the Act, which was not codified, the SJC determined that the retirement provisions apply prospectively only. Section 4 makes an explicit exception for retroactive application only for alimony judgments that exceed the durational limits set forth in M.G.L. c. 208, sec. 49 applicable to those married for less than 20 years. The court rejected Joe’s argument that durational limits are meant to include attaining full retirement.

CHIN V. MERRIOT

In 2011, after a marriage of 12 years’ duration, Chester Chin and Edith Merriot were divorced. At the time of the divorce, Chester was 67 years old and Edith was 69 years old. Incorporated and merged into the Judgment of Divorce was a separation agreement of the parties which provided, in pertinent part, that Chester would pay alimony to Edith of \$650 per month until either party’s death or Edith’s remarriage. Approximately a year and a half later, in 2013, Chester filed a

Complaint for Modification seeking to terminate his alimony obligation since he had attained full social security retirement age. He subsequently filed an Amended Complaint for Modification alleging that Edith was cohabitating with a third party. After trial, Chester's Complaint was dismissed and he appealed.

Relying on its decision in both Doktor and Rodman, the SJC found that the retirement and cohabitation provisions of the Act apply prospectively only. The SJC determined the Legislature's intent was unambiguous in this regard, given Section 4 of the Act: "Sections 48 to 55, inclusive, of said chapter 208 shall not be deemed a material change of circumstance that warrants modification of the amount of existing alimony judgments; provided, however, that existing alimony judgments that exceed the durational limits under section 49 of said chapter 208 shall be deemed a material change of circumstance that warrant modification."

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