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A Lesson on Presumptive Durational Limit of Alimony

BY CHARLES R. HUNSINGER • SEPTEMBER 11, 2024

The Appeals Court recently entered a judgment in the case of *S.S. v. S.S* holding that it was error for the trial judge to have deviated from the presumptive durational limit of alimony.

The parties were married in 2009. Both are "highly educated," and the husband had worked continuously at a university since 2004. The wife had worked occasionally during the marriage. There was one child born of the marriage.

The husband filed a complaint for divorce in 2021 and a trial was held in 2023. Prior to the trial, a guardian *ad litem* (GAL) had been appointed for the minor child, and that GAL's report was in evidence at the trial. While the husband testified at the trial, unusually, the wife did not. The only other witness was a special master who had been appointed to sell the marital home.

The trial judge determined it was appropriate for alimony to extend beyond the presumptive durational limits because of the wife's mental health. In 2018, the wife had been diagnosed with delusional disorder, persecutory type. In 2019, in India, the wife had been diagnosed with schizophrenia. In 2021, the wife was evaluated again and diagnosed with major depressive disorder and "did not show any signs of schizophrenia." The GAL in the case determined that the wife needed follow up care and that her diagnosis "need[ed] clarification." In the parties' stipulation of uncontested facts for trial, they agreed that the wife's mental health was "impaired." The trial judge concluded that the wife was "currently unable to engage in employment" and that the interests of justice required a deviation from the presumptive alimony duration, which would have ended alimony after approximately eight years.

On appeal, the husband argued that there was no evidence that the wife's mental health condition was permanent such that she would need alimony past the presumptive durational limit. He contended that if the wife needed alimony past the presumptive durational limit, the burden should be on her to file a complaint for modification in the future.

The Appeals Court concluded that a judge could consider a request for deviation from the presumptive durational limits at the time of divorce, but that the wife did not prove "by a preponderance of the evidence that deviation beyond

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the presumptive termination date is required in the interests of justice." The wife's burden was to "prove that the grounds for deviation asserted at the time of the divorce are reasonably likely to be present beyond the presumptive termination date."

Here, the trial judge correctly cited the factors for deviation set forth in G. L. c. 208, § 53(e) and correctly placed the burden of proof on the wife, but only made findings about the wife's *current* circumstances. The deviation was therefore deemed to be error insofar as it was made in the judgment of divorce and therefore allocated the burden to the husband to file a complaint for modification in the future to terminate alimony, rather than placing the burden to file a complaint for modification on the wife in the future, if her disability persists.

Ultimately, the Appeals Court vacated the portion of the divorce judgment that set the durational limit of the husband's alimony obligation and remanded for "entry of a judgment reflecting that the husband's alimony obligation will terminate in accordance with G. L. c. 208, § 49," and affirmed the remainder of the judgment.

The takeaway from this decision is that a potential alimony recipient always has the burden of showing that deviation from the presumptive durational limits is necessary in the interests of justice. While this has been the case under Massachusetts law, this decision makes clearer that at the time of the divorce trial, if seeking a deviation from the presumptive durational limits of alimony, the potential recipient must show that their circumstances requiring alimony will continue past the presumptive termination date. Thus, the burden for deviation is always on the alimony recipient, whether at a divorce trial or in a future modification action.

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