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Cavanagh Strikes Again – Income for Calculating Child Support

BY ROBIN M. LYNCH NARDONE • JULY 15, 2025

In 2022, the Massachusetts Supreme Judicial Court (SJC) issued a major decision impacting the calculation of alimony and child support. In *Cavanagh v. Cavanagh,* in addition to setting a new procedure for determining alimony and child support awards, the SJC addressed what sources of income can be considered for purposes of calculating child support.

The SJC held that in cases where alimony and child support may both be payable, the court must engage in a three-step analysis to determine the appropriate support order:

1. Calculate alimony first, in light of the statutory factors enumerated in G.L. c. 208, § 53 (a) and the principle that, with the exception of reimbursement alimony, the amount of alimony should be determined with reference to the recipient spouse's need for support to allow the spouse to maintain the lifestyle enjoyed prior to the termination of the parties' marriage. Then, calculate child support using the parties' post-alimony incomes.
2. Calculate child support first. Then, calculate alimony, considering, to the extent possible, the statutory factors enumerated in § 53 (a).
3. Compare the base award and tax consequences of the order that would result from the calculations in step (1) with those of the order that would result from the calculations in step (2), above. The judge should then fashion an order that would be the most equitable for the family before the court.

Notwithstanding the requirement in the 2022 *Cavanagh* decision for the court to compare tax consequences, the Appeals Court in *Smith v. Smith*, issued in May 2025, reminded lawyers and litigants that Probate and Family Court judges are not expected to be tax experts. Despite the parties' income tax returns having been in evidence at trial, the trial judge did not consider the tax consequences. The Appeals Court rejected the husband's claim that with the tax returns, the trial judge had the necessary information to determine the parties' effective tax rates. The Court held that a judge's obligation to consider the tax consequences of a particular support award will not be triggered by providing income tax returns. Instead, it is required that the parties (including self-represented litigants) provide reasonably instructive tax information, which can include having an accountant or tax expert testify and/or providing the judge

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with tax regulations and calculations.

In the 2022 *Cavanagh* decision, the SJC also considered various sources of income, including income from second jobs, dividends and interest, capital gains, employer contributions to retirement accounts, and employer contributions to health savings accounts and determined that all of those sources of income may be included in the child support calculation.

Cavanagh was remanded back to the trial court for further proceedings consistent with the SJC's decision. On remand, the trial judge added 50% of the father's dividend and interest income to his employment income for purposes of calculating child support. The mother asserted that the judge should have considered 100% of the father's investment income when calculating child support; the father contended that it should have been entirely excluded. The Appeals Court, in its recent 2025 *Cavanagh* decision, agreed with the mother that it was an abuse of discretion to exclude 50% of the father's investment income for purposes of calculating child support. What is striking about this decision is that the dividend and interest income in question was dividend and interest income in the father's 401(k) account, which was an account that had been divided with the mother as part of their divorce. The Appeals Court held that if the father sought to exclude a portion of the investment income reported on the 401(k) account statement, he should have presented evidence establishing what, if any, portion was not attributable to his share of the account. Now, therefore, in addition to including contributions to a 401(k) account by an employer that a party cannot access, any dividends and interest paid in the account may also be considered part of income for child support purposes.

The Appeals Court's decision is silent on other issues of concern to practitioners and litigants, such as the fact that a party often cannot access dividends and interest in a 401(k) account without paying an early withdrawal penalty.

It remains to be seen if any legislative action will be taken to ensure that income used in calculating child support will be limited to funds that are actually available (without penalty) to a payor to meet the child support obligation.

If you have any questions about this decision, please contact your Bowditch attorney or a member of our Family Law Practice.

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