The Alimony Reform Act: The Court Rules

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As many of you know, the Massachusetts Legislature amended the long standing alimony laws pursuant to the Massachusetts Alimony Reform Act of 2011, effective March 1, 2012 (“Alimony Reform Act”). Formerly known as the Massachusetts Alimony and Property Statute, M.G.L.Ch. 208§34 now addresses only the division of the marital estate. Separate statutes, pursuant to the Alimony Reform Act, M.G.L.Ch. 208§48-55, address alimony.

Although many questions remain, the Massachusetts Supreme Judicial Court (“SJC”) has made it clear that the Alimony Reform Act cannot be applied retroactively to cases determined prior to its enactment. What does that mean?

For example, the Alimony Reform Act states that general term alimony orders shall terminate upon the payor attaining the full retirement age, currently 66. M.G.L.Ch. 208§49(f). General term alimony, a term created by the Alimony Reform Act applies to marries of 20 years or longer in duration. Many divorced parties were under the impression that upon reaching full retirement age, their alimony obligation would terminate. The SJC’s recent decision in the Doctor v. Doctor (January 30, 2015) clarified that reaching full retirement age did not terminate an alimony obligation in those cases decided prior to March 1, 2012.

Specifically in Doctor, the husband sought to terminate his alimony obligation, which under the terms of his separation agreement would end upon the death or remarriage of his former wife. The husband argued because he was retired and past the age of full retirement, his alimony obligation terminated in accordance with the Alimony Reform Act. The SJC disagreed, stating the husband would have to establish a material change in circumstance since the date of the last alimony order in order to prevail. The husband’s retirement or reaching full retirement age was not considered a material change in circumstance because it was not a consideration to terminate alimony at the time the parties entered their separation agreement and it was expected that at some point the husband would retire.

The takeaway from the SJC’s opinion is that any separation agreement entered into prior to the effective date of the Alimony Reform Act is not subject to the alimony reform, unless there is a conflict in the durational limits of the payment of alimony.

In cases determined prior to the effective date of the Alimony Reform Act, the only factor that will trigger a modification, absent a material change in circumstance, when there is a conflict in the durational limits of the payment of alimony. Included in the Alimony Reform Act were several uncodified sections. St. 2011, c.124 §§4-6. These uncodified sections express the Legislature’s intent that the Alimony Reform Act excludes durational limits based upon the length of the marriage, only.

Another example is cohabitation. The Alimony Reform Act specifically refers to the act of cohabitation as a trigger to terminate alimony. However, this is applicable only to cases post the Alimony Reform Act. Situations where former spouses are cohabitating with another, may be a trigger to terminate alimony only if the Plaintiff can show that the cohabitation has resulted in the recipient spouse’s needs to be less than at the time of the alimony order, or there is specific language in the parties’ separation agreement that refers to cohabitation as a factor for alimony to end. In many separation agreements, there are conditions or events that will cause alimony to end, such as the remarriage of the recipient.

Another takeaway is if there is a disparity in the amount of alimony paid from the alimony guidelines as enunciated in M.G.L.Ch. 208§53(B), that too will not trigger a modification. Should one want to bring a modification of any alimony related issue, unrelated to the duration of the alimony paid, and the alimony order predates the Alimony Reform Act, it must be done the old fashion way: a material change in circumstance since the entry of the last judgment.
Be Prepared: Protect Your Estate from the High Cost of Nursing Home Care

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Odds are high that someone in your family will need a nursing home at some point. A majority of people over age 65 will require some type of long term care services during their lifetime, and for many, nursing home care is unavoidable. With the cost of private nursing home care now exceeding $100,000 per year, that’s an expense very few of us can afford. But there are steps you can take with careful estate planning to protect your estate and minimize the financial burden.

Medicaid, known as MassHealth in Massachusetts, is a joint federal/state need-based health insurance program for those with low income. As such, qualifying for MassHealth benefits requires applicants to meet stringent income guidelines. Currently in 2015, a couple seeking MassHealth benefits for one spouse may have only $119,220 in assets and a single applicant is allowed only $2,000. Virtually all assets are counted against these limits except for the home and personal belongings. Estate plan clients often ask me how to qualify for Medicaid to cover the cost of a nursing home. With advance planning, there are several legal strategies that can be utilized to protect the family home and avoid losing your life’s savings to qualify for MassHealth, while still having assets to pass on to loved ones.

One of these strategies is setting up an irrevocable trust. Irrevocable MassHealth trusts are generally recommended for people over the age of 60, who are primarily concerned about needing long term care. For a single person, or a married couple with assets below $1 million, only one irrevocable trust is necessary but for a married couple with assets exceeding $1 million or that may exceed $1 million over their lifetime, two separate irrevocable trusts are recommended. Using two trusts enables a married couple to protect their assets from the cost of long term care and utilize both federal and state tax exemptions, to ultimately reduce their estate tax liability.

Planning for MassHealth eligibility not only requires an experienced practitioner to thoroughly review your estate and healthcare needs, but also to draft documents that conform to current and frequently changing laws. As a cautionary note, income-only irrevocable trusts have come under attack from MassHealth despite being permitted under state and federal law. Although such challenges are not always successful, they underscore the need for carefully drafted documents. You do not have to go broke or lose your home to qualify for MassHealth. Setting up an irrevocable trust well in advance of needing long term care can be an effective and relatively low cost estate planning strategy to protect your assets.

Tis But a Breach – Looking for the Unfairness to Support a 93A Claim

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I frequently represent small businesses and individuals in litigation. One of the first topics I bring up is the cost associated with litigation. For smaller cases, the unfortunate reality is that litigation costs can easily dwarf the amount in dispute. And while a properly designed budget and strategy for a case should always consider the amount in dispute, there is only so much you can do to limit costs. So the discussion inevitably turns to whether the client can recover any of those fees and costs from the other side. I love this question. I am always looking for ways that a client can potentially recover their attorney’s fees and costs, not only so the client has the possibility of actually recovering those fees, but for the increased leverage a claim for fees can bring to a case. Just the possibility that a party will be able to recover their costs and fees can drastically change the dynamic of a case.

One of the more powerful tools you can use to potentially recover attorney’s fees and costs is a claim under M.G.L. c. 93A, the Massachusetts Consumer Protection statute. But inexplicably, this claim is often not included in complaints or counterclaims, in particular in cases involving breaches of contract. A 93A claim must allege more than a mere breach of contract. But often, digging below the surface of the breach will reveal facts that can be used to construct a valid 93A claim. All you need to show is that there were some egregious circumstances surrounding the breach to provide the additional “unfair” or “deceptive” ingredient required under the statute. This could be as straightforward as demonstrating that the opposing party breached the contract in a deliberate attempt to obtain the benefits of the contract, and to avoid fulfilling their own obligations under the contract. Or it could be that the opposing party’s actions unfairly “strung along” my client. There are any number of fact patterns that can support a viable 93A claim.

By looking at a set of facts through the lens of 93A, I am looking for the unfairness in what has happened to my client. This often guides not only the 93A claim, but how I frame the entire case going forward. As a trial attorney, I need to tell the story of why my client was wronged. The story of a client who was unfairly treated is much more compelling than the one about the gentleman’s breach of a contract.