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Alimony Obligations May Be Extended if an Ex-Spouse Gets Sick

By Nicole K. Levy | April 14, 2022

Family Law | Alimony | Divorce | Modification

Your Alimony Obligations May Be Extended If Your Ex-Spouse Gets Sick

Although Massachusetts law limits the length of alimony payments, these limits may be set aside when an alimony recipient is too sick to support him or herself without alimony.

The Massachusetts Alimony statute generally limits the duration of a former spouse's alimony based on the length of the marriage and/or the age of the alimony paying party. Generally, the longer the marriage, the longer the potential duration of an alimony obligation, at least until the payor reaches federal retirement age.

Despite the clear durational limits under the statute, several recent appellate decisions have suggested that alimony may be extended beyond these presumptive time limits, most often because the recipient spouse becomes sick or disabled following the divorce. A



recent Massachusetts Appeals Court decision illustrates how a divorced party may be required to continue paying alimony beyond the statutory limit if receiving ex-spouse becomes too ill to work and earn a proper living.

Appeals Court: Wife's Chronic Illness Justifies Alimony Extension

A recent unpublished Appeals Court decision, *Brosnan v. Brosnan* (2021), illustrates how the health-related provisions of G. L. c. 208, § 53(e) may be grounds for an extension of alimony based on the poor health of the alimony recipient. In *Brosnan*, the parties had been married for almost eighteen years before getting divorced in 1994. The former husband paid alimony from the date of the parties' divorce until November of 2018, when he filed a Complaint for Modification, seeking to terminate his alimony obligation. The husband's main argument for termination was that he had paid alimony for 24 years - i.e. a period substantially longer than the durational limits set forth in G. L. c. 208, § 53, and indeed longer than the marriage itself. In addition, the husband had reached federal retirement age.

The former wife filed a counterclaim, requesting that the durational limits be extended due to the wife's chronic illness and health circumstances. The trial judge found that the former wife's circumstance necessitated an extension of the durational limits and ordered alimony payments to continue at a reduced amount of \$150.00.

Divorce Date of 1994 Modifies Procedure and Legal Standard

Before digging into the Appeals Court's analysis, it is worth noting here that both the filing procedure and substantive law was impacted by the date of the parties' 1994 divorce. Had the parties been divorced in 2012 or later, alimony would have presumptively terminated when the parties reached the durational limit and/or the when the husband reached federal retirement age.

Because the parties were divorced before 2012, two things changed. First, the husband surpassing federal retirement age was not a basis for terminating alimony. The inconsistent treatment of retirement age under the statute is the product of a series of 2015 decisions by the Massachusetts Supreme Judicial Court (SJC) that limited the statute's application to pre-2012 divorces based on a drafting error by the legislature that was never fixed.

Although the husband could not raise his age as an absolute basis for termination, the SJC's 2015 decisions did not completely gut the statute for pre-2012 divorces. Oddly, those decisions still allowed alimony payors whose marriages lasted less than 20 years to seek termination under the statute based on the length of the marriage. However, even in these cases, the rights of pre-2012 alimony payors are limited, where it is the burden of the alimony payor to file a Complaint for Modification seeking a termination of alimony based on the durational limit. (For post-2012 divorces, the former spouse may stop making alimony payments when the durational limit arrives, and it is the burden of the recipient spouse to file a Complaint for Modification and obtain order for the continuation of payments.)

Former Wife's Chronic Illness Justifies Extension of Alimony

In *Brosnan*, the Appeals Court affirmed the Probate Court judge's decision to extend alimony based on the former wife's medical condition and her inability to be gainfully employed. The Appeals Court reviewed the Probate Court's findings, which noted that the trial judge found that even with reasonable accommodations, the former wife could not meet her basic needs without the former husband's continued financial support. The trial judge noted that her physical ailments and her cognitive inability to work with numbers prevented her from continuing to work. Accordingly, the trial judge found that an extension of alimony beyond the durational limits was "in the interests of justice", and the Appeals Court affirmed this decision.

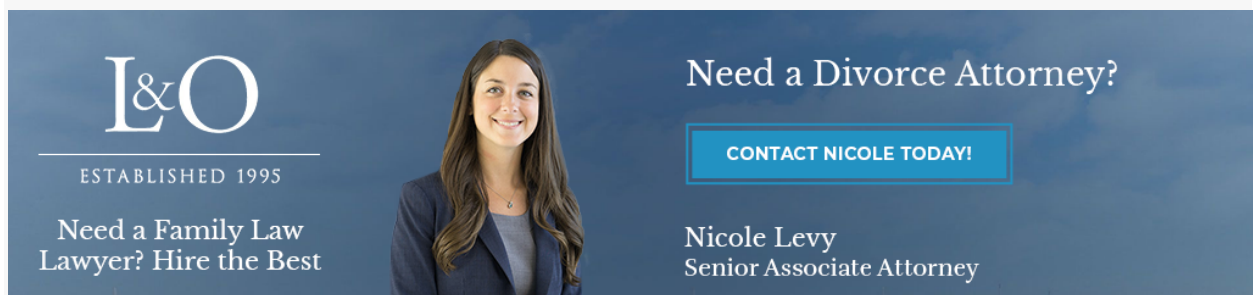
In its decision, the Appeals Court noted the rather vague legal standard that Probate Court judges apply in alimony deviation cases:

When seeking alimony beyond the statutory durational limits, the burden is on the spouse receiving the alimony to prov[e] by a preponderance of the evidence that deviation beyond the presumptive termination date is required in the interests of justice. The judge must make his/her determination based on the parties' circumstances as they exist at the time the deviation is sought. If relevant factors that existed at the time of the divorce persist when the complaint for modification is filed [e.g., an ongoing disability], a judge may properly consider them. [Citations omitted.]

In *Brosnan*, the Appeals Court observed that the Probate Court judge thoroughly documented the basis for extending alimony through detailed findings of fact:

The judge made thirty-three findings of fact in deciding to extend the wife's alimony beyond the statutory durational limits. ... Although the husband claims that wife is

independent, the judge found that even with reasonable accommodations she could not meet basic needs without the husband's continued financial support. The judge found that the wife suffers from joint subluxation throughout her body, "has particularly bad pain in her knees and hips," and that her frequent falls and inability to work cognitively with numbers prevented her from continuing to work. Here, the wife testified at length about the effect of her medical condition on her daily activities and also presented the judge with a letter from her primary care physician that detailed her condition and its negative effects on her ability to be gainfully employed. Therefore, the judge did not err in determining that the wife's chronic illness requires awarding alimony beyond the durational limits in the interests of justice.



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Wife's Alimony Paid from Husband's Social Security Benefits

Notably, the husband's continuing alimony obligation of \$150.00 per week was paid from the husband's social security benefits of \$527 per week. The wife testified that she received \$309 per week in social security. Accordingly, the wife's combined social security and alimony received were \$459 per week, while the husband's net received of \$527 per week in social security less \$150 per week in alimony was \$377 per week.

Ordinarily, alimony is limited to somewhere between 20% and 35% of the difference between the parties' incomes. In *Brosnan*, the Appeals Court found that the Probate Court's alimony order of \$150 per week was not an abuse of discretion, even if the difference between the parties' respective incomes was only \$218 per week (i.e. the wife received more than 65% of the difference between the parties' incomes).

As an unpublished opinion, the *Brosnan* decision featured less detail than a full opinion of the Appeals Court. In *Brosnan*, the Court did not address the broader financial circumstances of the parties beyond stating:

The judge found that while the husband's income had remained constant, he had dramatically increased his spending without any justification. Any error in the judge's

calculations used to determine the amount of the alimony to be paid by the husband did not result in an excessive award. ... It is clear that the judge's intent was to award alimony to the wife to help sustain her basic needs.

Left unsaid in the decision is whether the husband had substantially greater assets than the wife from which he could support himself. The Court's finding that the husband "had dramatically increased his spending without any justification" suggests that the husband may have had a greater share of assets on which to draw, but this is merely speculation.

How Long Does Alimony Typically Last in Massachusetts?

For marriages that lasted more than 20 years, alimony is only limited by the age of the payor (and/or the remarriage or cohabitation of the recipient spouse), with the Alimony Reform Act (ARA) stating that all alimony orders are presumptively terminated when the payor reaches federal retirement age. For marriages that lasted less than 20 years, alimony payment duration is presumptively limited by the length of the marriage. The longer the marriage, the longer the durational limit.

As the Brosnan decision makes clear, however, the ARA's durational limits are subject to deviation. As our blogs have shown, such deviations are most common when the recipient spouse suffers from an illness or disability that justifies an extension of alimony payments beyond the presumptive limits. To read more about alimony limits and deviations, check out some of these blogs:

- [What Court Filing Limits Alimony Duration In A Divorce?](#)
- [Cohabiting Before Marriage Can Increase Alimony Payments In MA](#)
- [When Does The Clock Start Running For Durational Alimony In Massachusetts?](#)
- [Using Premarital Cohabitation To Extend Alimony May Be Easier Than Previously Thought](#)
- [Appeals Court Increases Confusion Over Alimony Duration With Ruling That Burdens MA Probate & Family Court Judges](#)
- [Deviations Under the Massachusetts Alimony Reform Act](#)
- [When Can A Judge Extend Alimony Beyond Federal Retirement Age Under The Alimony Reform Act?](#)
- [Appeals Court: Alimony Appropriate Following Six-Year Marriage When Spouse Is Disabled](#)
- [MA Appeals Court: Wife's Poor Health Valid Grounds For Alimony Deviation](#)
- [Deviating From The MA Alimony Reform Act: Alimony Duration .](#)

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Alimony deviations are rare, but judges can make alterations to previously agreed upon terms when the situation warrants it. If you are interested in learning more about alimony or to discuss your divorce options, please get in touch with our law firm and contact Lynch & Owens, P.C. today.

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