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Big Appeals Court Decision Impacts Child Support And Alimony In Massachusetts

Decision supporting simultaneous alimony and child support order released weeks before new Child Support Guidelines are expected.



The Massachusetts Appeals Court has taken a decisive stand on a question that has divided Massachusetts courts for nearly a decade: whether Probate & Family Court judges can order alimony and child support to the same spouse, even when the parties earn less than \$250,000 in combined income. Since the Alimony Reform Act (ARA) became law in 2012, most Massachusetts

judges have treated the ARA's language as disfavoring the simultaneous payment of child support and alimony to the same spouse. Instead, most judges have applied the ARA and state Child Support Guidelines by ordering child support on the first \$250,000 in combined incomes of the parties and restricting alimony to cases involving combined income greater than \$250,000.

The Appeals Court, in [Calvin C. v. Amelia A. \(2021\)](#), appears to endorse a different approach, potentially opening the door to the entry of

simultaneous alimony and child support orders in a vastly greater swath of cases in which the parties earned combined income of less than \$250,000. Indeed, even for parties with combined incomes of greater than \$250,000, the case could have a major impact, where the decision suggests that Massachusetts courts employ a radically different approach to calculating alimony and child support than those followed by most of the state's Probate & Family Court case.

The Court's decision comes just weeks before the release of the 2021 Massachusetts Child Support Guidelines, which are expected to be published by the [state's 2021 Child Support Guidelines Task Force](#) in July 2021. The timing is notable where the relationship between child support and alimony has been a [major focus of advocacy groups](#) seeking changes in the upcoming guidelines. Specifically, the Court's decision appears consistent with advocacy groups' [position](#) that Massachusetts Probate Court judges should be open to ordering child support and alimony simultaneously, even in cases where parties earn less than \$250,000 in combined income.

How to Calculate Child Support and Alimony When Each Party is a Support Recipient (i.e. “Reciprocal Orders”)

The basic facts of the case are fairly familiar. In [Calvin C. v. Amelia A.](#), the husband was the major wage earner and primary custodial parent of the children. As the non-custodial parent, the mother was obligated to pay child support; however, given the mother's limited earnings, the mother required alimony payments from the husband in order to meet basic expenses. Such cases are not uncommon in Massachusetts.

Historically, judges and attorneys have handled this fact pattern by first calculating alimony, then including the alimony received in the custodial parent's income in the child support calculation, which is typically performed next. (The custodial parent also typically receives a deduction from his or her

child support income for the alimony paid.). In Calvin C., the lower court chose not to include the mother's alimony received as income for the mother when calculating the mother's child support obligation (similarly the lower court did not deduct the alimony payments from the husband's income in the child support calculation). The Appeals Court endorsed the lower court's approach of excluding alimony from the child support equation, writing in a footnote:

[I]f the judge had added the alimony to the wife's income for purposes of calculating child support, which would have resulted in a higher child support order, which in turn would have increased the wife's need for alimony due to the reduction in her ability to meet her own needs, thereby resulting in the need for an upward adjustment of the husband's alimony obligation.

The Court summarized the husband's objection to this approach as follows:

The husband contends that because the judge elected to calculate alimony first, she was obligated to treat the alimony as income to the wife, and to deduct the alimony from the husband's income, when calculating child support second.

However, the Court rebutted the husband's position, stating:

[T]he parties here are subject to reciprocal orders, i.e., each party is both a payor and a recipient of support. ... [The judge] effectively took a snapshot of the parties' incomes and simultaneously calculated their respective obligations to each other. This snapshot approach is an appropriate one in cases such as this, where the parties are facing a reduced lifestyle and each spouse is obligated to pay one form of support to the other.

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Child Support and Alimony Under the Alimony Reform Act: A Muddy Picture

After addressing reciprocal orders for child support and alimony, the Appeals Court in [Calvin C. v. Amelia A.](#) takes the somewhat unusual step of announcing how Massachusetts Courts should calculate child support and alimony in cases in which both forms of support flow to the same party. The Court's willingness to wade into this territory is notable, since questions have surrounded the interplay between alimony and child support since the passage of the [Alimony Reform Act of 2011](#), which provides:

When issuing an order for alimony, the court shall exclude from its income calculation . . . gross income which the court has already considered for setting a child support order.

Many Massachusetts judges interpreted the Act's language as essentially preventing courts from ordering alimony in cases involving parents who earned combined income of less than \$250,000, where the Child Support Guidelines suggest that the first \$250,000 in combined income should be reserved for calculating child support. The [2018 Child Support Guidelines](#), which are presently under review, are notably vague on how and when alimony and child support can be ordered in the same case, stating:

Chapter 124 of the Acts of 2011, entitled, "An Act Reforming Alimony in the Commonwealth", amended G. L. c. 208 and prohibits the use of gross income which the Court has already considered in making a child support order from being used again in determining an alimony order. ...

Depending upon the circumstances, alimony may be calculated first, and in other circumstances child support may be calculated first. Judicial discretion is necessary, and deviations shall be considered.

In January 2021, we [blogged about](#) position papers submitted by three major public advocacy organizations to the 2021 Child Support Task Force. The organizations – [Jane Does Well](#), the [Massachusetts Council on Family Mediation \(MCFM\)](#) and [Community Legal Aid](#) – each asked the Child Support Task Force to clarify the relationship between alimony and child support in Massachusetts. As noted in our [blog](#):

All three organizations critiqued the ambiguous manner in which the state’s Child Support Guidelines address cases in which a parent may be entitled either [alimony](#) or child support, or both.

In its [submission](#), Community Legal Aid wrote that “judges should be actively encouraged by clear language in the Guidelines to consider alimony in cases involving family incomes of \$250,000 or less and to award both alimony and child support when appropriate”. In its [submission](#), Jane Does Well argued that “Massachusetts is in the distinct minority of states that do not address situations when” both alimony and child support should be paid to a recipient. ... Most states calculate alimony first, and then use the alimony payment to increase the recipient’s income and decrease the payor’s income when calculating child support.” Meanwhile, MCFM wrote that under the current framework, “an economically dependent spouse with no children could receive more support as alimony than an economically dependent spouse (or unmarried parent) with multiple children would receive from child support, or if child support and/or alimony are calculated separately.”

In short, all three organizations argued that it was unfair that Massachusetts judges generally avoid ordering alimony and child support for the same parent/party when the parties earn less than \$250,000 in combined income.

Appeals Court Provides Framework for Simultaneous Alimony/Child Support Orders

In [Calvin C. v. Amelia A.](#), the Appeals Court decisively addressed the question raised by the three advocacy organizations cited in our [blog](#). The Court explained the framework for ordering simultaneous child support and alimony in cases where parties earn combined income of less than \$250,000 in straightforward terms:

[W]e agree that calculating alimony first usually necessitates using the parties' adjusted, post alimony incomes when calculating child support to avoid running afoul of G. L. c. 208, § 53(c)(2), this principle typically applies in cases where one spouse is the sole payor of both alimony and child support. In cases where one spouse pays both child support and alimony, and the parties' combined income is less than \$250,000 ... the alimony payment should be treated as income available to the recipient (rather than to the payor) for purposes of calculating child support.

Importantly, the Court notes that simultaneous orders for child support and alimony are not automatic, but rather, only occur “[i]f the judge in such a case exercises discretion to calculate alimony first” before calculating child support. The need for judicial discretion is especially important in such cases, where the paying spouse may simply lack the ability to pay both child support and alimony, and where the recipient’s economic need may not require combined alimony and child support.

Although the opinion in [Calvin C. v. Amelia A.](#) marks a sea change in Massachusetts family law, it remains to be seen how the Child Support Task Force - which occupies a uniquely influential position in the Probate & Family Court - treats the decision in the upcoming guidelines. Moreover, it is important to remember that Probate Court judges are human, and it is likely to take several years before judge move away from the reflexive avoidance of simultaneous child support and alimony orders in typical cases.

Decision Could Have Immediate Impact on Parties Earning More than \$250,000.

Although the opinion in [Calvin C. v. Amelia A.](#) focuses on parties earning less than \$250,000 in combined income, the most immediate impact of the decision may actually be on cases involving parties earning more than \$250,000 in combined income. Since the ARA became effective in 2012, most Massachusetts Probate Court judges have applied the Massachusetts Child Support Guidelines to the first \$250,000 in combined income of the parties, before applying the alimony guidelines to the parties' income over \$250,000 per year. The Appeals Court's decision suggests that this approach is erroneous.

As noted above, the Court took pains in [Calvin C. v. Amelia A.](#) to narrowly frame its decision to apply only "[i]f the judge in such a case exercises discretion to calculate alimony ..." Where the opinion lays out a clear framework for handling simultaneous alimony and child support orders, the decision may make it more difficult to justify the historical practice of excluding the first \$250,000 in combined income from alimony completely. Instead, attorneys are likely to argue that the payor's entire income should be used to calculate alimony first, with the alimony received by the recipient to count as income for the recipient in the child support calculation applied to the first \$250,000 in combined income.

Unlike support payors who earn less than \$250,000, individuals earning substantially higher incomes arguably have a better ability to pay simultaneous child support and alimony awards. Such combined orders would also eliminate the seeming unfairness that arises in cases in which a custodial parent who is entitled to both child support and alimony essentially receives the same (or perhaps even a lower) level of support than a former spouse without children who is only entitled to alimony.

Decision Appears to Address Alimony/Child Support Unfairness Cited by Advocates

On June 9, 2021, mere days before the Appeals Court decision was announced, women's advocates Jane Does Well [published a graphic](#) on its Instagram feed citing the state's treatment of alimony and child support as one of the main problems impacting Massachusetts family law cases:

MASSACHUSETTS STANDS ALONE AND APART FROM 49 OTHER STATES ON CHILD SUPPORT POLICY IN 5 CRUCIAL WAYS:

- # 1: MA IS THE ONLY STATE IN THE NATION TO PLACE A 15% CAP ON CHILDCARE COSTS FOR NON-CUSTODIAL PARENTS
- # 2: MA IS THE ONLY STATE IN THE NATION TO REVOKE ALIMONY WHEN TOTAL INCOME IS LESS THAN \$250,000
- # 3: MA IS THE ONLY STATE IN THE NATION TO REDUCE CHILD SUPPORT BASED ON AGE WITHOUT ANY SUPPORTING FACTS OR EVIDENCE
- # 4: MA IS THE ONLY STATE IN THE NATION TO SET FACTORS FOR >1 CHILD 50% BELOW NATIONAL LEVELS
- # 5: MA IS THE ONLY STATE IN THE NATION TO HIRE BIASED FOR-PROFIT ECONOMIC CONSULTANTS WHOSE PUBLIC STATEMENTS REFLECT A PERSPECTIVE CONTRARY TO THE PRINCIPLES OF CHILD SUPPORT

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Although the Appeals Court opinion in [Calvin C. v. Amelia A.](#) does not mandate a separate or additional alimony order in cases involving child support in which parties earn less than \$250,000, the decision appears to remove the main the limit on such orders by providing Probate Courts with a clear framework for how to enter such orders. Indeed, moving forward, it appears that the only limitation on such order is the discretion of the presiding judge, which will remain a hurdle for each party to clear in their respective case.

About the Author: [Jason V. Owens](#) is a Massachusetts divorce lawyer and family law attorney for Lynch & Owens, located in [Hingham](#), Massachusetts and [East Sandwich](#), Massachusetts. He is also a mediator and conciliator for [South Shore Divorce Mediation](#).

Schedule a consultation with [Jason V. Owens](#) today at (781) 253-2049 or send [him an email](#).

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