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Big Appeals Court Decision Impacts Child Support and Alimony in Massachusetts

June 21, 2021 (updated October 27, 2021)

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/year 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, in divorces involving children, 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, while restricting alimony to cases involving combined income greater than \$250,000. This practice has generated significant criticism from advocates who argue that the Massachusetts system punishes parents while rewarding former spouses without children.

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 larger swath of cases in which parties earn combined income of less than \$250,000 per year. Indeed, even for parties with combined incomes of greater than \$250,000, the decision could have a major impact, where the opinion suggests that Massachusetts judges should employ a radically different approach to calculating alimony and child support in such cases, compared to prior practice.

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. (Editor's note: As noted in our update at the end of this blog, the 2021 Guidelines have [now been released](#).) 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 child support 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 Receives Support (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 her basic expenses. Such cases are not uncommon in Massachusetts. When the primary wage earning spouse is also the primary caregiver for the children, so called "reciprocal orders" (or "cross orders") for alimony and child support frequently result.

Historically, judges and attorneys have handled this fact pattern by first calculating alimony, then including the alimony received in the non-custodial parent’s income in the child support calculation, with the child support calculation performed after alimony has been determined. (The custodial parent also typically received a deduction from his or her child support income equal to the alimony paid.). In Calvin C., the lower court chose not to treat the non-custodial mother’s alimony as income to the mother when calculating the mother’s child support obligation (nor did the court deduct the alimony paid by the husband from the husband's income in the child support calculation). The Appeals Court endorsed the lower court’s exclusion of 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.

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.

Since 2011, many Massachusetts judges have interpreted the Act's language as essentially "excluding" alimony in cases involving parents with combined incomes of less than \$250,000, where the Child Support Guidelines were assumed to consume the first \$250,000 in combined income of the parties, leaving no income for an alimony order. 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 ordered alimony *or* child support, but not both, in most cases.

Appeals Court Provides Framework for Simultaneous/Parallel Alimony and Child Support Orders

In [Calvin C. v. Amelia A.](#), the Appeals Court decisively addressed the question raised by the three advocacy organizations above. 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, can 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 cases where the paying spouse may simply lack the ability to pay both child support and alimony, or when 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 2021 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 may no longer be justified.

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 ...” However, once a judge has made the decision to calculate alimony, the Calvin C. decision suggests that it

may be improper for that judge to exclude the first \$250,000 in combined income from the alimony calculation. Instead, attorneys are likely to argue that the payor's entire income should be used to calculate alimony first *in every alimony case*, with child support always calculated after alimony has been apportioned. (We will be closely watching how the Appeals Court rules in cases where lower court judges take a different approach than the methodology suggested in Calvin C.)

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 may 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 less) support than a similarly situated individual who is only entitled to alimony *or* child support alone.

UPDATE (10/27/21) - 2021 Massachusetts Child Support Guidelines Include Multiple Citations to Calvin C.

On October 4, 2021, the [2021 Massachusetts Child Support Guidelines](#) became effective. The new Guidelines include a variety of changes resulting in increased child support in a variety of cases. For example, the 2021 Guidelines have increased the minimum combined income considered in the child support calculation from \$250,000 to \$400,000. (**Editor's note** - *We considered revising the many references to the \$250,000 cap in our original blog; however, if we updated every blog each time the law changed, we would not have time to practice law.*)

Notably, the 2021 Guidelines include two important citations to [Calvin C. v. Amelia A. \(2021\)](#) as guidance for calculating alimony and child support. The inclusion of the citations by the Child Support Task Force were remarkable, in part, because of the short period of time that elapsed between the Appeals Court decision on June 10, 2021 and the release of the draft 2021 Guidelines on August 3, 2021.

The 2021 Guidelines cite Calvin C. first in Section I (30), which includes the definition of income for child support purposes, as follows:

Sources of income include any other form of income or compensation not specifically itemized above, including, but not limited to, alimony consistent with [Calvin C. v. Amelia A.](#), 99 Mass. App. Ct. 714 (2021).

As noted in the Task Force's commentary, the citation best understood to encourage judges to treat alimony received as income in a subsequent child support calculation, consistent with the approach articulated in Calvin C. The Task Force's commentary further explains as follows:

On June 10, 2021, the Appeals Court issued a decision that addressed whether certain alimony amounts should be included as income by the recipient and deducted by the payor when calculating child support. The Appeals Court noted that where one spouse is the sole payor of both alimony and child support, and alimony is calculated first, it is usually necessary to "us[e] the parties' adjusted, postalimony incomes when calculating child

support to avoid running afoul of G. L. c. 208, § 53 (c) (2) ...” Calvin C. v. Amelia A., 99 Mass. App. Ct. 714, 721 (2021). This approach would not be utilized where the parties are “subject to reciprocal orders, i.e., each party is both a payor and a recipient of support” or where alimony is not calculated first. Id. Reference to this income is included in Section I. A. 30.

The Task Force’s decision to directly endorse the Calvin C. methodology is significant. Although every Appeals Court decision is controlling law in Massachusetts, the sheer scope of cases that fall under the Child Support Guidelines is probably wider than any single appellate decision. By citing the Calvin C. decision directly in the Guidelines, the Task Force has increased the speed with which Massachusetts judges are likely to follow the methodology outlined in the decision in individual cases. Indeed, less than one month after the 2021 Guidelines became law, we have already seen numerous attorneys make arguments based on Calvin C. with some success in courtrooms across the Commonwealth.

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