

**89 Mass.App.Ct. 1126  
51 N.E.3d 509 (Table)**

**Elizabeth W. SCHULMAN  
v.  
Robert A. SCHULMAN.**

**No. 15–P–418.**

**Appeals Court of Massachusetts.**

**June 3, 2016.**

*MEMORANDUM AND ORDER PURSUANT TO  
RULE 1:28*

In this appeal from a so-called “further judgment of divorce”<sup>1</sup> entered in the Probate and Family Court, Robert A. Schulman (husband), the former husband of Elizabeth W. Schulman (wife), challenges aspects of the alimony award and the provision regarding the payment of college expenses for the parties' child. We affirm.

1. *Alimony*. In the further judgment of divorce, the husband was ordered to pay general term alimony to the wife of \$952 per week, along with rehabilitative alimony of \$361 per week for a period of three years while the wife transitioned back into the workforce.<sup>2</sup> The combined general term and rehabilitative alimony amount of \$1,313 represented approximately thirty-five percent of the husband's weekly gross salary of \$3,750. The husband was also ordered to pay additional alimony to the wife equivalent to a percentage (thirty-five percent for the first three years, and thirty percent thereafter) of his “gross income from all other forms of compensation, including but not limited to bonuses, stock options, awards or grants, including incentive awards such as long-term incentive awards comprised of restricted stock units and cash components (except for capital gains income and dividend and interest income which derive from assets equitably divided by the parties under their Partial Agreement for Judgment) if, as, and when received.”

On appeal, the husband principally challenges the provision requiring him to pay a percentage of his “other” nonsalary income, on the grounds that (1) it constitutes an impermissible self-modifying alimony award in violation of *Hassey v. Hassey*, 85 Mass.App.Ct. 518, 526–529 (2014), and (2) it exceeds both the wife's need for alimony and the husband's ability to pay the same. As a threshold matter, we note that the husband did not raise his first argument (that the percentage-based alimony award is barred by *Hassey*) during the proceedings below. In fact, the husband specifically requested a percentage-based alimony award, rather than a fixed alimony amount, in connection with his discretionary bonus income.<sup>3</sup> Accordingly, we deem this argument waived and decline to consider it. See *Carey v. New England Organ Bank*, 446 Mass. 270, 285 (2006). We therefore turn to the husband's remaining argument that the alimony award exceeds both the wife's need and the husband's ability to pay.

“A judge has broad discretion when awarding alimony under the statute.” *Zaleski v. Zaleski*, 469 Mass. 230, 235 (2014). “In reviewing both the form and the amount of an award of alimony, we examine a judge's findings to determine whether the judge considered all the relevant factors under G.L. c. 208, § 53(a), and whether the judge relied on any irrelevant factors.” *Id.* at 235–236.<sup>4</sup> “[T]he amount of alimony should generally not exceed the recipient's need or 30 to 35 percent of the difference between the parties' gross incomes established at the time of the order being issued.” G.L. c. 208, § 53(b), inserted by St.2011, c. 124, § 3. “Although the [Alimony Reform] Act [act] creates express guidelines to aid judges in fashioning alimony orders, it does not alter the principle that the central issue relevant to a financial award is the dependent spouse's ‘need for support and maintenance in relationship to the respective financial circumstances of the parties.’” *Hassey*, 85 Mass.App.Ct. at 524–525, quoting from *Partridge v. Partridge*, 14 Mass.App.Ct. 918, 919 (1982). “If a supporting spouse has the ability to pay, the recipient spouse's need for support is generally the amount needed to allow that spouse to maintain the lifestyle he or she enjoyed prior to termination of

the marriage.” *Pierce v. Pierce*, 455 Mass. 286, 296 (2009).

a. *The wife's need for alimony.* In the present case, the judge found that the parties enjoyed an upper-income life-style during their long-term marriage. The husband was the primary wage earner throughout the marriage, and at the time of the divorce, he was earning an annual base salary of \$195,000, along with a compensation package that included discretionary bonuses,<sup>5</sup> restricted stock shares, and long-term incentive awards. As a result of the property division, the parties each received approximately \$1,704,791 in marital assets, some of which the wife used to purchase a condominium in South Carolina where she intended to move after the divorce. The judge found that, following the move to South Carolina, the wife would have weekly expenses of \$2,118.70, and, “given her significant assets,” she would “be able to meet her living expenses and maintain the marital lifestyle with a contribution from Husband of \$1,313.00 per week until she has the opportunity to obtain additional [job] training ... [while] also receiv[ing] varying portions of Husband's income from all other sources, including bonus income and stocks.”

The husband contends that the provision requiring him to pay additional alimony to the wife from his “other” nonsalary compensation is excessive, as the judge found that the wife's needs could be met with the \$1,313 alimony award alone. We disagree. The \$1,313 alimony award does not cover all of the wife's expenses, as it leaves a shortfall of \$805.70 per week. It is apparent from the findings that the judge expected the wife to cover the shortfall through a combination of her own assets and any additional alimony received from the husband. While the husband claims that the wife's expenses are inflated, we note that the wife's expenses had actually been reduced by approximately \$838 per week due to the South Carolina move.<sup>6</sup> Moreover, the wife's expenses amounted to less than one-half of the husband's expenses (\$4,468 per week). “Absent good reason, in a long term marriage, there is no justification for the lifestyle of one spouse to go down while the other remains high.”

*Goldman v. Goldman*, 28 Mass.App.Ct. 603, 611 (1990).<sup>7</sup> Accordingly, we conclude that the alimony award is not excessive with respect to the wife's needs.

b. *The husband's ability to pay.* The judge found that the husband has weekly expenses of \$4,468, and “given [his] significant assets, bonus income, and regular weekly income of \$3,750.00, he has the ability to pay weekly alimony of \$1,313.00 to Wife and still maintain the marital lifestyle.” The husband argues that the judge abused his discretion by making an alimony award that renders the husband unable to meet his own expenses without invading his assets, and by improperly including the husband's income derived from assets received in the divorce when determining his ability to pay alimony. Section 53(c) of c. 208, inserted by St.2011, c. 124, § 4, provides that “[w]hen issuing an order for alimony, the court shall exclude from its income calculation ... capital gains income and dividend and interest income which derive from assets equitably divided between the parties under section 34.” Contrary to the husband's claim, the judge specifically excluded such income when calculating the husband's alimony obligation.<sup>8</sup> Moreover, to the extent that the judge considered both parties' assets when assessing the over-all fairness of the alimony award, he was well within his discretion to do so. Contrast *Katz v. Katz*, 55 Mass.App.Ct. 472, 478 (2002).

The husband further argues that the provision requiring him to pay additional alimony from “all other sources” of compensation is overly broad, as it could encompass future earnings that are presumptively excluded under the act. Section 54(b) of the act provides that “[i]ncome from a second job or overtime work shall be presumed immaterial to alimony modification if: (1) a party works more than a single full-time equivalent position; and (2) the second job or overtime began after entry of the initial order.” G.L. c. 208, § 54(b), inserted by St.2011, c. 124, § 4. See *Vedensky v. Vedensky*, 86 Mass.App.Ct. 768, 778 (2014). However, this appeal does not involve a modification proceeding, nor is there any indication in the judge's findings that the

husband was planning to obtain a second job after entry of the divorce judgment.<sup>9</sup> The judge was obligated to consider all of the husband's current income when calculating the alimony award. See *Zaleski*, 469 Mass. at 243 (“The language of the act is clear that all of the payor spouse's income, as defined by the Massachusetts Child Support Guidelines ..., must be included in any calculation of alimony”). A fair reading of the provision in question demonstrates that the judge intended to include all nonsalary aspects of the husband's current compensation package.<sup>10</sup> As there is no express requirement for the husband to pay alimony out of income derived from a part-time job commenced after the divorce, we discern no error.

2. *College expenses.* At trial, the parties agreed to share in the cost of the child's college expenses, but disagreed as to the apportionment of those expenses. The judge found it equitable for the husband to pay two-thirds of the child's college expenses, in part because the wife would be “seeking the training necessary for her to reenter the workforce” during the time period in question. The husband argues that the disparate division of the child's college expenses was an abuse of discretion, as the husband will have to invade his assets to satisfy the judgment. However, as the husband does not cite to any legal authority in support of this claim, it does not rise to the level of reasoned appellate argument contemplated by Mass.R.A.P. 16(a)(4), as amended, 367 Mass. 921 (1975), and we decline to consider it. See *K.A. v. T.R.*, 86 Mass.App.Ct. 554, 567 (2014).<sup>11</sup> <sup>12</sup>

*Further judgment of divorce entered August 29, 2014, affirmed.*

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Notes:

<sup>1</sup> On July 11, 2014, a so-called “bifurcated judgment of divorce nisi” entered, incorporating a partial agreement of the parties resolving certain issues, including property division. Following a two-day trial on the remaining issues, including alimony and payment of college expenses, the

further judgment of divorce entered on August 29, 2014.

<sup>2</sup> The judge found that the three-year rehabilitative alimony period would enable the wife to obtain necessary job training, after which she would be capable of earning \$30,000 annually as an administrative assistant.

<sup>3</sup> The husband acknowledges in his brief that “[i]t was [his] position at the time of trial that he should pay [the wife] the amount of \$745.00 per week (\$38,740.00 annually) in alimony and twenty (20%) percent of his bonus, if, as and when received, as additional income.” Moreover, the husband's proposed judgment, submitted after *Hassey*, specifically included a provision requiring the husband to pay twenty percent of his bonus income as additional alimony to the wife.

<sup>4</sup> “In determining the appropriate form of alimony and in setting the amount and duration of support, a court shall consider: the length of the marriage; age of the parties; health of the parties; income, employment and employability of both parties, including employability through reasonable diligence and additional training, if necessary; economic and non-economic contribution of both parties to the marriage; marital lifestyle; ability of each party to maintain the marital life style; lost economic opportunity as a result of the marriage; and such other factors as the court considers relevant and material.” G.L. c. 208, § 53(a), inserted by St.2011, c. 124, § 3.

<sup>5</sup> In March of 2014, the husband received bonus income of \$30,000.

<sup>6</sup> The judge found that the wife's weekly expenses would be reduced from \$2,956.65 to \$2,118.70 as a result of the move to South Carolina.

<sup>7</sup> The husband further claims that there was no evidence that the wife would require three years of training before reentering the workforce. However, we find no merit in this argument, as the husband's own witness, Christopher Reece, testified, and the judge found, that the wife would “need to take courses on Microsoft Office

Products before she will be employable in administrative positions.”

<sup>8</sup> The judgment expressly excludes from the husband's alimony obligation “capital gains income and dividend and interest income which derive from assets equitably divided by the parties.” Moreover, the judge specifically noted that he did not consider “future dividend and interest income in calculating alimony, as this income will be derived from assets previously divided in the divorce.”

<sup>9</sup> Indeed, if the husband does obtain a second job in the future, he would be free to raise this argument in connection with a modification or contempt proceeding.

<sup>10</sup> This is demonstrated by the express inclusion of the various forms of compensation being earned by the husband.

<sup>11</sup> Even if we considered the merits of this argument, we would be unpersuaded. “In establishing support orders for children over age 18 ... the Court shall exercise its discretion in ordering support and/or college contribution.” Massachusetts Child Support Guidelines § II–F (2013) (guidelines). The guidelines are intended “to promote joint parental responsibility for child support in proportion to, or as a percentage of, income.” *Id.* at principles par. 2. In this case, after taking into account the alimony award, the husband retains approximately two-thirds of the parties' combined gross income. We therefore discern no abuse of discretion in requiring the husband to pay a share of the child's college expenses that is proportional to his income. See *J.S. v. C.C.*, 454 Mass. 652, 660 (2009) (Child support orders are reviewed for an abuse of discretion).

<sup>12</sup> The wife's request for an award of her appellate fees is denied.

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