Exploring the Interaction Between Openshaw and Cavanagh Decisions on Massachusetts Alimony Cases

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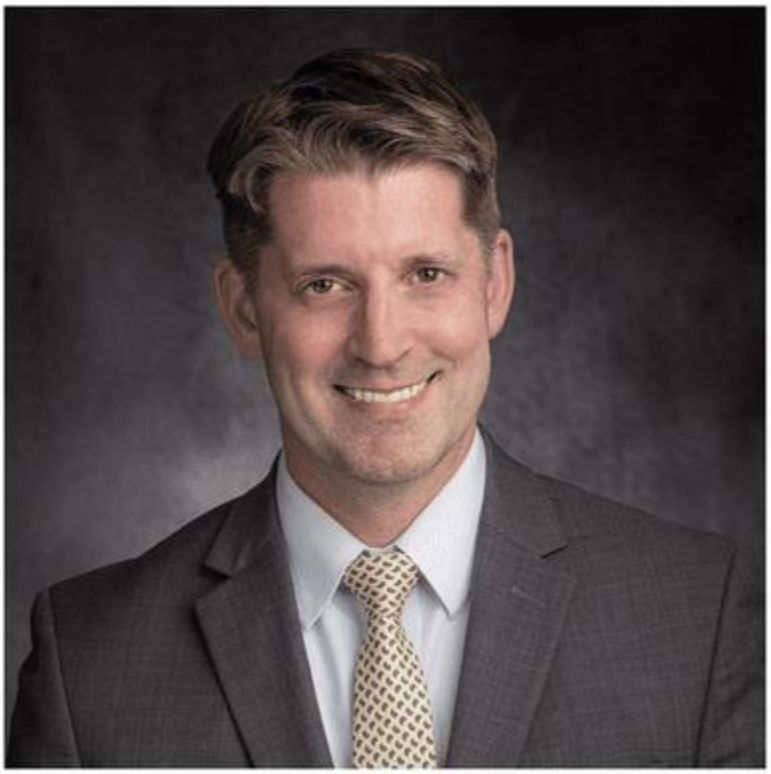
By Jason

Two recent decisions of the Massachusetts Supreme Judicial Court interact in complex ways, affecting alimony decisions in the state.



The Massachusetts Alimony Reform Act (ARA), as set forth in M.G.L. c. 208, § 53, provides Massachusetts courts with specific parameters for calculating the amount of alimony in a divorce case. Specifically, the statute suggests that judges should "cap" alimony at an amount that should generally not exceed the recipient's "need" or 30–35% of the difference in the parties' gross incomes. Since 2017, however, interpreting the ARA has become increasingly complex, starting with the loss of tax deductibility for alimony payments in 2019, followed soon after by several Supreme Judicial Court (SJC) decisions that have increased the legal exposure of Massachusetts payors for higher support orders.

In this blog, we explore the complex interaction between two recent alimony cases, *Openshaw v. Openshaw*(2024) and *Cavanagh v. Cavanagh*(2022), which have

disrupted alimony practice in Massachusetts against a backdrop of shifting tax rules and the state's increasingly complicated Child Support Guidelines.

Sweeping Tax Law Complicates Alimony "Formula"

As noted above, the ARA was conceived as a "cap" for alimony calculations, where the statute creates a presumptive ceiling on alimony based on the recipient's "need" or 30–35% of the difference in the parties' gross incomes. Until 2019, alimony was tax-deductible for state and federal tax purposes, meaning a former spouse could deduct alimony payments from their taxable income. Deductibility allowed many high-earning alimony payors to recover more than 40% of their alimony payments through tax savings based on their tax bracket. In practice, deductibility allowed the ARA's language to act less like a "cap" and more like a *formula*, with most alimony cases resolving with an order calculated at 30–35% of the difference in the parties' gross incomes between 2013 and 2019.

Tax deductibility was a win-win in alimony cases. Most alimony payors, who typically generated earnings at higher tax brackets, received a substantial tax refund through tax deductibility. Meanwhile, most alimony recipients, who typically fell within substantially lower tax brackets, were often content to pay the taxes on the alimony they received at their lower tax rates, since paying the taxes generally meant higher alimony awards. In 2019, this delicate balance was thrown off by the federal Tax Cuts and Jobs Act (TCJA), which passed in 2017 and became law two years later. Under the TCJA, alimony payments would no longer be deductible for federal tax purposes in new divorce cases starting in 2019. By tax year 2022, Massachusetts followed suit, eliminating state deductibility.

The impact of TCJA continues to be felt in Massachusetts as courts grapple with applying the ARA's 30–35% "formula" in a world where alimony payors can no longer write off payments to their former spouses. In many alimony cases, attorneys submitted worksheets to judges that reverse-engineered the ARA's 30–35% calculation into an after-tax number. For the purposes of this blog, the point is simply this: the loss of deductibility under the TCJA was the first step on the path towards an increasingly complex alimony picture in Massachusetts.

Cavanagh v. Cavanagh (2022): A Murky Decision Complicates Alimony

By 2022, three years had passed since the TCJA's 2019 effective date. In the aftermath of the TCJA, the Massachusetts legislature took no steps to update the ARA's 30–35% calculation, despite the glaring inconsistency between the current tax law and the statute's formula. Then came the SJC's decision in *Cavanagh in Cavanagh*(2022), which sparked confusion over alimony from an unexpected direction: the interaction between alimony and child support.

The provision of the ARA addressing the interaction between alimony and child support is found in M.G.L. c. 208, § 53 (c), which provides that "[w]hen 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." Prior to *Cavanagh*, most Massachusetts judges had interpreted § 53 (c) to require courts to use the parties' gross incomes to first calculate child support, which applies to the first $400,000 in combined income under the Child Support Guidelines. Only after the child support calculation could alimony be computed using the parties' income exceeding $400,000. *Cavanagh* changed this practice, suggesting that in many cases, alimony should be calculated prior to child support. Put simply, calculating alimony first results in higher combined alimony and child support orders than when child support is calculated first.

Notably, *Cavanagh* requires judges to "compare the base award and tax consequences" under each scenario, and the "judge should then determine which order would be the most equitable for the family before the court" after considering the factors articulated under the ARA and the Child Support Guidelines. Under *Cavanagh*, the SJC required parties to present multiple calculations (i.e. to calculate alimony and child support *both ways*) in every case. Specifically, judges must consider proposed orders in which alimony is calculated first, followed by separate calculations with child support computed first. Again, when judges calculate alimony first, it results in substantially higher combined support orders versus cases where child support is calculated first.

Although many cheered the *Cavanagh* Court's push for higher support orders, practitioners criticized the decision for failing to provide judges with clear guidance on *which* calculation to perform first in a given case. For many, *Cavanagh* appeared to create *a test without a standard* by asking judges to compare each support scenario with no guideposts on which option to *choose* in a given case. (For example, should alimony be calculated first in high-income cases where a payor earns more than $1 million annually? *Cavanagh* doesn't say. Should child support be calculated first when parties share custody of a child? *Cavanagh* doesn't say. All was left up to the individual judge's discretion.)

The *Cavanagh* Backlash: Massachusetts Judges Show Little Appetite for Calculating Alimony First

As noted above, many Massachusetts family law attorneys and judges criticized *Cavanagh* for forcing courts and practitioners to perform complex new calculations in alimony cases without guiding judges about which calculation should apply in a given case. For many observers, the SJC's lack of clarity in *Cavanagh* also rendered the decision toothless. Many judges have continued to calculate child support first across most of their cases, since the opinion does not say *when* judges should choose the

alimony-first option. This has been particularly true at the crucial temporary order stage of many divorce cases.

Most divorce cases resolve before trial. As a result, most child support and alimony orders are calculated at the temporary order stage of a case, with no trial to follow. Massachusetts Probate and Family Court judges are at the zenith of their powers at the temporary order stage of the case. Most judges feel little need to prepare detailed Findings of Fact at the temporary order stage of the case. Unsurprisingly, in the wake of *Cavanagh*, few judges feel compelled to perform a complex comparative analysis contrasting multiple support scenarios for alimony and child support (as suggested by *Cavanagh*) when parties appear seeking temporary orders. Instead, many judges have carried on with business as usual after *Cavanagh*, calculating child support first and only moving to alimony if the parties' combined income exceeds $400,000 in a given case.

Of course, there is one clear exception to this approach: Trial. When divorce cases proceed all the way to trial, judges are forced to grapple with the balancing test articulated in Cavanagh. Specifically, such judges must enter enter detailed findings of fact articulating *why* they prefer to calculate child support before alimony. At this point, the *Cavanagh* test shows its teeth.

A Question of "Need": Overlooked Part of the ARA "Cap" has Renewed Importance after *Cavanagh*

As noted above, the ARA seeks to presumptively "cap" alimony at an amount that should generally not exceed the recipient's "need" or 30–35% of the difference in the parties' gross incomes. In the early days of the ARA – before the TCJA stripped tax deductibility and *Cavanagh* entered the picture – the "need" portion of the cap often received little attention. Most alimony orders between 2013 and 2019 were generated using the ARA's 30–35% calculation, with little attention sometimes paid to "need". With the loss of deductibility, however, establishing a recipient's "need" became a more decisive factor in alimony cases. With *Cavanagh*, the spotlight on "need" has grown stronger.

Unsurprisingly, judges at the trial stage often continue to follow their instinct to calculate child support before alimony, resulting in lower combined alimony and child support orders. When it came to justifying this choice in their findings of fact, many judges have sought to limit the support paid to recipients based on "need". Said another way: After trial, many judges enter written findings that a recipient cannot show a need for the higher combined support orders resulting from *Cavanagh's* alimony-first approach.

Before the ARA became law in 2011, a recipient's "need" for alimony was the driving question that dictated the amount of alimony in Massachusetts cases. Cases like *Pierce v. Pierce*(2009) drilled down on "need", defining it as the amount of alimony required for a recipient to maintain the lifestyle (or standard of living) of the parties prior to the separation. In practice, determining a recipient's "need" often comes down to analyzing the parties' spending during the marriage to place a dollar value on the lifestyle the parties enjoyed before the marriage ended.

After *Cavanagh*, many judges seized on the "need" component of the ARA cap when entering findings in support of a judgment that calculates child support before alimony, resulting in a lower support order than the inverse. Such findings often concluded that a support order resulting from calculating alimony first *exceeds the recipient's need for support*. Indeed, "need" is sometimes the only logical grounds available for rejecting *Cavanagh*'s call to calculate alimony first in at least in some cases.

Enter Openshaw (2024): Expanding "Need" to Include Savings

Just as Massachusetts Probate & Family Court began to grapple with *Cavanagh*, the SJC entered a new opinion impacting alimony. In *Openshaw v. Openshaw*(2024), the SJC followed a trend that other states increasingly adopted in recent years. Namely, in *Openshaw*, the SJC held that a recipient's "need" for alimony encompassed a recipient's ability to accumulate savings after a divorce using alimony - if regular savings was part of the marital lifestyle. Prior to *Openshaw*, a recipient's "need" for alimony was generally limited to the *consumptive spending* that spouses engaged in during their marriage. Thus, "need" was often defined in terms of "lifestyle", which in turn focused on the houses, cars, jewelry, vacations, and consumption of resources that spouses engaged in while married.

Openshaw expanded "need" to include frugality. Instead of being limited to the family's consumptive spending during the marriage, the decision required courts analyzing "need" to consider the regular pattern of savings that the spouses engaged in during the marriage, and to incorporate any pattern of savings into the recipient's "need" for alimony.

After *Openshaw* was published, some practitioners regarded the decision as an outlier – i.e. a precedent that was likely to only impact wealthy spouses with very substantial

resources. Less appreciated was the impact that *Openshaw* could have on "need" arguments in the *Cavanagh* context. Specifically, *Openshaw's* allowance of savings impacts the "need" analysis in *Cavanagh* cases, where judges have increasingly used "need" as grounds for rejecting arguments for calculating alimony before child support in *Cavanagh* cases. By adding savings to a recipient's need, attorneys are better positioned counter one of the main defenses used in *Cavanagh* cases; namely, that the recipient has no need for higher combined support from the payor.

Openshaw may also have an underrated impact on cases where judges are reluctant to enter orders amounting to 30–35% of the payor's gross income, where such orders grew more scarce after the loss of tax deductibility under the TCJA. In the context of such cases, using savings to establish a higher "need" for recipients may be an important factor in arguing that an alimony order based on the payor's gross income, rather than the after-tax equivalent, is appropriate.

A Changing World: Growing Justification for Support Orders Exceeding 50% of After-Tax Income in MA

The passage of the ARA in 2011 reflected a specific moment in time. The ARA passed amid a backlash against the 2009 Child Support Guidelines, which had dramatically increased child support orders for non-custodial parents in the state. Much of the fuel behind the backlash was driven by Father's Rights groups, who argued that Massachusetts disproportionately awarded primary physical custody of children to mothers, resulting in less parenting time and higher child support orders for fathers. At the same time, the ARA's passage was partially driven by the phenomenon of "lifetime alimony", whereby alimony payors were forced to keep paying alimony to former spouses even after reaching retirement age.

Much has changed in Massachusetts since 2011. Fathers have made enormous progress concerning shared physical custody of children, with many Massachusetts probate court judges now treating shared parenting as the de facto norm in the state. The ARA has largely greatly reduced lifetime alimony orders over time. Meanwhile, women's voices have grown stronger in Bay State politics. Amid these changes, some of the fuel that drove the alimony reform movement in 2011 has faded. Today, there appears to be little appetite in the Commonwealth for reducing alimony.

Against this backdrop, it is increasingly evident that one of the foundational elements of the ARA – the desire to limit support orders to 35% of a payor's income – appears to be eroding. A major mechanism for limiting alimony orders to 35% of a payor's income under the ARA involved the tax deductibility of alimony payments, which vanished for new divorce

cases in 2019. Under *Cavanagh*, the common practice of only calculating alimony after child support was subsequently weakened (albeit in a somewhat limited way due to the SJC's flawed execution of the decision). Under *Openshaw*, alimony orders are now a vehicle for post-divorce savings for recipients.

Taken together these changes appear to put increasing pressure on Massachusetts judges to cross the threshold of awarding more than 50% of one or both parties' after-tax income to a support recipient. Depending on one's politics, these trends may be a good or bad thing, but for attorneys, only one thing is certain: We stand ready, as always, to argue both sides of the case for our clients.

Illustration: How an Alimony Recipient Receives More than 50% of After-Tax Income

Consider a combined income scenario with the numbers below. Assume: Payor earns $125k, Recipient earns $75k, with one child who rides with Recipient.
Under *Cavanagh* Step 1, perhaps an alimony order of ~$13k/year ($250/week) is set, in part to meet the recipient's *Openshaw* "need," and then child support is calculated, say $19k/year ($377/week). Before taxes, Recipient ends up with about $2069/week total income, while Payor is left with about $1776/week.

Recipient has more income than Payor pre-tax, due to the transfers. Now factor in taxes: Payor pays tax on their full $125k (including the $32k in support paid out), while Recipient pays tax only on their $75k salary (the support is tax-free). For simplicity, imagine each party paying an effective tax rate of 20%, which amounts to $25k in taxes for Payor and $15k for Recipient. With taxes, the disparity grows larger, with Payor left with $67k in after-tax income and Recipient with $92k. As noted in our prior blogs, in such scenarios, the recipient *"may end up with more after tax resources than [the] payor, where [the] payor is paying income taxes on an additional $50,000 in income"*.

In this scenario, counsel for Payor would argue that calculating alimony first is inappropriate, where Recipient's share of the net income *already* exceeds Payor's share with child support alone. That argument could include calculating child support first at around $22k per year ($425/wk), with the payor continuing to carry the higher tax burden ($25k/year to the recipient's $15k/year), resulting in Payor retaining $78k in after-tax income and the recipient retaining $82k. In this scenario, Payor should be well-positioned to argue that additional alimony is inappropriate where Recipient's share of the after-tax income exceeds that of the payor after child support alone. (With no income disparity, alimony becomes inappropriate.)

Of course, if we increase Payor's income in this scenario to $250k/year, the resulting numbers are pretty different, with the gap between each party's share of the after-tax

income shifting dramatically. Is the shift enough to justify calculating alimony first? *Cavanagh* does not tell us. Presumably, if a payor earns $750k/year, the argument for calculating alimony first grows, but *Cavanagh* provides no standard for resolving the question.

The Ever-Increasing Complexity of Massachusetts Alimony Cases

Regardless of where one falls on the political spectrum (or how one feels about higher or lower support orders in Massachusetts), one growing concern about the state of alimony law in Massachusetts is the ever-increasing complexity that has occurred since 2019. As of 2025, practitioners are expected to present judges with *multiple* layers of arguments on alimony and child support, including the following:

1. **Net of Tax Alimony Analysis** – Following the loss of tax deductibility, leaders in the field, led by CPA Marc Bello, drew support after proposing a method for converting the ARA's 30-35% formula from gross income to net, after-tax income. For many cases, the after-tax equivalent of ARA's 30-35% formula results in alimony orders equal to 20-27% of the difference in the parties' gross incomes. However, the net-of-tax calculation varies based on which tax bracket the payor falls within, and requires practitioners and judges to have a working knowledge of tax law to understand.

2. ***Cavanagh* Analysis** – After determining an after-tax alimony order, practitioners must then perform their *Cavanagh* calculations for the Court. This requires attorneys to use the Court's 5-page Child Support Guidelines Worksheet, which is widely acknowledged to contain too much math for most practitioners or judges to complete without the aid of an online form. Attorneys must import their alimony figures from Step 1, then perform separate calculations with alimony calculated first and child support second, along with child support calculated first and alimony second. If the parties disagree about shared vs. primary custody, each side can easily end up submitting 8+ forms to the Court showing the calculations for the various scenarios.

3. **Openshaw Need/Savings Analysis** – If an attorney is also arguing for savings alimony, the attorney must present a separate savings analysis to the Court, setting forth the pattern of savings followed by the parties prior to the separation.

In some cases, one party may end up submitting a dozen worksheets to the Court, showing pre- and post-tax alimony calculations, alimony before child support calculations and vice versa, plus multiple child support calculations based on primary vs. shared custody. Effectively presenting which scenario is most applicable often requires the use of expert witnesses. (With the *Cavanagh* opinion offering so little guidance on which scenario the

judge should choose in a given case, attorneys may be performing all of this work for a judge who may not even be open to persuasion.)

Clearly, the current state of play surrounding alimony in Massachusetts is good for attorneys, since we get paid by the hour to present and unpack complex scenarios. Whether the complexity is good for the citizens of Massachusetts is less clear.

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