

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

20-P-1263

RICHARD A. BROSANAN

vs.

SUSAN M. BROSANAN.

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

Richard Brosnan (husband) appeals from a Probate and Family Court modification judgment, challenging the award of alimony to Susan Brosnan (wife).¹ The husband claims the judge abused her discretion in ordering alimony beyond the durational limits and in determining the amount of weekly alimony. We affirm.

Background. The parties were married for seventeen years and seven months. A judgment of divorce nisi entered on May 24, 1994. The husband paid alimony in various amounts from the date of divorce until November 2018.² On October 10, 2018, the

¹ The husband also appealed from a contempt judgment entered the same day but he has raised no arguments pertaining to that judgment in his briefing. Accordingly, we deem any such arguments waived and we need not address that judgment further. Mass. R. A. P. 16 (a) (9) (A), as appearing in 481 Mass. 1628 (2019).

² In 2015 a modification judgment entered after the parties agreed that the husband would pay alimony in the amount of \$301

husband filed a complaint for modification seeking to terminate his alimony obligation on the grounds that he had paid alimony for a longer period than required pursuant to the durational limits of G. L. c. 208, § 49 (b), and that the term of alimony had terminated in accordance with G. L. c. 208, § 49 (f), as he had reached full retirement age. The wife filed a counterclaim requesting a deviation from the durational limits due to her chronic illness and unusual health circumstances. After a trial, the judge found that neither of the husband's two grounds justified terminating his alimony obligation and that deviation beyond the durational limits was required "in the interests of justice due to [the wife's] life-long chronic illness . . . and health issues related thereto."

The judge's written findings included that the wife suffers from Ehlers Danlos Syndrome (EDS), which prevents her from working and impacts on her quality of life. The judge also found that although her treatment has slowed the progression of her symptoms and provided some improvement at times, the wife's EDS prevents her from driving and requires her to use a cane, walker, shower chair, and several devices to assist her in getting dressed. The judge determined that the wife cannot

per week. The husband stopped paying the weekly alimony in November 2018 without a court order or the agreement of the wife.

provide for her most basic needs without the continued payments of alimony from the husband and ordered the husband to continue to pay alimony in the reduced amount of \$150 per week.

Discussion. 1. Duration limits for alimony. The husband argues that the judge abused her discretion in awarding the wife alimony beyond the durational limits. "Although a 'judge has broad discretion when awarding alimony under the [act],' . . . the judge must consider all relevant, statutorily specified factors." George v. George, 476 Mass. 65, 71 (2016), quoting Duff-Kareores v. Kareores, 474 Mass. 528, 535 (2016).³ When seeking alimony beyond the statutory durational limits, the

³ General Laws c. 208, § 53 (e), provides in part that:

"Grounds for deviation may include: (1) advanced age; chronic illness; or unusual health circumstances of either party; (2) tax considerations applicable to the parties; (3) whether the payor spouse is providing health insurance and the cost of health insurance for the recipient spouse; (4) whether the payor spouse has been ordered to secure life insurance for the benefit of the recipient spouse and the cost of such insurance; (5) sources and amounts of unearned income, including capital gains, interest and dividends, annuity and investment income from assets that were not allocated in the parties divorce; (6) significant premarital cohabitation that included economic partnership or marital separation of significant duration, each of which the court may consider in determining the length of the marriage; (7) a party's inability to provide for that party's own support by reason of physical or mental abuse by the payor; (8) a party's inability to provide for that party's own support by reason of that party's deficiency of property, maintenance or employment opportunity; and (9) upon written findings, any other factor that the court deems relevant and material."

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.'" George, supra, at 70, quoting G. L. c. 208, § 49 (b). The judge must make his/her determination based on the parties' circumstances "as they exist at the time the deviation is sought." Id. (citation omitted). "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." Id.

The judge made thirty-three findings of fact in deciding to extend the wife's alimony beyond the statutory durational limits. See George, 476 Mass. at 68 (judge must make written findings when requiring alimony beyond 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.

"The judge's factual findings must be left undisturbed absent a showing that they are plainly wrong or clearly

erroneous." Schechter v. Schechter, 88 Mass. App. Ct. 239, 245 (2015). "A finding is clearly erroneous when there is no evidence to support it, or when, 'although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed.'" Custody of Eleanor, 414 Mass. 795, 799 (1993), quoting Building Inspector of Lancaster v. Sanderson, 372 Mass. 157, 160 (1977). 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. See George, 476 Mass. at 68.

2. Alimony finding. The husband also argues that the judge abused her discretion in determining that he should pay \$150 per week because she incorrectly determined that the husband's Social Security income was \$618 per week. A judge's alimony determination "will not be disturbed on appeal unless 'plainly wrong and excessive [emphasis added].'" Heins v. Ledis, 422 Mass. 477, 481 (1996), quoting Pare v. Pare, 409 Mass. 292, 296 (1991). Upon appellate review, we grant deference when the judgment that entered is consistent with the

judge's original intent. See, e.g., Chapman v. University of Mass. Med. Ctr., 423 Mass. 584, 589 (1996); Gagnon v. Fontaine, 36 Mass. App. Ct. 393, 400 (1994); DeLuca v. DeLuca, 26 Mass. App. Ct. 191, 194 (1988).

Here, there was conflicting evidence on the amount that the husband received in weekly Social Security benefits. The husband testified that the wife was receiving half of his full retirement Social Security benefits. The wife's testimony was that she received approximately \$309 weekly from Social Security. However, the husband's Social Security statement, which was introduced as an exhibit at the trial, indicated the husband received \$27,408 yearly. Breaking the yearly amount down to a weekly payment would result in the husband receiving \$527 per week.

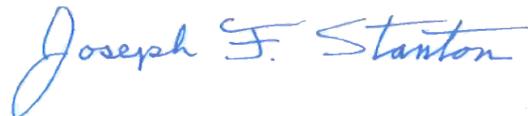
Even assuming that the judge erred in determining that the husband's Social Security was \$618 per week, the judge's award to the wife of \$150 in weekly alimony was not an abuse of discretion. The judge determined that the wife could not meet her basic needs without continued financial support from the husband. The awarded alimony is half of the amount that the husband agreed to pay in 2015. In addition, the judge found that based on her Social Security income, the wife could not receive more than \$200 per week in alimony to maintain her eligibility for the services she was receiving. 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. See Heins, 422 Mass. at 481. It is clear that the judge's intent was to award alimony to the wife to help sustain her basic needs. See Chapman, 423 Mass. at 589. The judge did not abuse her discretion in awarding the alimony.

Modification judgment
affirmed.

Contempt judgment affirmed.

By the Court (Massing,
Lemire & Hand, JJ.⁴),


Clerk

Entered: November 22, 2021.

⁴ The panelists are listed in order of seniority.