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Ganong v. Ganong
66 Mass.App.Ct. 1108, 847 N.E.2d 366 (Table)
Mass.App.Ct.,2006.
May 17, 2006

66 Mass.App.Ct. 1108, 847 N.E.2d 366 (Table), 2006 WL 1344864 (Mass.App.Ct.)

Unpublished Disposition

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NOTICE: THIS IS AN UNPUBLISHED OPINION.

Appeals Court of Massachusetts.
Joan Elaine GANONG,
v.
David GANONG.
No. 05-P-1281.
May 17, 2006.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

****1** The motion judge correctly concluded that there is no merit to the husband's constitutional challenge to the statutory provisions for alimony established under [G.L. c. 208, § 34](#). As the wife observes, the Supreme Judicial Court rejected a constitutional challenge to the statute, based on a claim of discrimination, in [Saraceno v. Saraceno, 369 Mass. 967 \(1976\)](#). The husband's argument that the statute impermissibly interferes with his constitutional right to autonomous privacy ignores the fact that the statutory right to continuing support in the form of alimony derives from an association voluntarily entered into by the parties to a marriage, and that their association through marriage carries with it the well-established legal attributes concerning the rights of the parties during the marriage and following its dissolution.

The husband's arguments are not merely novel, they are "so untenable as to be frivolous." [Allen v. Batchelder, 17 Mass.App.Ct. 453, 454 \(1984\)](#). The wife has requested an award of her appellate attorney's fees, and we agree that an award of such fees is appropriate. The wife shall, within fifteen days following this order, file with this court and serve on the husband a motion for determination of the amount of her attorney's fees incurred on appeal, supported by an affidavit detailing such fees, in accordance with the procedure described in [Fabre v. Walton, 441 Mass. 9, 10-11 \(2004\)](#). The husband may, within fifteen days thereafter, file with this court and serve on the wife an opposition to the amount of fees so claimed. [\[FN1\]](#)

[FN1](#). Though the wife framed her fee request by reference to [G.L. c. 231, § 6F](#), we consider the award more appropriately supported by [Mass.R.A.P. 25](#), as appearing in 376 Mass. 949 (1979). The fact that the fee award is justified is in our view more significant than the specific grounds on which the wife based her request. See [Krock v. Krock, 46 Mass.App.Ct. 528, 532-533 \(1999\)](#); [Brooks v. Brooks, 65 Mass.App.Ct. 129, 132 & n.11 \(2005\)](#).

Judgment affirmed.

[Mass.App.Ct.,2006.](#)

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- [2005 WL 4167718](#) (Appellate Brief) Brief of Appellee (Nov. 17, 2005)
- [2005 WL 3335047](#) (Appellate Brief) Brief and Record Appendix for the Appellant (Oct. 18, 2005)
- [2005-P-1281](#) (Docket) (Sep. 9, 2005)

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