

adjudicate this matter before Orellana formally retired on December 31, 2025. One of Shaffer's concerns was that it would not be possible to determine all the retirement benefits to which she might be entitled until the retirement became effective. While the case was under advisement, Shaffer's counsel advised the Court that her client had been able to sell her principal residence in Ohio (the "Ohio Home") as part of a planned move back to Virginia. Under the circumstances, the Court determined that there was a need to re-open the evidence. After conferring with the parties on dates, the matter was set by consent for a supplemental hearing on January 16, 2025.

On December 23, 2025, the Court issued an opinion on the justiciability issue. It concluded that Va. Code §§ 20-109(E) and 20-109(F) grant statutory standing to persons who have reached "full retirement age" to seek an opinion from a Circuit Court about the consequences of a contemplated retirement. A copy of that opinion is attached to this decision at Appendix A.

On January 16, 2026, the Court received stipulated additional evidence from the parties as discussed below. Having considered the evidence, the credibility of the witnesses, the law, and the arguments of counsel, the Court issues this Memorandum Opinion and Order resolving the parties' dispute.

DISCUSSION

I. BACKGROUND

Retirement is a dream for many, if not most, Americans. In this case, and in pursuit of that dream, Orellana has lived for approximately eight years "like a pauper" in a small efficiency apartment near Philadelphia, Pennsylvania following his divorce from Shaffer in June 2018. The apartment has no air conditioning but does have a rodent problem. On the upside, Orellana's frugality enabled him to invest as much as he could into the stock market. As a longtime

employee of the Bureau of Alcohol, Tobacco and Firearms (“ATF”), Orellana participated in a federal defined benefit plan (which is known colloquially as a pension) and owned investment accounts with combined assets valued at approximately \$2.7 million dollars as of the time of trial.¹ Most of it had been contributed or accumulated after the parties’ divorce. Orellana reached the full retirement age of 67 before filing his Motion to Terminate, and he retired as of December 31, 2025.

The final order of divorce in this case (the “FOD”) was entered on June 7, 2018. In the course of the original proceedings, and as reflected in the FOD and its incorporated transcript, Shaffer argued that she had been a stay-at-home mother and housekeeper by agreement, and that Orellana had never asked her to go back to work during the marriage. She also argued she was unemployable on the basis of, among other things, depression, anxiety, and agoraphobia, and that a suicide attempt in 2015 had led to in-patient hospitalization. Orellana countered with an expert who opined that she could make at least \$25,000/year and could learn some basic computer skills in about three months. In weighing this testimony, the Court stated:

What [is] concern[ing] is that [Shaffer] made absolutely no effort to seek employment or take steps to be able to provide for herself. She has worked in the past and raised a family. It is not credible that she could not work at all and the Court would encourage her to investigate various options presented for her own mental health.

After reviewing the equities under Va. Code § 20-107.1(E), the Court awarded Shaffer monthly spousal support in the amount of \$3,000 for an indefinite term. It also awarded her \$540,000 as part of an equitable distribution of the parties’ assets and split Orellana’s Federal Employees Retirement System (“FERS”) pension.² Like most pensions, the FERS pension is

¹ By the end of November 2025, the amount had grown to approximately \$3,358,000.

² Shaffer pointed out that her share of the equitable distribution was lower than Orellana’s due to certain credits and adjustments that were made to her payout. The Court does not find that any

intended to partially replace employment earnings upon retirement. As of January 2026, Shaffer had received \$279,000 in spousal support payments from Orellana.

Like Orellana, Shaffer also hopes to live comfortably in her later years. While she did not feel confident investing in the stock market, as a former realtor she was willing to invest in real property. It is undisputed that Shaffer used several hundred thousand dollars of the money she received from the divorce proceeding to purchase and renovate the Ohio Home, an historic home in Cincinnati, Ohio where she lived after the divorce.³

Prior to the Motion to Terminate being filed, Shaffer decided to move back to Virginia to be closer to her aging mother and son, respectively. To further that effort, she listed the Ohio Home for \$499,000 and had difficulty finding a buyer. At trial, Orellana's counsel suggested that one reason the house did not attract more interest is its location on a four-lane highway. No evidence was presented as to its rental value.

On October 20, 2025, while this matter was still under advisement, Shaffer's counsel notified the Court that the Ohio Home had finally sold and that Shaffer had obtained net proceeds of \$451,000. Shaffer used these proceeds to pay off all the outstanding debt she accrued since the divorce, including credit cards, state and federal income tax arrearages, loans to her adult daughter, and her automobile. Shaffer acknowledged that much of her debt was a direct result of her renovation efforts related to the Ohio Home. She also used \$244,570.37 of the Ohio Home proceeds as a downpayment on a four-bedroom single family home in Henrico County,

disparity presents a genuine issue of material fact in terms of the issues that must be decided with respect to the Motion to Terminate.

³ Shaffer's Post-Trial Brief put this number, including the cost of sales efforts, at approximately \$360,000.

Virginia (the “Henrico Home”) which is encumbered by a mortgage with a monthly payment of approximately \$1,456.31 per month. Although the Henrico Home will require repairs and improvements, Shaffer testified that she has only about \$31,000 in cash savings left and no stocks, bonds, or other investments.

When asked why she purchased a four-bedroom home that needs remedial work given her life situation, Shaffer stated that she hoped to have her mother and adult son move in, though whether she will be able to collect rent from either of them is presently unclear. She also somewhat passionately testified that the Henrico Home would be part of her legacy to her son when she eventually passes away.

Shaffer testified that her monthly expenses are presently \$4,752/month and that on a net basis she runs a monthly deficit of \$3,270/month. There is no evidence that Shaffer ever sought some way to earn supplemental funds at any level of income. There is also no evidence that she sought or received financial or investment advice from a professional at any time, that she had engaged in any financial forecasting, or that she had considered investing in assets that could produce cashflow for living expenses.

For his part, Orellana is now retired. While there will be a brief lag time before he is entitled to receive the full amount of his FERS pension in or about April 2026, the gross monthly amount will be approximately \$6,759 and is subject to cost-of-living adjustments. The initial marital share that Shaffer will be entitled to receive in April 2026 is \$1,791.14/month. Starting in October 2026, Shaffer will be able to receive a portion of Orellana’s Social Security entitlement in the amount of approximately \$1,243/month. This amount will also be subject to cost-of-living adjustments. In sum, by October 2026 Shaffer will receive \$3,034.14/month in FERS and Social Security payments.

Because the amounts Shaffer will soon receive or have available to her exceed Orellana's monthly support obligation, Orellana points out that Shaffer will suffer no diminution in income if his spousal support obligation is terminated. He further notes that both the FERS and Social Security payments to which Shaffer will be entitled are due to his efforts; that is to say, the pension results from his work for the ATF, not hers, and Shaffer qualifies for Social Security as a result of his earnings history, not hers. Orellana contends that under the circumstances it is equitable to relieve him of his spousal support obligation as of at least October 2026.

Shaffer does not disagree that she will be entitled to receive payments through FERS and Social Security. While she does not concede that Orellana's figures are accurate, she does not seriously contest his projections. She does dispute the notion that Orellana should be able to free himself of his support obligations simply because he no longer wants to work, especially given his substantial savings. She argues that by April 2026 he will receive a monthly FERS payment of at least \$3,974, a monthly Social Security payment of at least \$3,128, and other income, for a monthly total of at least \$7,499. *See* Joint Exs. 14 and 26. In addition, Shaffer notes that Orellana will be able to draw on his substantial investments to supplement his income.⁴

Shaffer argues that there are additional equities that should cause the Court to deny Orellana's motion. She possesses a General Equivalency Degree (or "GED") and has long struggled with major depression, anxiety, and agoraphobia, and she testified that she tried to

⁴ Shaffer argues that she should not have to take Social Security at the age of 62, and that she should be able to defer that election until she turns 67. By waiting, Shaffer would be entitled to 50% of Orellana's Social Security payment instead of the 32.5% she will be eligible to receive if she elects to take Social Security at age 62. From the Court's perspective, the salient fact is that Social Security payments will be available to her starting in October 2026. She can take them or not.

commit suicide in 2023.⁵ These issues have always limited her ability to work, and it is undisputed that she and Orellana agreed that she could spend her productive time during their marriage tending to the couple's domestic life and their son rather than working outside the home. However, all of that was also true in 2018 when this Court found her claim of unemployability incredible. What is new is that Shaffer had a stroke in 2023 that, according to Shaffer, left her with extreme and episodic fatigue and bouts of confusion and/or disorientation. While both she and Orellana presented well at trial, Shaffer presented evidence that she would struggle to find and keep financially remunerative employment. This included evidence from the vocational specialist who testified *for Orellana* in the original proceeding.

On the other hand, there was substantial evidence that Shaffer's work to improve the Ohio Home was not unlike a part-time job. She had to coordinate contractors and was involved in the renovations to a significant degree. Shaffer is able to drive, though she testified she does not like to drive in the city and will not drive with a trailer on a highway. She also testified that she cannot conduct certain activities of daily living without assistance, and she presented in court with a cane. While Shaffer testified that the stroke she suffered impacts her memory, she was sharp and quick on the stand and displayed no problems recalling small details or pushing back during cross-examination.

Having reviewed the evidence and the weighed the credibility of the witnesses, the Court finds that Shaffer's economic needs are approximately \$4,752/month and that her current

⁵ As noted, Shaffer also attempted suicide in 2015 and presented evidence of her emotional issues in connection with the underlying divorce case.

monthly net income is \$2,216.⁶ There was no presentation of what Shaffer's monthly net income would be if the Court were to add the \$3,034 that will be available to Shaffer from Orellana's FERS and Social Security as of October 2026. However, if the Court were to assume gross income to Shaffer of \$6,034/month and reference 2025 tax tables,⁷ it appears Shaffer's net income would be approximately \$4,675/month. After her actual out-of-pocket health insurance expense of \$221/month, the amount would be \$4,454.41/month. The Court finds that Orellana's income pre-retirement was approximately \$7,670/month on a net basis and that post-retirement it will be approximately \$7,499/month on a net basis. The Court further finds that Orellana's post-retirement expenses are likely to be 7,846/month.⁸

II. ANALYSIS

Cases involving spousal support turn on "fact-specific" decisions entrusted to the sound discretion of the trial court. *Stubblebine v. Stubblebine*, 22 Va. App. 703, 709 (1996) (*en banc*). "The moving party in a petition for modification of support is required to prove both a material change in circumstances and that this change warrants a modification of support." *Dailey v. Dailey*, 59 Va. App. 734, 742-43 (2012).

⁶ Joint Exhibit 25 is Shaffer's Monthly Income and Expense Statement. It subtracts a federal health insurance credit of \$734 from Shaffer's monthly gross income to arrive at monthly gross income of \$1,482, presumably because \$734 reflects part of the cost of Shaffer's actual health insurance (she pays \$221/month out-of-pocket). However, to the Court's knowledge the \$734 does not actually come out of Shaffer's pocket. It is a federal subsidy. Thus, the Court does not consider the subsidy as an expense.

⁷ Under Rule 2:201, the Court may take judicial notice of, among other things, matters capable of accurate and ready determination. Tax tables are public information and qualify as being capable of accurate and ready determination.

⁸ Orellana apparently wishes to vacate his rental apartment and buy a house and the Court understands that his monthly income and expense statement at Joint Exhibit 26 reflects this. The Court has not made an allowance for ongoing legal expenses.

Most spousal support modification cases require the movant to put on a varied and sometimes involved set of facts to support a “material change of circumstances.” However, Va. Code § 20-109(E) provides that reaching “full retirement age” is a “material change in circumstances” in-and-of-itself, and one of the benefits of aging is the ability to seek a spousal support modification simply through proof of reaching “full retirement age.” Va. Code § 20-109(E) defines this term as “the normal retirement age at which a person is eligible to receive full retirement benefits under the federal Social Security Act,” which depending on birthdate is between 65 and 67. 42 U.S.C. § 216(I). Orellana was 67 when he filed the Motion to Terminate.⁹

In sum, although retirement is not as certain as death and taxes, anyone getting divorced in Virginia is on statutory notice that a payor spouse’s attainment of full retirement age may result in serious consequences with respect to the payment or receipt of spousal support. Consistent with this reality, the Virginia Court of Appeals has stated that each divorcing spouse is responsible for “planning and providing for [their own] retirement,” *Baker v. Baker*, 2024 Va. App. LEXIS 126 at *12-13 (2024).¹⁰ Obviously, parties may avoid future controversy by

⁹ Orellana’s full retirement age was slightly under age 67, but because he was 67 when he filed the Court does not need to parse the nuances of the statute.

¹⁰ In an *en banc* decision, the Court of Appeals previously found it “persuasive[] that a spousal support award should not operate to force persons who have reached normal retirement age to continue working.” *Stubblebine*, 22 Va. App. at 709. While the payor spouse did not prevail in *Stubblebine*, the Court reiterated that every case must be determined on its own facts.

contracting around the issue of retirement. Va. Code § 20-109(C).¹¹ Barring that, Va. Code §§ 20-109(E-F) require a trial court to weigh the equities.

In this case, Orellana reached 67 years of age before filing his Motion to Terminate. Prior to that time, the Court finds that following the parties' divorce he assiduously planned for his retirement with a high level of discipline and deferred gratification. For example, he did not buy a house. He lived in a small rental apartment with no air conditioning and a rodent problem. He invested his money and in approximately eight years grew his savings to approximately \$3,500,000.

On the other hand, the Court finds that Shaffer engaged in little or no planning, and the Court is very hesitant to make Orellana an underwriter of the risks Shaffer assumed as a consequence. This finding does not mean Orellana is automatically entitled to the relief he seeks, however, as the end result must satisfy the conscience of a court of equity considering the applicable statutory factors, which include any special circumstances.

Further, by filing his Motion to Terminate, Orellana opened the door to a fulsome consideration of the factors that "must" be considered in a spousal support modification proceeding under Va. Code 20-109(F). In that exercise, the Court "may" also consider the factors

¹¹ This provision states as follows:

[I]f a stipulation or contract signed by the party to whom [spousal support] relief might otherwise be awarded is filed before entry of a final decree, no decree or order directing the payment of support and maintenance for the spouse, suit money, or counsel fee or establishing or imposing any other condition or consideration, monetary or nonmonetary, shall be entered except in accordance with that stipulation or contract. If such a stipulation or contract is filed after entry of a final decree and if any party so moves, the court shall modify its decree to conform to such stipulation or contract.

found at Va. Code § 20-107.1. This may result in the increase, decrease or termination of Orellana’s support obligation.¹²

Factors the Court Must Consider

The six mandatory factors that the Court “must” consider under Va. Code § 20-109(F) are as follows:

1. *Whether retirement was contemplated by the court and specifically considered by the court when the spousal support was awarded.*

This factor invites the Court to look to the FOD’s discussion of the equitable factors that must be considered in connection with an award of spousal support.¹³ For example, if retirement is expressly addressed this could theoretically be dispositive. An example would be a statement in a final order of divorce that “support shall terminate upon the payor spouse reaching full retirement age.” Here, the FOD does not mention retirement one way or another. However, pension payments are, by design, intended to at least partially replace employment income. Further, the FERS pension in this case would not pay out until Orellana retired. Thus, although the FOD is silent on retirement, the nature of pension payments suggests that a party receiving them should not automatically expect to continue receiving alimony originally calculated on the basis of employment income. This factor supports Orellana.

¹² The Court rejects Orellana’s argument that because Shaffer did not file her own petition to increase support she could not seek such relief in this case. Once the door is opened by a petitioning spouse, the Court may increase, decrease, or terminate the amount or duration of any spousal support and maintenance. *See* Va. Code § 20-109(A) and Va. Code § 20-109(F). Thus, a non-petitioning spouse may seek relief in the form of an *increase* in support without filing an independent request for modification. This does not mean that Shaffer, who is still 61, is excused from the requirement that she show a material change in circumstances.

¹³ Because a court only speaks through its orders, the Court does not read the statute to permit a free-ranging examination of the record relating to an order for spousal support. It only contemplates a review of the order awarding spousal support itself, which will either recite the court’s discussion of the equitable factors or incorporate that discussion by reference.

2. *Whether the retirement is mandatory or voluntary, and the terms and conditions related to such retirement.*

Orellana's retirement was voluntary. However, he is not seeking *early* voluntary retirement because he reached "full retirement age" before retiring. Persons in his category are entitled to move for modification or termination without demonstrating any other material change in circumstance. For the reasons discussed by the Court in its decision on justiciability, a copy of which may be found in the appendix to this decision, the Court finds that the voluntary or involuntary nature of a "full retirement age" withdrawal from the workplace is a neutral factor in this case.¹⁴

The Court does not consider that there are "terms and conditions" of Orellana's retirement that specially bear on the analysis in this case.¹⁵ Examples of relevant "terms and conditions" might include a forced retirement for misconduct or the receipt of a pay package known as a "Golden Parachute." While such situations might cut against any reduction in support, this is not such a case. It is true that Orellana was demoted with a salary cut a short time before his retirement, but the Court does not find his loss in pay constitutes funds to which Shaffer had a colorable entitlement on the facts of this case. Nor is he receiving new,

¹⁴ This could be true even if a person had been fired from their job at age 67 and simply decided not to go back to work. Of course, the facts of every case will differ and potentially drive different outcomes.

¹⁵ "Terms and conditions" will vary from case to case and can encompass more than money.

unanticipated benefits that might support an argument that it would be inequitable to reduce his spousal support obligations.¹⁶

Based on the above analysis, the Court considers this factor to be neutral.

3. *Whether the retirement would result in a change in the income of either the payor or the payee spouse.*

Orellana's retirement will mean the loss of his employment income, which as of the time of trial was approximately \$150,962 per annum. On the other hand, Shaffer's entitlement to indefinite alimony of \$3,000/month will not change absent a modification in this case. She will, however, be able to receive more than two times that amount as of October 2026 if Orellana's motion is not granted.

The Court takes no view as to whether these facts represent good or bad developments; the issue is simply the circumstances of the parties and the equities of the case upon consideration of the statutory factors. In this case, the FOD awarded Shaffer \$3000/month in spousal support without a cost-of-living adjustment. She was also awarded a substantial equitable distribution. Those amounts were based on the equities at the time.

Since then, Orellana assiduously planned for his retirement, living like a "pauper" for approximately eight years as he invested his money in the stock market. There was no evidence presented that Shaffer planned at all beyond hoping that she could potentially sell the Ohio

¹⁶ Shaffer suggests that Orellana should be deemed to have involuntarily impoverished himself to some extent by suffering a demotion due to alleged misconduct. The demotion resulted in an approximate reduction to his annual salary of approximately \$40,000 per year. The Court finds that Orellana did not self-sabotage or act in bad faith; rather, he contested his demotion. Ms. Shaffer had no expectancy right that Orellana would continue making a certain amount of money or that he would even continue working after he reached full retirement age. The FOD does not require anything more of Mr. Orellana other than that he pay \$3000/month until that obligation may be altered by contract or by a court. The Court also finds that the diminution in Orellana's income has no bearing on its decision and that imputing \$40,000 (or more) to Orellana per year would not change the outcome in this case.

Home for a premium over her substantial investment (which was a very large portion of the equitable distribution she received under the FOD). The Ohio Home was built in 1881 and was situated on a four-lane highway. As a former realtor, it should have been obvious to Shaffer that such a situation might not appeal to many potential homebuyers. More broadly, it was Shaffer's decision to move to Cincinnati and there is no evidence that she undertook any studies of the real estate market there before undertaking her project. There is also no evidence that she consulted financial professionals about alternative investments or that she has ever sought education or training to make herself marketable in a field or profession she could undertake notwithstanding her physical and mental condition. This Court also agrees with the original trial judge that Shaffer's claim of a complete inability to work is not wholly credible. As noted, the Court found her to be not only engaged but feisty on the stand.

All-in-all, these considerations weigh in favor of Orellana's position.

4. The age and health of the parties.

Orellana is 69 years old and has some issues with his knees but nothing that he claimed is an impediment to working full-time in his profession.

Shaffer, in contrast, is 61. She has significant physical and psychological issues as already mentioned. The Court notes that there was no evidence presented that these issues, in and of themselves, require an increase in spousal support. Nor are they new issues save for the stroke Shaffer suffered in 2023. With respect to the stroke and given the evidence and Shaffer's ability to handle herself in court, the Court does not find that it changes the overall mix of facts and circumstances relating to health as they existed at the time of the FOD.

On the whole, the Court finds this factor to be neutral.

5. The duration and amount of spousal support already paid.

The indefinite spousal support received by Shaffer since June 2018 amounts to not less than \$279,000 as of January 2026. The Court finds this to be a substantial sum and notes that there is no arrearage claimed to be due. All-in-all this factor supports Orellana.

6. The assets or property interest of each of the parties during the period from the date of the support order and up to the date of the hearing on modification or termination.

The assets and property interests of the parties following the FOD have been discussed above. The Court finds it was Shaffer's right to devote what amounts to most of her share of the parties' marital property to a 130-year-old house on a four-lane highway in Cincinnati, Ohio. However, the Court also finds that it would be inequitable to make Orellana an after-the-fact underwriter of risk for her investment decisions. Indeed, if the Court were to keep spousal support in place at the current level, Orellana's net monthly post-retirement income would be \$4,599, an amount less than what Shaffer would receive from the combination of spousal support, FERS, and Social Security.

Shaffer argues that the Court should consider the substantial sum Orellana has accumulated due to a combination of frugality, investing acumen, and good fortune. However, on the facts of this case the Court rejects that invitation. For as much as Orellana has done to plan and save, Shaffer has done the opposite. She is also asking the Court to essentially increase her monthly spousal support payments under circumstances where the major change since the FOD has been her investment in two major, non-income producing assets. The Court struggles to understand how it can equitably reallocate post-divorce savings to Shaffer given the source of those funds and the parties' respective post-divorce decisions.

At the same time, the Court will not be blind to the fact that Orellana has accumulated a sizable retirement nest egg. This factor would weigh in favor of Shaffer had she demonstrated

better decision-making or if Orellana had acted with less self-discipline. As it stands, the Court considers it neutral.

Factors the Court “May” Consider

Next, under Va. Code 20-109(F), the Court “may also consider the factors for setting spousal support in Code § 20-107.1(E).”¹⁷ The Court now turns to that task.

1. *The obligations, needs and financial resources of the parties, including but not limited to income from all pension, profit sharing or retirement plans, of whatever nature.*

This factor has been addressed in prior sections of this opinion.

Shaffer has no personal debt and monthly expenses of \$4,752. Some of these expenses, however, relate to a mortgage and related expenses (such as \$200/month for lawn maintenance) for the four-bedroom Henrico Home that Shaffer purchased using proceeds from the sale of the Ohio Home. No evidence was presented by either side as to the cost of alternative housing, such as a one- or two-bedroom apartment in the same area. However, what is clear is that the Ohio Home was a relatively severe cash drain and that the Henrico Home appears to be one too. Beyond the decision to use most of her money to buy a “fix-upper” home in the first place, the Court is taken aback that Shaffer would spend most of the remaining capital she had available to her after the sale of the Ohio Home on an older, four-bedroom home before the Court rendered a decision in this case. On the other hand, Orellana did not present evidence of the income Shaffer might enjoy if the funds spent by Shaffer on older homes had been invested in other financial

¹⁷ Va. Code § 20-109(G) provides that in “any action for the increase, decrease, or termination of spousal support” the court “may” consider the factors set forth in Va. Code § 20-109(F) and § 20-107.1(E), a directive seemingly at odds with the “must” language in Va. Code § 20-109(F) itself. The Court finds that Va. Code §§ 20-109(E) and (F) exclusively govern in cases of retirement where the payor spouse has attained full retirement age. Thus, this Court “shall” consider the six factors in Va. Code § 20-109(F) and “may” (and in this case does) consider the factors set forth in Va. Code § 20-107.1(E).

vehicles. However, while it would be unreasonable to expect Shaffer to replicate the returns Orellana made in the stock market, his success does suggest “what might have been” had Shaffer pursued a more diversified portfolio.

Orellana appears to have little or no personal debt and monthly expenses of \$7,846. Based on his anticipated expenses, he would have to either keep working against his will or draw down on his retirement savings in order to pay Shaffer what she contends she needs. Of note, most of Orellana’s savings accrued after the divorce. On the other hand, working past full retirement age is what Orellana will have to do if the Court determines that the equities require it.

2. *The standard of living established during the marriage.*

In and of itself, the original award of spousal support contemplated this issue and the Court’s conclusions were expressed through the FOD. Divorce re-sets the scales to some extent, particularly as time passes by, as each party has a duty to plan for their own retirement and because each party has agency over their own lives. Parties who receive substantial assets in a divorce proceeding do not have a license to risk it and then seek contribution from a non-involved ex-spouse if things do not go well.

3. *The duration of the marriage.*

The parties were married twenty-four years and this was a factor that contributed to the original spousal support award.

4. *The age and physical and mental condition of the parties and any special circumstances of the family.*

This factor is discussed above, with one exception. The parties’ adult son apparently has suffered from drug addiction (at least in the past) though the evidence was sparse on the topic. He will, or likely will, live with Shaffer and Orellana pays him a “stipend” of \$785/month to supplement his living expenses.

5. *The extent to which the age, physical or mental condition or special circumstances of any child of the parties would make it appropriate that a party not seek employment outside of the home.*

This factor is not applicable.

6. *The contributions, monetary and nonmonetary, of each party to the well-being of the family.*

This factor was already encompassed by the original FOD and has been indirectly discussed above.

7. *The property interests of the parties, both real and personal, tangible and intangible.*

This factor is discussed elsewhere within this opinion.

8. *The provisions made with regard to the marital property under § 20-107.3.*

This factor is discussed elsewhere within this opinion.

9. *The earning capacity, including the skills, education and training of the parties and the present employment opportunities for persons possessing such earning capacity.*

This factor is also largely encompassed by the foregoing discussion. Shaffer has always had a limited ability to be employed and earn income outside the home. Orellana was and has always been the main earner. He could continue to work for at least the foreseeable future at his last rate of employment income.

10. *The opportunity for, ability of, and the time and costs involved for a party to acquire the appropriate education, training and employment to obtain the skills needed to enhance his earning ability.*

Shaffer had many years to pursue paths to at least some degree of financial independence.

This factor does not appear to be applicable to Orellana given his current station in life.

11. *The decisions regarding employment, career, economics, education and parenting arrangements made by the parties during the marriage and their effect on present and future earning potential, including the length of time one or both of the parties have been absent from the job market.*

This factor is largely encompassed by the foregoing discussion.

12. *The extent to which either party has contributed to the attainment of education, training, career position or profession of the other party.*

This factor is not applicable.

13. *Such other factors, including the tax consequences to each party and the circumstances and factors that contributed to the dissolution, specifically including any ground for divorce, as are necessary to consider the equities between the parties.*

The Court finds that there are no special tax consequences in this case that require consideration. However, though divorces almost always involve numerous and nuanced issues created or contributed to by both spouses, Orellana testified that Shaffer's refusal to relocate to Pennsylvania from Virginia for his ATF job was ultimately the issue that most contributed to the end of the parties' marital relationship. In what seems like something of a contradiction, Shaffer moved to Ohio right after the divorce and her renovation of the Ohio Home was the heart of her financial difficulties at this point in her life. The original trial judge also found that the factors which contributed to the parties' divorce included Shaffer's "addiction to the internet[,] and her unrefuted cybersex."

Other factors necessary to consider the equities between the parties include the fact that, following the entry of the FOD, Shaffer had agency over her future and she exercised it. So did Orellana, and the parties' financial circumstances have diverged in direct relation to choices each has made. One inescapable conclusion is that Orellana planned for retirement to a high degree and Shaffer did not. Orellana deferred purchasing a home until his financial situation became clearer, drove an old Toyota into the ground, and lived without air conditioning in a rental apartment he shared with rodents while he saved his money. Shaffer did none of those things, choosing instead to pursue what appears to have been a passion project restoring an old home on a four-lane highway in Cincinnati, Ohio.

Under the FOD, Shaffer received \$540,000 as a result of the parties' equitable distribution. On top of that, Orellana has paid her approximately \$279,000 in spousal support through January 2026. The original trial judge found it not credible that Shaffer could do no gainful work outside the home, and the undersigned shares that skepticism even following Shaffer's stroke in 2023. There is no evidence that Shaffer took steps to see what could possibly be done to obtain an income stream or to plan for her own financial future by obtaining professional financial or investment advice. When she sold her home in Ohio, she did not wait to see what the Court would do in this case. She purchased a four-bedroom home that requires some restoration or repair, leaving her only \$31,000 in liquid assets. By her own reckoning, she is running a large monthly budget deficit.

III. CONCLUSION

Except for the lucky few, retirement presents individuals with difficult and often complex decisions. It is common sense that retirement planning is not only a good idea, but fundamentally important. The General Assembly's determination that reaching full retirement age is a material change of circumstances can be viewed as statutory notice that planning is all the more important when one of the parties is nearing full retirement age at the time of divorce and the alimony awarded is not permanent. In this case, Orellana was 61 when the FOD was entered and the alimony award was indefinite.

Orellana has not argued that he will be unable to retire if his support obligation is not reduced. However, that does not mean he should be required to go back to work in order to continue paying his original spousal support payments or that he should continue paying the same amount regardless of the circumstances.

The equities of this case ultimately skew in Orellana's favor. The evidence contained in the FOD and at trial showed that Shaffer's decisions and actions were the precipitating factors in the divorce. In his post-divorce quest to retire, Orellana planned extensively and demonstrated a savings ethic that far exceeded the norm. On the other hand, Shaffer's planning appeared to be non-existent and she has been almost reckless, if not actually reckless, with her financial decisions. There was no evidence that she made a reasonable effort to be self-sufficient, a refrain of the original trial judge's finding that her claim of being unable to work was not credible. The Court rejects the notion that Orellana should be an underwriter of risk for Shaffer's financial decisions and behaviors without a contractual assumption of responsibility.

The Court also rejects the contention that Shaffer is entitled to continue her spousal support at its original level just because Orellana planned better than she did, has accumulated a large retirement savings, and "can afford it." That would unfairly punish prudence and undermine the joint duty to plan for retirement under Virginia law. Further, the evidence shows that neither party is able to fully fund their living expenses on the basis of income derived from other than employment earnings.

Following an equitable distribution and an award of spousal support, maintaining a certain standard of living becomes an individual responsibility. Shaffer knew or should have known that Orellana might retire no later than reaching "full retirement age." In that regard, the FERS payments both Orellana and Shaffer will receive are *retirement* payments and have always been intended as a replacement for Orellana's employment income once he is no longer part of the workforce. Under the circumstances of this case, the Court will credit the FERS payments Shaffer receives against Orellana's spousal support obligations starting January 1, 2027. The

Court will not credit the Social Security payments Shaffer receives against Orellana's spousal support obligations.

For the foregoing reasons, Orellana's Motion to Terminate Spousal Support is GRANTED IN PART AND DENIED IN PART, as follows:

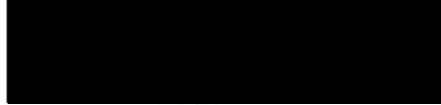
A. Orellana's spousal support obligation shall be reduced to \$1,208.86/month beginning January 1, 2027.

B. Any other affirmative relief sought by either party is denied.

C. After consideration of the circumstances of the parties and the equities, neither side shall be awarded attorney's fees or costs.

THIS MATTER IS FINAL. SIGNATURES ARE DISPENSED WITH UNDER RULE 1:13 AND ANY PARTY MAY NOTE EXCEPTIONS BY MARCH 2, 2026.

February 13, 2026
Fairfax, Virginia

A solid black rectangular box redacting the signature of Timothy J. McEvoy.

Timothy J. McEvoy, Circuit Court Judge

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

GLORIA SHAFFER,

Plaintiff,

v.

JUAN ORELLANA,

Defendant.

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Case No. CL2017-2349

MEMORANDUM OPINION AND ORDER ON JUSTICIABILITY

This matter was tried to the Court sitting without a jury on July 1-2, 2025, with respect to the Motion to Terminate Spousal Support (“Motion to Terminate”) filed by Defendant Juan Orellana (“Orellana”). Orellana’s former spouse, Gloria Shaffer (“Shaffer”), adamantly opposes termination.

Orellana has invoked VA. CODE § 20-109, which authorizes the Court to consider termination of a spousal support obligation once a payor spouse reaches the “normal retirement age” of sixty-seven. *See* VA. CODE §§ 20-109(E-F). Having reached that milestone before he filed suit, Orellana argues that upon his actual retirement Shaffer will receive monthly benefits from his federal pension that when combined with Social Security payments will eclipse what Shaffer currently receives in alimony. Building from this premise, he contends it is fair and equitable to relieve him of his support obligation in light of the circumstances.

During opening statements, counsel for Shaffer moved to stay or dismiss the case on the ground that there was no justiciable controversy before the Court. She argued that until Orellana definitively leaves his longtime position with the Drug Enforcement Administration (“DEA”)

there can be no case or controversy. The Court denied Shaffer's motion and proceeded to take evidence.

The parties submitted post-trial briefs on the merits and closing arguments were held on July 31, 2025. At that time, Shaffer renewed her justiciability argument and the Court took the matter under advisement. While the case was in that posture, Orellana notified the Court and Shaffer that he intended to definitively retire on December 31, 2025. In addition, the Court was advised there had been a material change in circumstances with respect to at least Shaffer's financial circumstances. Accordingly, the Court directed the parties to meet and confer as to a date for the receipt of supplemental evidence and the case is scheduled for a hearing on January 15, 2026.

By the time the Court and the parties reconvene, Orellana will be retired and the issue of justiciability will be moot. However, mooting justiciability does not eliminate the question of whether or not the case was properly brought in the first place and the consequences if the answer is no. Because the Court concludes that the case was justiciable from the day it was filed, the case will proceed as scheduled. Accordingly, the Court will deny Shaffer's oral motion to dismiss and provide the parties with additional instructions for the upcoming hearing.

ANALYSIS

The parties litigated this case like any other case up to the date of trial. However, in her opening statement, Shaffer argued that a case seeking to modify spousal support on the basis of retirement cannot proceed until the retirement has occurred. In essence, her argument was that no justiciable case or controversy was before the Court. Unsurprisingly, Orellana disagreed. While the arguments were not fully fleshed out at trial, the Court concluded that it could proceed to

determine the parties' dispute and took evidence. Shaffer, however, continued to press her position in her closing argument.

A justiciable case or controversy is a necessity in any litigation because courts are not to issue advisory opinions. *Rebh v. Arlington County*, 303 Va. 379, 381 (2024). Indeed:

Rendering advisory opinions 'represent[s] an attenuated exercise of judicial power in which [a court] 'traditionally declines to participate.' [Internal cites omitted] Whenever it appears or is made to appear that there is no actual controversy between the litigants, or that, if it once existed, it has ceased to do so, it is the duty of every judicial tribunal not to proceed to the formal determination of the apparent controversy, but to dismiss the case. It is not the office of courts to give opinions on abstract propositions of law, or to decide questions upon which no rights depend, and where no relief can be afforded. Only real controversies and existing rights are entitled to invoke the exercise of their powers.

Id. In short, Virginia courts require litigants to only press claims that involve a present entitlement to relief under the relevant substantive law. *Cherrie v. Va. Health Services*, 292 Va. 309, 314 (2016).

In *Cherrie*, the Virginia Supreme Court reiterated that the "substantive law" which determines whether a litigant may press a legal claim "includes the Constitution of Virginia, laws enacted by the General Assembly, and historic common-law principles recognized by [Virginia] courts." *Cherrie*, 292 Va. at 314. Where, as here, the party seeking relief relies upon a statute:

[The] inquiry asks 'whether the plaintiff is a member of the class given authority by [the] statute to bring suit' In other words, the question is whether the legislature 'accorded *this* injured plaintiff the right to sue the defendant to redress his injury.' [Internal cites omitted]. It simply is not enough that the plaintiff has 'a personal stake in the outcome of the controversy,' [internal cites omitted] . . . or that 'the plaintiff's rights will be affected by the disposition of the case,' [internal cite omitted]. Rather, the plaintiff must possess the legal right to bring the action, which depends on the provisions of the relevant statute.

Cherrie, 292 Va. at 315-16. As detailed below, under this standard Orellana was entitled to have his claims adjudicated before he actually retired.

The Court heard the Motion to Terminate as part of its equitable jurisdiction. VA. CODE § 20-96 (“The circuit court shall have jurisdiction of suits for annulling or affirming marriage and for divorces, and claims for separate maintenance, and such suits shall be heard by the judge as equitable claims”). VA. CODE § 20-109(A), which Orellana specifically invoked to terminate spousal support, states that:

Upon petition of either party the court may increase, decrease, or terminate the amount or duration of any spousal support and maintenance that may thereafter accrue, whether previously or hereafter awarded, as the circumstances may make proper.

“The moving party in a petition for modification of support is required to prove both a material change in circumstances and that this change warrants a modification of support.” *Daily v. Dailey*, 59 Va. App. 734, 742-43 (2012); *Antonelli v. Antonelli*, 242 Va. 152, 154–56 (1991). A court has broad discretion to decide if a spousal support award should be modified and, if so, by how much. *Nielsen v. Nielson*, 73 Va. App. 370, 379 (2021).

Virginia Code § 20-109(E) specifically addresses retirement as a potential material change of circumstances:

For purposes of the modification of an award of spousal support, and without precluding the ability of a party to otherwise file for a modification of spousal support based upon any other material change in circumstances, *the payor spouse's attainment of full retirement age shall be considered a material change in circumstances*. For the purposes of this subsection, ‘full retirement age’ means the normal retirement age at which a person is eligible to receive full retirement benefits under the federal Social Security Act, but ‘full retirement age’ does not mean ‘early retirement age’ as defined under the federal Social Security Act [Emphasis added].

The parties do not dispute that “full retirement age” means the attainment of 67 years and at all relevant times Orellana has been 67 years of age or older. Nor do they dispute that Orellana will not be retired until December 31, 2025.

As can be seen, the “attainment of full retirement age” is a material change in circumstances by itself, and as such is unlike “any other material change in circumstances.” VA. CODE § 20-109(F). Conspicuously, the statute does not say that “*retirement* after attainment of full retirement age” is the touchstone. Rather, it is only turning 67 that by itself that opens the door to potential relief under VA. CODE § 20-109(E). The statute in question gives anyone of sufficient age permission to file a suit seeking to modify spousal support without the necessity of having first retired.¹ In essence, the General Assembly has authorized an individual contemplating retirement to file what amounts to a petition for aid and direction, an ancient equitable procedure that asks a court for guidance when someone responsible for another person’s property or care is uncertain how to proceed or needs court approval to act.

Retirement after “attaining normal retirement age” is a major life event attended by many variables, some of them highly unpleasant.² If an individual contemplating retirement cannot obtain what amounts to aid and direction from a Circuit Court about their post-retirement obligations, they can face a wrenching choice between enduring in a

¹ Virginia Code § 20-109(F) describes a case under subsection (E) as “an action for the increase, decrease, or termination of spousal support *based on the retirement of the payor spouse . . .*” Reading subsections (E) and (F) together, it can be argued that the statute requires an actual retirement to occur before a party may seek a modification of spousal support. This is not persuasive. Had the General Assembly intended to make *actual retirement* after the attainment of full retirement age the touchstone for a material change in circumstances, presumably it would have used those words (*i.e.*, “the payor spouse’s *retirement after attainment of full retirement age* shall be considered a material change of circumstances”). There is nothing in the statute that mandates that a retirement must occur before an action for modification is filed. The fact that a modification may not be *effective* until retirement is still a modification “based on the retirement of the payor spouse.”

² Persons who attain “normal retirement age” can be relatively vulnerable compared to their younger selves. The payee spouse in *Stubblebine v. Stubblebine*, 22 Va. App. 703, 706 (1996) had several chronic diseases. In *Baker v. Baker*, No. 1476-22-1, 2024 Va. App. LEXIS 126 at *10 (Ct. App. 2024), the court found it to be a matter of “common sense” that a 70-year-old payor spouse might experience physical limitations that inhibit fully productive work.

job that may be detrimental to their health and welfare or gambling that all will come well even if they abandon or reduce gainful employment. Reading VA. CODE § 20-109 according to its plain terms permits a party to understand the consequences of a decision to retire before making a potentially irreversible, life-changing decision.

ORDER

For these reasons, Orellana's case was justiciable the day he filed it and Shaffer's motion to dismiss is hereby DENIED.

The parties will please submit supplemental witness and exhibit lists by January 5, 2026 with any objections due January 9, 2026. The parties are encouraged to consider proceeding by proffer as to matters that are not genuinely in dispute. If any party believes the matter cannot be heard in three hours they should so notify the Court as soon as possible.

The Court also encourages the parties to meet and confer as to the amount of Orellana's FERS pension Shaffer will be entitled to receive upon Orellana's retirement, and the amount of Social Security Shaffer will be entitled to receive when she becomes eligible for benefits in October 2026.

Finally, the Court understands Shaffer has sold her house in Ohio. Because many of her estimated expenses appeared to be influenced by whether she lived in Ohio or Virginia, and because much of the uncertainty around that question has apparently resolved, the Court expects that Shaffer will be able to update her estimates with more certainty.

December 23, 2026⁵
Fairfax, Virginia



Timothy J. McEvoy
Circuit Court Judge