

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

GLORIA SHAFFER,)
Plaintiff,)
v.) Case No. CL2017-2349
JUAN ORELLANA,)
Defendant.)

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, mooted 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, 2026
Fairfax, Virginia

Timothy J. McEvoy
Circuit Court Judge