

YUDES FAMILY LAW CITATOR

FALL 2017 SUPPLEMENT

CHAPTER 1 - ALIMONY

I. GENERAL ALIMONY CASES

Lombardi v Lombardi, 447 N.J.Super 26(App.Div.2016)

In this Appellate Division decision, the court addressed the issue of how alimony should be calculated in a divorce case when the parties during the marriage historically saved money. The case involved litigants whose annual income was approximately one million dollars. At trial it was shown that the parties' monthly budget was approximately \$17,000 in monthly spending. On top of their monthly spending, the litigants saved an additional \$60,000 per month. After a lengthy trial, the trial court issued a decision awarding the Wife alimony that met the monthly spending budget but which failed to factor in any savings element into its alimony calculation. At trial, the Wife sought half the savings component to be given to her as part of her alimony award. The trial court reasoned that while savings is a component of support, it is only a component to insure the risk of alimony in the future. The trial court, given the extent of the equitable distribution award to the Wife in this case, did not view that the Wife was at financial risk.

The Wife appealed and Appellate Division reversed the decision of the trial court, noting that although saving for a future is one of the ways that the savings component is realized, the savings component can also be used as a buffer for disaster, future acquisitions and other unforeseen circumstances. The Appellate Division by no means concluded that savings is an absolute right; the concept of savings in this case was fact based. The marital budget in this case was just a small fraction of the litigants' earnings. It is worth noting that the New Jersey Family Part Case Information Statement, a financial disclosure document that the family court requires litigants to complete, includes a line item for a savings component. It is again important to note that savings has to be part of the historical routine of the litigants. Also, the alimony statute was amended in 2014 to reflect that neither party is more entitled than the other to enjoy the standard of living experienced during the marriage. Specifically, the court found: "It is not equitable to require plaintiff to rely solely on the assets she received through equitable distribution to support the standard of living while defendant is not confronted with the same burden. As expressed under the alimony statute's current version, the court must recognize that 'neither party ha[s] a greater entitlement to that standard of living than the other.' *N.J.S.A. 2A:34-23(b)(4)*." Footnote 6 of the Appellate Division's decision also noted that the "holding is limited to the establishment of alimony. We do not decide in this opinion the extent to which the savings component should be considered upon a change in circumstances, such as the payor spouse's retirement." The Appellate Division ultimately remanded the case to the trial court noting "that the court attempted to identify areas through which plaintiff might be able to save money at some level, but the court's suggestions did not amount to a consideration of savings as part of the parties' standard of living, especially where there was no dispute that the parties saved the lion's share of the family's income or that defendant had the ability to continue to fund such savings."

II. MODIFICATION OF ALIMONY

(a) Request for Reduction by Payor - Spouse

Mills v Mills, 447 N.J.Super. 78(Ch.Div.2016)

In this case, Judge Jones in Ocean County addressed the interpretation of a 2014 amendment to the alimony statute involving an obligor spouse's loss of W-2 employment and his obtaining new employment at a substantially lower income.

The parties divorced in 2013 after a 13 year marriage. They had two children, aged 11 and 13. At the time of their divorce, the parties' settlement agreement provided for Defendant to pay limited duration alimony of \$330 per week plus \$200 per week in child support. The Agreement stated that support was based on the Plaintiff earning \$59,000 as a teacher, and Defendant's earnings of \$108,000 per year (as a district sales manager for a flooring services company).

In 2015 Defendant's position at his company was eliminated in a restructuring. He received \$35,000 in severance. Four months later, he accepted a job at another flooring company with a much lower salary of \$70,000 plus a \$6,000 annual car allowance, and he where he was paid a \$6,000 annual bonus. With income of \$82,000, he experienced a 25% reduction in income below the baseline income in the parties' settlement agreement. He sought a reduction in his support obligation. Plaintiff claimed that Defendant was underemployed, that he had income potential of at least \$108,000 and that he did not demonstrate that was unable earn that much. At the plenary hearing, he explained that he worked for his prior employer for 12 years, and that he worked his way up the ladder over the years which increased his income, and that he could not command the same salary at a new company.

Judge Jones noted that before the amendment to the alimony statute in 2014, there were no bright line rules, and cases were fact sensitive where income imputation was a discretionary and imprecise matter. In 2014, the Legislature amended the alimony statute to add N.J.S.A. 2A:34-23(k) to address when a W-2 obligor spouse loses his/her job and seeks to reduce alimony. This section lists the factors to consider when such an application is made. The language does not distinguish between situations when a spouse obtains a new job in the same field rather than in a new field. It does state that a court may consider the obligor spouse's documented efforts to find a new job or to pursue another occupation. Also, the court can consider the obligor spouse's good faith effort to find remunerative employment at any level and in any field. The statute does not contain a standard of analysis when an obligor spouse finds a new job at much lower pay.

The court determined that the amended alimony statute applied even though the parties divorced before September, 2014 reasoning that the case law before the statute was amended allowed litigants to seek reductions in support due to a substantial change in circumstance. The judge questioned whether the new statute supersedes the principles in cases that pre-date the 2014 amendments such as Arribi v. Arribi, Storey v. Storey, Dorfman v. Dorfman, Gertcher v. Gertcher, and Deegan v. Deegan. The court concluded that the most reasonable analysis consisted of a two step inquiry (in addition to the factors of N.J.S.A. 2A:34-23(k), where the court examines (1) whether the supporting spouse's choice in accepting a particular replacement job was objectively