

# YUDES FAMILY LAW CITATOR

## FALL 2020 SUPPLEMENT

### CHAPTER 1 – ALIMONY

#### I. GENERAL ALIMONY CASES

##### Gormley v. Gormley, 2019 N.J. Super. LEXIS 187 (App. Div. 2019)

The case of Gormley addressed the standard to apply in determining the income of a litigant who has been determined by the Social Security Administration to be disabled and whether the Court should impute income for someone who has been adjudicated disabled and does not work.

In this case, the parties married in 2000, had one child, and the plaintiff filed a Complaint for Divorce in 2015. The Defendant had already been diagnosed with multiple sclerosis at the time of the marriage. In 2002, also during the marriage, the Social Security Administration determined that the Defendant was disabled by multiple sclerosis. As such, she did not work and was receiving \$2,023 per month in social security disability benefits. The Plaintiff was employed full-time and earned a commission based income. In the two years before the trial, he had been earning approximately \$150,000 per year. However, in the year of the trial, he was working fewer hours in order to represent himself at trial, and to study psychology and parental alienation. As such, he was earning approximately \$112,000 per year.

The family court judge imputed \$240 per week of earned income to the Defendant even though the Social Security Administration had determined that she was disabled and had been paying monthly social security disability benefits since 2002. The judge reasoned that she did not visibly observe Defendant exhibit in court disabling symptoms from multiple sclerosis such as fatigue, bladder issues, tremors, difficulty in concentration or any other difficulties that the judge felt would prevent her from working. No income was imputed to the plaintiff.

The trial court relied on the decision of another trial court judge in the matter of Gilligan v. Gilligan, 428 N.J. Super. 69 (Ch. Div. 2012), in which that family court held that a letter from the Social Security Administration is not enough by itself to establish that a litigant cannot work, and that more evidence is required.

The Appellate Division reversed this decision and reaffirmed its holding in Golian v. Golian, 344 N.J. Super. 337 (App. Div. 2001), in which the Appellate Division held that a Social Security Administration determination constitutes a prima facie showing that a litigant is disabled and unable to work. This shifts the burden to the other party to refute that presumption. The other litigant could use “lay testimony, expert testimony[,], or medical records, consistent with the Rules of Evidence, as the trial court deems appropriate.” Golian, 344 N.J. Super. at 343. If the opposing party is able to rebut the presumption of disability, then a court can impute income to the party receiving disability benefits.

In this case, the Plaintiff had the opportunity to have the Defendant examined by his experts, but did not refute the Defendant’s disability. As such, the Appellate Division found that the trial court erred by imputing earned income to the Defendant. The Appellate Division also felt

that the trial court erred by not basing support obligations on the plaintiff's earnings in the two years prior to trial when he was earning a higher income consistent with his earning capacity. Courts have to consider "potential earning capacity of an individual, not his or her actual income." When a litigant has variable income, a court can reasonably use an average income to determine ability to pay support, including the years before and after the divorce complaint is filed.

**S.W. v. G.M., 2020 N.J. Super. LEXIS 22 (App. Div. 2020)**

After a trial, the trial court awarded the wife permanent alimony. The husband earned a significant income, which varied year to year, but which the court found to be an average net income of approximately \$1.3 million per year. The court found that the parties lived an opulent lifestyle, and that the husband's income was entirely spent to maintain that lifestyle. In regards to that lifestyle, the parties had previously submitted CIS' reflecting expenses ranging between \$80,000 and \$92,000 per month, although the wife's most recent CIS reflected a budget of only \$27,000 per month, and which the trial court reflected sacrifices made to her prior lifestyle. Notwithstanding the parties' "incredibly profligate lifestyle", the trial court had only awarded the wife alimony payable at the rate of \$22,000 per month from the husband's draw and \$186,000 per year payable from the husband's bonus for a total yearly obligation of \$450,000 which was taxable to the wife. The trial court also ordered the husband to maintain life insurance of \$4 million to secure his alimony obligation. An appeal was taken, and as a result, the Appellate Division reversed the alimony determination noting that while the trial court's descriptive findings regarding the lifestyle were adequate, they were unable to correlate his findings regarding the parties' expenditures with the alimony award, noting that without a numerical finding of lifestyle, they were unable to determine how the alimony figure was derived. The matter was remanded to the trial court to make a numerical finding of the marital lifestyle and then explain whether and how the alimony award met it.

On remand, the trial court increased alimony to \$36,792 per month, credited defendant's pendente lite support based on the increase, and reduced the plaintiff's life insurance obligation from \$4 million to \$2.2 million. In so doing, the trial court chose to utilize the wife's "sacrifice" CIS budget of \$27,000 per month, while acknowledging that this budget did not represent the true numbers of the lifestyle enjoyed during the marriage which had completely subsumed the husband's income, and added back to that reduced budget certain additional expenses, which the court considered reasonable to include, and resulting in the court's determination of the wife's actual monthly need as being \$36,792, corresponding with the increased level of alimony awarded. In reducing the level of life insurance the trial court appeared to accept the proposition that alimony might end in five years when the husband reached the age of "good faith retirement". A second appeal followed.

In once again reversing the determination of the trial court, the Appellate Division noted that the importance of finding the marital lifestyle could not be overstated, noting that it is at once the fixed foundation upon which alimony is first calculated and the fulcrum by which it may be adjusted when there are changed circumstances in the years following the initial award. The goal in fixing an alimony award is to assist the supported spouse in achieving a lifestyle which is reasonably comparable to the one enjoyed while living with the supporting spouse during the marriage, and that this standard of living during the marriage is the way the couple actually lived, whether they resorted to borrowing or parental support, limited themselves to their earned income, or if they chose to accumulate savings. A finding of the marital lifestyle must consider what the