

## CHAPTER 1

### ALIMONY

#### I. GENERAL ALIMONY CASES

##### ***Gnall v. Gnall*, \_\_ N.J. \_\_ (2015) (2015 WL 4545127)**

This case reviews the analysis of an award of alimony, prior to the enactment of the current alimony statute. The Supreme Court held that: (1) when determining a request for alimony, all of the factors set forth in *N.J.S.A. 2A:34-23(b)* must be considered, as the duration of the marriage is merely one factor. The Appellate Division erroneously created a bright line rule that a fifteen year marriage is not short term and therefore requires an award of permanent alimony. The trial court improperly relied upon the duration of the marriage over the other factors by stating that since it was not a twenty five or thirty year marriage permanent alimony was not warranted.

The only issue raised on Appeal and in the Supreme Court had to do with the husband's alimony obligation owed to the wife after their nearly fifteen (15) year marriage and therefore the issue was very specific and straightforward. The trial court entered an award for limited duration alimony, in the amount of \$18,000 per month, for a period of 11 years. The trial court based its determination on the following basis: (1) the parties were relatively young; (2) the parties each had similar educational levels; and (3) the duration of the marriage "certainly was not short-term, but neither [was it] a twenty-five to thirty year marriage." Ultimately, the Appellate Division ruled that the trial court had erred by entering an award of limited duration alimony and therefore reversed and remanded the case to the trial court for an award of permanent alimony. The Appellate Division based its determination on the following basis: A fifteen year marriage is "not short-term," and therefore limited duration alimony was precluded as an option.

The Supreme Court ruled that the Appellate Division had improperly created a bright line rule that a fifteen (15) year marriage required the entry of a permanent alimony obligation and therefore reversed and remanded the matter to the trial court for new findings of fact and a new determination as to the husband's alimony obligation owed to the wife. The Supreme Court further opined that the trial court had not considered or weighed all of the necessary factors set forth in *N.J.S.A. 2A:34-23(b)(2)* when making its determination. In other words, the Supreme Court held that the trial court had improperly created a bright line rule that permanent alimony was only appropriate in marriages that lasted twenty-five (25) years or longer. In each case, the Supreme Court ultimately observed and concluded that each of the lower courts had improperly removed the analysis of the other twelve (12) factors set forth in the alimony statute and created improper bright line rules that focused solely on the duration of the marriage without due consideration of the other statutory factors. As the Supreme Court notes, the alimony statute (*N.J.S.A. 2A:34-23*) was modified as of September 10, 2014, in relevant part, to remove permanent alimony and replace it with the term open durational alimony.

The important takeaway from the Supreme Court's decision, as specifically delineated in the new alimony statute, is that when an alimony obligation is being considered, the trial court is required to equally analyze each and every factor set forth therein. While trial courts are not precluded from weighing factors differently in a given case and set of circumstances, they are required to set forth (a) that they are doing so; and (b) a detailed explanation and basis as to why they are doing so.

## II. MODIFICATION OF ALIMONY

### (a) Request for Reduction by Payor - Spouse

#### *Krupinski v. Krupinski*, 437 N.J. Super. 159 (App. Div. 2014)

In the case of *Krupinski v. Krupinski*, the Appellate Division reversed the trial court's decision denying Mr. Krupinski's motion to terminate alimony. In the decision, the Appellate Division directed the trial court on remand to provide for an exchange of discovery and the possibility of an evidentiary hearing. The basis for Mr. Krupinski's application was that his former spouse, from whom he was divorced in 1990, was receiving a large portion of this teacher's pension through a Qualified Domestic Relations Order (QDRO). The QDRO entitled his former wife to a payout of the marital portion his pension. At the time of the divorce, Mr. Krupinski was earning \$45,000. After getting divorced, Mr. Krupinski later went on to get his masters degree, which allowed him to obtain work in school administration. He eventually retired with a pension based upon a salary of \$132,000, which was nearly three times his salary at the time of the divorce.

*N.J.S.A.* 2A:34-23(b) provides that: "When a share of a retirement benefit is treated as an asset for purposes of equitable distribution, the court shall not consider income generated thereafter by that share for purposes of determining alimony." The statute codified the trial court's decision in *D'Oro v. D'Oro*, 187 N.J. Super. 377 (Ch. Div. 1982), *aff'd*, 193 N.J. Super. 385 (App. Div. 1984), that case held that income from a pension cannot be considered as income for alimony modification purposes if the value of the marital asset had previously been equitably distributed by the court. In *Krupinski*, the value of his pension was distributed by way of a QDRO. In *Innes v. Innes*, 117 N.J. 496, 569 A.2d 770 (1990), the New Jersey Supreme Court confirmed that the statute applied "to both initial alimony orders and modifications of earlier alimony awards." *Id.* at 508, 569 A.2d 770. The Court's intention was to prevent "double-dipping," wherein a pension is considered an asset subject to equitable distribution and income.

Here, the Appellate Division found that the trial court erred in denying Mr. Krupinski's motion to terminate his alimony obligation without making the threshold determination, stating "Specifically, the court must discern what part of the \$1,871 monthly pension benefits plaintiff has been receiving since defendant's retirement in 2010 is attributable to defendant's post-dissolution efforts, and thus may be considered income to plaintiff for purposes of determining alimony, outside the bar imposed in *N.J.S.A.* 2A:34-23(b)." The Appellate Division agreed with Mr. Krupinski's argument that the trial court had to address the fact that "his pension benefits increased significantly as a result of his post-divorce efforts to continue his education and training, which led to his promotion to high school administrator [and] [t]hus...the motion judge was required to identify which portion of his pension shared by plaintiff was a joint effort of the parties during the marriage, and which part was due to defendant's post-divorce efforts."

The appellate court relied upon the case of *Barr v. Barr*, 418 N.J. Super. 18, 41 (App. Div. 2011), wherein it ruled: "[T]here are some extraordinary post-judgment pension increases that may be proven to be attributable to post-dissolution efforts of the employee-spouse, and not dependent on the prior joint efforts of the parties during the marriage. In such instances, these sums must be excluded from equitable distribution and the application of the coverture fraction may be insufficient to accomplish this purpose. The court further cited Judge King's ruling in *Bednar v. Bednar*, 193 N.J. Super. 330 (App. Div. 1984), stating: "Accretion in value must be analyzed in terms of whether it was attributable to the personal industry of the party controlling the asset, apart from the non-possessory partner, or simply to fortuitous increase in value due merely to inflation or other economic factors."