

# Appellate Division Enforces Pre-2014 Settlement Agreement And Rejects a Termination of Alimony Based on Underemployment

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In light of COVID-19 and the related potential for employer-initiated layoffs, terminations, or early retirement inducements, divorced spouses should be aware of an April 2019 decision from the Appellate Division of New Jersey captioned Amzler v. Amzler, NO. A-3384-18T3 (App. Div. April 2, 2020).

By way of background, Husband and Wife settle their divorce case in 2009. As part of their settlement agreement they agree that Husband will pay Wife alimony subject to an anti-Lepis provision (based on Lepis v. Lepis, 83 N.J. 139 (1980), a New Jersey Supreme Court case that allows modifications of, among other things alimony, where a substantial change in circumstances has occurred). The provision in the parties' agreement stated, in relevant part, that certain events would not constitute a change in circumstances permitting a reduction or termination in alimony: "1) [t]he voluntary reduction in income of either party; 2) [a]ny voluntary increase or decrease in each party's cost of living; [and] 3) [t]he dissipation of the assets received by either party as and for equitable distribution."

After the parties divorced, plaintiff continued working at PSE&G, and on the early unreduced retirement date of January 12, 2013, he declined to retire in order to recover the money he "lost in the divorce." He eventually retired in July 2017, at the age of fifty-nine, at which point he was entitled to full retirement benefits of \$5,164.37 per month through his PSE&G pension (of which, Wife received \$808.93/month). Thereafter, Wife filed a motion to find the Husband in violation of the agreement; Husband filed his own application to modify or terminate alimony. As a result of the dueling motions, a trial court scheduled a hearing. In preparation of the hearing, the Husband retained a vocational expert (an expert to opine on his ability to work). That expert testified that Husband could no longer work in his previous capacity, but opined that appropriate alternatives might include employment "as a security guard or automobile parts delivery person, both of which would allow for some freedom of

movement.”

At the conclusion of the hearing the judge issued an oral decision on September 12, 2018. The judge applied the factors under N.J.S.A. 2A:34-23(j)(2)(which deals with alimony and retirement) and considered the testimony from the plenary hearing. The judge found that Husband had retired in “good faith.” Thus, the judge terminated Husband’s alimony obligation, effective September 25, 2018.

Adding a layer of complexity to the case, the trial court judge was faced with an agreement entered into between the parties in 2009, before the New Jersey Legislature made wide-sweeping changes to our alimony laws in 2014. After additional procedural steps, the Wife appealed and argued, among other things, that the judge should not have applied N.J.S.A. 2A:34-23(j)(2), but rather should have applied N.J.S.A. 2A:34-23(j)(3)(which applies to agreements or judgments entered into before 2014).

On appeal, the Appellate Division reversed the trial court and held that the 2014 amendments (particularly with respect to retirement), did not apply retroactively to agreements entered into prior to the amendment. Accordingly, the trial court should have applied N.J.S.A. 2A:34-23(j)(3). In addition, the Appellate Division determined that the trial court judge failed to give due consideration to the parties’ “anti-Lepis” provision, which provided that a “voluntary” reduction in come would not constitute a sufficient change in circumstances to modify or terminate alimony.

In sum, when considering whether a continuation, modification, or termination of alimony is appropriate, parties need to remain mindful of whether they have a pre-2014 or post-2014 settlement agreement and they need to consider the language they bargained for in their settlement agreements.

Decision available at: <https://www.njcourts.gov/attorneys/assets/opinions/appellate/published/a3384-18.pdf?c=lnj>.