

# NJ Supreme Court Grants Certification in Cohabitation Matter, *Cardali v. Cardali*, with Appellant's Arguments Presented by Matheu D. Nunn, Co-Chair of Einhorn Barbarito's Matrimonial and Family Law Practice

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The New Jersey Supreme Court has granted certification in *Cardali v. Cardali*, a matter focusing on the level of proofs necessary to make a *prima facie* case of cohabitation to warrant the termination or suspension of alimony payments post-divorce. [Matheu D. Nunn](#) and his co-counsel, Taryn Zimmerman, represent the appellant in the *Cardali* matter, a husband/alimony-payor who seeks to terminate his alimony obligation based on cohabitation.

Nunn, who also represented the prevailing party in the Supreme Court cohabitation case, *Quinn v. Quinn*, 225 N.J. 34 (2016), notes that *the Cardali* case is different from *Quinn* because here, and in many other recent cases, courts are not permitting discovery and, in turn, not conducting hearings. Nunn further explains, "The patchwork of court decisions on cohabitation incorrectly and inconsistently define the *prima facie* burden needed to establish cohabitation, and courts have ultimately set an artificially high *prima facie* burden that is a nearly insurmountable obstacle." Nunn and several co-authors (Jeralyn Lawrence, Sheryl Seiden, Robin Bogan, Debra Weisberg, and Carolyn Daly), analyzed the cases and complex issues surrounding cohabitation in an article entitled "*Temple of Doom: The Prima Facie Showing of Cohabitation Remains a Mystery*," published in the [New Jersey Law Journal](#) in December, 2022 and more extensively in the *New Jersey Family Lawyer* publication of the New Jersey State Bar Association, which is available [here](#), beginning on page 32, and is reprinted with permission of the New Jersey State Bar Association, New Jersey Family Lawyer Vol. 41, No. 2 - January 2023.

During the initial proceedings of *Cardali v. Cardali*, the former husband was able to show that his ex-wife remained in an eight-year, committed relationship, providing evidence of shared vacations, family functions, independent access to each other's residences, and frequent overnights together. Despite this evidence, the trial court held that no proof of financial entanglement existed and therefore Mr. Cardali failed to meet the *prima facie* burden necessary to proceed further. The Appellate Division

affirmed the trial court, denying the former husband's motion to modify or terminate alimony, stating that "defendant provided no evidence to counter plaintiff's assertion there was no financial entanglement between the two and that [the boyfriend] maintained his own residence. The record also was devoid of evidence [the boyfriend] made any enforceable promise of support to plaintiff."

The *Cardali* case is one of four recent petitions to the Supreme Court about cohabitation. Nunn explains, "The New Jersey Supreme Court's attention to the cohabitation evidence issue in the *Cardali* matter will have a significant impact on matrimonial and family law in the state. This case is being closely watched in 2023, as entities including the American Association of Matrimonial Lawyers (AAML) and the New Jersey State Bar Association (NJSBA) are participating as *amicus curiae* due to the importance of cohabitation's effect on divorced couples in New Jersey."