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RICHARD MALEK,

Plaintiff,

v.

APRIL MALEK,

Defendant.

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SUPERIOR COURT OF NEW JERSEY  
OCEAN COUNTY  
CHANCERY DIVISION  
FAMILY PART

DOCKET NO. FM-15-1028-16W  
OPINION

Date of Decision: August 5, 2016

Christine Rossi, for plaintiff  
G. John Germann, for defendant

L.R. Jones, J.S.C.

This opinion addresses pendente lite alimony, against the backdrop of recently enacted statutory amendments to New Jersey's alimony statute (N.J.S.A. 2A:34-23(b)). For the reasons set forth in this opinion, the court holds the following:

- (1) Retention of the “marital lifestyle” is not the sole or primary criteria in a pendente lite alimony analysis. Both the terms and spirit of the amended alimony statute direct the analysis of pendente lite alimony applications under applicable statutory factors, which involve more than considering either party’s purported marital lifestyle or former “standard of living”.
- (2) In many divorces, it is mathematically probable that following separation, neither party will be financially able to maintain the former “marital lifestyle” on a pendente lite basis. Rather, both parties may need to responsibly adjust their expectations and their budgets, as the court may equitably enter a fair pendente lite support order under which neither party maintains the prior marital standard of living.

#### FACTUAL BACKGROUND

Plaintiff and defendant married in 2012. During the marriage, they had two children, who are presently four and three years old. Plaintiff is a teacher earning approximately \$90,000 per year, while defendant is a hairdresser with a present imputed income of approximately \$20,000 per year.<sup>1</sup>

In 2016, each party filed for divorce. They are living separately, and have essentially been sharing joint legal and residential custody of the children.

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<sup>1</sup> During the marriage, defendant always earned less than this amount.

Defendant has now filed a motion against plaintiff seeking pendente lite alimony, while plaintiff objects to same.<sup>2</sup> Defendant also seeks child support.

Both counsel have presented thorough written submissions and oral arguments. In essence, defendant contends that she needs alimony in order to maintain the marital lifestyle and standard of living, which she has not been able to maintain at the same level as plaintiff, because he is not paying support. In turn, plaintiff contends that defendant does not need pendente lite alimony, emphasizing that she moved back in with her mother following separation. Plaintiff argues that as a result, defendant has no real roof expenses, and therefore her budget does not reflect the necessity for spousal support under the circumstances.

Pursuant to Rule 5:5-2, each party has filed a case information statement (CIS) with the court. The parties essentially stipulate that their joint marital lifestyle previously cost approximately \$6100 per month to maintain.<sup>3</sup> Plaintiff states that his present, post-separation monthly budget is \$6,432, and that his monthly budget has not significantly changed since separation. He contends that after paying his other expenses, he does not have funds

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<sup>2</sup> The parties have each sought other forms of pendente lite relief against each other as well, which have been addressed by the court and are outside the scope of this opinion.

<sup>3</sup> Plaintiff calculates the monthly budget at \$6054, while defendant calculates the monthly budget at \$6,138.

available to pay alimony. Reciprocally, defendant represents that her present, post-separation monthly budget is \$2,691, which is far less than the marital lifestyle, but not by her choice. Rather, she contends that she cannot afford a higher budget and lives with her mother because she presently has no additional money, and is receiving no support from plaintiff. Each party has set forth other ancillary contentions as well.

#### LEGAL ANALYSIS: PENDENTE LITE ALIMONY

Pursuant to N.J.S.A. 2A:34-23(b), the Legislature authorizes the family court to enter an alimony award “pending any matrimonial action or action for dissolution of a civil union brought in this State or elsewhere.” The statute further provides that the court may make such order as to alimony or maintenance as the circumstances of the parties and the nature of the case shall render fit, reasonable and just .

An interim support award is a pendente lite order, which in Latin means, “pending the litigation” or “while an action is pending.” Black's Law Dictionary, page 1314 (10th ed., 2014). A pendente lite support order establishes temporary financial arrangements between divorcing parties until such time as the litigation is finalized by either settlement or trial. See Mallamo v. Mallamo, 280 N.J. Super 8, 12 (App. Div. 1995).

By its very nature, a pendente lite motion may well be one of the most frequently filed and contested types of applications in matrimonial court. The reason for this likelihood is that such motions usually take place either at the start of, or middle of, ongoing divorce litigation. By contrast, a divorce trial only occurs at the conclusion of the case, after all efforts to mutually and amicably resolve the matter have failed. Since the overwhelming majority of matrimonial cases do in fact settle, most divorces never reach trial. Even cases which ultimately settle, however, often first involve one or more contested pendente lite applications.

For this reason, pendente lite motions are far more common than trials in divorce litigation. It is therefore paradoxical that New Jersey has a historical abundance of precedential case law regarding divorce trials, but comparatively little case law on the subject of pendente lite applications. As a result, there has historically been longtime and significant debate in the legal community over the proper standards and criteria for analysis and adjudication of a pendente lite motion. Recently enacted amendments to New Jersey's alimony statute, however, implicitly help shed some clarifying light on the issue.

#### Pendente Lite Support Order: General Purpose

A pendente lite support motion is often indispensable in a contested matrimonial action, as heavy caseloads frequently mean there is often a substantial but avoidable delay between the time of filing of the complaint and the final hearing. See Rose v. Csapo, 359 N.J. Super 53, 58 (Ch. Div. 2002). When parties commence contested divorce proceedings in New Jersey, there is often a wait of a year or longer before a case actually proceeds to trial. Moreover, in addition to backlog, there may be multiple other reasons for delay, including but not limited to each party's right under the Court Rules to have sufficient time and opportunity for conducting pre-trial discovery, (including the retention of experts when applicable), and for trial preparation itself.

During a lengthy pre-trial period, if there is no interim support agreement or order defining the financial rights and obligations of the parties, economic chaos may result. Thus, the purpose of a pendente lite support application is to help financially bridge the gap in time between the beginning and the end (or other interim point in the divorce litigation), in an orderly fashion. Put another way, the jurisdictional basis for pendente lite relief arises out of practical economic necessity. See Schiff v. Schiff, 116 N.J. Super 546, 562 (App. Div. 1971). In fact, a pendente lite order is often the only way to provide the

means for a supported spouse to survive at the start of an action. See Crowe v. Degoia, 90 N.J. 126, 130 (1982).

A supported spouse frequently files a pendente lite motion at the start or early stages of the divorce proceedings. When such a filing occurs, the applicant generally asks the court to make preliminary decisions regarding interim support, often before the period for pre-trial discovery has concluded. Discovery in a standard track divorce may take up to one hundred and twenty days or more to complete under Rule 5:5-1(e), meaning that a pendente lite motion during the early months of litigation takes place before the parties' minimum period for discovery has expired.<sup>4</sup> Therefore, available information may in some cases be relatively limited or incomplete.

A pendente lite application is generally heard on the Family Court's motion calendar. The procedure which a court utilizes for an interim support motion, however, is usually far different than the fact finding process implemented at trial. At the pendente lite motion phase, there is rarely in-court, direct oral testimony by the applicant which is subject to cross-examination by the other party. While a court may exercise judicial discretion and take oral testimony during a pendente lite support motion proceeding under R. 1:6-6, the same rule

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<sup>4</sup> The practical reality is that, notwithstanding the 120 day period set forth in the Rule, it is commonplace for discovery to extend beyond 120 days, by request or joint consent, for a multitude a various reasons.

also expressly authorizes motions to be heard on "affidavits made on personal knowledge . . ." Ibid. Given the large calendars which family courts generally carry on motion days, along with the heavy demands by countless litigants for the court's limited available time, a pendente lite motion is frequently adjudicated following review of the filed papers and oral argument under Rule 5:5-4, without involving in-court oral testimony, direct and cross-examination, or other trial-applicable procedures. See Mallamo v Mallamo, 280 N.J. Super at 12. See also Rose v. Csapo, *supra*, 359 N.J. Super at 58.

Since a matrimonial litigant is usually and ultimately entitled to his or her day (or days) in court, a pendente lite support order is generally entered without prejudice, subject to retroactive modification, upward or downward, at the time of trial in the court's discretion. See Mallamo v. Mallamo, 280 N.J. Super 8, 12 (1995). Further, a court may retroactively modify a pendente lite order at, or prior to, trial without requiring a party to show a substantial change of circumstances under Lepis v. Lepis, 83 N.J. 139 (1980). See Mallamo, *supra*, 280 N.J. Super at 17. Retroactive modification of a pendente lite support order does not violate New Jersey's anti-retroactivity laws under N.J.S.A. 2A:17-56.23a. Mallamo, *supra*, 280 N.J. Super at 17; Kakstys v. Stevens, 442 N.J. Super 501, 509 (Ch. Div. 2015); Cameron v. Cameron, 440 N.J. Super 158,

167 (Ch. Div. 2014); See also Jacobitti v. Jacobitti, 263 N.J. Super 608, 617 (App. Div. 1993), aff'd 135 N.J. 571 (1994) (trial judge permitted to retroactively modify prior pendente lite award after considering all trial testimony and evidence). Retroactive modification of a pendente lite support order is sometimes appropriate as a matter of fairness and equity. A court's decision on pendente lite alimony depends largely upon a review of limited available evidence, such as conflicting certifications and case information statements, supplemented by oral argument. Hence, it is possible in some cases that the court may fail to receive a reasonably complete picture of the parties' financial status prior to trial. For this reason, a pendente lite support order is entered without prejudice to further review and modification.

#### Marital Standard of Living: Only One Part of Alimony Analysis

Historically, there often appeared to be a dominant, and sometimes exclusive, focus during pendente lite litigation on maintaining the dependent spouse's prior standard of living. Terms and phrases such as "marital lifestyle", and "status quo" seemed to rise to the forefront of nearly every legal argument by a supported spouse for pendente lite alimony, in amount necessary to maintain the lifestyle to which he or she had become accustomed during the marriage. The focus would frequently tend to be on the needs and budget of the supported spouse, with comparatively less focus on the financial

needs of the supporting spouse. An analysis which only considered the needs of one party, however, could leave the other party with little or no money to afford any type of similar reasonable lifestyle at all

Prior to the 2014 amendments, New Jersey's alimony statute, various judicial opinions stressed that a goal of alimony was "to assist the supported spouse in achieving a lifestyle that is reasonably comparable to the one enjoyed while living with the supported spouse during the marriage." Crews v. Crews, 164 N.J. 11, 16 (2000). Weishaus v. Weihaus, 180 N.J. 131, 140 (2004). Accordingly, the marital standard of living was a relevant, appropriate and essential factor for consideration in an alimony case. See Crews, supra, 164 N.J. at 16, 25. Further, the potential preservation of the status quo pending a full hearing of the case was deemed a relevant goal, when reasonably possible and/or practical. See Mallamo, supra, 280 N.J. Super at 11-12. Hence, alimony could be awarded in order to allow the dependent spouse to maintain a standard of living reasonably comparable to the standard established during the marriage, while also considering the ability of the dependent spouse to be or become self-sufficient. Crews, supra, 164s N.J. at 33.

Arguably, however, these holdings and principles were, in practice, sometimes mischaracterized and/or taken out of context. While prior court

opinions clearly emphasized the importance of considering the needs of the supported spouse, nowhere in Crews, Weishaus, or any other precedential opinion was there any pronouncement that alimony should be considered in a factual and legal vacuum, focusing only on the supported spouse's ability to maintain the former marital lifestyle, to the total exclusion of the supporting spouse's similar right to seek maintenance of such lifestyle as well. To the contrary, neither Crews, Weishaus or other leading cases purported in any way to invalidate the long-standing statutory language of N.J.S.A. 2A:34-23(b), factor 4, which provided for consideration of "... the likelihood that each party can maintain a reasonably comparable standard of living" (emphasis added). In fact, Crews itself recognized the reality that, in some situations, limited resources often did not permit both parties to live in separate households with both separately maintaining lifestyles comparable to the one they were able to enjoy while living together. Id. at 26. <sup>5</sup>

Further, in Rose v. Csapo, 359 N.J. Super 53 (Ch. Div. 2002), the court held that "the general purpose of pendente lite support is to maintain the parties in the same or similar situation they were in prior to the inception of the litigation" and "to preserve the status quo through the device of awarding

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<sup>5</sup> Crews noted that "the supporting spouse's current earnings become relevant when determining whether, and the degree to which, the supporting spouse can support the dependent spouse in maintaining a lifestyle reasonably comparable to the standard of living enjoyed by the parties during the marriage. Id. at 27.

temporary financial support pending a full investigation of the case." Id. at 58. Notably, the language utilized in Rose was plural rather than singular (i.e., "parties"), reflecting that the right to seek continuance of the marital lifestyle applied to both parties, not simply the supported spouse.

Even before enactment of the 2014 amendments to the alimony statute, "marital lifestyle" was never appropriately the sole and exclusive factor for consideration in an alimony analysis. See Dudas v. Dudas, 423 N.J. Super 69, 73 (Ch. Div. 2011). Rather, New Jersey's alimony statute clearly established that the marital standard of living was only one of multiple criteria for a court's consideration. Specifically, N.J.S.A. 2A:34-23(b), in its pre-2014 form, provided for a multi-level analysis of alimony which included not one but thirteen factors for consideration, as follows:

- (1) The actual need and ability of the parties to pay;
- (2) The duration of the marriage or civil union;
- (3) The age, physical and emotional health of the parties;
- (4) The standard of living established in the marriage or civil union and the likelihood that each party can maintain a reasonably comparable standard of living;
- (5) The earning capacities, educational levels, vocational skills, and employability of the parties;

(6) The length of absence from the job market of the party seeking maintenance;

(7) The parental responsibilities for the children;

(8) The time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, the availability of the training and employment, and the opportunity for future acquisitions of capital assets and income;

(9) The history of the financial or non-financial contributions to the marriage or civil union by each party including contributions to the care and education of the children and interruption of personal careers or educational opportunities;

(10) The equitable distribution of property ordered and any payouts on equitable distribution, directly or indirectly, out of current income, to the extent this consideration is reasonable, just and fair;

(11) The income available to either party through investment of any assets held by that party;

(12) The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a non-taxable payment;

(13) Any other factors which the court may deem relevant.

By the pre-amendment language of the statute, the marital “standard of living” (enumerated in the statute as factor 4), was only one of many considerations in an alimony claim. Yet, in the past, this factor was sometimes unofficially elevated to the predominant status for consideration, specifically

with reference to the supported spouse's lifestyle needs as opposed to both parties' needs. There was no formal language in the alimony statute, however, which directly or indirectly supported such an approach.

In 2014, however, the Legislature enacted several amendments to the alimony statute, which now clarify and support the concept of a court considering all applicable statutory criteria under N.J.S.A. 2A:34-23 in an alimony analysis, rather than mostly or only on the alleged marital lifestyle and needs of the supported spouse to maintain the prior "status quo." The amendments further provide updated general parameters and guidance on how courts may address spousal support and marital lifestyle in matrimonial litigation. While marital standard of living continues to remain a relevant statutory factor for a court's consideration, there are at least four amendments to the statute<sup>6</sup> which help to diffuse any potential, still-existing legal misconceptions that (a) maintaining the prior standard of living is the paramount consideration in a pendente lite alimony case, and/or that (b) only the supported spouse is entitled to maintain the marital lifestyle, either on a pendente lite basis or otherwise.

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<sup>6</sup> There are other amendments to N.J.S.A. 2A:34-23 as well, regarding issues which are not germane to the present case.

First, the amended alimony statute now directs family courts to consider, among other factors, “the practical impact of the parties’ need for separate residences and the attendant increase in living expenses on the ability of both parties to maintain a standard of living reasonably comparable to the standard of living established in the marriage or civil union, to which both parties are entitled. . . .” N.J.S.A. 2A:34-23(c). Second, the amended statute expressly provides that neither party has “a greater entitlement to that standard of living than the other.” N.J.S.A. 2A:34-23(b)(4). Third, the statute declares that “no factor shall carry more weight than any other factor unless the court finds otherwise”, and that in analyzing the various factors, the court is required to “consider and assess evidence with respect to all relevant factors and specify, with written findings of fact and conclusions of law, if it determined that certain factors are more or less relevant than others .” N.J.S.A. 2A:34-23(b).

Fourth, the amended statute now states that the nature, amount and length of pendente lite support, if any, paid during a divorce proceeding is to be considered by the court when rendering a final alimony award. N.J.S.A. 2A:34-23(b)(13).

The foregoing provisions in the amended alimony statute logically apply not only to final judgments, but to pendente lite alimony orders as well. The

amended statute provides no exception or distinction to the analytical process for “pendente lite” alimony, which is assumedly also calculated with due consideration of applicable statutory factors, albeit usually with less available evidence. Moreover, pendente lite alimony is determined without prejudice, and ultimately subject to retroactive modification at final hearing.<sup>7</sup> This conclusion is supported by the fact that the first words in the alimony statute are: “(P)ending any matrimonial action . . .” followed shortly thereafter by the statutory factors for consideration of an alimony application. These first words logically imply use of the factors in a pendente lite application, which by its very definition take place “pending” a “matrimonial action.”

#### Retention of “Marital Lifestyle”: Right vs. Illusion

As noted, the amended alimony statute establishes that the marital standard of living is relevant to both parties. In many pendente lite proceedings, however, the blunt economic reality is that separation and divorce often render impossible the ability of either party to financially maintain the prior marital lifestyle, or the same standard of living to which they formerly became “accustomed” during the marriage.

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<sup>7</sup> Some factors in the alimony statute, such as factor 10 (consideration of equitable distribution), are generally not applicable in a pendente lite proceeding, unless some or all of equitable distribution has already been effectuated by agreement or otherwise.

For example, in the present case, the evidence supplied to date reflects that the parties' marital lifestyle budget cost approximately \$6100 per month to maintain. Therefore, the anticipated cost to jointly sustain the parties' "marital lifestyle" and joint "standard of living", if they were in fact still living together, would come to approximately \$1,409 per week.

Utilizing the parties' present imputed incomes of \$90,000 and \$20,000, plaintiff and defendant have an estimated combined gross annual income of approximately \$ 2115 per week, before considering taxes and other applicable mandatory deductions. During the marriage, the parties had little money left over for savings or investment. Even while living together, the parties' "standard of living" and "marital lifestyle" involved a element of living paycheck to paycheck. Therefore, following separation and after deducting anticipated and estimated federal and state taxes and other mandatory deductions, it is clear that presently there is simply not enough money for both parties to maintain the same lifestyle living apart that they were able to afford while living together.

For these two parties, as well as countless other litigants undergoing divorce proceedings while living on economically strained budgets, the "right" to continue the prior marital lifestyle following separation is in reality

a fictional mirage and an economically unattainable goal shortly after separation. As a matter of simple mathematics, there may not be enough money to support two separate households at the same financial level or lifestyle that they could jointly afford, and became accustomed to living, while they were pooling their incomes and benefitting from the economies of shared living expenses. See Dudas v. Dudas, *supra*, 423 N.J. Super 69, 74-75. This reality often exists without even considering the additional fact that both parties may also be incurring new significant costs in restructuring their lives, including but not limited to the burden of ongoing substantial litigation expenses in heavily contested cases. In short, while the joint marital lifestyle may have arguably once temporarily "belonged" to both parties, the ability to actually and separately maintain such lifestyle often functionally and necessarily expires and disappears with separation and the practical end of the marriage itself.

When neither party can reasonably afford to separately maintain the marital lifestyle after separation or divorce, a mutually fair and equitable pendente lite approach often requires that both parties, rather than just one party, will have to adapt to interim lifestyles which are financially lower than that which they both enjoyed together during the marriage. This possibility is

especially strong in marriages such as the present one, where the parties were apparently spending most of their available income even before separation and formal institution of divorce proceedings. Under such circumstances, neither party may fairly and realistically expect complete retention of the prior lifestyle, particularly when the only possible way for either party to achieve same is to inequitably insist upon allocation of most or all of the available financial resources to oneself, to the complete exclusion and economic detriment of the other party.

Our courts have long recognized the concept that economic arrangements may need to change when there is a substantial change in circumstances. See Lepis v. Lepis, 83 N.J. 139, 149 (1980). While Lepis and its progeny address the issue of a change in circumstances following entry of a support order, the economic rationale and logic is just as equitably appropriate and applicable in the pendente lite analysis of “marital lifestyle”, and a change in “status quo” through marital separation even when there has previously been no prior support order in place at all. Put another way, no matter what a married couple's prior married lifestyle and status quo may have been while living together, a separation by married partners into two separate homes is sometimes as substantial a change of economic circumstances as one can possibly imagine.

Such a change in circumstances may render impossible the ability of either party to continue living the prior lifestyle. In such instances, the goal that separated parties legally maintain the same economic status quo they enjoyed while living together under one roof is, in many instances, unachievable. See Dudas, supra, 423 N.J. Super at 74-75.

In such circumstances, if the court sets pendente lite alimony either too high or too low, one party may inequitably suffer extreme and unjust financial hardship. Frequently, the key to a mutually fair and equitable pendente lite award is not necessarily to maintain either party in the exact same marital lifestyle as previously existed, but rather to devise an interim economic arrangement which is mutually fair to both parties given the limitations of available financial resources and the totality of the circumstances. There is no exact formula for how this can or should be accomplished. Much depends upon the facts of specific case, application of the statutory factors, and the discretion of the family court itself to achieve fairness on a pendente lite basis.<sup>8</sup>

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<sup>8</sup> While some may argue that the statutory language of the alimony statute regarding “marital lifestyle” suggests that income should be equally divided between the parties, this court finds absolutely no authority supporting such a legislative intent or judicial conclusion as a matter of law. To the contrary, if automatic income equalization was truly the intent of the legislature, the statute could have stated so, as opposed to setting forth a list of multiple criteria for the court to consider in its equitable discretion, including but not limited to “any and all other factors.” While income equalization might be an appropriate result in some specific, fact-sensitive cases, there is by no means any presumption or inference automatically supporting such a result in any specific case. See also Rothman v Rothman, 65 N.J. 219, 232-33 note 6 (1974), holding against an automatic equal, fifty/fifty presumption in dividing marital assets for purposes of equitable distribution.

With an equitably balanced pendente lite alimony award, neither party may be able to maintain their prior lifestyle, and both parties may certainly incur significant financial challenges and hardships. Such an outcome, however, may nonetheless be the most fair pendente lite result under the totality of the parties' circumstances. While the financial circumstances do not have to be equalized or even approach equalization, in the context of economic issues in pendente lite matrimonial litigation and family court, a fair sharing of the monetary pain is often the most equitable result.

#### Applying Statutory Factors in Pendente Lite Alimony Motion

The court has considered the parties' submissions, and adjudicates this pendente lite alimony application by applying the applicable statutory factors under the amended alimony statute, N.J.S.A. 2A:34-23(b). As regarding actual need and ability to pay, defendant needs pendente lite alimony as she presently only has an imputed income of approximately \$20,000 per year. While plaintiff argues for the court to impute a higher income to her (i.e, \$35,000), and while she may at some point in the future earn or be able to earn this level of full time income, she has never earned close to such an amount during the marriage as a part-time employee. She will therefore logically need some reasonable transitional time to reach higher levels of income consistent with her experience,

education and skills, and to convert imputed income into actual income. See Gnall v. Gnall, 432 N.J. Super 129, 159-60 (App. Div. 2013), *rv'd* on other grounds, 222 N.J. 414 (2015).

Plaintiff further argues that defendant has moved back in with her mother, and therefore now has less of a need for alimony. Defendant's living situation, however, appears to be one of financial necessity, which is likely why at the age of 39 she returned to her mother in the first place. Significantly, even without an immediate mortgage or rental obligation, defendant nonetheless still has very limited financial resources, a modest income history, and a budget which even when significantly downscaled and reduced at the start of a divorce, cannot immediately be carried by defendant herself without some reasonable time to transition, regroup and rebuild.

Defendant presently has insufficient funds to afford her own residence, and so she moved in with her mother. The return-to-parents'-home scenario following marital separation is very common, especially when a party has a relatively small income, and when the ultimate rights and obligations of the parties remain unresolved and up in the air pending the conclusion of divorce proceedings. As a result, a party who separates from a spouse and has little available financial resources often ends up staying in the guest bedroom or on

the couch of parents, other family members, or friends who may voluntarily and generously offer to assist on an interim basis at little or no cost. Such a situation, however, does not mean that a supporting spouse can or should be allowed to automatically pass his or her own potential support obligations onto a third person – parent or otherwise – who is gratuitously lending a hand and extending some temporary situational help to a party in the face of economically challenging or dire circumstances.

In this case, it would be the height of irony if defendant now was denied alimony because limited financial circumstances essentially required her to move back in with her mother in the first place. Moreover, there is no evidence that defendant's mother is providing defendant with any type of a lavish and plush lifestyle, beyond a basic interim roof over her head, in a manner which might weigh against the need for alimony. Still further, there is no evidence that defendant's mother was intending in any way to take over any legal responsibility plaintiff might otherwise have regarding even short-term alimony, by allowing her daughter to live with her pending conclusion of the divorce and establishment of each party's rights and obligations under a final judgment. The economic beneficiary of the mother's willingness to open her home to defendant was most likely supposed to be her daughter, not her soon-to-be ex-son-in-law.

While the court may consider the totality of all factors in this situation, it would not be appropriate or equitable to deny defendant reasonable interim support in order to meet a reasonable budget, merely because defendant's mother is presently trying to help her daughter out under financially challenging circumstances. Even without a roof expense, defendant has reasonable needs supporting reasonable spousal support on a pendente lite basis.

Regarding ability to pay, plaintiff earns \$90,000 per year and, with some reciprocal reductions in his own budget and "lifestyle", has an ability to pay a mutually fair level of pendente lite alimony. It would be wholly inappropriate, however, to impoverish plaintiff with an unreasonably top-sided alimony award in order to maintain defendant at the level of her prior purported "lifestyle." In divorce, the economic pain very often must be fairly and equitably shared by both parties, and not just shouldered by the supporting or supported spouse. Thus, the amount of pendente lite alimony must not be so numerically substantial as to deprive plaintiff of his own right to reasonably support himself as well, even if he, like defendant, must also at this time live beneath the former "status quo" or standard of living.

Regarding length of the marriage, the parties were married for approximately four years. This is a relatively short term marriage. Pursuant to the amended

alimony statute, when a marriage is less than 20 years in duration, the term of alimony shall not exceed the length of the marriage except in exceptional circumstances. N.J.S.A. 2A:34-23(b). Further, the nature, amount and length of any pendente lite alimony already paid by the obligor under court order is ultimately considered in the context of determining any final alimony award. N.J.S.A. 2A:34-23(b)(13).

Regarding age and health, plaintiff is 50 years old and defendant is 39 years old. There are no known health issues which prevent either party from working.

As regarding the marital standard of living, and as previously referenced, the parties appeared to previously maintain a conservative, middle-class standard, of living, with an estimated budget of approximately \$6100 per month. Neither party can presently meet a budget of this nature on a pendente lite basis. Hence, the present lifestyles and standard of living must be responsibly lowered by each party at this time, notwithstanding whatever prior economic status quo they previously were able to achieve while residing together and sharing expenses as a married couple.

Regarding earning capacity and educational levels, plaintiff is a teacher and defendant is a hairdresser. Plaintiff earns significantly more money than defendant. As regarding parental responsibilities for children, the parties are

presently joint legal and residential custodians of the children, with logical and natural responsibilities and obligations flowing from same.

Concerning the time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, both parties are employed and may have the opportunity for additional employment as well (plaintiff is off during the summer, while defendant can attempt to increase her historical work hours on a sustained basis during the pendente phase of the litigation). As regarding acquisition of significant capital assets and income, there is presently insufficient evidence that either party has or will shortly be acquiring such capital and income in the near future, or that either party presently has assets of significance besides the marital home and retirement plans. Plaintiff does have a second, pre-marital home in which defendant generally asserts a possible equitable interest. There is insufficient evidence at this juncture, however, to determine the merits or value of such claim, if any. It further appears that this second property may operate at or near a break-even point between rental income and carrying costs.

With respect to the history of the parties' financial or non-financial contributions to the marriage, plaintiff was the primary financial supporter in the household. Both parties, however, logically contributed on an economic basis

to meeting and maintaining the family budget. As regarding non-economic contributions, the court concludes without prejudice, that in this marriage, each party likely contributed in a non-economic fashion to maintaining the household and helping raise the children as well.

As regarding equitable distribution of property, this motion is a pendente lite application. Equitable distribution thus far remains unsettled. It is therefore premature to truly consider this factor in the analysis of pendente lite alimony. As noted, however, the parties have limited identified assets or other financial resources available for equitable distribution in the first place. Similarly, on the related issue of income available to either party through investment of any assets, there appears to be little present opportunity for same.

With reference to tax treatment and consequences to both parties of any alimony award, alimony is generally tax deductible by the payor and taxable to the recipient, unless otherwise ordered.

Overall, in determining the appropriate level of pendente lite alimony in this case, the court has considered the various applicable statutory factors enumerated under N.J.S.A.2A:34-23(b). Under the totality of the circumstances, the court orders that plaintiff will pay defendant \$350 per week in pendente lite alimony, through the probation department via wage garnishment., which will be

tax deductible by plaintiff and taxable to defendant. After tax-affecting same, plaintiff is left with approximately sixty percent of the combined net incomes, while defendant is left with approximately forty percent of same. Further, by placing this alimony amount into the calculation for child support under a shared parenting worksheet under the Child Support Guidelines, Appendix IX-A to Rule 5:6A, plaintiff's pendente lite child support obligation to defendant is an additional \$40 per week.

The \$350 per week pendente lite alimony figure may well be considered "too high" by plaintiff and "too low" by defendant, relative to their former marital lifestyle. This amount, however, is not inequitable or unfair to either party under the totality of the present circumstances. As a pendente lite order, the terms herein are without prejudice and subject to retroactive modification, upward or downward at final hearing or upon further order of the court. See Mallamo, *supra*, 280 N.J. Super at 17; Kakstys, *supra*, 442 N.J. Super at 509; Cameron, *supra*, 440 N.J. Super at 167.

Moving forward from this interim order, the court schedules this case for an Early Settlement Panel (ESP) proceeding within three weeks (August 23, 2016), to be followed by a status conference immediately thereafter. Generally, reasonable (and in this case, professionally represented) parties who understand and

appreciate the value of compromise and resolution should logically be able to constructively consider resolution of issues such as those presented in this case. It is fundamental that settlement of litigation ranks high in the public policy of this state. Ziegelheim v. Apollo, 128 N.J. 250, 263 (1992). Nolan v. Lee Ho, 120 N.J. 465, 472 (1990). This is particularly true in divorce litigation, where settlement agreements are encouraged as a peaceful means of terminating domestic strife. See N.H. v. H.H., 418 N.J. Super 262, 279 (App. Div. 2011).