

**To: New Jersey Law Revision Commission**  
**From: Thevuni Athalage, Legislative Law Clerk**  
**Re: Termination of Permanent Alimony Based on Remarriage or Cohabitation, N.J.S. 2A:34-23(n) (as discussed in *Temple v. Temple*, 468 N.J. Super. 364 (App. Div. 2021))**  
**Date: April 11, 2022**

## MEMORANDUM

### Project Summary

In New Jersey, as part of a matrimonial action or after a judgment of divorce, a court may enter an order as to alimony “as the circumstances of the parties and the nature of the case shall render fit, reasonable and just....”<sup>1</sup> A party may receive permanent alimony “to assure a dependent spouse a level of maintenance sufficient to support that spouse based on the living standards of the couple during marriage.”<sup>2</sup> The purpose of permanent alimony payments is to allow the dependent spouse to maintain the same lifestyle that the parties enjoyed during their marriage.<sup>3</sup>

A court may modify or terminate an alimony award if the moving party presents sufficient evidence that there has been a change in the circumstances for one or both of the parties.<sup>4</sup> When the supported spouse remarries,<sup>5</sup> or cohabits with another,<sup>6</sup> a court may modify or terminate the alimony award.<sup>7</sup>

In *Temple v. Temple*, the Appellate Division considered whether N.J.S. 2A:34-23(n), requires a movant to provide evidence of each of the six factors set forth in the statute to determine whether cohabitation is or was occurring before a court can modify or terminate an alimony award.<sup>8</sup> After considering the intent of the Legislature, the Appellate Division used a “far less mechanical” approach than the trial court and determined that a movant need not provide evidence for each one of the factors enumerated in subsection n. of N.J.S. 2A:34-23 to alter an alimony obligation.<sup>9</sup>

### Statute Considered

N.J.S. 2A:34-23(n) provides, in relevant part:

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n. Alimony may be suspended or terminated if the payee cohabits with another person. Cohabitation involves a mutually supportive, intimate personal relationship in which a couple has undertaken duties and privileges

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<sup>1</sup> N.J. STAT. ANN. § 2A:34-23 ¶ 1 (West 2021).

<sup>2</sup> *Konzelman v. Konzelman*, 158 N.J. 185, 195 (1999).

<sup>3</sup> *Gnall v. Gnall*, 222 N.J. 414, 430 (2015).

<sup>4</sup> *Temple v. Temple*, 468 N.J. Super. 364, 367 (App. Div. 2021) citing *Lepis v. Lepis*, 83 N.J. 139 (1980).

<sup>5</sup> N.J. STAT. ANN. § 2A:34-25 (West 2021).

<sup>6</sup> N.J. STAT. ANN. § 2A:34-23(n) (West 2021).

<sup>7</sup> *Temple*, 468 N.J. Super. at 367-68.

<sup>8</sup> *Id.* at 369-370.

<sup>9</sup> *Id.* at 370-71.

that are commonly associated with marriage or civil union but does not necessarily maintain a single common household.

When assessing whether cohabitation is occurring, the court shall consider the following:

- (1) Intertwined finances such as joint bank accounts and other joint holdings or liabilities
- (2) Sharing or joint responsibility for living expenses;
- (3) Recognition of the relationship in the couple's social and family circle;
- (4) Living together, the frequency of contact, the duration of the relationship, and other indicia of a mutually supportive intimate personal relationship;
- (5) Sharing household chores;
- (6) Whether the recipient of alimony has received an enforceable promise of support from another person within the meaning of subsection h. of R.S.25:1-5; and
- (7) All other relevant evidence.

In evaluating whether cohabitation is occurring and whether alimony should be suspended or terminated, the court shall also consider the length of the relationship. A court may not find an absence of cohabitation solely on grounds that the couple does not live together on a full-time basis.

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### **Background**

The *Temple* Court considered what a movant must provide in order to successfully establish a case of cohabitation for purposes of terminating alimony. In that case, Plaintiff and Defendant were married in 1986 and divorced in 2004.<sup>10</sup> Following the divorce, Plaintiff was ordered to pay Defendant \$5,200 per month in permanent alimony.<sup>11</sup> In 2020, Plaintiff moved to terminate this alimony, arguing that Defendant was either remarried or cohabitating with another individual.<sup>12</sup>

To support his motion, Plaintiff provided the court with evidence that Defendant had been in a fourteen-year relationship with another individual and that there were “indicia of a mutually supportive intimate personal relationship.”<sup>13</sup> About two years after the divorce, Plaintiff began to notice that Defendant’s alleged cohabitant, William Boozan, was regularly at the Plaintiff’s former

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<sup>10</sup> *Temple*, 468 N.J. Super. at 367.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at 368.

<sup>13</sup> *Id.* at 371.

marital home.<sup>14</sup> After observing social media posts about the two, Plaintiff hired a private investigator to seek more information about their relationship.<sup>15</sup>

The investigation produced evidence that Defendant was cohabitating and possibly even married to the alleged cohabitant.<sup>16</sup> This included social media posts, spanning seven years, in which Boozan referred to Defendant as his “wife.”<sup>17</sup> The posts indicated the pair frequently traveled and attended events together.<sup>18</sup> Additionally, records indicated that Defendant sold the former marital home and purchased an apartment in New York City where, it appeared, she and Boozan resided together as they did in Boozan’s Spring Lake home.<sup>19</sup> The investigator produced photos that showed Defendant performing routine household activities, which included bringing groceries into the house, shopping trips, and retrieving mail.<sup>20</sup> Defendant was also photographed using a key to enter Boozan’s home, or entering it using the garage keypad.<sup>21</sup> Financial records provided by Defendant further indicated that the two were together at the Spring Lake residence on weekends in early 2020 and in New York City.<sup>22</sup>

After Plaintiff’s lawyer demanded that Defendant preserve all relevant records in June 2020, Defendant and Boozan responded by clearing their social media of any indication that they were, in fact, together.<sup>23</sup> Defendant denied that she and Boozan were married or cohabiting, claiming instead that they were just good friends.<sup>24</sup>

Despite the evidence presented by Plaintiff, the judge denied Plaintiff’s motion to terminate alimony, relying on *Landau v. Landau*.<sup>25</sup> In the face of competing factual assertions, the judge accepted Defendant’s version of the facts.<sup>26</sup> Plaintiff appealed, arguing that he was entitled to further discovery and an evidentiary hearing.<sup>27</sup>

### Analysis

In New Jersey, alimony is governed by N.J.S. 2A:34-23. Subsection (n) provides six factors to be considered when assessing whether alimony should be suspended or terminated on the basis of cohabitation.<sup>28</sup>

Plaintiff’s appeal concerned the question of what constitutes a prima facie case of cohabitation sufficient to justify the termination of permanent alimony.<sup>29</sup> The Appellate Division

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<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 372.

<sup>16</sup> *Id.* at 372.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.* at 374.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 375.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 368-369.

<sup>26</sup> *Id.* at 368.

<sup>27</sup> *Id.* at 367.

<sup>28</sup> *Id.* (n).

<sup>29</sup> *Temple v. Temple*, 468 N.J. Super. at 371.

disagreed with “what seems to be implied in the judge’s decision that evidence favorable to the movant must be presented on all six statutory considerations contained in N.J.S.A. 2A:34)23(n).<sup>30</sup> The seventh factor contained in that subsection of the statute, which calls on courts to consider “all other relevant evidence,” was described by the Appellate Division as a further indication that the preceding six factors are not all that may “ultimately persuade a court that a support spouse is cohabiting.”<sup>31</sup> The court said that “[i]f – as the motion judge seems to have held – a movant...must provide evidence on all six specific items to establish a prima facie case, then we wonder whether any movant could ever clear that obstacle.”<sup>32</sup>

Since discovery is not permitted until after a movant makes a prima facie case, the court asked “how is it that a movant is to obtain and present direct evidence that a former spouse and another have ‘intertwined their finances’?”<sup>33</sup>

The Appellate Division reversed and remanded for discovery and an evidentiary hearing without retaining jurisdiction.<sup>34</sup>

### **Pending Bills**

Currently, there are no bills pending concerning N.J.S. 2A:34-23(n) as discussed in *Temple v. Temple*.<sup>35</sup>

### **Conclusion**

Staff requests authorization to conduct additional research and outreach to determine whether a modification of N.J.S. § 2A:34-23(n) would be of assistance to clarify the information that must be provided by a movant seeking to terminate alimony.

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<sup>30</sup> *Id.* at 369.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 370.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.* at 377.

<sup>35</sup> N.J. STAT. ANN. § 2A:34-23(n) (West 2014)