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New Jersey Court Determines That The 2014 Amendment To New Jersey's Alimony Statute May Be Applied Retroactively To Reduce Alimony Following Loss Or Change In Employment

In 2014 the New Jersey Legislature amended that state's alimony statute adding subsection (k) to N.J.S.A. 2A:34-23. Under the new section a court may reduce an alimony obligation when the obligor loses his or her prior W-2 employment, and thereafter makes reasonable attempts to find substitute employment. Prior to this decision, courts were prohibited from using the statutory amendments to decide motions for cases resolved or decided prior to the statute's amendment. On Friday, the Committee on Publications approved for publication *Mills v. Mills*, __ N.J.Super __ (Ch.Div.2016), Docket No. FM-15-1263-12, confirming the precedential value of the trial court's opinion. In *Mills* the plaintiff and defendant divorced in 2013 following thirteen years of marriage. The parties' settlement agreement contained no contractual provision regarding what would happen to defendant's support obligation in the event of a substantial change of circumstances, such as defendant's loss of employment or reduction in income. In January 2015, after twelve years of working at the same company, defendant involuntarily lost his job. Rather than continue searching for another job at a salary closer to his prior income, defendant decided to accept a job offer and lower salary. The defendant filed a motion with the court to prospectively modify and reduce his support obligation based upon a substantial change in circumstances.

The Court granted the defendant's motion concluding that as matter of equity and fairness, the defendant's obligations required modification. The Court created a practical two-step inquiry. First, was the supporting spouse's choice in accepting a particular replacement employment opportunity objectively reasonable under the totality of the circumstances? Second, if so, what if any resulting support adjustment should occur that is fair and reasonable to both parties, given their respective situations? The court concluded that the focus on these two questions is logical and wholly consistent with N.J.S.A. 2A:34-23(k), and the statute which also states that a court may consider, in addition to the other enumerated factors, any other factors the court deems relevant to fairly and equitably decide an application for reduction in support.

The Court also determined when a modification of alimony based upon a loss of employment is sought, the court may apply the terms and spirit of the 2014 amended alimony statute, even if the parties were divorced prior to September 10, 2014, so long as (a) the parties had no written agreement to apply a different standard, and (b) the issue has not already been litigated and adjudicated by the court.

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