Examining Cohabitation Post-*Landau*, When Did it Become So Difficult to Establish a *Prima Facie* Case of Cohabitation?

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Consider a situation where a prospective client has extensive proof that an ex-spouse has been intimately involved with a paramour for several years. Among other corroborating indicia, the proof consists of social media posts and the report of a private investigator that shows they spend large percentages of overnights together during the time-period surveilled. The evidence shows proof of attendance at numerous family milestone events, such as holidays, graduations for the parties' children, and that the pair regularly vacation and socialize together. The client acknowledges that missing from the evidence is any proof that the ex-spouse and paramour share living expenses, or that they have any financial connections to one another beyond their shared vacations. The attorney is asked whether this a *prima facie* case of cohabitation.

The answer to this question has historically been difficult for practitioners to reliably answer. However, attorneys and courts alike now have the 2014 amendments to the alimony statute as guidance in answering these difficult questions, though in practice, uncertainty continues to remain. A driving force behind this uncertainty is the ongoing misapplication of the Appellate Division's 2019 decision in Landau by trial courts and family law attorneys, who rely upon the case as a basis to find an absence of cohabitation, when this was not before the Court or addressed in Landau.

When the Appellate Division decided Landau v. Landau, the Court made clear its holding was to ratify and uphold the changed circumstances framework established by the Supreme Court of New Jersey in Lepis v. Lepis. It *did not* evaluate whether or not the moving party presented sufficient evidence to constitute a *prima facie* case of cohabitation. The Court made this distinction clear in the very first sentence of its written opinion, noting:

> "**The question presented by this appeal, here on leave granted, is whether the changed circumstances standard of Lepis v. Lepis, 83 N.J. 139, 157, (1980), continues to apply to a**

> **motion to suspend or terminate alimony based on cohabitation following the 2014 amendments to the alimony statute**."

In Landau, the trial court was presented with an application to review alimony based on cohabitation. In support of the motion, Mr. Landau presented evidence that Ms. Landau vacationed with her boyfriend, attended social activities as a couple including family parties, posted jointly on social media sites, and offered surveillance purporting to show Ms. Landau and her boyfriend spent 75% of their time together during the time observed. As is common in cohabitation cases, Mr. Landau argued that it would be incredibly hard to demonstrate a *prima facie* case without discovery of the intimate details of the wife's and boyfriend's life and finances. Ms. Landau opposed the motion and denied the allegations.

The motion judge "decided that [he was] not going to decide whether ... plaintiff has made out a prima facie case, but [he was] going to allow discovery ... to allow ... plaintiff the opportunity to make a showing of a prima facie case, or not, as the case may be." Ultimately, this would lead to the Appellate Division reversing the decision, finding that because the trial court did not find that a *prima facie* case of cohabitation had been made, "Plaintiff was plainly not entitled to discovery under Lepis." The Court further held:

> **"[t]here is no question that a *prima facie* showing of cohabitation can be difficult to establish…[b]ut that is hardly a new problem and it cannot justify the invasion of defendant's privacy represented by the order entered here. We are confident the Lepis paradigm requiring the party seeking modification to establish "[a] prima facie showing of changed circumstances ... before a court will order discovery of an ex-spouse's financial status," continues to strike a fair and workable balance between the parties' competing interests, which was not altered by the 2014 amendments to the alimony statute."**

As a result of the Court acknowledging that it can be difficult to establish a *prima facie* case without discovery, attorneys and trial judges now rely upon Landau as justification for denying cohabitation applications at the motion stage, either because a movant has not provided proofs involving the financial factors set forth in N.J.S.A 2A:23(n), or because the moving party is unable to provide proof of every factor set forth in N.J.S.A 2A:23(n). However, the issue of what constitutes *prima facie* evidence

was not before the Court in Landau, and nothing in New Jersey case law or New Jersey's alimony statute requires that *all* statutory factors be shown to establish cohabitation.

The misapplication of the Appellate Division's holding is not only inconsistent with the actual tenets of Landau, but it also serves to undermine the legislative purpose in enacting the 2014 amendments to New Jersey's alimony statute, which sought to bring greater clarity to cohabitation jurisprudence. The issue of what is, and is not, sufficient to set forth a *prima facie* case of cohabitation was never before the Court in Landau. Landau also did not address the quantum of proofs required to set forth a *prima facie* case of cohabitation, yet as a result of the decision, courts now routinely find an absence of *prima facie* evidence if a party fails to provide financial proofs demonstrating cohabitation as part of an initial application or does not have proof of *every* factor set forth in N.J.S.A 2A:23(n) when the statute does not impose this requirement.

In the wake of Landau, litigants face unpredictable outcomes with widespread variance, based arbitrarily upon which family part judge happens to preside over the matter. Where one family part judge may believe establishing a *prima facie* case of cohabitation to be a low bar, others rely upon Landau to deny such applications, setting the burden on the moving party inappropriately high.

For practitioners seeking to provide a reasonable degree of predictability, this presents a real challenge. To absolve the confusion surrounding the Landau decision, and the accompanying misapplication of the amended statute, attorneys and courts must address and rely upon the explicit statutory language and apply the individual factors set forth therein to the facts and circumstances of each individual case. As no one factor is dispositive to the cohabitation analysis, all factors must be addressed and reviewed globally. In this way, the legislature's goals are achieved, and practitioners have the requisite guidance necessary to reasonably advise their clients as to whether a mutually supportive, intimate personal relationship exists warranting relief.

The Unintended Influence of *Landau v. Landau* on the Clear Framework Established by the 2014 Amendments to New Jersey's Alimony Statute

In 2014, New Jersey's alimony statute was amended, in part to help provide greater clarity for trial courts adjudicating applications based upon cohabitation. N.J.S.A 2A:23(n) now provides various factors a Court must consider when evaluating claims based on cohabitation. The first two factors call for a review of the finances of the potentially cohabiting party, including (i) consideration of "intertwined finances" between the alimony recipient and the alleged paramour, and (ii) "joint responsibility for living expenses."[1] Nothing in the statute indicates that all factors must be proven to establish cohabitation.

Under longstanding New Jersey case law, there is an established and recognized burden shift, whereby once a moving party successfully demonstrated *prima facie* evidence their ex-spouse was cohabitating, a rebuttable presumption shifts to the supported spouse to prove they are not cohabitating or that there was no economic benefit from the cohabitation.[2] This was first established in the 1992 case of Frantz v. Frantz, a chancery division case where the trial court held "that it would be unreasonable to place the burden of proof on a party not having access to the evidence necessary to support that burden of proof.[3]" Six years later, the Appellate Division further endorsed this approach in Ozolins v. Ozolins, holding:

> **"There is a rebuttable presumption of changed circumstances arising upon a *prima facie* showing of cohabitation. The burden of proof, which is ordinarily on the party seeking modification, shifts to the dependent spouse. We agree with Judge Sullivan [of Frantz] 'that it would be unreasonable to place the burden of proof on a party not having access to the evidence necessary to support that burden of proof.'"**

Finally, in another chancery division case from 2002, the court held in Rose v. Csapo, citing to Ozolins and Frantz, that the burden shift is particularly appropriate, since the cohabiting party and paramour hold all the resources, as well as the financial and social/sexual information necessary for the court to make a finding regarding cohabitation and whether spousal support should be eliminated or modified. The court even held that it would be unreasonable to place the burden of proof on a party not having access to the evidence necessary to support that burden of proof.

Obviously, these decisions all were borne out of the same premise, that the law specifically recognized that the non-moving spouse was better situated to come forward with the requisite proofs.[4]

When the Appellate Division decided Landau in 2019, it ratified the longstanding framework for evaluating applications based upon changed circumstances as promulgated by the Supreme Court of New Jersey in Lepis v. Lepis and held that discovery was impermissible unless and until a *prima facie* case is established by the moving party. It is significant to note that nowhere in the opinion does the Appellate Division address whether Mr. Landau set forth a *prima facie* case of cohabitation, nor did the Court hold that all statutory factors must be established before a *prima facie* case can be found. The Court also never addressed the issue of burden shifting, or any intention to eliminate same. Rather, the Court reversed the trial court for authorizing invasive discovery without first finding that a *prima facie* case of cohabitation was made.

For all intents and purposes, Landau is not a case that should alter the disposition of cohabitation applications other than to preclude discovery before a *prima facie* case is set forth. The issue remains that Landau continues to be relied upon for reasons that go beyond its holding, serving as misapplied justification for trial courts to find a *prima facie* case has not been made in the absence of financial proofs of cohabitation. Since this case was decided, and as discussed at greater length below, there have been six subsequent decisions citing to Landau, several of which cite to the same when finding that the moving party did not set forth a *prima facie* case of cohabitation. Both courts and practitioners alike must be called upon to employ the express provisions of the 2014 statutory amendments to ensure uniformity in its application and avoid any future misapplication of Landau and its progeny.

A Review of Post-*Landau* Decisional Law Demonstrates this Confusion

In the little over a year since the Appellate Division issued their decision in Landau, there have already been six unreported opinions in the Appellate Division and trial court citing to Landau. Often,

reference to this decision is made as purported authority for denying discovery and a plenary hearing on the issue of whether or not cohabitation existed because moving parties are unable to provide evidence of all statutory factors at the motion stage without the benefit of discovery, most commonly evidence of shared living expenses or intertwined finances.

These impediments stand in contrast to the long-established burden shift to the supported spouse to prove there was no economic benefit from the cohabitation once a *prima facie* case was made.[5] If Landau is extended to hold that the moving party must now have proof of the economic factors set forth in N.J.S.A. 2A:34-23(n), this burden shift is effectively eradicated, and the burden remains with the moving party.

In the aftermath of Landau, courts continue to interpret Landau beyond its holding in order to find that applications to review alimony on the basis of cohabitation are flawed if they cannot prove every statutory factor provided in N.J.S.A. 2A:34-23(n), most commonly the financial factors. A review of these cases is instructive.

Goethals v. Goethals

Goethals v. Goethals is an unpublished decision decided by the Appellate Division on January 7, 2020.[6] This case dealt with the appeal of a trial court's denial of a motion to modify alimony on the basis of cohabitation. In his application, Mr. Goethals set forth proofs indicating that his ex-wife had been in an exclusive, enduring, and committed relationship for three years, which began prior to the finalization of the parties' divorce, and resulted in Ms. Goethals's engagement to her alleged paramour. The husband also presented evidence by way of social media postings and a private investigator's report, that the ex-wife and her fiancé were spending consistent and regular overnights with each other, had moved in together, blended their families, performed household chores together, attended parties and familial gatherings together, and held themselves out to the public as a couple, among other proofs.

In response, Ms. Goethals certified that there were no intertwined finances, no enforceable promises of support, and denied living with her fiancé. The motion judge denied the husband's application, stating that the husband had demonstrated inadequate proofs to establish cohabitation "considering the absence of economic impact." However, the Appellate Division determined that the trial judge's requirement of proofs of intertwined finances and the couple living together to establish a *prima facie* case was incorrect and improper, and reversed this decision.

The Appellate Division cited to Landau to support the notion that the 2014 amendments to the alimony did not disrupt the Lepis framework that the moving party still bears the burden of demonstrating a *prima facie* case of changed circumstances before discovery is ordered, and that the amended statute provided factors for a court to consider in making its determination as to whether cohabitation is occurring. While the Appellate Division ultimately reversed and remanded, the trial court's interpretation of the statute and factors is not isolated and demonstrates that trial courts are denying these applications in the absence of financial proofs.

Garcia-Travieso v. Garcia-Travieso

In Garcia-Travieso v. Garcia-Travieso, the moving party, Mr. Garcia-Travieso, sought to modify his alimony obligation on the basis of cohabitation, supported by a private investigator's report which demonstrated that Ms. Garcia-Travieso and her paramour were spending overnights at her home regularly, that the paramour would drive Ms. Garcia-Travieso's vehicle, perform household chores while at her home, and had his own parking spot in the attached garage of the home.[7] Ms. Garcia-Travieso maintained that they had been dating since before the parties divorced and nothing changed in their relationship since that time. She admitted to borrowing $25,000 from her boyfriend for home repairs but stated that this amount was paid back. Ms. Garcia-Travieso further clarified that the majority of photographs taken by the private investigator were taken on weekends, and the majority of the weekday

visits were simply because the boyfriend, who lived in Connecticut, had business in New Jersey. The trial court ultimately denied Mr. Garcia-Travieso's application, deciding that the investigator's evidence was "stale," and that the single incidence of the boyfriend shoveling snow provided by the Mr. Garcia-Travieso did not "rise to maintenance of the property [and] sharing responsibilities regarding the home and the property."

The Appellate Division affirmed the trial court, noting that "[husband] fails to address the first two cohabitation factors of intertwined finances and joint responsibility for living expenses," and that "[Mr. Garcia-Travieso] failed to establish that there was any financial comingling or interdependence between [Ms. Garcia-Travieso and her boyfriend]." In support of its decision, the Appellate Division cited Landau to support the holding that the Lepis paradigm was not modified by the 2014 amendments to the alimony statute and only provided the courts with a definition of cohabitation and enumerated factors to use when making their determination as to whether or not the moving party has made a *prima facie* case of changed circumstances. Despite the Appellate Division giving Mr. Garcia-Travieso all favorable inferences, and stating that he had demonstrated that Ms. Garcia-Travieso and her boyfriend had been in a long term relationship since 2014, that social and family circles recognized their relationship, that they see each other every weekend and some weekdays, and that the boyfriend did perform some household chores for her (albeit not frequently enough to satisfy either the trial judge or the Appellate Division), the Appellate Division affirmed the lower court's ruling. This opinion again seems to place significant weight on economic factors that are widely understood to be challenging, if not impossible, to obtain without some level of discovery.

Smith-Barret v. Snyder

This case involved a couple divorced in 2007. In 2018, the payor, Ms. Smith-Barrett, hired a private investigator to determine if Mr. Snyder was cohabitating.[8] The investigator's report detailed instances in

which Mr. Snyder's girlfriend's car was found parked at his home and supplemented the report with social media posts demonstrating the romantic nature of their relationship.

The trial court ultimately denied Ms. Smith-Barrett's application to terminate her alimony obligation, finding that she had not demonstrated that Mr. Snyder and his girlfriend had undertaken the duties and privileges that are commonly associated with marriage and that she had only demonstrated that Mr. Snyder and his girlfriend were in a mere romantic relationship and that the relationship did not rise to the level of cohabitation that warranted a termination of her alimony obligation. Specifically, the opinion noted that Ms. Smith-Barrett did not provide any evidence of the couple living together, intertwined finances, or shared living expenses or household chores to demonstrate cohabitation.

The Appellate Division, in affirming the trial court's ruling, stated that their decision in Landau continued the Lepis framework that came before it and that the only change to the cohabitation questions provided by the 2014 amendments was that it provided a definition of cohabitation and provided enumerated factors for courts to consider in making their determinations. In her appeal, Ms. Smith-Barrett argued that the trial court failed to address the "substantial and authenticated proofs" she provided and that if there was a dispute as to the financial factors, that is a basis for which discovery should have been ordered, and that the difficulty of obtaining Mr. Snyder's financial records after thirteen years of being divorced should not stand as a bar to her cohabitation application. Ms. Smith-Barrett also pointed to the numerous social media postings, including pictures and posts of the couple on vacation in Aruba, changing their status to "in a relationship" on Facebook, sharing pictures of the couple celebrating holidays together, and changing various profile pictures to ones of the couple together.

The Appellate Division in this case specifically noted that the standard for a *prima facie* case of cohabitation is a demonstration that the couple has undertaken duties and privileges that are commonly associated with marriage including living together, intertwined finances, shared living expenses and

household chores, and a recognition of the relationship in family and social circles. As the Appellate Division believed Ms. Smith-Barrett had not met her burden, they affirmed the trial court's denial of her application.

Watkins v. Howard

This 2019 case involved a couple divorced in 1993 and Mr. Watkin's two applications to terminate his alimony on the basis of Ms. Watkin's cohabitation.[9] Ms. Howard had been in a relationship with another man since 1998. In 2009, at the trial court level, it was proffered that Ms. Howard was walked down the aisle at her daughter's wedding by her boyfriend, the couple was spending 4-5 nights per week at each other's residences, and they vacationed together. Ms. Howard's boyfriend even accompanied her to the birth of her first grandchild. Mr. Watkins further provided that the grandchildren refer to the man as "Grandpa K" and that he took on a grandfatherly role towards the grandchildren. Ms. Howard admitted that the man was in fact her boyfriend and that they spent at least one night per weekend together and also admitted that they travelled and visited family together. Based on the above, the trial court denied the application for cohabitation.

Mr. Watkins made a second application to terminate his alimony obligation based on Ms. Howard's cohabitation in 2018, alleging the same facts as he did in his 2009 motion. He additionally provided certifications from the parties' children, corroborating his claims of Ms. Howard's dating relationship. The children's certifications added that Ms. Howard and her boyfriend had made additional trips out of state to visit her children and attended multiple family events with her and also outlined an instance in which the parties' daughter, her husband, and their children visited Ms. Howard and her boyfriend in New Jersey and left the children, Ms. Howard, and her boyfriend to stay in the boyfriend's home, while the parties' daughter and her husband stayed in Ms. Howard's condo only a couple miles

away throughout the duration of their trip. Mr. Watkins additionally alleged that Ms. Howard was reliant on her boyfriend for transportation as she did not drive. This allegation was denied by Ms. Howard.

The trial court again denied Mr. Watkins's application, citing the fact that Ms. Howard and her boyfriend maintained separate homes and did not comingle finances. The judge found that the children's certifications provided little probative evidence beyond confirming that Ms. Howard and her boyfriend occasionally visit the children together and further found "no other objective indicia" that Ms. Howard and her boyfriend were in a relationship tantamount to marriage. In his decision, the trial judge found that the plaintiff had not made a *prima facie* showing that Ms. Howard's boyfriend "actually supports" the defendant.

On appeal, Mr. Watkins argued that he provided ample evidence of cohabitation to warrant further discovery, including evidence of socializing, attending family and personal events together, and residing close to one another. The Appellate Division, in affirming the trial court's denial of the motion, cited to the cases of Garlinger v. Garlinger[10] and Reese v. Weis[11] to support their holding that a demonstration that a relationship is tantamount to marriage requires an analysis of the economic benefits of the relationship. Further, the Appellate Division cited to Landau, stating that a *prima facie* case of cohabitation "can be difficult to establish because the readily available evidence is often also consistent with a less serious dating relationship, [but] it is still a prerequisite to ordering discovery and a hearing." The Appellate Division found that due to Mr. Watkins's reliance on conclusory allegations and lack of objective proofs as to a physical cohabitation or an economic entanglement of the defendant and her boyfriend, a *prima facie* case of cohabitation had not been made.

B.S. v. A.S.

This unpublished Appellate Division decision from 2019 dealt with B.S.'s appeal of the entry of a final judgment of divorce, awarding alimony to A.S.[12] During the trial, B.S. argued that an award of

alimony was inappropriate, as A.S. was already cohabitating with another woman. To support his position, B.S. alleged that A.S.'s girlfriend was spending overnights with A.S. in the presence of the parties' children during the pendency of the litigation. A.S.'s son from a prior relationship testified at trial, stating that the girlfriend did not live with A.S. but had spent nights at the home since 2017. A.S.'s girlfriend also testified at the trial, stating that she does not provide A.S. with any financial assistance, that she spends a few overnights at A.S.'s residence per week, and stated that she did assist with household chores, such as mowing the lawn (for which she was paid), driving A.S.'s son to school, and installing a screen door. The trial judge did not find that A.S. was cohabitating with her girlfriend, specifically finding that no evidence of a mutually supportive, intimate personal relationship or comingled finances were demonstrated, and that the evidence only lead to the conclusion of the girlfriend visiting A.S.'s home, helping around the house, and staying overnight.

On appeal, the Appellate Division found no merit in B.S.'s cohabitation argument. In affirming the trial court, the Appellate Division cited to Landau, stating that "[c]ohabitation is not demonstrated by evidence of 'a romantic relationship between an alimony recipient and another, characterized by regular meetings, participation in mutually appreciated activities, and some overnight stays in the home of one or the other.'" The Appellate Division also found that B.S. failed to meet his burden by only demonstrating sporadic overnights, assisting in caring for the children and occasional physical assistance around the home, and not demonstrating "that the required economic relationship existed between [A.S.] and her friend."

Logan v. Brown

This 2020 unpublished opinion dealt with Ms. Logan's appeal of the trial court's 2019 termination of Mr. Brown's permanent alimony obligation on the basis of cohabitation.[13] The parties were divorced in 2012 after a 22-year marriage. Soon after the parties separated in 2011, Ms. Logan began seeing her boyfriend, A.V. According to the parties' daughter, in 2014 Ms. Logan moved from New Jersey to a tiny

home in Maine. Prior to purchasing the tiny home, though, the parties' daughter stated that Ms. Logan briefly moved into A.V.'s cabin, also located in the same town in Maine.

The parties' daughter further testified that she visited Ms. Logan "four or five times" at A.V.'s cabin in Maine, where they also celebrated Christmas together. She also stated that Ms. Logan's clothing, pictures and personal belongings were in A.V.'s home and that Ms. Logan also slept there. The parties' daughter also stated that Ms. Logan wore an engagement ring, had purchased A.V. a ring, and referred to him as her "perpetual fiancé."

Mr. Brown presented multiple articles regarding the tiny home, with both quotes from A.V. referring to the renovations done as well as pictures of both A.V. and Ms. Logan standing in front of the home. Additionally, Mr. Brown presented an Instagram page depicting the tiny home's renovation process. The account contained many pictures of A.V. doing repairs on the home. Mr. Brown also presented Ms. Logan's website where she promoted her photography. This website listed her home as A.V.'s address. Mr. Brown also provided two private investigator reports, detailing that while Ms. Logan spent much of the day at the tiny home working on the house, her car was routinely parked at A.V.'s home at the end of the day.

During his deposition, A.V. stated that he and Ms. Logan were dating and "perpetually engaged," with no plans to marry. He also stated that he paid for their vacation to Hawaii in 2011 or 2012 and for their travel to Canada every year. He also stated that he did extensive work on the tiny home for no compensation, spending $2,000 of his own funds for the project. While denying that he and Ms. Logan lived together, he did admit that she stored belongings at his home, and they spend overnights together frequently and also denied Ms. Logan performing any household chores at his home or paying any of his bills. The trial court ultimately found that Ms. Logan was cohabitating with A.V. and terminated Mr. Brown's alimony obligation.

In their opinion affirming the trial court's termination of Mr. Brown's alimony obligation, the Appellate Division cited Landau, specifically that the framework of Lepis continues to be the standard, despite the 2014 amendments, and that the moving party still bears the burden of demonstrating a *prima facie* case of cohabitation before discovery will be ordered. Both the trial court and Appellate Division were satisfied that Mr. Brown had met his burden, despite very little information in the opinion related to any economic factors listed in the statute.

So what exactly is a *prima facie* case of cohabitation?

The New Jersey Supreme Court defines the term "*prima facie*" as "evidence that, if unrebutted, would sustain a judgment in the proponent's favor."[14] In situations involving post-judgment applications, discovery and further proceedings are not permissible unless the moving party sets forth a *prima facie* case of changed circumstances, or in this instance, of cohabitation. When met with these applications, motion judges conduct a balancing act, seeking to evaluate whether the moving party has presented sufficient evidence to warrant the intrusion on the post-divorce privacy of the non-movant, *vis-à-vis* through discovery and a plenary hearing. Absent sufficient evidence of changed circumstances, Courts protect the non-moving party's right to privacy and confidentiality of financial records.

The Supreme Court of New Jersey set forth the procedure for modifications of support in Lepis v. Lepis.[15] The first step is that the moving party bears the burden of demonstrating that there are substantial changed circumstances sufficient to justify modification. Second, after the moving party has made a *prima facie* showing of changed circumstances, the court may order financial disclosure of both parties to allow the court to make an informed decision as to what, in light of all the circumstances is equitable and fair. If there are genuine issues of material fact, a plenary hearing may be ordered.

In the cohabitation arena, entry into a marital like relationship by an alimony recipient has long served as a change in circumstance warranting a review of alimony.[16] When New Jersey's alimony statute

was revised in 2014, cohabitation was codified as a statutorily authorized basis to review alimony, due to the addition of a new subsection to the statute. The statute now provides:

> **"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 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."** [17]

Although often interpreted in such manner in the wake of Landau, the statute importantly ***does not*** state that "all" of the aforementioned considerations must be present in order for a Court to find cohabitation. On the contrary, trial courts are tasked with considering those factors, in conjunction with 'all other relevant evidence,' to determine whether the relationship at issue equates to a mutually supportive, intimate personal relationship in which the couple has undertaken the "*duties and privileges that are commonly associated with marriage or civil union*."

Consequently, in order for a party seeking a review of alimony to set forth a *prima facie* case of cohabitation, the application must provide sufficient proofs to "sustain a judgment in the proponent's

favor." In other words, there must be sufficient proof that the relationship at issue is intimate and mutually supportive, and the couple shares the duties and privileges of marriage. Nothing in our law compels the moving party to have proof of every factor set forth in N.J.S.A. 2A:34-23(n). They simply must present a sufficient basis for the Court to conclude, at least preliminarily, that the relationship at issue potentially shares the duties and privileges of marriage.

Obviously, an application devoid of any proof of the economic factors of cohabitation is at greater risk of failing to set forth a *prima facie* case than a moving party with such proofs. However, the absence of same should not be fatal to one's application for relief if the other proofs of cohabitation are sufficiently compelling.

The direction cohabitation jurisprudence has taken in the wake of Landau makes clear that it remains difficult to set forth a *prima facie* case of cohabitation. Much like any other area of family law, the adjudication of specific applications will always turn on the facts and circumstances unique to a given dispute. However, a party seeking a review of alimony based on cohabitation must bring sufficient proof of cohabitation on an initial motion in order to set forth a *prima facie* case of cohabitation. Practitioners should also be mindful to reference Landau for the specific purpose for which it was intended, as at its core, it confirms that the Lepis framework for changed circumstances still holds true in the wake of the 2014 amendments to the alimony statue. It was not a decision addressing what is, and what is not, sufficient to set forth a *prima facie* case of cohabitation, nor should it be cited for such purpose.

However, it does provide a cautionary tale for those litigants assuming they will prove a case for cohabitation through the use of discovery, as they may never get to that stage of a proceeding without substantial proof that a relationship shares the duties and privileges of marriage based upon the other factors set forth in the alimony statute.

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[1] N.J.S.A 2A:34-23(n).
[2] Rose v. Csapo, 359 N.J. Super. 53, 61 (Ch. Div. 2002). See Ozolins v. Ozolins, 308 N.J. Super. 243, 248-49 (App. Div. 1998). See also Frantz v. Frantz, 256 N.J. Super. 90, 93 (Ch. Div. 1992). See also Grossman v. Grossman, 128 N.J. Super. 193, 197 (Ch. Div. 1974).
[3] Frantz, 256 N.J. Super. 90, 93 (Ch. Div. 1992).
[4] *See,* Rose v. Csapo, *supra*, 359 N.J. Super. at 61; Ozolins v. Ozolins, *supra*, 308 N.J. Super. at 248-49; Frantz v. Frantz, *supra*, 256 N.J. Super. at 93.
[5] Rose v. Csapo, 359 N.J. Super. 53, 61 (Ch. Div. 2002). See Ozolins v. Ozolins, 308 N.J. Super. 243, 248-49 (App. Div. 1998). See also Frantz v. Frantz, 256 N.J. Super. 90, 93 (Ch. Div. 1992). See also Grossman v. Grossman, 128 N.J. Super. 193, 197 (Ch. Div. 1974).
[6] Goethals v. Goethals, 2020 WL 64933 (App. Div. Jan. 7, 2020).
[7] Garcia-Travieso v. Garcia-Travieso, 2020 WL 1866939 (App. Div. April 14, 2020).
[8] Smith-Barrett v. Snyder, 2020 WL 563468 (App. Div. Feb. 5, 2020).
[9] Watkins v. Howard, 2019 WL 5302858 (App. Div. Oct. 21, 2019).
[10] Garlinger v. Garlinger, 137 N.J. Super. 56, 65 (App. Div. 1975).
[11] Reese v. Weis, 430 N.J. Super. 552, 571 (App. Div. 2013).
[12] B.S. v. A.S., 2019 WL 4567486 (App. Div. Sept. 20, 2019).
[13] Logan v. Brown, 2020 WL 6166087 (App. Div. Oct. 22, 2020).
[14] Baures v. Lewis, 167 N.J. 91, 118 (2002).
[15] Id.
[16] Gayet v. Gayet, 92 N.J. 149, (1983).
[17] N.J.S.A. 2A:34-23(n).