The Impact of Cohabitation Under New Jersey Law: An Analysis of Pre- and Post-Amendment Statutory Law and Case-Law Precedent

By: Jeralyn L. Lawrence, Esq.[[1]](#footnote-1)

Pursuant to New Jersey law, orders entered as to alimony, whether entered by a court or pursuant to agreement of the parties, “may be revised and altered by the court from time to time as circumstances may require.” N.J.S.A. 2A:34-23. Courts have the statutory authority to both establish and revise such orders as circumstances may require. Lepis v. Lepis, 83 N.J. 139, 145, 416 A.2d 45 (1980). See also Crews v. Crews, 164 N.J. 11, 17, 751 A.2d 524 (2000). “As a result of this judicial authority, alimony and support orders define only the present obligations of the former spouses. Those duties are always subject to review and modification on a showing of ‘changed circumstances.’” Lepis, supra, 83 N.J. at 146, 416 A.2d 45. Courts employ a two-step process, first enunciated in Lepis, to determine whether there exists a change in circumstance warranting review and modification of a pre-existing alimony award. Notably, the party seeking modification bears the burden of proving that such changed circumstances exist, and that the relief sought is warranted. Lepis, supra, 83 N.J. at 157, 416 A.2d 45. The two-prong test is as follows:

A prima facie showing of changed circumstances must be made before a court will order discovery of an ex-spouse’s financial status. When the movant is seeking modification of an alimony award, that party must demonstrate that changed circumstances have substantially impaired the ability to support himself or herself. This requires full disclosure of the dependent spouse’s financial status, including tax returns . . . Only after the movant has made this prima facie showing should the respondent’s ability to pay become a factor for the court to consider.

Naturally, there exists no exhaustive list of “changed circumstances” that would warrant a court’s review and modification of alimony. However, cohabitation, which 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[,]” is one such change in circumstance frequently addressed by courts relative to requests for modification of alimony. Lepis, supra, 83 N.J. at 151, 416 A.2d 45.

New Jersey alimony law was subject to sweeping reform in September 2014 resulting in changes to the forms of alimony identified and available to litigants incident to divorce, and the enumeration of fourteen specified factors for modification and/or termination of the payor’s alimony obligation. Specifically, and under circumstances where one’s cohabitation is in dispute, the Superior Court of New Jersey has opined that statutory provisions relevant to the same do not apply to post-judgment orders or agreements finalized before enactment of the amended statute under circumstances where the order or agreement (1) contains an express contractual stipulation regarding the effect of cohabitation on alimony; (2) affirmatively asserts that the principles enunciated in Gayet v. Gayet, 92 N.J. 149, 456 A.2d 102 (1983) apply; and/or (3) was already the subject of “subsequent, post-judgment litigation that addressed and adjudicated the issue of alimony and cohabitation prior to the enactment of the statutory amendments.” See Landers v. Landers, 444 N.J.Super. 315, 133 A.3d 637 (App.Div. 2016); See also Spangenberg v. Kolakowski, 442 N.J.Super. 529, 125 A.3d 739 (App.Div. 2015); and Mills v. Mills, 447 N.J.Super. 78, 95, 145 A.3d 1105 (Ch.Div. 2016), respectively. Litigants with pre-amendment orders or marital agreements that fall within one of the three categories set forth above continue to confront these issues. Id.

1. **Analysis of Cohabitation for Pre-Amendment Orders and Agreements that   
    Explicitly Require Application of Pre-Amendment Law**

For those matters that fall outside the scope of statutory reform, the cohabitation of a recipient spouse constitutes changed circumstances requiring further review of the economic consequences of the new relationship and its impact on the previously imposed support obligation. [Gayet*,* supra, 92 N.J. at 149](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1983109738&pubNum=583&originatingDoc=Ief63720fb6f911e2a555d241dae65084&refType=RP&fi=co_pp_sp_583_155&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.History*oc.DocLink)#co_pp_sp_583_155). See [Lepis*,* supra*,* 83 N.J. at 151](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1980117391&pubNum=583&originatingDoc=Ief63720fb6f911e2a555d241dae65084&refType=RP&fi=co_pp_sp_583_151&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.History*oc.DocLink)#co_pp_sp_583_151). Seealso[Boardman v. Boardman*,* 314 N.J.Super. 340, 347 (App. Div. 1998)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1998168084&pubNum=590&originatingDoc=Ief63720fb6f911e2a555d241dae65084&refType=RP&fi=co_pp_sp_590_347&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.History*oc.DocLink)#co_pp_sp_590_347) (explaining “cohabitation constitute[s] changed circumstances . . . justifying discovery and a hearing”). The court in Konzelman defined cohabitation as “an intimate relationship in which the couple has undertaken duties and privileges that are commonly associated with marriage. These can include, but are not limited to, living together, intertwined finances . . ., sharing living expenses and household chores, and recognition of the relationship in the couple’s social and family circle.” Konzelman v. Konzelman, 158 N.J. 185, 202, 729 A.2d 7, 10 (1999).

In Konzelman, the court found that the evidence submitted was sufficient to find that plaintiff-wife was cohabiting with her boyfriend as defined by the parties’ Marital Settlement Agreement. Id. According to the court, plaintiff and her boyfriend lived together the majority of the time;[[2]](#footnote-2) plaintiff’s boyfriend paid for improvements made to her residence; plaintiff shared a joint bank account with her boyfriend; and plaintiff’s boyfriend paid for their joint vacations. Id. To constitute cohabitation under Konzelman, the relationship “must be shown to be serious and lasting.” Id. at 203. Under no circumstances, however, is a “mere romantic, casual or social relationship” considered sufficient to justify termination of alimony under New Jersey law. Id. at 202. Conversely, cohabitation involves an “intimate[,]” “close and enduring” relationship, requiring “more than a common residence” or mere sexual liaison, and is comprised of conduct whereby “the couple has undertaken duties and privileges that are commonly associated with marriage.” Id. In addition to long-term intimate or romantic involvement, indicia of cohabitation may “include, but are not limited to, living together, intertwined finances such as joint bank accounts, sharing living expenses and household chores, and recognition of the relationship in the couple’s social and family circle.” Id. The couple’s relationship “bears the generic character of a family unit as a relatively permanent household[,]” is “serious and lasting[,]” and reflects the “stability, permanency and mutual interdependence” of a single household. See [Gayet*,* supra*,* 92 N.J. at 155](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1983109738&pubNum=583&originatingDoc=Ief63720fb6f911e2a555d241dae65084&refType=RP&fi=co_pp_sp_583_155&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.History*oc.DocLink)#co_pp_sp_583_155) and [Konzelman*,* supra*,* 158 N.J. at 202–03](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1999120021&pubNum=583&originatingDoc=Ief63720fb6f911e2a555d241dae65084&refType=RP&fi=co_pp_sp_583_202&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.History*oc.DocLink)#co_pp_sp_583_202), respectively.

In Ozolins, the Appellate Division held that “a showing of cohabitation creates a rebuttable presumption of changed circumstances shifting the burden to the dependent spouse to show that there is no actual economic benefit to the spouse or the cohabitant.” [Ozolins v. Ozolins*,* 308 N.J.Super. 243, 245, 705 A.2d 1230 (App.Div. 1998)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1998059897&pubNum=590&originatingDoc=Ief63720fb6f911e2a555d241dae65084&refType=RP&fi=co_pp_sp_590_245&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.History*oc.DocLink)#co_pp_sp_590_245). See[Conlon v. Conlon*,* 335 N.J.Super. 638, 650 (Ch. Div. 2000)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=2000657349&pubNum=590&originatingDoc=Ief63720fb6f911e2a555d241dae65084&refType=RP&fi=co_pp_sp_590_650&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.History*oc.DocLink)#co_pp_sp_590_650) (holding that the dependent spouse has the burden of proof “to address the economic consequence of the [new] relationship in order for the [c]ourt to make an appropriate assessment regarding a modification or termination of alimony”). The trial court ultimately terminated defendant-husband’s alimony obligation retroactively based on plaintiff-wife’s cohabitation and defendant-husband’s deteriorating medical condition. Id. at 247. In so deciding, the trial court determined that plaintiff received a minimal financial benefit from cohabiting with her boyfriend. Id. The Appellate Division agreed with the judge’s finding that defendant made a *prima facie* showing of cohabitation, thus shifting the burden of proof to plaintiff to demonstrate her need, if any, for continuing support. Id. However, the Appellate Division remanded the matter to the trial court, finding that the court erred in terminating, rather than modifying, defendant’s alimony obligation. Id.

When faced with the circumstance of cohabitation of a recipient spouse under circumstances where pre-reform law applies, the court must focus on the economic relationship of the cohabitants to discern whether one cohabitant “subsidizes the other[.]” [Boardman v. Boardman, 314 N.J.Super. 340, 347](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1998168084&pubNum=590&originatingDoc=Ief63720fb6f911e2a555d241dae65084&refType=RP&fi=co_pp_sp_590_347&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.History*oc.DocLink)#co_pp_sp_590_347) (App.Div. 1998). Modification of alimony is warranted when the cohabitant either contributes to the dependent spouse’s support or lives with the dependent spouse without contributing. [Garlinger v. Garlinger*,* 137 N.J.Super. 56, 64 (App.Div. 1975)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1975103294&pubNum=590&originatingDoc=Ief63720fb6f911e2a555d241dae65084&refType=RP&fi=co_pp_sp_590_64&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.History*oc.DocLink)#co_pp_sp_590_64). When a dependent spouse economically benefits from cohabitation, his or her support payments may be reduced or terminated. [Gayet*,* supra*,* 92 N.J. at 155.](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1983109738&pubNum=583&originatingDoc=Ief63720fb6f911e2a555d241dae65084&refType=RP&fi=co_pp_sp_583_155&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.History*oc.DocLink)#co_pp_sp_583_155) See [Melletz v. Melletz*,* 271 N.J.Super. 359, 363 (App.Div. 1994)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1994081347&pubNum=590&originatingDoc=Ief63720fb6f911e2a555d241dae65084&refType=RP&fi=co_pp_sp_590_363&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.History*oc.DocLink)#co_pp_sp_590_363) (stating “the test for determining whether cohabitation by the dependent spouse should reduce an alimony award has always been based on a theory of economic contribution”), certif. denied*,* [137 N.J. 307 (1994)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1994158839&pubNum=583&originatingDoc=Ief63720fb6f911e2a555d241dae65084&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.History*oc.DocLink)). “The inquiry regarding whether an economic benefit arises in the context of cohabitation must consider not only the actual financial assistance resulting from the new relationship, but also should weigh other enhancements to the dependent spouse’s standard of living that directly result from cohabitation.” Reese v. Weiss, 430 N.J.Super. 552, 557-58 (App.Div. 2013).

In Reese, the court found that defendant-wife not only cohabited with her paramour, but also received a substantial economic benefit as a result of the same, warranting termination of plaintiff-husband’s alimony obligation. Id. Specifically, the court determined that plaintiff’s paramour contributed to the mortgage and taxes; paid a large portion of their joint expenses; paid defendant’s credit card bills; provided defendant with cars and necessary insurances; and provided defendant with extravagant luxuries beyond those that defendant and plaintiff experienced during the marriage. Id. In so deciding, the trial court appropriately applied the principles established in Gayet and its progeny, specifically that “[t]he extent of actual economic dependency, not one’s conduct as a cohabitant, must determine duration of support as well as its amount.” [Gayet*,* supra*,* 92 N.J. at 154](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1983109738&pubNum=583&originatingDoc=Ief63720fb6f911e2a555d241dae65084&refType=RP&fi=co_pp_sp_583_154&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.History*oc.DocLink)#co_pp_sp_583_154). In order to rebut the presumption that the living arrangement is tantamount to marriage and has reduced or ended the need for alimony, a dependent spouse must prove he or she remains dependent on the former spouse’s support. [Id. at 154–55.](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1983109738&pubNum=162&originatingDoc=Ief63720fb6f911e2a555d241dae65084&refType=RP&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.History*oc.DocLink))

The Supreme Court has described what constitutes cohabitation relative to pre-reform divorce matters. [Konzelman*,* supra*,* 158 N.J. at 202](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1999120021&pubNum=583&originatingDoc=Ief63720fb6f911e2a555d241dae65084&refType=RP&fi=co_pp_sp_583_202&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.History*oc.DocLink)#co_pp_sp_583_202). See also [Gayet*,* supra*,* 92 N.J. at 155.](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1983109738&pubNum=583&originatingDoc=Ief63720fb6f911e2a555d241dae65084&refType=RP&fi=co_pp_sp_583_155&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.History*oc.DocLink)#co_pp_sp_583_155) In so doing, the Court has explained the respective burdens of the parties when a claim of cohabitation serves as a basis to modify an alimony obligation. [Ozolins v. Ozolins, 308 N.J.Super. 243, 248, 705 A.2d 1230 (App.Div. 1998).](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1998059897&pubNum=590&originatingDoc=Ief63720fb6f911e2a555d241dae65084&refType=RP&fi=co_pp_sp_590_248&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.History*oc.DocLink)#co_pp_sp_590_248) These cases hold that a supporting spouse’s obligation may be modified or terminated when a dependent spouse economically benefits from cohabiting. [Gayet*,* supra*,* 92 N.J. at 155.](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1983109738&pubNum=583&originatingDoc=Ief63720fb6f911e2a555d241dae65084&refType=RP&fi=co_pp_sp_583_155&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.History*oc.DocLink)#co_pp_sp_583_155)

Decades ago, the Appellate Division explained:

We have no doubt, however, that where a former wife chooses to cohabit with a paramour, whether in her abode or his ... the issue may well raise whether ... she has further need for the alimony. If it is shown that the wife is being supported in whole or in part by a paramour, the former husband may come into court for a determination of whether the alimony should be *terminated or reduced.* ... In short, the inquiry is whether the former wife’s ... relationship with another man ... has produced a change of circumstances sufficient to entitle the former husband to relief. [Garlinger v. Garlinger, 137 N.J. Super. 56, 64](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1975103294&pubNum=590&originatingDoc=Ief63720fb6f911e2a555d241dae65084&refType=RP&fi=co_pp_sp_590_64&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.History*oc.DocLink)#co_pp_sp_590_64) (App.Div. 1975). See also[Wertlake v. Wertlake*,* 137 N.J. Super. 476, 487 (App. Div. 1975)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1975103600&pubNum=590&originatingDoc=Ief63720fb6f911e2a555d241dae65084&refType=RP&fi=co_pp_sp_590_487&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.History*oc.DocLink)#co_pp_sp_590_487).

When examining the cohabiting household, a trial judge starts with a review of the parties’ financial arrangements to discern whether the cohabitant actually pays or contributes toward the dependent spouse’s necessary expenses, such as housing, food, clothing, transportation, or insurance. Reese v. Weiss, 430 N.J.Super. 552, 576 (App.Div. 2013). If so, the cohabitant provides the dependent spouse with a direct economic benefit. Id. Further, indirect economic benefits which benefit the dependent spouse must also be considered, including the cohabitant’s payment of his or her own expenses. Id. When the parties’ financial obligation arrangements are comingled, blurring the demarcation of economic responsibility, subsidization of expenses by one party for the benefit of the other may occur, and the ability to prove economic independence may diminish or possibly disappear. Boardman, supra, 314 N.J.Super. at 347.

Once a *prima facie* showing of cohabitation is made by the supporting spouse, there exists a rebuttable presumption that shifts the burden of proof to the alleged cohabiting spouse. The spouse must then demonstrate that they are not cohabiting, or that there is no economic benefit to him or her as a result of the cohabitation. Rose v. Csapo, 359 N.J.Super. 53, 61 (Ch. Div. 2002). See 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). The shift of the burden of proof to the dependent spouse is premised upon the reality that he or she and the “paramour hold all the resources, as well as the, financial and social/sexual information necessary for the court to make a finding regarding cohabitation…” Rose v. Csapo, 359 N.J.Super. 53, 61(Ch.Div. 2002). Indeed, as our courts have noted, “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.” Frantz, supra, 256 N.J. Super. at 93. However, while there exists a voluminous body of case-law precedent applicable to pre-Amendment matters, the foregoing analysis illustrates that the criteria set forth in Konzelman and its progeny effectively create a formidable barrier for a payor spouse to overcome in situations where the recipient spouse is, for all intents and purposes, living in a relationship tantamount to marriage with another individual while continuing to receive alimony.

1. **Analysis of Cohabitation for Post-Amendment Orders, Post-Amendment Agreements, and Pre-Amendment Orders and Agreements that Fail to Define or Otherwise Address Cohabitation**

A payor spouse seeking to modify a post-amendment alimony order must still meet his or her initial burden of demonstrating the changed circumstance of cohabitation. Landau v. Landau, 461 N.J. Super. 107, 108 (App. Div. 2019). Specifically, and pursuant to the Appellate Division’s holding in Landau, “the 2014 amendments to the alimony statute did not alter the requirement that ‘a prima facie showing of changed circumstances must be made before a court will order discovery of an ex-spouse’s financial status.’” Id. In so deciding, the Landau court further opined that “we see no indication the Legislature evinced any intention to alter the Lepis changed circumstances paradigm when it defined cohabitation and enumerated the factors a court is to consider in determine ‘whether cohabitation is occurring’ in the 2014 amendments to N.J.S.A. 2A:34-23.” Id. at 118.

To prove cohabitation under New Jersey’s 2014 alimony reform, a payor spouse need not prove that the recipient spouse is residing with another individual. This fact is confirmed in two separate sentences within subsection (n) of the statute. N.J.S.A. 2A:34-23(n). Cohabitation is now statutorily defined in N.J.S.A. 2A:34-32(n), which states, “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 common household.’” Id. (emphasis added). In assessing whether or not cohabitation is occurring in any given case, a court must analyze the following seven factors:

(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.

N.J.S.A. 2A:34-32(n) further provides that, “[i]n 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.” Id. (emphasis added).

While there exist no reported cases analyzing the specific factors as set forth in N.J.S.A. 2A:34-32(n) at this time, trial courts throughout the state of New Jersey have and continue to face these issues and address the same. For example, the trial court in Logan v. Brown, No. A-3554-18T1, 2020 N.J. Super. Unpub. LEXIS 2015, at \*2 (App. Div. Oct. 22, 2020) recently terminated a payor’s alimony obligation retroactively based on a finding of cohabitation under N.J.S.A. 2A:34-32(n). In Logan, the parties were married for a period of twenty-two (22) years prior to their divorce in 2012. Though the parties’ Property Settlement Agreement was executed prior to the 2014 statutory amendment, the agreement expressly provided that “Wife’s cohabitation with an unrelated adult individual may constitute a change of circumstances consistent with the law then in effect based upon the then facts and then controlling case and statutory law.” Id. Plaintiff-wife vacated the marital residence following the parties’ divorce in 2012 and resided in an apartment in Mount Laurel for approximately two (2) years. Thereafter, plaintiff-wife relocated from her apartment and represented that she was living with her family. Defendant-husband disputed this representation and presented evidence, in the form of testimony and investigation reports, documenting that she had, in fact, relocated to Maine to live with her long-term boyfriend Id.

Following trial, at which time the trial court entertained testimony, reports and documentary proofs submitted by the parties, the court terminated defendant-husband’s alimony obligation retroactive to 2017. In so deciding, the trial court held that “some of the [plaintiff-wife’s] explanations . . . were wholly incredible[.] Every time [plaintiff] was asked a question about intertwining finances or staying with [her boyfriend] or having a ring . . . or being engaged or anything the answers were incomprehensible. They didn’t make sense. They . . . strained reality.” Id. at 12. The court similarly found that plaintiff-wife’s dating relationship began in 2009 or 2010, and that the evidence “’was overwhelmingly clear that [she] moved to Maine in the middle of . . . 2014’ to be with [her boyfriend] and she did not live at her sister’s house.” Id. at 11.

The court further opined that there existed “tons of social media about the two of them together.” Id. Thus, the trial court determined that plaintiff-wife had frequent contact with her boyfriend, resided with him for a period of years, and that the parties were engaged in the mutually supportive intimate personal relationship contemplated by N.J.S.A. 2A:34-32(n)(4). The trial court similarly addressed factors (2), (3) and (5) of the statute, finding that the plaintiff-wife and her boyfriend were “a couple. They do everything together. They renovate a house together, they live together . . . she takes care of his pets and . . . helps him with his website and he helps her and did this renovation in her house of the goodness of his heart, never charged her a dime.” Id. at 13.

The court further opined that “they share everything . . . they are each other’s family . . . This is clearly not just a boyfriend and girlfriend relationship. This relationship has every indicia of a marriage other than a piece of paper.” Id. Plaintiff-wife subsequently sought to appeal the trial court’s decision. In affirming the same, the Appellate Division ultimately opined: “[W]e are satisfied defendant made the requisite showing based on plaintiff’s cohabitation with [her boyfriend] . . . We have no reason to disturb the finding that plaintiff is cohabiting with [her boyfriend]. Thus, defendant’s alimony and life insurance obligation were appropriately terminated.” Id. at 20.

In contrast, the Appellate Division affirmed the trial court’s denial of defendant-husband’s application to terminate alimony in the unpublished decision of Garcia-Travieso v. Garcia-Travieso, No. A-4023-18T1, 2020 N.J. Super. Unpub. LEXIS 668, at \*14 (App. Div. Apr. 14, 2020). The parties were married for a period of twenty-one (21) years prior to their divorce in April 2014. The settlement agreement required defendant-husband to pay alimony in the sum of $14,000 per month, which would terminate upon either party’s death or plaintiff-wife’s remarriage. The agreement further provided that defendant-husband’s alimony obligation “may be modified or terminated upon the cohabitation of [plaintiff] pursuant to the law at that time.” Id. In support of his request to terminate alimony, defendant-husband represented that plaintiff’s boyfriend (1) was actively involved in her family and life events; (2) played a significant role in their children’s lives; (3) vacationed with plaintiff on several occasions; (4) assisted in household chores; (5) was present at plaintiff’s home on a regular basis; and (6) loaned plaintiff significant funds to complete construction on her home. Id. at 2. Defendant-husband additionally submitted a private investigator’s report documenting that the plaintiff’s boyfriend frequently visited her, drove her vehicle, and performed certain household chores. Id.

In opposition to the defendant-husband’s application, plaintiff-wife attested that her relationship began during the parties’ divorce proceedings and that the same was casual in nature. According to plaintiff-wife, their relationship was “not marriage like,” and they did not function as a family unit. Plaintiff-wife similarly testified that her boyfriend continued to reside at his home in Connecticut, and only stayed with her on the weekends or if he had a work assignment in New Jersey. Further, plaintiff-wife indicated that she repaid the loan in question and that while she had vacationed with her boyfriend, they each had covered their own expenses. Id. Plaintiff-wife additionally testified that the photographs taken by the private investigator were predominantly taken on weekends. According to plaintiff-wife, her boyfriend did not stay in her residence when she was not present, did not have a key to the residence or access to the garage, nor did he contribute to her personal costs and expenses. In support of her testimony, plaintiff-wife submitted the deed to her residence, utility bills, credit card statements, receipts and bank statements. Id.

In denying the defendant-husband’s request for relief, the trial court explicitly acknowledged the lack of financial dependence and intertwined finances between plaintiff-wife and her boyfriend (N.J.S.A. 2A34-23(n)(1)); that her boyfriend maintained a separate residence and paid for his own living expenses (N.J.S.A. 2A34-23(n)(2)); the increased familiarity between plaintiff-wife and her boyfriend’s families (N.J.S.A. 2A34-23(n)(3)); how often the two (2) spent time together and the duration of their relationship (N.J.S.A. 2A34-23(n)(4)), and whether defendant-husband’s evidence was sufficient to demonstrate that they shared household chores, (N.J.S.A. 2A34-23(n)(5)). The trial court held that defendant-husband “has [not] established or met the burden of a prima facie showing that there has been a change in circumstance in this matter.” Id. at 7.

The trial court further confirmed that it had considered the plaintiff-wife’s “’certification, [boyfriend’s] certification, the exhibits that had been provided to the Court, receipts to the Court regarding financials . . . and the private investigator materials, [and it] did not find that that was anywhere near sufficient’ to grant defendant the relief requested.’” Id. With regard to the private investigator’s report, the trial noted that the dates on which the investigator captured the boyfriend at plaintiff-wife’s residence were “extremely stale” and that “the one incident of [the boyfriend] shoveling snow ‘does not rise to maintenance of the property [and] sharing responsibilities regarding the home and the property.’” Id. On appeal, the Appellate Division affirmed the trial court’s Order, stating:

Giving defendant all favorable inferences from the motion record, he demonstrated that plaintiff and [her boyfriend] have been in a long-term relationship since 2014 (a fact well-known prior to defendant’s agreement to pay plaintiff alimony in accordance with the Agreement), that their social and family circles recognize that relationship, and that they see each other every weekend plus some weekdays. With respect to household chores, out of thirty-nine days that defendant surveilled plaintiff’s residence, [the boyfriend] was observed taking the garbage out once, shoveling snow once, and carried in boxes or shopping bags three times. Thus, even though N.J.S.A. 2A:34-23(n) states that a court may not find an absence of cohabitation solely on the grounds that they do not live together, we agree with the court that the other evidence in the motion record was wholly insufficient to establish a prima facie showing of changed circumstances based on cohabitation.

The Appellate Division’s analysis as set forth above only further illustrates that the unique facts and circumstances of any given case drive the outcome of the same. In Garcia. The trial court’s findings that plaintiff-wife had engaged in a long-term relationship with her boyfriend, and that their families and social circles recognized this relationship, was not sufficient to meet the requisite legal standard.

The Appellate Division reversed and remanded the trial court’s decision to deny defendant-husband’s application to terminate alimony based on plaintiff-wife’s purported cohabitation in the unreported matter of Goethals v. Goethals, No. A-0513-18T2, 2020 N.J. Super. Unpub. LEXIS 32, at \*1 (App. Div. Jan. 7, 2020). The parties were married for a period of fifteen (15) years prior to their divorce in 2016. As part and parcel to their agreement, the parties incorporated a provision relative to cohabitation: “[C]ohabitation in a mutually supportive, intimate, personal relationship shall be considered a change of circumstances warranting a review of alimony.” Id. at 4. Defendant-husband filed an application with the trial court wherein he asserted that plaintiff-wife had been involved in an “exclusive, enduring and committed relationship for the past three . . . years,’ which ‘began prior to’ the finalization of their divorce and ‘has now resulted in . . . plaintiff and [her boyfriend] becoming engaged.’” Id. at 6. In support of his application, defendant-husband relied upon social media posts, his personal observations, and the report of his private investigator. Id.

Plaintiff-wife opposed the application, asserting that while she was engaged as of April 2017, she had never intertwined finances with her boyfriend, shared household chores, or lived together. Id. at 8. The trial court ultimately denied defendant-husband’s application to terminate alimony, concluding that he had “fallen short . . . in making a prima facie case of cohabitation to shift the burden of proof to the plaintiff.” Id. Though the trial court acknowledged plaintiff-wife’s engagement, the court opined that their relationship “is the romantic relationship characterized by regular meetings, participation in mutually appreciated activities, and some overnight stays,’ all of which were insufficient to establish cohabitation ‘considering the absence of economic impact.’” Id. at 9. According to the trial court, defendant-husband failed to establish any evidence of “intertwined finances, such as joint bank accounts and other joint holdings or liabilities,’ and failed to produce any evidence of ‘joint responsibility for living expenses.’” Id. The court further opined that “eating out, vacationing, and visits to plaintiff’s shore house do not suggest that plaintiff or [her boyfriend] are paying each other’s living expenses.” Id.

Among other considerations, the trial court found “no evidence of ‘sharing household chores,’ or caring ‘for each other’s children.’” Id. The court similarly rejected the defendant-husband’s claims that twenty-eight (28) photographs on social media over the course of a two (2) year period constituted “recognition of the relationship in the couple’s social and family circle,’ or evidence ‘of a relationship tantamount to marriage.’” Id. at 10. Conversely, the trial court determined that the foregoing was “evidence of casual contact between friends on the internet; not two families effectively merging by virtue of the relationship between a couple . . . Even if defendant had better evidence, recognition of the couple would not be dispositive of a prima facie case of cohabitation” Id.

The trial court concluded:

As for living together, the frequency of contact, the duration of the relationship, and other indicia of a mutually supportive intimate personal relationship, defendant's photographs of moving trucks and POD[S] containers confirm only one thing — that plaintiff moved and [her boyfriend] helped the movers. There is no evidence [her boyfriend's] belonging[s] were inside the POD[S]. There is no evidence that [her boyfriend] moved to New Jersey whatsoever, let alone back in October 2016, the time of the POD[S's] invoice and purported move. . . . All of the activity reported by the private investigator is nothing short of sporadic. The pattern of the time periods in the report reflect temporary visiting. The private investigator could not "string together" any significant length of time suggesting anything more than regular visits and overnight stays. Same is said for the defendant's own photographs offered as evidence . . . . Defendant's evidence certainly suggests an intimate and enjoyable relationship, albeit one mutually supportive emotionally, not economically. Intimacy does not pay the bills or maintain the standard of living memorialized in a [MSA].

Defendant-husband sought reconsideration of the trial court’s order, filed a subsequent application approximately one (1) year later for the same relief, and ultimately appealed the trial court’s denial of the same.

Upon review of the trial court’s decision, the Appellate Division reversed and remanded the same, stating: “By dismissing the substantial evidence amassed by defendant, and requiring evidence of intertwined finances and the couple living together on a full-time basis to establish prima facie evidence of changed circumstances, the judge misapprehended the express provision of the MSA and the factors enumerated in N.J.S.A. 2A:34-23(n).” Id. at 26. According to the Appellate Division, the trial court committed reversible error by failing to order discovery and hold a hearing to address the material facts in dispute. Id.

Among other considerations, the case-law precedent identified above further illustrates that, while the Legislature borrowed language from the Konzelman court in defining cohabitation as a “mutually supportive, intimate personal relationship in which a couple has undertaken duties and privileges that are commonly associated with marriage or civil union,” the statute explicitly clarifies that cohabitation does not require the alimony recipient to physically reside with another person. Id. Consequently, the barrier that once seemed insurmountable has become more attainable for the payor spouse to overcome. Moreover, the terms of the statute as set forth above explicitly allow a court to suspend or terminate alimony upon a finding of cohabitation. However, the authority of the court is not strictly limited to these two options, as the statutory language does not preclude a court from modifying alimony if deemed appropriate under the circumstances:

Pending any matrimonial action or action for dissolution of a civil union brought in this State or elsewhere, or after judgment of divorce or dissolution or maintenance, whether obtained in this State or elsewhere, the court may make such order as to the alimony or maintenance of the parties . . . as the circumstances of the parties and the nature of the case shall render fit, reasonable and just . . . Id. (emphasis added).

The permissive language employed by the Legislature permeates the statute and allows courts to suspend, terminate, or modify alimony upon cohabitation based on the specific facts of the case, application of the law, and principles of equity. This interpretation is further supported by the court’s analysis of the amended statute in Spangenberg:

Recently, the Legislature adopted amendments to N.J.S.A. 2A:34-23, designed to more clearly quantify considerations examined when faced with a request to establish or modify alimony . . . Apt to this matter, the amendments include provisions regarding modification of alimony and the effect of a dependent spouse’s cohabitation . . . Spangenberg v. Kolakowski, 442 N.J. Super. 529, 536-37, 125 A.3d 739 (App.Div. 2015). (emphasis added).

The statutory language and case-law precedent interpreting the amended statute clearly support the position that our courts have the authority to terminate, suspend, or modify the payor spouse’s alimony obligation once cohabitation has been demonstrated. This principle is further supported by the long-established case-law precedent analyzed above. Specifically, an award of alimony remains subject to review and, if warranted, modification, when either party experiences a substantial change in financial circumstances. [Lepis*,* supra*,* 83 N.J. at 146](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1980117391&pubNum=583&originatingDoc=Ief63720fb6f911e2a555d241dae65084&refType=RP&fi=co_pp_sp_583_146&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.History*oc.DocLink)#co_pp_sp_583_146) (citation omitted). See also[N.J.S.A. 2A:34–23](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000045&cite=NJST2A%3a34-23&originatingDoc=Ief63720fb6f911e2a555d241dae65084&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.History*oc.DocLink)) (stating alimony orders “may be revised and altered by the court from time to time as circumstances may require”).

The parameters of alimony reform and its effect on cohabitation continue to evolve. Our courts have similarly begun to interpret the statute and its practical application to matters involving the enforcement of cohabitation settlement provisions. The New Jersey Supreme Court’s decision in Quinn is particularly instructive on this issue. Quinn v. Quinn, 225 N.J. 34, 137 A.3d 423, 425 (2016). In Quinn, the parties entered into a Marital Settlement Agreement providing that alimony would terminate if the supported spouse cohabited with another. Id. at 38. Although the trial court determined that the supported spouse cohabited for a period of twenty-eight months, the court suspended the payor spouse’s alimony obligation for the period of cohabitation in lieu of terminating it. Id. at 38-39. In reversing the lower court’s decision, the New Jersey Supreme Court held that once cohabitation is proven, the inquiry ends and the terms of a Marital Settlement Agreement providing for termination or modification of alimony are enforceable. Id. at 53-4.

According to the Court,

[i]t is irrelevant that the cohabitation ceased during the trial when that relationship existed for a considerable period of time. Under those circumstances, when a judge finds that the spouse receiving alimony has cohabited, the obligor spouse is entitled to full enforcement of the parties’ agreement. When a court alters an agreement in the absence of a compelling reason, the court eviscerates the certitude the parties thought they had secured, and in the long run undermines this Court’s preference for settlement at all, including marital [] disputes. Id.at 55. (emphasis added).

The Quinn court further stated that,

[w]hen parties to a matrimonial settlement agreement have agreed to permit termination of alimony on remarriage or cohabitation, they have recognized that each are equivalent events. In each situation the couple has formed an enduring and committed relationship. In each situation, the couple has combined forces to mutually comfort and assist the other. The only distinction between remarriage and cohabitation is a license and the recitation of vows in the presence of others. When the facts support no conclusion other than that the relationship has all the hallmarks of a marriage, the lack of official recognition offers no principled basis to treat cohabitation differently from an alimony terminating event. Id. (emphasis added).

Clarification of cohabitation from the Legislature and the practical application of the statute by the courts have made it easier for a payor spouse to prove he or she is entitled to terminate alimony through enforcement of a marital settlement agreement. However, notwithstanding the objective factors set forth within the reformed statute, pursuing termination of alimony based on cohabitation continues to be a difficult burden to overcome, especially under circumstances where the recipient spouse is actively concealing cohabitation.

An analysis of case-law illustrates that statutory law and relevant case-law precedent relative to changed circumstances, and specifically cohabitation, provide courts with the requisite guidelines to determine whether or not a termination, suspension or modification to a previously ordered or agreed-upon alimony award is appropriate and warranted. However, these cases similarly demonstrate that these issues will be decided based on the facts and circumstances of each case. When confronted with a potential cohabitation case, it is imperative that one first analyze the relevant agreement or court order and any language contained therein that may address the issue. To the extent cohabitation is expressly addressed in a prior agreement or order, the same will dictate the post-judgment analysis. Thereafter, one must ensure that the correct legal analysis is applied, with the same being dependent upon the date of entry of the order or agreement. Though the law may apply differently to pre-amendment and post-amendment orders and agreements, it remains the facts and circumstances of any given case that drive its outcome, as the court retains exceptional authority and discretion under each analysis.

1. The author would like to thank Ashley E. Edwards, Esq. for her tremendous contributions to this article. [↑](#footnote-ref-1)
2. Although the actual length of time that plaintiff and her boyfriend actually resided together is unknown, defendant undertook surveillance of plaintiff’s residence “seven days a week for 127 days, mostly in the evening, nighttime, and early morning hours.” Id. at 191. Surveillance demonstrated that plaintiff’s boyfriend returned to her residence “most evenings” and he left the residence “most mornings to go to work.” Id. [↑](#footnote-ref-2)