The Continued Confusion of Cohabitation Post-Landau: A Recent New Jersey Appellate Division Ruling Provides Further Guidance

Client Alert

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By: Barry S. Sobel

In the precedent-setting case *Landau v. Landau*, decided by the Superior Court of New Jersey Appellate Division in September 2019, the Court held that the 2014 statutory amendments to New Jersey's alimony statute, which essentially codified prior case law with regard to the issue of cohabitation, did not alter the requirement that a party seeking to terminate his/her alimony obligation remained obligated to establish a prima facie ("at first look") case of cohabitation prior to obtaining discovery with respect thereto. Notably, the *Landau* Court did not address what qualified as prima facie evidence of cohabitation or whether the alimony payor in that matter established prima facie evidence.

Temple v. Temple

In a June 17, 2021 unpublished decision, the Appellate Division provided further guidance to explore the specific requirements necessary to illustrate the presence of a prima facie showing of cohabitation in the matter of *Temple v. Temple*.

In *Temple*, the parties, who were married for over 18 years, entered into a marital settlement agreement obligating Mr. Temple to pay Ms. Temple permanent alimony. More than 16 years later, in July 2020, Mr. Temple sought to terminate his alimony obligation on the grounds that Ms. Temple was cohabiting with another individual with whom she had been in a relationship for more than 14 years. Citing *Landau*, the trial court denied Mr. Temple's application, holding that Mr. Temple failed to present prima facie evidence of cohabitation because he failed to submit evidence on all six enumerated statutory factors.

The Appellate Division reversed the trial court, finding that Mr. Temple was not required to submit evidence on all statutory factors. In support of its determination, the Court referred to a seventh "catch-all" statutory factor allowing a court to consider all other relevant evidence, thereby demonstrating that the statute does not contain "the alpha and omega of what ultimately persuade a court that a support spouse is cohabiting."

The Court also held that the trial court impermissibly decided genuine issues of fact in competing certifications without conducting a hearing and placed improper weight on Ms. Temple's certifications when Mr. Temple - based on the evidence he presented, as discussed below - was entitled to an assumption of the truth of his allegations and the benefit of all reasonable inferences.

Notwithstanding the procedural statutory element, the Court also noted substantively that it would be virtually impossible to provide evidence on all 6 statutory factors. For example, the Court referred to the very first statutory factor - evidence of intertwined finances of the alleged cohabitant and paramour. As the Court noted, "if *Landau* correctly holds that compulsory discovery is not permitted until a *prima facie* case is shown, how is it that the movant is to obtain and present direct evidence that a former spouse and another have intertwined their finances?" The Court further noted that absent "voluntary turnover, a movant will never be able to offer evidence about the financial relationship [and if] a movant must check off all six boxes to meet the burden of presenting a *prima facie* case, a finding of cohabitation will be as rare as a unicorn."

The Court held that the judicial task in determining whether a movant has sufficiently alleged a prima facie case of cohabitation is "far less mechanical" and instead, relies on analysis of all statutory factors in their totality to determine if the alleged cohabitant and significant other are in a mutually supportive relationship tantamount to marriage. With regard to this specific matter, the Court held that Mr. Temple presented an abundance of evidence demonstrating that he was entitled to further discovery, specifically including, but not limited to information and/or documentation demonstrating that Ms. Temple and her paramour (a) are now and have previously resided together on several occasions, (b) have a 14+ year relationship, (c) traveled together extensively, (d) were the subject of at least 7 social media posts over the span of 5 years where Ms. Temple's paramour referred to Ms. Temple as his wife (that were subsequently scrubbed/deleted); (e) traveled/attended/participated in events extensively; (f) spent holidays together, and (g) that Ms. Temple spent significant time at her paramour's vacation home over 4+ years. The Court held not that this evidence constituted prima facie evidence of cohabitation, but rather that this evidence was sufficient to entitle Mr. Temple to discovery and an evidentiary hearing and reversed and remanded for same.

Key Takeaway

Trial courts have continued to misapply the *Landau* holding to issues of fact regarding whether a prima facie burden to warrant further discovery has been satisfied. Although unreported, the *Temple* holding will hopefully correct that pervasive misapplication. Cohabitation, however, remains a fact-sensitive inquiry based on the unique circumstances of each individual situation, with no one factor holding more weight than others.

Related Attorneys

Barry S. Sobel

Partner

973.577.1816

Email