

**IS A TEN (10) YEAR MARRIAGE STILL CONSIDERED LONG-TERM: AN
OVERVIEW OF THE DIFFERENT TYPES OF ALIMONY AND THE
JUDICIAL PROGRESSION SUBSEQUENT TO HUGHES**

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The award of alimony to a divorcing spouse is provided for by statute. Specifically, N.J.S.A. 2A:34-23 sets forth that “after judgment of divorce or maintenance ... the court may make such order as to alimony or maintenance of the parties ... as the circumstances of the parties and the nature of the case shall render fit, reasonable and just.” Pursuant to N.J.S.A. 2A:34-23(b), Courts are permitted to award one or more of the following types of alimony: permanent, rehabilitative, reimbursement or limited duration. The following is a brief overview of these four (4) different types of alimony:

PERMANENT ALIMONY - This form of alimony is intended to compensate a spouse for the economic need which was created by the marriage. Id. at 477. Permanent alimony is reserved for marriage of long duration where economic need is demonstrated. Gordon v. Rozenwald, 380 N.J. Super. 55 (App. Div. 2005). In any case where there is a request for permanent alimony, a Court is required to consider and make findings as to the factors set forth in N.J.S.A. 2A:34-23(b). If an award of permanent alimony is not warranted, then the Court must state its basis for not doing so, and upon making such findings, may thereafter consider whether limited duration, rehabilitative and/or reimbursement alimony is appropriate.

REHABILITATIVE ALIMONY - This form of alimony permits a short-term award to enable a former spouse to complete whatever steps are needed to become economically self-sufficient, and terminates upon their reaching this position of self-support. Cox v. Cox, 335 N.J. Super. 465, 475 (App. Div. 2000). Such an award is appropriate when a spouse has postponed their educational pursuits to raise a family or support the household. Id. at 475.

REIMBURSEMENT ALIMONY - This form of alimony is intended to compensate a spouse who made financial sacrifices that permitted the other spouse to forego gainful employment while securing an advanced degree. Id. at 475. It follows that this type of alimony is limited to “monetary contributions made with the mutual and shared expectation that both parties to the marriage will derive increased income and material benefits”. Id. *citing to*, Mahoney v. Mahoney, 9 N.J. 488 (1982).

LIMITED DURATION ALIMONY - By way of history, less than a decade ago, the New Jersey Legislature created an additional form of alimony - limited duration alimony - for situations where the parties’ marriage was not of a long duration and permanent alimony was not warranted. N.J.S.A. 2A:34-23(b). The legislative intent behind creating limited duration alimony was to ensure that the dependent spouse, in a marital relationship of not substantial length, was compensated for their contribution to the marital partnership. See Gordon v. Rozenwald, 380 N.J. Super. 55 (App. Div. 2005).

Whether permanent alimony or limited duration alimony is awarded turns principally upon the length of the marriage. The Appellate Division, in Gordon, explained:

“Limited-duration alimony, like permanent alimony, is based primarily on the marital enterprise. It is distinguishable from permanent alimony, because the length of the marriage does not warrant permanent support...” *Id.* at 66.

In Gordon, the Appellate Division further analyzed when an award of limited duration alimony is available to a dependent spouse. Specifically, in Gordon, the Appellate Division noted that:

“Limited duration alimony is available to a dependent spouse who made “contributions to a relatively short-term marriage that... demonstrated the attributes of a ‘marital partnership’ and has the skills and education necessary to return to the workforce.” *Id.* at 65-66, *citing to, Cox v. Cox*, 335 N.J. Super. 465, 483 (App. Div. 2000).

When a Court is required to decide between Limited Duration Alimony and Permanent Alimony, the identical factors are to be reviewed, with the chief difference being that limited duration alimony is awarded in marriages of not long duration. When ascertaining how to review these factors and decide between limited duration and permanent alimony, the Appellate Division in Tarantino stated that:

“To determine whether to award limited duration alimony, the trial judge must consider the same factors applicable to permanent alimony, adjusted only to reflect the limited duration of the marriage...The trial court must consider, and make specific findings, regarding the statutory factors set forth in N.J.S.A. 2A:34-23b.” Tarantino v. Tarantino, 2006 WL 572197 (N.J.Super.A.D., 2006).

In 1998, prior to the September 13, 1999 legislative amendment recognizing both reimbursement alimony and limited duration alimony, the Appellate Division in Hughes v. Hughes, 311 N.J. Super. 15 (App. Div. 1998), was required to decide whether a ten (10) year marriage warranted an award of permanent alimony. In deciding in the affirmative, the Appellate Division set forth that:

“In this case, the judge stressed that he considered this to be a short-term marriage, justifying the brief and minimal amount of alimony, even considering the even briefer period of slightly increased rehabilitation. First, we take issue with a ten-year marriage being considered a short-term marriage. By today’s standards, it is not.” Id. at 31.

In determining that the marriage was not of a short-term duration, the Appellate Division remanded this matter to the Trial Division with the premise that the supported spouse was to receive permanent alimony. Although not

discussed at length herein, it should be noted that the Legislature provided for limited duration alimony approximately one (1) year after the decision in Hughes. As the Appellate Division in Hughes noted that although permanent alimony was warranted, it specifically requested that the Trial Court consider whether the permanent alimony could be provided “at a reduced rate to reflect a marriage of this medium length”. Given this directive of the Appellate Division in Hughes, it appears that given their belief that this marriage was of “medium length”, that had same been available, limited duration alimony may have been warranted.

Although not available in Hughes, soon after the Legislature amended the alimony statute, a multitude of Courts have confirmed that marriages in or around ten (10) years in duration do not warrant permanent alimony, should not be considered a long-term marriage, and an award of limited duration alimony, rather than permanent alimony, would be warranted. In fact, awards of permanent alimony have been reversed where the duration of these marriages were not of sufficient length.

In Dubois v. Brodeur, 2007 WL 2012387 (N.J. Super. A.D.), the Appellate Division reversed and remanded the trial judge’s award of permanent alimony. Specifically, the Appellate Division noted that “An award of limited duration alimony rather than permanent alimony should have been awarded” and that an award a permanent alimony “is not warranted in this case.” In confirming their holding, the Appellate Division in Brodeur cited to the *Report of the Commission to*

Study the Law of Divorce (April 18, 1995), which at Recommendation 13, set forth that the Commission was of the “unequivocal view” that limited duration alimony “should be limited to shorter marriages and not be ordered in long-term marriages.” Brodeur at 18.

A similar fact pattern was presented to this Court in Schwartz v. Schwartz, 2005 WL 2861023 (N.J. Super. A.D.). In Schwartz, the Appellate Division reversed and remanded the Trial Court’s award of permanent alimony to a 37 year-old wife. When analyzing the length of the marriage in Schwartz, this Court described same as a “short-term nine-year marriage”. Id. at 1. In reversing the erroneous ruling of the lower court, this Court explained its basis for the reversal as follows:

“Limited duration and permanent alimony reflect and validate “the important policy of recognizing that marriage is an adaptive economic and social partnership” ...As contrasted with permanent alimony, limited duration alimony is awarded when “an economic need for alimony is established, but the marriage was of short-term duration such that permanent alimony is not appropriate.” ...Permanent alimony is generally reserved for “marriages of long duration where economic need is also demonstrated.”... Schwartz at 3, *citing to*, Cox v. Cox, 335 N.J.Super. 465, 479 (App. Div. 2000).

“One of the statutory factors that is especially relevant when deciding whether to award limited duration alimony or permanent alimony is the length of the marriage. ...” All other statutory factors being in equipoise, the duration of the marriage marks the defining distinction between whether permanent or limited duration alimony is warranted or awarded.” Cox at 483.

Similarly, the Appellate Division in Heinl v. Heinl, 287 N.J. Super. 337, 346 (App. Div. 1996), reversed a permanent alimony award when the parties’ were involved in a short-term marital relationship. In Heinl, the Appellate Division reversed an award of permanent alimony to a 34-year old wife when the parties’ had a “relatively short marital life” of “a period of seven years and eight months” from the date of their marriage through the date of their separation. Id. at 346.

Most recently, the Appellate Division in the unreported opinion of Christopher v. Christopher, WL 1918080 (N.J. Super. A.D. 2009) confirmed that a 9-year marriage did not warrant permanent alimony. In this unreported decision, the Appellate Division noted that the Trial Court, in awarding permanent alimony, found that the parties “had about a nine-year relationship” and stated that this marriage was “neither long nor short duration.” Id. at 6. In reviewing the Trial Court’s findings, the Appellate Division noted that the Court erred in awarding the supported spouse permanent alimony rather than limited duration alimony.

Additionally, the Appellate Division confirmed that:

“Although there is no bright line between marriages of long and short duration, this marriage is more appropriate characterized as having a short rather than a long duration.” Id. at 6.

Similarly, the Appellate Division in the unreported opinion of Valente v. Valente, WL 169294 (N.J. Super. A.D. 2009) confirmed that an 11-year 9 month marriage did not warrant permanent alimony. In making this finding, the Appellate Division noted that alimony of limited duration was appropriate as a “marriage of eleven years and nine months was of intermediate length.” Based upon the intermediate length of the marriage, the Appellate Division reversed the Trial Court’s award of permanent alimony and remanded this matter for an award of limited duration alimony.

Equally indicative of the progression away from Hughes and toward the award of limited duration alimony in marriages of medium or intermediate length, is the Appellate Division’s affirmation of an award of limited duration alimony in Booth v. Booth, 2006 WL 20568623 (N.J.Super.A.D., 2006). In Booth, after 11 years of marriage, the Appellate Division affirmed a limited duration alimony award of four (4) years to a 33-year old wife who was the primary caretaker of the parties’ five year-old child. Id. at 8.

The Appellate Division confirmed that based on the parties’ circumstances, it was appropriate to award alimony of “limited duration, rather than the more extreme options of a permanent alimony award or outright denial

of alimony.” Id. This Court concluded that “[t]he four-year alimony term selected by the trial judge reflected a sensible exercise of discretion and fairness.” Id.

In summary, it appears that with the September 13, 1999 statutory amendment providing for limited duration alimony, the ten (10) year benchmark for permanent alimony, as purportedly provided for within Hughes, is being substantially eroded. As set forth above, there is a host of case-law, both reported and unreported, confirming that in marriages of intermediate length, limited duration alimony – not permanent alimony – is appropriate.