

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-000139-24

ROBIN COLEMAN

Plaintiff-Respondant

V

KARL COLEMAN

Defendant-Appellant

CIVIL ACTION
ON APPEAL FROM
SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION FAMILY PART
ATLANTIC COUNTY
DOCKET NO. FM-01-379-23

HONORABLE STEVEN SCHEFFLER, J.S.C.

Sat below

BRIEF AND APPENDIX
FOR
APPELLANT KARL COLEMAN

KARL COLEMAN
5 SCHOOL VIEW DR. APT. 1
ABSECON N.J. 08201
609-515-0062
kvc415@comcast.net

RECEIVED
APPELLATE DIVISION
MAR 17 2025
SUPERIOR COURT
OF NEW JERSEY

RECEIVED
APPELLATE DIVISION
APR 04 2025
SUPERIOR COURT
OF NEW JERSEY

TABLE OF CONTENTS

	PAGE
PRELIMINARY STATEMENT	1
PROCEDURAL HISTORY	2
STATEMENT OF FACTS	3
ARGUMENT	
I. THE TRIAL COURT ERRED IN THE ALLOCATION OF PENSION ASSETS BY MISAPPLICATION OF LAW, FINDING OF FACT AND ABUSE OF DISCRETION. (Raised below: Da1; 5T, 34-35)	5
II. THE TRIAL COURT ERRED IN NOT PROVIDING SPECIFIC FINDINGS OF FACT, OMISSIONS OF FACT AND FAILURE TO CONSIDER ALL CRITERIA MANDATED BY N.J.S.A. 2A:34-23.1 IN THE EQUITABLE DISTRIBUTION OF THE PENSION ASSET AND THE HOME ASSET. A PATTERN OF PREJUDICE EMERGED TOWARDS THE DEFENDANT AND PERSISTED THROUGHOUT THE TRIAL THAT EXTREMELY HARMED HIM AND NEGATIVELY	29

INFLUENCED THE COURTS DECISION ON THESE ASSETS.

(Raised below: Da1; 5T,1-50)

III. THE TRIAL COURT DID NOT PROVIDE SPECIFIC FINDINGS 56

ON THE EVIDENCE ABOUT ALL OF THE STATUTORY FACTORS
SET FORTH IN SECTION 2A:34-23(B)-ALIMONIY MAINTENANCE.

THE TRIAL COURT DID NOT PROVIDE WRITTEN FINDINGS OF
FACT AND CONCLUSIONS OF LAW ON ISSUES ELEVATED TO
GREATER IMPORTANCE. THE TRIAL COURTS DECISION WAS
BASED ON FINDINGS NOT SUPPORTED IN TESTIMONY AND
THE RECORD, RESULTING IN AN AWARD UNABLE TO SUSTAIN
THE DEFENDANT IN THE STANDARD OF LIVING AFFORDED
DURING THE MARRIAGE.

(Raised below: Da1; 5T, 1-50)

CONCLUSION

58

TABLE OF JUDGEMENTS, ORDERS AND RULINGS

Case management order filed March 28, 2023 Da123

MESP Case Management Conference order
Filed September 20, 2023

Post-MESP Case Management Conference order to
Economic mediation September 29, 2023 Da44

Intensive Settlement Conference order February 21, 2024

Order to retain Lois Fried C.P.A. to evaluate pension assets
and taxes issue February 21, 2024 Da45

Order for Trial April 15, 2024

Oral Final Order of Judgement July 10, 2024 1T4

Written Final Order of Judgement July 16, 2024 Da 1

TABLE OF APPENDIX

appendix document	appendix page number
Final Order of Judgement Filed July 16, 2024	Da1
Complaint filed December 23, 2022	Da5
Answer filed February 20, 2023	Da8
Exhibit A) N.J.S.A. 2A:34-23.1	Da11
Exhibit B) Trial memorandum on behalf of defendant Karl Coleman	Da14
Exhibit C) Matrimonial early settlement panel memorandum	Da22
Exhibit D) Intensive settlement conference memorandum	Da33
Exhibit E) Order for economic mediation	Da44
Exhibit F) Order to retain services of CPA for taxes and QDRO	Da45
Exhibit G) Letter from CPA Capaldi Reynolds	Da47
Exhibit H) Plaintiff case information statement CIS	Da48
Exhibit I) Social Security Document	Da71
Exhibit J) Order for Intensive Settlement Conference	Da72

Exhibit K) Defendant case information statement CIS	Da73
Exhibit L) Plaintiff case information statement	Da90
Exhibit M) Final Order of Judgement FOJ	Da114
Exhibit N) Defendant Social Security Statement	Da118
Exhibit O) Case Management Order	Da123
Exhibit P) Intensive Settlement Memorandum on behalf of defendant	Da127
Exhibit Q) Public Catalyst Document	Da134
Exhibit R) Amended Answer to Counterclaim	Da136
Exhibit S) Quit Claim Deed	Da141
Exhibit T) Tax Return Comparison	Da146
Exhibit U) Plaintiff w-2017, 2019 and 2018 tax return	Da147
Exhibit V) Answer to defendant's Amended Answer & Counterclaim	Da150
Notice of Appeal, Filed September 9, 2024	Da152

TABLE OF AUTHORITIES

<u>Authority number</u>	<u>Brief page</u>
Title 2A – Administration of Civil and Criminal Justice	6, 29
Section 2A:34-23.1 – Equitable Distribution Criteria	6, 29
Section 2A:34-23(b) Alimony Maintenance	55
Court Rules:	
Rule 2:10-2	5
Rule 2:10-5	28, 60
Case Law:	
<u>Brodinsky v. Brodinsky,</u> 162 N.J. Super. 437 (App. Div. 1978)	15, 49, 52
<u>Crews v. Crews,</u> 164 N.J. 11,16, 751 (2000)	57
<u>Esposito v. Esposito,</u>	60

158 N.J. Super. 285 (App. Div. 1978)

Gemignani v. Gemignani, 28, 46
146 N.J. Super. 278 (App. Div. 1977)

Genovese v. Genovese, 29, 44
392 N.J. Super. 215 (App. Div. 2007)

Hughes v. Hughes, 38
311 N.J. Super. 15, 34, 709 (App. Div. 1998)

Innes v. Innes, 57
117 N.J. 496, 503, (1990)

Kikkert v. Kikkert, 16, 25, 35
177 N.J. Super. 471 (App. Div. 1981)

Kruger v. Kruger 41
73 N.J. 464,468 (N.J. 1977)

LaSala v. LaSala, 11, 18, 29
335 N.J. Super. 1 (App. Div. 2000)

Mahoney v. Mahoney, 57
91 N.J. 488, 501-02, 453, (1982)

<u>Mani v Mani,</u> 183 N.J. 70, 80, 869 (2005)	57
<u>Marx v. Marx,</u> 265 N.J. Super. 418, 627 (1993)	14
<u>McGrew v. McGrew,</u> 151 N.J. Super. 515 (App. Div. 1977)	23, 36
<u>M.G. v. S.M.,</u> 457 N.J. Super. 286 (App. Div. 2018)	13, 25, 49 55, 57
<u>Painter v. Painter,</u> 65 N.J. 196, 320, (1974)	10, 11, 24 41, 53
<u>Perkins v. Perkins,</u> 159 N.J. Super 243 (App. Div. 1978)	45
<u>Rothman v. Rothman,</u> 65 N.J. 219, 320 (1974)	6, 26, 49
<u>Slutsky v. Slutsky</u> 451 N.J. Super. 332 (App. Div. 2017)	14, 42, 45, 48

State v. Brown 8, 55, 57
118 N.J. 595, 606 (1990)

Steneken v. Steneken, 23, 36, 55
183 N.J. 290 (N.J. 2005)

Foot Notes:

- 1) Oxford Dictionary 39
- 2) Social Security Administration 20

PRELIMINARY STATEMENT

The plaintiff filed for divorce in January 2023. The court ordered the equitable distribution of the parties pension assets as follows. No party will receive any portion of the others asset. Both parties will retain exclusive ownership of their own pension. The court's reasoning was that the defendant will receive so much that it would put the plaintiff upside down in future years, three, four, five years when the plaintiff decides to give up their second job. The job that supplements her pension and affords income of over 180,000 per year, opposed to the defendant 72,000 per year. The court's decision was made with no professional analysis, no specific finding of fact, omission of facts, no conclusion of law and flawed findings not supported by testimony or the record or the mandated criteria governing the equitable distribution of assets. The trial contained instances of prejudice towards the defendant that produced life changing circumstances for him. The decision was wrong as a matter of law, misapplication of law and the abuse of the court's discretion. The court awarded 400 dollars per month in alimony which was not consistent with the need and the ability to pay that the numbers revealed and the standard of living, the alimony statute seeks to achieve in divorce proceedings. The defendant asked this court to reverse those decisions and if it does not have the

jurisdiction to make a decision of its own, the defendant asks the case be remanded not back to the same court, but to a court outside of Atlantic County New Jersey with instructions. Instructions to use the normal QRDO process and distribute the asset on a 50% basis. Because of prejudicial statements and unjust, unfair and inequitable awards, the defendant feels that he cannot receive a fair decision with this court in this county.

PROCEDURAL HISTORY

Plaintiff filed a complaint against defendant on December 23, 2022 (Da5-Da7). Defendant filed answer to the complaint o February 20, 2023 (Da8-Da10). Defendant filed Amended answer and counter claim on March 17, 2023 (Da150-Da151). The Case Management Order was entered on March 28, 2023 (Da123-Da126). The trial judge heard argument during a four day trial. After oral argument, the trial judge presented an oral Final Order of Judgement on July 10, 2024 (Da1-Da4). Written Final Order of judgement on July 16, 2024 (Da1-Da4). Notice of Appeal to this court on September 9, 2024 (Da152-Da162).

Footnote:

1T,15,1-25 =Transcript 1, Page, Line

Transcript 1 = May 20, 2024 Trial

Transcript 2 =May 30, 2024 Trial

Transcript 3 = June 12, 2024 Trial

Transcript 4 = June 17, 2024 Trial

Transcript 5 = July 10, 2024 Trial

Transcript 6 = April 15, 2024 Settlement Conference

Statement of Facts

The parties were married on June 23rd, 2000. In January 2023 the plaintiff filed for divorce (5T,6,17). It was a 22 1/2 year marriage (5T,6,15). The plaintiff and defendant had marital assets that consisted of a home, pensions and a 401K (Exhibit K). Both parties pensions we're in pay status. Both parties had premarital components involved in their pensions (Exhibit K)^{CDa 10}(1T,15,17-19). The defendant had two pensions prior to the marriage and one obtained during the marriage (Exhibit ~~K~~)^{CDa 10}. The one obtained during the marriage was for 19 years of the marriage from 2000 until 2018 (1T,189,3-5). The two obtained before the marriage were for 20 years 1979-1999. The plaintiffs pension was obtained during 20 years of the marriage, from 2000 until 2020 (1T,121,5-7). This pension had a premarital component of approximately 16 years from 1985 through 2000 (1T,16,3-5). The plaintiff also had a 401K from the second job obtained for two years of the marriage (1T,36,7). The trial court awarded the plaintiff first option to buy the defendant out of the home, with the defendant receiving 40% of the value and the plaintiff 60% (Exhibit

M,FOJ). The trial court ordered the split in the plaintiff's 401K's of 50%
(Exhibit M). The trial court ordered both parties retain ownership of their own
respective pensions (Exhibit M). The trial court imputed 22,000 added to the
defendant's income (Exhibit M). The trial court ordered both parties
responsible for a loan for the daughters college and both parties will be
responsible for their own debts (Exhibit M). Alimony of 400.00 per month
order to the defendant (Exhibit M).

ARGUMENT

I. COURT ERRED IN THE ALLOCATION OF PENSION ASSETS BY MISAPPLICATION OF LAW, FINDING OF FACT AND ABUSE OF DISCRETION (Raised below; 5T,34-35)

Any error or omission shall be disregarded by the appellate court unless it is of such a nature as to have been clearly capable of producing an unjust result, but the appellate court may, in the interest of justice, notice plain error not brought to the attention of the trial or appellate court.

[R. 2:10-2]

The trial court in error disproportionately allocated the pension assets to the plaintiff. It failed to provide the present value of the asset. It provided no specific findings of fact credible or adequate presented in testimony or in the record to support its conclusions. It prejudicially relied on the feelings and emotions of the plaintiff and the court to make its decision. The trial court relied on erroneous computations and omissions in determining actual income each party possessed and will possess. The trial court erroneously intermingled the law concerning equitable distribution and alimony even though they are closely intertwined, confusing, forgetting or misapplying the established separate purpose of them. It abused its discretion not using its established authority mandated by the law. First, to determine what assets are marital and eligible for distribution. Second, what the present value of the asset is. Third, how to allocate such assets and most importantly to allocate such assets in a fair, just,

equitable manner. The court's prejudicial, arbitrary, capricious and irrational actions have excessively harmed the defendant financially and emotionally. For these reasons the appellate court must reverse this order and avoid a miscarriage of justice.

New Jersey Statute Title 2A-Administration of Civil and Criminal Justice
Section 2A:34-23.1 Equitable Distribution Criteria Governs the Distribution of Marital Assets. (Exhibit 1) This statute mandates the consideration of all criteria for the equitable distribution of marital assets.

There are three steps the trial court must consider in making an equitable distribution of marital assets. The court must decide what property is eligible for distribution, determine the value and decide how the allocation can most equitably be made. Rothman v. Rothman Supra 65 N.J. 219, 272 (1974)

It is the Judges function to develop an appropriate equitable distribution method. Over the years, 3 methods have generally been utilized to distribute pensions: (1) "deferred distribution," where payment occurs after the retiring spouse begins receiving benefits; (2) "Or payment, "Which utilizes existing assets to either offset or pay the benefit; and (3) "partial deferred distribution," which entails a "current valuation award of the appropriate share of the non- contingent benefits if and when they are paid to the employee spouse." Moore v. Moore, supra, 114 N.J. at 161.

We also recognize the family court has “Jurisdiction and expertise in family matters,” which often requires the exercise of reasoned discretion. *Cesare*, 154 N.J. at 413. Thus, if we conclude there is satisfactory evidentiary support for the family part Judges findings, our “task is complete and [we] Should not disturb the result.” *Beck v. Beck*, 86 N.J. 480,496(1981) (quoting *State v. Johnson*, 42 N.J. 146, 161-62 (1964)

Although our “[d]eference is especially appropriate ‘when the evidence is largely testimonial and involves questions of credibility[.]’ *Cesare*, 154 N.J. at 412 (quoting *In re Return of Weapons to J.W.D.*, 149 N.J. 108, 117, 693 A.2d 92 (1997)), “[r]eversal is warranted when the trial courts factual findings are ‘so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interest of justice.’ “ *294 *Slutsky v. Slutsky*, 451 N.J. Super. 332, 344,167. Furthermore, “Legal conclusions, and the application of those conclusions, facts are subject to our plenary view.” *Reese v. Weis*, 430 N.J. Super. 552, 568, 66 (App. Div. 2013).

“Family court judge has broad discretion... in allocating assets subject to equitable distribution.” *Clark v. Clark*, 429 N.J. 61 Super.(App Div. 2012). However, we reverse if a *324 Judge’s “Findings were mistaken[,] or... the determination could not reasonably have been reached on sufficient credible evidence present in the record[,]” or “Failed to consider all of the controlling Legal principles.” *Gonzales-Posse v. Ricciardulli*, 410 N.J. Super 340, 354,09) ; see also *Wadlow v. Wadlow*, 200N.J. Super. 392, 382, (App .Div. 1985) (reversal is required when the result could not “reasonably have been reached by the trial judge on the evidence or whether it is clearly unfair or unjustly distorted by a misconception of law or findings of fact that are contrary to the evidence. *Perkins v. Perkins* 159 N.J. Super. 243 (App. Div. 1978)

State v. Brown, 118 N.J. 595, 605, (1990) In reviewing a trial court decision to grant a new trial following a jury verdict, an appellate court must be “guided by essentially the same standard as that controlling the trial Judges review of a jury verdict” and must “weigh heavily” the trial courts views on “credibility of witnesses, their demeanor, and [the trial courts] general ‘feel of the case’”. State v. Sims 65 N.J. 359, 373, (1974). If the trial court acts under misconception of the applicable law, however, the appellate court need not give such deference, “wrongness” In overturning jury verdict; “feel of the case” factor does not control appellate review when the trial courts “subjective conclusions” are not supported by the record. Moreover, to the extent that the weight of the evidence is germane to its decision, the trial court ought not to engage in a weighing of the persuasiveness of that evidence but only its sufficiency. Kulbacki v. Sobchinsky, 38 N.J. 435,445. (1962); see Battista v. Olson, 213 N.J. N.J Super. 137, 142, (App. Div. 1986). We have also observed that the trial Judges decision is not “entitled to any special deference where it rests upon a determination as to worth, plausibility, consistency, or other tangible considerations apparent from the face of the record with respect to which {s]he is no more peculiarly situated to decide than the appellate court.” Dolson v. Anastasia, 55 N.J.2, 7, (1969). Moreover, even intangible considerations must be supported by some factual basis or other objective elements. Baxter, supra, 74 N.J. at 601.

Analytical deficiencies by the trial court have unnecessarily complicated the issues involved in the distribution of pension assets and the distribution of the home asset in this case. It is an abuse of the trial court's discretion to ignore the facts and prejudicially fashion remedies that favored the plaintiff without substantial credible evidence presented at this trial. Evidence in the record shows that both parties were in agreement to QDRO the pensions and follow the equitable distribution criteria (Exhibits B,C,D). It is shown in the Trial

Da 19, 32, 42

Memorandum on behalf of the Defendant page 6, the Matrimonial Early Settlement Panel Memorandum of the Plaintiff page 11 and Intensive Settlement Conference Memorandum page 10. It was also in the defendant's attorney summation. (4T,41,19-21) It is also shown in the plaintiff attorney summation (4T,51,22-23). Also shown throughout testimony.

In looking at the ISC, the trial court questioned the attorneys on the issues involved (6T, 3, 1-25). The defendant's attorney expressed that the pensions were not a salient issue, two were premarital and they will be QDRO'd (6T, 4, 1-5). The plaintiff attorney did not comment on the defendant attorney's understanding (6T, 4, 22-25). There is a rebuttable presumption that if the plaintiff did not disagree with what was said then, what was said is presumed to be true. The court silence on the issue spoke the same. The court made no comment on the pension issue. The court did speak about the three remaining issues the home, the taxes and alimony (6T, 1-9). All the remaining issues with the exception of those 3 were basically resolved before the ISC. It should be noted, neither party believed or desired the case would or should go to trial (1T,90, 24-25)(1T,91,1-4)(3T,60,21-25)(3T,61,2-10)(3T,62,7). When the divorce proceedings started, the parties had a different judge. The parties went through the MESP process and the judge ordered the parties to go through an economic mediation. (Exhibit E) ~~Da 44~~

The parties scheduled this mediation and paid for it. The parties then were

informed that there was a change in Judges. Approximately 3 days before the economic mediation the parties met with the new judge and were informed that we were no longer going to see the expert and the judge will be performing the ISC (Exhibit J).^{0.72} The parties ISC lasted approximately 20 minutes. In those 20 minutes the parties agreed who was going to retain the home and what responsibilities there would be for the tax liabilities (3T,59,15-25). The only issue left was alimony. The issue of pensions was never discussed because the parties expected them to be QDRO'd and divided. The defendant believes that the court pushed the parties into a trial and harmed them by denying them the opportunity to go see an economic expert which the first judge had ordered.

In addressing equitable distribution of the pension assets, the court said that the issue of the pensions was not argued aggressively on either side (5T, 11, 8-9). This was because both parties were in agreement with the QDRO for all the reasons that were cited above. The parties expected the court to deal with the issue in the usual way (4T, 41, 18-20). The plaintiff's attorney expressed it in her summation saying the parties will be taking QDROs to distribute their retirement accounts (4T, 57, 14-16).

Incident to the grant of divorce" ... the court may make...[an] award or awards to the parties, in addition to alimony and

maintenance, to effectuate an equitable distribution of the property, both real and personal, which was legally and beneficially acquired by them or either of them during the marriage.” Painter v. Painter 65 N.J. 196, at 213 (1974)

Judged by these criteria the words, “equitable distribution set forth a standard which is not unduly vague. This phrase simply directs and requires that the matrimonial judge apportion the marital assets in such a manner as will be just to the parties concerned under all of the circumstances of a particular case.” Painter v. Painter 65 N.J. 196 at 209 (1974).

La Sala v. LaSala 335 N.J. Super. 1 at 9 (App. Div. 2000). No one questions plaintiffs right to equitable distribution, under N.J.S.A. 2A:34-23, of a defendant’s pension. Kruger v. Kruger, 73 N.J. 464 (1977). It is well recognized in this state that a spouse’s pension, during the marriage, is subject to equitable distribution upon divorce. Moore v. Moore, 36, 48 (App. Div. 1987).

It is the Judges function to develop an appropriate equitable distribution method. Over the years, three methods have generally been utilized to distribute pensions: (1) “deferred distribution, “where the payment occurs after the retiring spouse begins receiving benefits; (2) “immediate offset or payment, “which utilizes existing assets to either offset or pay the benefit; and (3) “partial deferred distribution, “which entails a “current valuation award of the appropriate share of the non-contingent portion of the pension and a deferred distribution of the share of the contingent benefits if and when they are paid to the employee spouse.” Moore v. Moore, supra, 114 N.J. at 161.

The trial court ordered that each party retain sole exclusive title and interest in their own retirement vehicles. There will be no distribution of these retirement funds by either party (5r 34, 2-10). Further the trial court focused on the

defendant's premarital assets, saying that it did not distribute them but it's taking into consideration that the defendant has them. By considering this, the court is allowed to disproportionately distribute the remaining retirement assets (5T, 34, 11-25).

The trial court considered significantly the premarital assets that the defendant has (5T, 41, 1-2).

The trial court believed that what the defendant will receive from the plaintiff's pension will put her upside down when she decides to retire 3,4,5 years from the present (5T, 33,16-19).

The trial court expressed, in three, four or five years when the plaintiff retires, she will be needing support if the court did not deal with the retirement issue in the way that it did (5T, 40, 17-21).

In the court's oral and written final order of judgment and analysis, the court gave no findings of fact on the present value of the pension asset. This is an error of the law on equitable distribution 2A:34-23.1(k). There were no factual findings nor basis in law offered to support that determination. It was just a statement that had no value to the litigants, to the appellate court or to the interests of the public.

M.G. v. S.M 457N.J. Super. 286 at 295 (App. Div. 2018). “[T]he goal of equitable distribution... is to affect a fair and just division of marital [property]. *Steneken v. Steneken*, 367 N.J. Super. 427, 434, (App. Div. 2004). After a trial judge identifies the marital assets and determines the value of each asset the judge must decide “how such allocation can most equitably be made” *Rothman v. Rothman*, 65 N.J. 219,232, (1974). This demands more than simply “mechanical division[,]” it requires a “weighing of the many considerations and circumstances... presented in each case.” *Stout v. Stout*, 155 N.J. Super. 196, 205, (App. Div. 1977), overruled on other grounds by *Peterson v. Peterson*, 85 N.J. 638, 643, n.2, (1981). This is because equitable distribution” reflects a *295 public policy that is ‘at least in part an acknowledgement that marriage is a shared enterprise, a joint undertaking, that in many ways [] is akin to a partnership.’ “*Thieme v. Aucoin-Thieme* 227 227 N.J. 269, 284, (2016) (quoting *Smith v. Smith*, 72 N.J. 350, 361, (1971) (quoting *Rothman*, 65 N.J. at 229,)). However, an equitable distribution does not presume an equal distribution. See *Rothman* 65 N.J. at 232 n.6. Rather N.J.S.A. 2A:34-23.1, requires an equitable distribution be “designed to advance the policy of promoting equity and fair dealing between divorcing spouses.” *Barr v. Barr*, 418 N.J. right. Super. 18, 45, (App. Div. 2011). This policy is best implemented by evaluating the facts and evidence associated with each asset.

In this instant, the trial court, by only considering premarital assets of the defendant and not considering the premarital asset of the plaintiff, created a manifest prejudice towards the defendant. This prejudice harmed the defendant by denying him the right to an asset, in which he owns. The trial court abused its discretion by not applying the tools available to the court to ascertain the sufficient credible evidence which would have allowed it to make an equitable distribution. The previous cases urge us to adopt the coverture fracture

methodology for equitable distribution pursuant to Marx v. Marx, 265 N.J. Super. 418, at 425 (Ch. Div. 1993).

“Under New Jersey law, pensions are clearly subject to equitable distribution. Krueger v. Krueger, 73 N. J. 464. It is well established that the “right to receive benefits accruing to a spouse subsequent to a divorce are subject to equitable distribution if they are related to the joint efforts of the parties. “Moore v. Moore, 114 N.J. 147, 154, (1989); Whitfield v. Whitfield, 222 N.J. Super. 36, (App. Div. 1987). In Whitfield, the parties had been married for 16 years during all of which the husband was in military service. His pension would not vest until after 20 years of service. The husband argued that the pension should be excluded from the marital estate because it did not mature during the marriage.

The appellate division held that the pension was, indeed, subject to equitable distribution to the extent of the employee participation in the pension plan during the marriage. The method of distribution prescribed by the court involves the application of the coverture fraction multiplied by the non- employee spouses share. The coverture fraction is determined as follows: “The numerator of the fraction is the period of the pension plan participation during the marriage and the denominator is the total period of the plan participation necessary to the receipt of benefits.” *426 222 N.J. Super. At 48. As applied in Whitfield, the wife’s entitlement equaled X% of 16/20ths of the pension.

Because the trial court performed no study and provided no findings of fact concerning the present value of the asset it is no way to determine whether the distribution was equitable. Therefore, the court analysis was arbitrary and irrational. It did not consider criteria (K) of the Equitable Distribution Statute. In such, the trial court abused its discretion choosing not to follow established

criteria and methodology. In addition, the reasoning and computations relied on by the court to reach its conclusion was erroneous and there was given no conclusion of law.

Brodinsky v. Brodinsky 162 N.J. Super. 437 at 444 (App. Div. 1978). Where the issue on appeal concerns which assets are available for distribution or the valuation of those assets, it *444 Is apparent that the standard of review is whether the trial Judges findings are supported by adequate credible evidence in the record. Rothman, supra 65 N.J. at233. See also, Perkins v. Perkins, 159 N.J. Super. 243, 3247 (App. Div. 1978). However, where the issue on appeal concerns the manner in which allocation of the eligible asset is made, the standard of review is not so clearly established. In such cases it would seem reasonable to conclude that, as in alimony matters, an appellate court may determine whether the amount and manner of the award constituted an abuse of the trial judges discretion. Esposito v. Esposito, 158 N.J. Super. 285, 291 (App. Div. 1978); Salmon v. Salmon, 88 N.J. Super 291, 310 (App. Div. 1965).

The instant case is not one where the determination to distribute in kind may be said to have rested upon sufficient credible evidence. The reverse is true; the solution offered was rested on the asserted lack of sufficient credible evidence. The method of distribution, we hold, was an arbitrary and capricious one in light of the situation of the parties and the distribution techniques which are available in order to achieve a reasonable result. Gemignani, supra 146 N.J. Super. At 282; 11 N.J. Practice (Finnerty, Marriage, Divorce and Separation) (3 ed. Supp. 1978), 1338 at 237.

The judge should not refrain from appointing his own expert as well where the parties proofs do not provide him with sufficient foundation and guidance.

Kikkert v. Kikkert 177 N.J. Super. 471 at 475 (App. Div. 1981). We perceive a significant relationship between proof of present value as of the date for equitable distribution and the technique to be employed in effecting it. Where the court is satisfied, based upon appropriate proofs, the present value has been established and there are other assets to be distributed a firm and final division may be achieved free of future contingencies.

“The right to receive monies in the future is unquestionably... an economic resource subject to equitable distribution based upon proper computation of its present dollar value.” Kruger v. Kruger, 73 N.J. 464,468 (1977); Pellegrino v. Pellergrino, supra; Scherzer v. Scherzer, supra; Blitt v. Blitt, 139 N.J. Super. 213 (Ch.Div. 1976). Therefore, pension benefits “[a]s a form of deferred compensation earned during coverture” constitute distributable assets to “the extent to which the anticipated benefits will have been generated by a mutual effort of the parties.” McGrew v. McGrew, 151 N. J. Super. 515, 518 (App. Div. 1977).

Although early in the case, during the ISC, the court ordered the parties to employ a CPA firm to look at the taxes and the pensions (Exhibit F)^{Da 45}. The company never supplied a report or any findings (Exhibit G)^{Da 47}(6T,3,8-25)(6T,4,1-5)(3T, 149, 1-25). As you can see from exhibit G the company that the parties employed said that they did not supply a report. The defendant himself approached the company because he couldn't get answers from the court or his attorney about this study that the court had ordered (Exhibit F)^{Da 45}. The defendant raised this question in his testimony, however, was shut down by the court, as seen above in Transcript 3, page 149, lines 1-25. The trial court in its analysis of the equitable distribution of the pension mentioned this company, however, said

his analysis goes beyond this company that includes other intangibles. (5T, 33,6-25). The trial court, although mentioning the process of determining equitable distribution, it never gave any specific findings of fact pertaining to its findings in that portion of its analysis. (5T, 33, 10-16). The trial court, when mentioning this process, the same process that is cited in the cases above said, it may work in this instant case right now however it won't work in the long run. (5T, 33, 10-25). The error that the trial court made here is Section 2A:34-23.1(f) Equitable distribution criteria, mandates the consideration of the economic circumstances of each party at the time the division of the property becomes effective. Not only did the trial court not consider distribution at the time the property became effective, when the trial court was considering each Equitable distribution criteria, the trial court erroneously did not consider criteria (F) at all (5T, 20, 1-6). Criteria (F) was omitted, completely not addressed. This is not a harmless error. The balance of likely the most important asset in this case relies on this error and every other error associated with the distribution of this asset.

We review equitable distributions awards for abuse of discretion. Slutsky v. Slutsky, 451 N.J. Super. 332, at 345, 356 (App. Div. 2017).

Reversal is warranted when the trial courts factual findings are “so manifestly unsupported by or inconsistent with the competent relevant and reasonably credible evidence as to offend the interest

of justice. “Rover farms resort, Inc. v. Inv’rs Ins. Co. of Am. , 65 N.J. 474, 484, (1974) (quoting Fagliarone v. Twp. Of N. Bergen, 78 N.J. super. 154,155, (App. Div.), certif denied, 40 N.J. 221, (1963)). All *345 “legal conclusions, and the application of those conclusions to the facts, are subject to our plenary view.” Reese v. Weis, 430 N.J. Super. 552, 568 (App. Div. 2013).

La Sala v. LaSala, 335 N.J. Super. 1 at 7 (App. Div. 2000). Thus, we will affirm an equitable distribution as long as the trial court could reasonably have reached its result from the evidence presented, and the award is not distorted by legal or factual mistake. Perkins v. Perkins, 159 N.J. Super. 243, 247-48 (App. Div.1978). However, “[a] Trial courts interpretation of the law and the legal consequences that flow from establish facts are not entitled to any special deference.” Manalapan Realty v. Township Comm., 140 N.J. 366, 378 (1995).

A judge's failure to perform fact finding” constitutes a disservice to the litigants the attorneys and the appellate court.” Curtis v. Finneran, 83 N.J. 563, 569-70, (1980) *358 (quoting Kenwood assocs. v. Bd. Of Adjustment Englewood,141 N.J. Super. 1, 4 , (2009) (requiring a judge, to “find the facts and state [all] conclusions of law... on every motion decided by a written order that is appealable as of right”).

The trial court stating if it didn't perform the analysis the way it did, when the plaintiff retired, she would be upside down, is not finding of fact, there are no specifics (5T, 33, 17-21). The trial court asserting, taking into consideration that the defendant has premarital assets and him considering it allows him to disproportionately distribute the remaining assets. (5T, 34, 20-24). There are no conclusions of law, they are just mere statements.

Analyzing the facts that the trial court relied on to distribute the pension assets the way it did:

The trial court stated, when the plaintiff retires and pays off the loan from her pension, the plaintiff's pension will be fairly equal within a few hundred dollars of the defendant. (5T, 35, 16-21). This is contrary to the facts in the record. The plaintiff's CIS shows her monthly pension income at 4125 per month (Exhibit H). ^{CDa1} The plaintiff has a loan from the pension with a payment of \$724.00 per month and a balance of 2800 as of January 2024. (Exhibit H). ^{CDa1} This loan in all likelihood is paid off by the time of FOJ on July 10, 2024 considering a loan payment of \$724.00 per month. These facts place the plaintiff at receiving \$4849.00 per month from her pension. The defendant receives 3658 dollars from his pensions per month (3T, 49, 5-19). This shows that the plaintiff receives \$1191 per month more than the defendant, not a few hundred dollars. The facts do not support the court assertions. Again, the trial court is not considering this at the time the asset is being distributed. The trial court is considering this in the future 3,4,5 years from the present when and if the plaintiff retires. This is contrary to N.J.S.A. 2A:34-23 subsection (f).

The trial court states that if it distributed the pensions a different way, in 3,4,5 years the plaintiff will be needing support (5T, 40, 17-21). Again, trial court is not considering, at the time the asset is being distributed, but in the future when the plaintiff retires. The trial court included the defendant's Social Security when determining if the defendant could make the budget approved by the court (5T, 41,16-25). Likewise, the trial court considered the plaintiff's Social Security when the plaintiff retires (5T, 49, 14-17). However, the trial court never determined what amount the plaintiff's Social Security would be, but it did assume that she would have it (5T, 49, 14-19). The statement in this citing was totally irrational, assuming that it will be about a 60/40 share of what their combined cash flows are. The court never determined what her Social Security would be. These are the facts concerning this: In four years when the plaintiff decides to retire, she will be at full retirement age. The maximum Social Security benefit at the present time is \$4018 per month (Exhibit I)² ^{Da 71} This amount will increase due to the cola increase every year. Considering the plaintiff's income over the years, her income at present and full retirement age in 4 years, the plaintiff will receive the maximum benefit. The courts analysis having the plaintiff, 3 or 4 years from the present will receive, \$4849 from her pension and approximately \$4018 from Social Security totally \$8867 combined when she

² Social Security Administration

courts analysis of setting her budget 6000 per month the same as the defendant (5T, 36, 12-13). The defendant would have to receive from the plaintiff's pension over \$2800 per month for her to be upside down, for her to need support, for her to be unable to make her budget of \$6000. The trial court's analysis is not supported by the facts in testimony and the record. The court's analysis and facts are arbitrary, capricious and irrational. The defendant was deprived of the present value of the asset and the amount he would have received if the coverture fracture had been performed. There is no way of determining if the distribution was equitable or not.

The appellate court should keep in mind just, fair and equitable. If the trial court would have considered, the economic circumstances of each party at the time the division of property becomes effective, which 2A:34-23.1(f) mandates. What amount per month would the defendant have to receive from the pension asset to place the plaintiff upside down at the present time. These are the facts that it would see. The plaintiff earns over \$180,000 per year and has been earning this much for the last four years (1T, 123, 2-6). Plaintiff brings home over 12,000 per month (5T, 44, 16-22). Plaintiff has an approved budget from the court of 6000 per month (5T,41,16-19). In contrast the defendant's earning, 72,000 per year and brings home 5400 per month. The defendant's approved budget is 6100 per month. (5T, 42, 9). The defendant is already \$700.00 over

budget, underwater. The trial court, imputed 22,000 to the defendants income (5T, 42, 1). This essentially means that the defendant will have to continue working forever in order to make his budget. He's retired for 7 years, collecting Social Security on a fixed income (2T, 162, 2-7). Is this fair, just and equitable. The trial court also stated, the defendant has been retired for 5 years which is contrary to the evidence in testimony and in the record (5T, 38, 23-24)(1T, 29, 24-25). The trial court is concerned with the plaintiff being upside down four years from the present opposed to the economic situation of the defendant at the present time. This error in the court not adhering to section F of the equitable distribution statute and disproportionately distributing the asset to the plaintiff was a harmful error. There were major flawed factual findings and it was a misapplication of the law. It deprives the defendant of his share of an asset that he contributed to. It deprives him of needed resources that could assist the defendant in maintaining the standard of living that he enjoyed during the marriage. The defendant is aware that the purpose of equitable distributions is not to assist the party in achieving that standard. That is the purpose of alimony. Equitable distribution is an addition to alimony. However, what the trial court did in its intermingling of the two, was to assist the supporting party in its standard of living 3, 4, 5 years into the future.

Steneken v. Steneken 183 N.J. 290 at 298,302 (N.J. 2005). We start from the bedrock proposition that all alimony awards and equitable distribution determinations must-both jointly and severally-satisfy basic concepts of fairness. In reaching that ultimate determination, we are guided by the principle that, although clearly interrelated, the structural purpose of alimony and equitable distribution are different.

Each of the statutory considerations for an award of alimony and the considerations for equitable distribution remains true to its respective original and independent goals-for alimony, “to assist the supportive spouse in achieving a lifestyle that is reasonably comparable to the one enjoyed while living with the supporting spouse during the marriage,” *Crews v. Crews*, supra, 164 N.J. at 16, and for equitable distribution, “to effect a fair and just division of marital assets.” *Steneken v. Steneken*, supra, 397 N.J. Super. At 434.

McGrew v. McGrew, 151 N.J. Super. 515 at 518 (App. Div. 1977). Further, *518 the statutory provision for equitable distribution of property rest upon the premise that *** each spouse contributed something to the establishment of marital estate even though one or the other may actually acquire the particular property. Therefore, when the parties become divorced, each spouse should receive his or her fair share of what has been accumulated during the marriage. The concept of fault is not relevant to such distribution since all that is being effected is the allocation to each party of what really belongs to him or her. [*Chalmers v. Chalmers*, 65 N.J. 186, 194 (1974)].

An interesting question arises for the appellate court:

Is the allocation in this case a distribution of assets? The trial court answered in a confusing way. The trial court said there won't be any distribution of these

retirement funds by either party to the other (5T, 34, 8-9). Then the trial court said it was distributing the assets in a disproportionate way (5T, 34, 23-2). The defendant says the answer is yes and no. However, the defendant says both ways are in error. The trial court distributed the assets disproportionately with errors, in the few if any findings of fact expressed. What justified an unequal division in property. The trial court said because, it was considering the defendant's premarital assets (5T, 34, 20-25). The trial court gave no conclusion of law or finding of fact to support its conclusion. It should be noted, there is no difference in one party receiving retirement from two separate entities and the other receiving from just one. Again, both parties had premarital portions to their pensions, the number of premarital years were about the same. By ignoring the plaintiff's premarital portion and singling out the defendant's premarital assets the trial court created a manifest prejudice towards the defendant. The defendant also says no, the trial court did not distribute. The trial court threw up his hands and did nothing with the asset, in an effort not to harm the plaintiff. They remain the same as when the parties entered the court.

Painter v. Painter 65 N.J. 196, at 207 (1974). The distribution and allocation of marital assets as between spouses is intimately related to the dissolution of a marriage. There must be very few instances where a divorce is not accompanied by a division of property either determined consensually or by judicial decree.

M.G. v. S.M. 457 N.J. Super. 286 at 295 (App. Div. 2018). Rather, N.J.S.A. 2A:34-23.1, requires an equitable distribution be “designed to advance the policy of promoting equity and fair dealing between divorcing spouses.” Barr v. Barr, 418 N.J. Super. 18, 45 (App. Div. 2011).

What is more equitable and fair dealing than both spouses being in agreement to QDRO the pensions and divide the asset. However, the trial court ignored the countless times in testimony and in the record where the parties were in agreement and expected it. The court abused its discretion to distribute in the erroneous manner in which it did.

Kikkert v. kikkert, 88 N.J. 4 at 9 (1981)

Where one spouse has earned money during a marriage while the other spouse worked without pay in the “essential supportive role... in the home, “Rothman

Supra, 65 N.J.at 229, The case for equitable distribution becomes most compelling, regardless of when the money is received. That is why, when the right to receive pension monies is required during the marriage, as in this case, that property rights should be equitably distributed regardless of when the pension matures and regardless of when the pension will be treated as income for tax purposes. The crucial fact is that Martin kikkert earned pension during the “Shared enterprise” of his marriage. Fairness thereby entitled both him and his wife to their respective equitable shares.

The purposes of equitable distribution differ from those of alimony and child support. Alimony and child support can help maintain the income of both parties at a certain level overtime by using one parties income to support the other. However, the

primary purpose of marital property distribution laws is not to compensate for changes in the parties fortunes after they have separated, but to achieve a fair distribution of what the parties “lawfully and beneficially acquired” while they were together. The legislature wrote the equitable distribution law to apply comprehensively, see *Painter, supra*, *Rothman, supra*; *Kruger, supra* and while the legislature has made certain exemptions from the act’s coverage, see L. 1980, c. 181, 1, it has given the courts no reason to narrow equitable distribution beyond those specific exemptions. Thus, in keeping with the legislative intent and the important policy goals underling equitable distribution, I joined the court in subjecting to equitable distribution the “vested” but unmatured pension benefits which Martin Kikkert acquired during his marriage to Elizabeth Kikkert.

Rothman v. Rothman 65 N.J.219, at 233-234 (1974). We emphasize these considerations because of their rather conspicuous absence at the trial of this case. The defendant is a wealthy man and his business interests widespread and complex. But this affords no excuse for failure to set forth clearly and in detail a description as well as the value of each interest in property that he owns and that may be eligible for distribution. The same is true of the plaintiff and will be true as to all marital litigants. We confessed to an inability, upon the present record, to find adequate credible evidence support or disprove the conclusions reached by the trial court as to the total value of the assets eligible for distribution that are owned by each party.

Those portions of the judgment entered below pertaining to the allocation of marital assets are hereby vacated and set aside and this case is remanded for further proceedings consistent *234 with what has been said above and with the decisions in *Painter v. Painter and Chalmers v. Chalmers, supra*. The award of alimony made below may also be reviewed by the trial court, because of its close relationship to the judgment of allocation. All alimony payments as ordered below are to be in the mean time continued.

In this instant the Appellate Court must reverse in order to right a grave injustice that has been heaped upon the defendant. The trial court's distribution was sadly inadequate. The trial courts finding on the valuation of the pension assets was confined to a mere statement. There was no articulation in terms of facts or analysis to support the court findings. The court findings cannot stand judicial scrutiny. They were not fair, equitable or just, based on an unfounded, unreasonable, erroneous evaluation of the evidence.

The trial court abused its discretion, as the findings were mistaken and they could not have been reasonably reached on the sufficient credible evidence that was present in the records. The appellate court should not exercise the normal standard of review in determining if there is sufficient credible evidence in the record to support the trial court findings. The findings were made on the lack of sufficient credible evidence. The trial court failed to consider all the controlling legal principles associated with the equitable distribution law 2A:34-23.1 and the appellate court must reverse if the trial court failed to consider all of the controlling legal principles. The trial court purposely fashioned a remedy that disproportionately favored the plaintiff and the result was based on a misconception of the law and findings of fact that were contrary to the evidence. The trial courts broad authority to use its discretion in caprice, passionate or biased ways, whenever or however it chooses is not an arbitrary power of an

individual Judge. The court must provide factual findings and legal conclusions supporting the exercise of judicial discretion. For this reason and the prejudice shown towards the defendant's premarital asset and other prejudices that will be shown, the defendant asks the appellate court not to remand back to the same trial court. The defendant asks that the appellate court invoke its original jurisdiction under R. 2:10-5 and proceed to determine the merits of the pension issue, order a QDRO and distribute the asset on a fifty percent basis. Even if the appellate court believes that the trial court was acting in good faith when addressing the pension issue, the appellate court cannot agree with the method used by the trial court to effectuate the distribution. There are more frequently used methods that result in equitable distribution of pension assets.

Gemignani v. Gemignani, 146 N.J. Super 278 at 282 (App. Div. 1977). While we agree, however, with the trial Judges rationale, we cannot agree with the method by which he attempted to implement it, particularly in view of his apparent inclination to have divided the marital assets equally between the parties but for the circumstances involving the house. We certainly do not intend to suggest that a distribution which awards less than 50% of the distributable assets to a husband who is the sole wage earner is prima facie inequitable. We are, however, satisfied, without repeating the relevant factors enumerated in Painter v. Painter, 65 N.J. 196, 211 (1974), that a fair consideration of all of these factors compels the conclusion that the distribution here was inequitable, and that the inequity resulted from the legitimate concerns of the trial judge which could and should have been accommodated by distribution techniques that would have achieved a more equitable result.

ARGUMENT

II. THE TRIAL COURT ERRED IN NOT PROVIDING SPECIFIC FINDING OF FACT AND FAILURE TO CONSIDER ALL CRITERIA MANDATED BY N.J.S.A. 2A:34-23. IN THE EQUITABLE DISTRIBUTION OF THE PENSION ASSETS AND HOME ASSET. A PATTERN OF PREJUDICE EMERGED TOWARDS THE DEFENDANT AND PERSISTED THROUGHOUT THE TRIAL THAT EXTREMELY HARMED HIM AND NEGATIVELY INFLUENCED THE COURTS DECISION ON THESE ASSETS. (Raised below: Da1; 5T,1-50)

The appellate court must reverse if it finds that the trial court did not adhere to all of the criteria for the equitable distribution of marital assets. It must reverse if the trial court did not supply specific findings of fact for each criteria. The appellate court must reverse if there is a lack of sufficient credible evidence provided in testimony or in the record to support the decision of the trial court. It is not sufficient for the trial court to address every criteria and say I considered this, I considered that, while omitting or ignoring testimony or misrepresenting what the testimony is. In doing so, which this court did, the decision is based on facts contrary to the evidence resulting in a flawed decision.

New Jersey Title 2A-Administration of Civil and Criminal justice Section 2A:34-23.1 (Exhibit A). Da 11

Genovese v. Genovese 392 N.J. Super. 215 at 223 (App. Div. 2007). The appellate court must decide if the trial court mistakenly exercised it's broad authority to divide the parties property or whether the result reached was

bottomed on the misconception of law or finding of fact that are contrary to the evidence. Valentino, supra, 309 N.J. Super. 339; Wadlow v. Wadlow, 200 N.J. Super. 372, 382 (App. Div. 1985).

LaSala v. LaSala, 335 N.J. Super. 1 at 7 (App. Div. 2000). “[a] trial courts interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference” Manalapan Realty v. Township Comm., 140 N.J. 366, 378 (1995).

In the analyzation of the equitable distribution criteria the court made errors, omissions and finding of fact contrary to testimony and the record on almost every criteria. In many instances, the court deferred its analysis until it analyzed the alimony criteria. In doing so, the court in error failed to address issues that it deferred from, when analyzing the alimony. The question that arises, because alimony and equitable distribution are so closely intertwined, does it relieve the court of its obligation to consider and provide specific finding of fact for each criteria? In the defendant’s initial brief draft, every error was pointed out. However, because of a space limitation, the defendant is constrained to address only significant errors. However they are all significant, they all have the same common denominator, how the pension asset is to be distributed.

B). The age and physical and emotional health of the parties;

The court considered the defendant's physical condition in terms of being able to go back to work at its previous employment (5T,12,15-19). However, there are no specific findings on health conditions which would severely limit the employment available to the defendant or the impact of being out of the workforce for seven years (2T,162,1-7). The court in error stated the defendant retired five or six years ago. The conditions are as follows. A heart condition left bundle branch blockage, extreme sleep apnea, plantar fasciitis in both feet, torn rotator cuff left shoulder, torn meniscus right knee, hypertension and weight of 285 lbs (1T,18,15-25)(1T,19,4-10)(4T,49,21-25).

C). The income or Property brought into the marriage or civil union by each party. The court gave no specific finding of fact concerning the income that was brought into the marriage. The plaintiff's income was 40,000 per year when they got married (1T,27,18). The defendant brought more income in the early years. It should be noted that during those first 2 years, when the plaintiff was in school getting a masters degree, she was only receiving half salary, 20,000 per year(1T,20,7-11). Therefore, during those years the defendant was earning close to 50,000 and the plaintiff 20,000. The defendant's Social Security earnings statement Shows in year 2000, 2001, he earned 22,441 and 21,899 (Exhibit 14).

Adding the defendant's pension of 25,368 per year equals 47,779 and 47,267 (Exhibit K, ^{Da 16}). When not employed the defendant receives unemployment compensation (3T,7,17-25)(3T,8,1-9). If added to the defendant's earnings it will be even more (1T,151,16-17)(Exhibit T)(^{Da 146}1T,124,1-3). This earnings trend continued for years until the plaintiff obtained a master's degree which made advancements available in her industry, which were not available because the master's degree was prerequisite for advancement to certain levels (1T,27,1-25)(1T,28,1-25)(1T,29,1-3). The plaintiff was at Level 3 when she got married and at level 10, twenty years later earning 103,000 when she retired. Therefore, when the court addresses the issue during alimony and states that the plaintiff paid more bills simply because she earned more is not supported by the facts, testimony and record. The plaintiff earned more during the later years but not throughout the marriage. The court stated the last five years of the plaintiff's employment before retirement, the plaintiff earned substantially more than the defendant (5T,20,12-15). Social Security statement shows in his last four years during that time, the defendant earned 36,788, 33,358, 43,843, and 40,232. But the defendant's pension is added, the numbers are as follows; 62,155, 58,725, 69,210 65,599 (Exhibit ^{Da 118}N). Naturally the plaintiff earned more when the defendant retired. However, the plaintiff's income over those five years was

between 88 and 103,000 (2T,16,10-12). The plaintiff earned more but not by that much. Evidence in the record shows in 2017, 2018 in 2019 respectively the plaintiff earned 83,000, 88,000 and 88,000 (Exhibit U). The defendant received ^{Da 147, 148, 149} in 2017, 10,285 in unemployment benefits (Exhibit T). If added to the 65,599, ^{Da 146} the defendant's income was 75,844 that year compared to the plaintiffs 83,000. In 2018 the defendant's income was 91,861 compared to the plaintiffs 88,000 (Exhibit U). ^{Da 149} In 2016, the defendant's income was 69,210 plus 7,299 unemployment benefits, totaling 76,509 compared to the plaintiffs 83,000 (Exhibit T). ^{Da 146} Therefore, the court finding the plaintiff earning substantially more is in error. This is important, the court relied on this factor heavily when making its decision stating the plaintiff contributed more just by virtue of her earning more (5T,40,1). However, during those five years the court has only records for five years from the filing of divorce back, January 2023 until 2018. The plaintiff retired in January 2020, therefore the court only has records of income for 2018 and 2019 during the five years that it states about the plaintiff's income. The court's findings are not supported by the evidence and testimony in the record. The plaintiff finished paying off a pension loan six months before retirement and obtained another pension loan three months right before retirement (3T,45,11-25)(3T,46,1-6). During that five year period, she may have been

earning that amount on paper but she was not receiving that amount because it was going to pay off a previous loan (2T,16,7-17). Testimony showed the plaintiff was a habitual pension loan taker, she took many pension loans over the years (1T,89,1-13). The court ignores these facts however they are not rebutted. The court stated that for 20 years the plaintiff earned more than the defendant (5T,46,13-14). This is not supported by testimony or facts in the record and has just been provided by above. The parties have to submit five years of financial records before the trial, it is no way for the court to know the finances of 20 years ago unless there is testimony or record submitted as the defendant did in this instance. Therefore, the court is making statements without facts or evidence or just ignoring the evidence. Testimony shows during that five years in question when the plaintiff was earning that income she was having problems paying her bills (1T,109,4-12). She had over \$18,000 in credit card debt and defendant had to give her money to buy lunch and to get gas to go to work (1T,117,22-24)(3T,5,13-22). This was not because of what the court found that she was paying the lion's share of the household bills. It was because of her bad financial decisions and as the court put it "she was a spender that's what she'd like to do" (5T,46,15-25)(5T,47,1). The court gave no findings of fact showing that she contributed a disproportionate share of the cost of their lifestyle

(5T,46,5-25). The court again just made a statement. The court found the parties did not live a lavish lifestyle, it was driven by both incomes, they lived within their means (5T,15,14-25). They didn't take vacations or eat out much and paid their own liabilities (1T,43,3-20)(1T,44,6-12). What did the plaintiff pay a disproportionate share on? Evidence that she didn't contribute a disproportionate share lies in the fact that she didn't pay her bills. She had two bankruptcies that included foreclosures on the home, one mortgage modification and three of her cars repossessed (1T,20,15-18)(1T,22,14-19)(2T,109,23-24).

The court, by not giving specifics and deferring to when it talks about alimony, in addressing retirement assets in section C and throughout its findings, creates evidence that may be persuasive but is strongly misleading and of confusing nature. It is an unfair prejudice that harmed the defendant extensively. Although equitable distribution and alimony are intertwined they're separate and have two distinct purposes. Equitable distribution is to equitably distribute an asset and alimony is to provide help to a party to maintain a standard of living Kikkert v. Kikkert, 88 N.J. 4 at 9 (1981). Therefore, when the trial court begins to address a single criteria for the equitable distribution of an asset and before it gives a specific finding of fact, states I will address this when I address alimony is a disservice to the litigants and the appellate court. Although the two are

intertwined, each has different criteria that is mandated to be addressed and they are not necessarily congruent Steneken v. Steneken, 183 N.J. 290 at 300 (N.J. 2005).

Again the trial court in section C, singled out, focused on the defendant's premarital assets in its consideration of how to allocate the retirement assets and the home (5T,14,19-25)(5T,15,1-8). The premarital assets of the plaintiff are never mentioned. This is the pattern of prejudice towards the defendant that is pervasive throughout this case, ultimately, extremely harming the defendant by denying him the portion of an asset that he contributed to and owned McGrew v. McGrew, 151 N.J. Super.515 at 518 (App. Div. 1977). The court never provided the present value of the asset or perform a coverture fracture which would have informed us of what the value of the asset was. The court's significant attention to only the premarital asset which is immune to distribution and is separate, is in error and compounded by not recognizing that the plaintiff also has premarital components to her pension (4T,51,22-23)(1T,15,17-18). The premarital assets of the plaintiff would have an offset component to the equation. This evidence cannot be missed mistakenly. Therefore, it was done purposely. The question to be answered then is why. An even more important question is how harmful is the error. The defendant says it's extremely harmful,

harmful enough to reverse the case, but not the only error that rises to that level. Each one of these errors are connected to the one issue of how the court distributed the pension asset. An asset whose value is so high that it would harm the plaintiff if it were distributed in the usual way according to the trial court. An asset that we don't even know the value of because the trial court did not obtain the value or disclose it.

There was never a dispute about the plaintiff owning the home for two years prior to the marriage. Both parties we're in agreement that the plaintiff will receive 55% of the equity and the defendant 45% (1T,87,1-4). The court found it significant that the defendant was never put on the mortgage and was put on the deed 23 years later (5T,13,8-14). In the court's decision, it expressed that the defendant thought that the equity should be split 55% to 45% however, it stated the defendant has no facts to support it (5T,28,20-25). This proves that the court was aware of what equity the defendant was willing to offer in terms of a buyout throughout the trial. It also shows that the court prejudicially badgered the defendant throughout the trial saying, it did not know what the defendant was willing to offer (3T,132-143). The court awarded the plaintiff 60% with no specific finding of fact other than the defendant not being put on

the deed for 23 years. The defendant was put on the deed in 2020 therefore the court finding is not supported by evidence (Exhibit S). Da 141

D) The standard of living established during the marriage or civil union;

The court found that the plaintiff contributed more to the parties lifestyle (5T,15,20-22). However, the court gave no specific findings or facts proving this. Precedent in New Jersey case law defines the marital standard of living as “the way the couple actually lived, whether they resorted to borrowing and parental support, or if they limited themselves to their earned income Hughes v. Hughes, 311 N.J. Super. (App. Div. 1998). The defendant’s standard of living included no longer having to work, he has been retired for seven years. He lives within his means. Testimony showed when things were bought during the marriage they would normally split 50/50 (1T,154-157)(1T,157,1-21)(3T,71,22-25). The plaintiff paid 1100 per month towards the mortgage, the defendant 900 towards electric, cable etc. (1T,201,1-2). The food for a family of 6 was purchased by the defendant, toiletries and cleaning supplies by the plaintiff (1T,103,17-22). All other debts and personal charges were paid individually (2T,73,10-25)(2T,74,1-22). However in the court’s alimony analysis, it continued with the narrative that the plaintiff contributed a disproportionate

share of the lifestyle, liabilities and marital expense with no specific finding of fact (5T,46,15-16)(5T,41,13-15)(5T,28,8). The court stated the parties we're not one to throw money into one account and make their decisions together. Testimony showed the parties had an account which they put their money into and the bills were paid out of that account (1T,40,12-15)(1T,41,1-8)(2T,73,20-25)(2T,74,1-24). The defendant is mixing the equitable distribution with the alimony analysis because the court mixed the two together. The court said it's distributing the pension asset in this way so that it can do what it wants to do with the alimony (5T,40,8-16). What it wants to do with the alimony is give a nominal amount to the defendant (5T,47,14-15). The meaning of nominal from the dictionary is a nothing amount, very small, far below the real value or cost (Oxford Languages Dictionary).¹ The court tells us why it wants to do that. The court said, I do not want to give the plaintiff a disincentive. I don't want to say to the plaintiff, as long as you are working, you're going to be paying X, and it doesn't make sense to her to keep working at that level. I don't want give her disincentive to have to leave what seems to be a fairly lucrative job (5T,45,16-21). The court said it does not want fashion an alimony award that makes the

¹ Oxford Languages Dictionary

plaintiff think about what she's doing and say why am I working if i'm giving this lion's share to the defendant (5T,47,2-13). The court is significantly considering the emotions and the feelings of the plaintiff and itself, opposed to the intentions of equitable distribution and alimony. Should the court's feelings or failings combined with the plaintiff's feelings and spending habits come as an obstacle to her paying alimony or relieve the plaintiff from statutory obligations? The defendant thinks not.

E) Any written agreement made by the parties before or during the marriage concerning an agreement of property distribution;

During the ISC with the court, the home issue and the tax issue were agreed upon. The only remaining issue was alimony and the parties were not afforded the time to discuss it before the court ordered the trial (3T,59,15-25). The court not letting the parties attend an intense economic mediation with an expert

forced a trial on the parties. The following are the list of issues that were agreed upon by the parties before the trial and through their testimony. 1). The parties agreed that an agreement could have been made before trial (1T,90,24-25)(1T,91,1-4), 2). Equity for the home would be split plaintiff 55% defendant 45% (1T,87,2-4), 3). Student loan will be paid equally (4T,59,1-6), 4). Parties will be responsible for own liabilities (1T,88,13-18)(1T,91,16)(4T,57,22-25), 5). Pensions will be QDRO'd and split (4T,57,14-16), 6). Plaintiff responsible for pension loan.

F) The economic circumstances of each party at the time the division of property becomes effective;

2A;34-23.1(f) was completely ignored and omitted when the court was considering the criteria. No specific finding of fact was given on this criteria (5T,20). It is acknowledged the court may consider issues that are not part of the criteria. However, the consideration of the parties economic circumstances 3-5 years into the future is merely hypothetical and contrary to established criteria. The financial status of the parties should have been considered at a particular point in time, normally the date of filing. Equitable distribution is concerned with a date certain Kruger v. Kruger 73 N.J. 464,468, (N.J. 1977) Painter v Painter, 65 N.J. at 218. There is no certainty that the plaintiff will retire at that

time, considering how profitable her employment is, her debt and spending habits. The court's mathematical computations were in error with no conclusions of law. The court only considered the income from the plaintiff's pension and omitted her Social Security income although acknowledging that she would have it (5T,49,14). The appellate court must reverse if all criteria are not considered or specific finding of fact are not made Slutsky v. Slutsky 451 N.J. Super. 332 at 356 (App. Div. 2017).

G). The income and earning capacity of each party including educational background training employment skills experience.

One consideration that the court made spoke volumes in this section. The court said, "I don't disagree with the defendant's analysis that he's not able to go back into the labor workforce, you know, again" Even if he would, it would impact his Social Security (5T,20,19-20). The court said that it would not be fair for the defendant to have to recreate himself in trying to acquire educational training to reenter the workforce after being retired at this age. (5T,39,12-14). The defendant asserts that he cannot work any longer and has no desire to return to the workforce (4T,47,14-24)(4T,30,11-15). The court's statement agrees. However, the court's analysis on alimony criteria in a capricious way, contradicts this previous statement concerning the defendant's future

employment. The court found that the defendant could return to work 40 hours per week and imputed 22,000 per year income to the defendant (5T,42,1-7). The court said that the defendant asked for the imputation (5T,37,13-17). This fact is contrary to testimony. The defendant spoke on the imputation only to show how irrational the court was being in first saying it was going to impute 41,000 (3T,145,1-25)(3T,146,1-24). The defendant pointed out to the court that it could not impute that amount because if the defendant went back to work, he can only earn 22,000 per year. It would be absurd for the defendant to ask for any imputation of income, especially when it would affect the alimony award. The court arbitrarily picked that number because that was the highest amount it could impute without affecting the defendant's Social Security. The imputation was arbitrary and irrational. There are no specific findings or consideration to the defendant's health, lack of technical skills, length of time out of workforce and lack of experience outside of the construction industry (4T,29,14-25)(4T,30,1-25)(4T,31,1-7).

H) The contribution by each party to the education, training or earning power of the other.

The court failed to recognize the testimony of the defendant and the plaintiff which showed the defendant made a nonfinancial contribution to this specific

asset that is in question at this time (the plaintiff's pension). The defendant testified that he wrote all of the plaintiff's papers in her pursuit in acquiring her master's degree (2T,164,8-25)(2T,165,1-10). The plaintiff disputed that the papers were written by the defendant, however, acknowledged that the defendant marked up, proof read and instructed on how to correct the errors and made it make sense (1T,149,12-25)(1T,150,1-25). This help is an intangible asset. Intangible assets have value. The court failed to recognize this. The court instead, commended the plaintiff for her efforts in obtaining this degree emphasizing how it enabled her to obtain this employment after retirement (5T,21,4-7). The court failed to recognize that the plaintiff took a 50% cut in salary during those first 2 years and it was the defendant who carried the lion share of the parties household expenses. The defendant's help may or may not be deemed as an asset to be distributed as property, however it should be considered where equitable distribution is concerned. Help given to the plaintiff enhanced her prospective earnings, evidenced by her moving from 40,000 at the beginning of the marriage up to 103 by retirement. Certain levels of the plaintiff's employment were not attainable without a master's degree (1T,27,7-18)(1T,28,8-15). It helped to maintain the employment to the point of achieving this pension Genovese v. Genovese, 392 N.J. Super. 215 at 226 (App. Div.

2007). Perkins v. Perkins 159 N.J. Super. 243 at 247 (App. Div. 1978). The help given could also be characterized as goodwill. Regardless of how the help given in support of achieving this degree is characterized (an asset to be distributed or just to be considered), the court in this case omitted the testimony given and gave no specific finding of fact and did not consider it at all.

Slutsky v. Slutsky, 451 N.J. Super.332 at 358 (App. Div. 2017). The omission of necessary findings requires we vacate provisions in the final judgment fixing the value and distribution of defendant's interest in the firm. To aid the remand proceeding, the outcome of which will require analysis and establishment of supporting factual findings necessary to resolve the complex question of value surrounding a goodwill component attached to an interest in a law firm, we recite the authority establishing goodwill as an intangible asset subject to equitable distribution as well as the required analysis to be undertaken by the trial court when fixing goodwill value.

[A] Persons earning capacity, even where its development has been aided and enhanced by the other spouse, as here the case, should not be recognized as a separate, particular item of property within the meaning of N.J.S.A. 2A34-23. Potential earning capacity is doubtless a factor to be considered by a trial judge in determining what distribution will be "equitable" and it is even more obviously relevant upon the issue of alimony. But it should not be deemed property as such within the meaning of the statute.

Further "[g]oodwill can be translated into prospective earnings."

In concluding goodwill existed as a component of value of this marital asset, the trial judge failed to make specific factual findings to support the value of attendant goodwill. Consequently, *357 we are constrained to reverse the resultant unsupported conclusions.

K) The present value of the property

Again, the court never addressed the present value of the pension asset. There is no evidence in testimony or the record where the present value of the pension asset was ever made known throughout the trial. The court never addressed the present value of the 401K asset. The court in essence said whatever the value of that asset is it shall be divided equally. However, it did divide it at its value at the present time (5T,25,1-14). This points to the capriciousness of the court by not adhering to mandated criteria and treating 2 pension assets that have the same qualitative rights in two different ways.

Gemignani v. Gemignani 146 N.J. Super. 278 at 284 (App. Div. 1977).

In terms of the equitable distribution of the home asset, the defendant is not showing the appellate court this to change the distribution that the court made. It is to show the prejudice towards the defendant and to partially show, from where it stems. It should be noted, this prejudice persisted throughout the trial and influenced the way the pension asset was distributed. The facts are;

The defendant obtained an appraisal for the home one year before the trial took place because the court ordered both parties to obtain appraisals (Exhibit O). Very early in the trial the court requested the defendant to stipulate on this appraisal. The defendant refused to stipulate because it was an old appraisal and through Realtors he believed the value of the home had increased (Exhibit B,VI). Da 19

The defendant also knew that section K is concerned with the present value of the home (Exhibit A).^{Da 11} The court got angry with the defendant for not stipulating.

In its anger, the court overlooked the fact that the court had ordered both parties to obtain appraisals. It was determined that the appraisal was obtained by the defendant and paid for by the defendant (1T,171,7-25)(1T,172,1-4). Instead of the court questioning the plaintiff as to why they had not adhered to the order, the court went on a trial long campaign to portray the defendant has a bad actor, as he had done something wrong, as he was acting in bad faith, by threatening him, penalizing him, pressuring him to make an offer for the home and ultimately fashioning remedies that are clearly contrary to the evidence, testimony and the law governing the equitable distribution of assets. The court stated that the defendant was proceeding in bad faith, that the defendant had provided an appraisal that was the appraised value that he was going to rely on (1T,174,13-19). This was contrary to the evidence in the record as shown by the

defendant's attorney's testimony (4T,36,5-11) Slutsky v. Slutsky, 451 N.J. Super. 332 at 367 (App. Div. 1977). The court said nothing about the plaintiff not securing an appraisal as ordered. The defendant's attorney advised the court, that with no present value the home should be put up for sale and the equity split by what the court felt appropriate (1T,172,2-4). It should be noted, during the ISC, the court was adamant about the way this trial was going to go concerning the home asset. The court told both attorneys that if an agreement was not made the home was going up for sale (6T,6,15-25)(6T,7,1-25). It should be a reasonable expectation that the parties can rely on the court to do what it says it's going to do. Otherwise, the court will be misleading attorneys and litigants. The court now in its capriciousness said it was not going to compel sale of the home. The court threatened the defendant, stating that it was going to appoint an appraiser and the defendant would have to pay for them (1T,174,2-15). The defendant on a limited income and has already paid for one appraisal, the court was going to make him pay for another one, with no mention that the plaintiff didn't follow the order. It should be noted, that the court followed through with the threat and made the defendant pay for an appraisal at the end of the trial (5T,30,14-18). The court had the appraiser testify via video as to the present value of the home. The appraiser testified that the value of the home had

increased just as the defendant said it had (2T,35,1-5). However, he didn't know by how much. The court erred at that very moment. The court should have followed through with his threat to the defendant and ordered an appraisal right at that very moment while the appraiser was there. Instead, the court waited almost two months until the end of the trial and distributed the home asset without ever knowing the present value of that asset. The court's failure to exercise its authority to obtain the value of that asset was an abuse of its discretion MG v. SM., 457 N.J. Super. 286 at 294 (App. Div. 2018). Rothman v. Rothman, 65 N.J. 219, 232 (1974).

Brodinsky v. Brodinsky 162 N.J. Super.437 at 445 (App. Div. 1978).

The court continued to blame the defendant for the court not having the value of the property (1T,175,10-15). The court continued several instances to pressure the defendant to make an offer on the home (2T,174,6-14). The defendant did not understand how he could make an offer for the home if there was no present value. The court continued to state that he knew what the plaintiff would offer but did not know what the defendant would offer (4T,37,12-16). Every time the subject was brought up by the court, the defendant tried to answer but the court shut him down (3T,136,1-14)(3T,134,1-13). At one point the defendant said the equity amount but the court shut him down (3T,143,14-19). This equity amount

of 55%- 45% was set, agreed upon before the trial and seen throughout testimony (4T,39,1-6). The defendant's attorney attempted to explain this to the court however, the court was being disingenuous because it knew what equity the defendant was willing to give the plaintiff (3T,135,1-3). It was shown earlier in the brief, where the court expressed at the end of the trial what the defendant thought the equity amount should be (5T,28,20-25). This is evidence that the court understood the amount all along. However, the court continued to state that it didn't know all the way until its final decision (5T,22,1-14). The court accused the defendant of trying to block the plaintiff from getting the home (3T,135,22-24). However, during the ISC, the defendant agreed for the plaintiff to receive the home and there's an abundance of testimony of what the defendant thought should happen with the home and why (5T,21,23-24)(3T,132,17-25)(3T,133,1-25). This accusation shows the prejudice towards the defendant. When the defendant tries to explain his position the court shut him down (3T,136,1-25). The appellate court should read all of the exchanges from 3T pages 132 to 143. The court prejudicially continued to say the defendant acted in bad faith, unfair and made the inference that the defendant would hire Charlie Brown or Sally Smith or an unscrupulous person to perform a new appraisal all the way up to its final decision (5T,27,13-18)(5T,31,16-23). This is the

prejudicial action and mindset that persisted throughout the trial. It extremely harmed the defendant emotionally and financially resulting in a loss of equity from the home and income from the pension asset. The court went on to state, if the defendant didn't fulfill his obligation to secure the appraiser and pay for it, the court would distribute the home asset at the original appraisal value even after the expert appraiser confirmed that the value of the home had increased (5T,31,16-25). The court was still willing to circumvent the law on equitable distribution concerning the present value of the asset. The court, in spite of both parties being in agreement on the amount of equity chose to award the plaintiff 60% of the equity with no specific finding of fact on why the plaintiff deserved 5% more, except that the defendant had not been put on the deed for 23 years. The court's decision was arbitrary, irrational and prejudicial. This 5% amounted to thousands of dollars because the home appraised for 115,000 more than the original appraisal. This compensated the plaintiff for owning the home for two years prior to the marriage. The court then under the guise of being fair and equitable (giving both parties options to buy the home), awarded the plaintiff first rights to buy the defendant out of the home (Exhibit M, FOJ).^{De 2,3} The defendant emphasizes the word guise, because the court was well aware the plaintiff wanted the home and was financially able to purchase. Therefore, in essence the

court awarded the home to the plaintiff. The plaintiff was given a disproportionate share of the equity and the brick and mortar home. These decisions and actions by the court were neither fair, just or equitable.

In considering section K the court again after making one observation deferred until it's final order. In that one observation the court praised the plaintiff for being willing to make an offer on the home and prejudicially disparaged the defendant for not making an offer, being unfair and not making an effort to ascertain the value of the property (5T,22,1-14). Exhibit B shows new values that realtors supplied showing the increase in value (Exhibit B)^{De 19}. This was the effort that the defendant made along with obtaining the original appraisal. The plaintiff is the one that made no effort, yet the court failed to recognize this. The court finally ordered the defendant to obtain an appraisal after the final order of judgment and almost two months after the appraiser testified to the increase in value (2T,26,17). The appraiser testified on May 30, 2024, and the FOJ was July 10, 2024, enough time to order a second appraisal. There were two more court dates between this and the FOJ. The court distributed the home asset before obtaining the value of the asset. The court's decision rested on the lack of sufficient evidence.

Brodinsky v. Brodinsky 162 N.J. Super. 437 at 444 (App. Div. 1978). This instant case is not one where the determination to

distribute in kind may be said to have rested upon sufficient credible evidence. The reverse is true; the solution offered was rested on an asserted lack of sufficient credible evidence. The method of distribution, we hold, was an arbitrary and capricious one in the light of the situation of the parties and the distribution techniques which are available in order to achieve a reasonable result. *Gemignani*, supra 146 N.J. Super. at 282; 11 N.J. Practice (Finnerty, Marriage, Divorce and Separation) (3ed. Supp. 1978),1338 at 237

The prejudice towards the defendant that manifested here with the home asset negatively influenced the distribution of the pension asset. It was an easy case, the majority of the issues were agreed to before the trial including the QDRO of the pensions. There was no need for judicial intervention *Painter v. Painter* 65 N.J. 196 at 213 (1974). The court stated that the pensions were easy (2T,173,23). The pension issue became difficult when the court attempted to fashion a remedy that favored the plaintiff. However, its financial analysis for the plaintiff's future income was not supported by facts. There was no conclusion of law, no present value of the asset and the court deviated from established criteria of Equitable Distribution Section (F and K).

M) The debts and liabilities of the parties

The court found that the plaintiff took on a disproportionate share of the debts and liabilities and commended her (5T,22,20-24). However, the court gave no specific findings. The court ignored testimony and the record which show that a disproportionate share of the debt and liabilities were created by the plaintiff (1T,77,1-25). The defendant had virtually no debt as expressed by the court (5T,17,7). The plaintiff had \$18,000 in credit card debt among other things. Therefore, the plaintiff took responsibility for her own debt (1T,87,13-21). The parties paid their own liabilities throughout the marriage (1T,44,6-20).

The court also found that the plaintiff took responsibility for a disproportionate share of the tax debt. Again, with no specifics on its finding. The company looking at the taxes never gave a report on it and the one time the defendant questioned this during testimony he was shut down by the court (3T,149,1-25). The court's statement was made without professional analysis and ignoring the record and testimony that was provided. The plaintiff took responsibility for \$6000 for the year 2021 (1T,77,1-17). The plaintiff knew the tax debt was attributed to her not having sufficient funds withheld from her checks, because the parties were informed by their accountant (Exhibit P Sect. ^{Da 129,130} IV). When questioned about this the defendants lawyer was shut down by the court and the plaintiff was evasive in her answering (1T,151,1-25)(1T,152,1-

25). In 2022, after the filing of divorce the parties filed separately. The defendant's earnings were 49,000 per year from 2019 through 2022. In 2022 the defendant received a refund therefore, indicating the previous three years tax liability was not from insufficient withholdings on his behalf (Exhibit P,IV). Da. 12⁹, 13⁰

P) Any other factors the court deems relevant

The court emphasized that it could not separate the alimony analysis from equitable distribution (5T,23,11-15). This in itself is an error, although they are closely intertwined they have two distinct purposes and the court erred in both Steneken v. Steneken 183 N.J. 290 at 300 (2005). The court used the pension asset to try to equalize the supporting parties standard of living 3-5 years into the future with the supported parties standard of living. In only considering the premarital asset of the defendant erroneously, caused the courts analysis on the alimony issue to also be an error MG v. SM., 457 N.J. Super. 286 at 294 (App. Div. 2018). State v. Brown, 118 N.J. 595 at 604 (1990).

ARGUMENT

III. TRIAL COURT DID NOT PROVIDE SPECIFIC FINDINGS ON THE EVIDENCE ABOUT ALL OF THE STATUTORY FACTORS SET FORTH IN SECTION 2A:34-23(b)-ALIMONY MAINTENANCE. THE TRIAL COURT DID NOT PROVIDE WRITTEN FINDINGS OF FACT AND CON-

CLUSIONS OF LAW ON ISSUES ELEVATED TO GREATER IMPORTANCE. THE TRIAL COURTS DECISION WAS BASED ON FINDINGS NOT SUPPORTED IN TESTIMONY AND THE RECORD, RESULTING IN AN AWARD UNABLE TO SUSTAIN THE DEFENDANT IN THE STANDARD OF LIVING AFFORDED DURING THE MARRIAGE.

(Raised below: Da1; 5T,1-50)

Again, the court gave no specifics on the majority of the criteria considered for alimony. It is not enough space to argue alimony, therefore if answers not found in argument III are found in argument II. The defendant addressed them as did the trial court. However, they are supported by testimony and the record.

1). The court found plaintiff had the ability to pay and the defendant had somewhat of a need. However, capriciously in section 13 the court found the defendant had no need (5T,36,10-23).

3&4). No specifics were given on health or standard of living (5T,37,2-23).

9). No specifics given except the plaintiff contributed more(5T,39,22).

10&11). The issues of the pensions and defendant's premarital assets were considered significant, raising the level of importance requiring written findings of fact and conclusions of law were not provided (5T,40,8-25).

14). The court erred in the analysis of the plaintiff's income. It failed to include a 5000 per year Christmas bonus and 5000 per year for not using the companies

healthcare (1T,36,17)(1T,122,10)(1T,123,1)(Exhibit Q). It also reported her monthly pension at 3956.00 per month, CIS, pay stubs report 4125.00 per month (5T,44,17-21). As shown earlier in the brief the plaintiffs pension loan would have been paid off by this time adding another 724.00 to the monthly pension, increasing the total monthly income to well over 12,000 per month (Exhibit H).

The courts “feel of the case” deserves no special deference when its findings are not supported by sufficient credible evidence present in the record or its subjective conclusions are not supported. Consideration of intangibles also must be supported by some factual basis. State v. Brown, 118 N.J. 595, 605 (1990). MG v. SM., 457 N.J. Super. 286 (App. Div. 2018). The standard of living established during the marriage works as the “touchstone” in determining alimony. Crews v. Crews 164 N.J. 11, 16 (2000). The “Basic purpose of alimony is the continuation of the standard of living enjoyed by the parties prior to their separation”. Innes v. Innes, 117 N.J. 496, 503 (1990)(citing Mahoney v. Mahoney, 91 N.J. 488, 501-02 (1982)). The purpose is not just to meet the bare necessities, it is considered an “economic right” that provides support to achieve the quality of economic life that existed during the marriage. Mani v. Mani, 183 N.J. 70, 80 (2005). In the instant case, the parties established and maintained a lifestyle in retirement which did not include a return to the labor market for the

defendant. Personal and household financial responsibilities were fulfilled. The help received by the defendant was a partner who helped secure a home and provided health care for 24 years. The court has ruled that this help now comes from a hypothetical imputed job or the defendant must return to work. This is not fair, just or equitable considering the length of time absent from the workforce, the defendant's health, limited tech skills and the plaintiff's ability to support.

CONCLUSION

This brief has shown the court erroneously intermingled the Equitable Distribution and Alimony statute. The court used them in a way contrary to their established original purpose, resulting in an unfair, unjust an inequitable distribution of the pension asset and a harshly inadequate alimony award. All criteria were not addressed. Criteria (F) of equitable distribution was omitted completely. Criteria (K) The present value on the pension asset was never determined. It is an abuse of the court's discretion to not follow the law or misapply the law and distribute disproportionately this asset with no conclusion of law and erroneous finding of fact on its analysis. Its mathematical calculation did not support the conclusion that the plaintiff would be upside down in three to five years or if the court followed criteria (F) at the time of distribution.

All the actions in totality severely prejudiced the case and harmed the defendant. Without them occurring would have changed the case outcome. If the court did not prejudicially single out the defendant's premarital assets and ignore the plaintiff's, which are virtually the same number of premarital asset there will be no appeal for this case. The defendant was harmed emotionally and financially. Emotionally, having to go through the appeal process at the same time not having healed from the divorce. Also, navigating the appeals process with no funds for representation, limited technical skills, but knowing that he has been wronged and something had to be done about it. The defendant is harmed financially by being denied his right to an asset that he contributed to. This right entitles both parties to their respective equitable shares. Each party share the same qualitative interest in each other's retirement rights. In totality, the final order of judgment was not fair, just or equitable. In divorces there are losses, a division of assets. This judgment amounted to a windfall for the plaintiff. The plaintiff lost nothing. The plaintiff received her tax liabilities paid for by the defendant, a disproportionate share of the pension asset, a disproportionate share of the equity in the home and the brick and mortar home. Alimony of 400.00 per month was ordered. Therefore, the plaintiff lost \$400.00 per month from over \$12,000 per month income, on a 6000 per month budget.

This in contrast to the defendant who lost his home, healthcare and the American dream of ever owning another home. The defendants budget is 700 above his 5400/ month income. The defendant's equity from the home was entirely eaten up by \$45,000 in legal fees and the tax liabilities caused by the plaintiff's lack of withholding. This is an easy case for the appellate court, search the transcripts. It's the appellate court's opportunity to right a wrong. Any reasonable person will consider the court's behavior as unfair and biased.

The defendant requests the appellate court to reverse the equitable distribution order on the pension asset and the alimony award. The defendant request the appellate court, not remand back to the same trial court. The defendant asks the appellate court to invoke its original jurisdiction under R.2:10-5 and proceed to determine the merits of the pension issue, order a QDRO and distribute the asset on a 50% basis. The defendant cannot afford any further litigation. In addition, neither can the defendant afford the issue being reanalyzed by the same court that made an egregious decision and has shown to be prejudicial towards the defendant Esposito v. Esposito, 158 N.J. Super.285 at 291-301 (App. Div. 1978).

Reversal is justified when the courts factual findings are so manifestly unsupported by credible evidence as to offend the interest of justice.

KARL COLEMAN

Handwritten signature of Karl Coleman in black ink, appearing as 'Karl C' with a long horizontal stroke.

ROBIN COLEMAN,)
Plaintiff / Respondent)
v.)
KARL COLEMAN,)
Defendant / Appellant)

) SUPERIOR COURT OF NEW
) JERSEY APPELLATE DIVISION
) DOCKET NO. A-000139-24
) CIVIL ACTION
)
) ON APPEAL FROM THE
) SUPERIOR COURT OF NEW
) JERSEY, CHANCERY DIVISION
) FAMILY PART -
) ATLANTIC COUNTY
)
) SAT BELOW: THE HONORABLE
) STEVEN SCHEFFLER, J.S.C.
) DOCKET NO. FM-01-379-23

PLAINTIFF / RESPONDENT'S BRIEF AND APPENDIX

KELLY MCGRIFF LAW, LLC
Kelly T. McGriff, Esquire
New Jersey Attorney ID# 02491-2008
1125 Atlantic Avenue, Suite 539
Atlantic City, NJ 08401
Tel. 609-892-8773
Fax 609-939-0831
Email kelly@kellymcgriffllaw.com
Attorney for Plaintiff / Respondent, Robin Coleman

KELLY T. MCGRIFF, ESQ.
Counsel of Record & On the Brief:

TABLE OF CONTENTS

	<u>Pages</u>
Table of Contents.	i
Table of Respondent Appendix.	iii
Table of Authorities	iv
Procedural History	1
Statement of Facts.	2
Legal Argument.	28
Point One:	
The Trial Court’s Findings are Entitled to Deference and Must be Affirmed Because They are Supported by Credible Evidence.	28
Point Two:	
The Trial Court Properly Applied Every Factor Set Forth in N.J.S.A. 2A:34-23(b) In Its Analysis of Defendant’s Request for Alimony.	32
Point Three:	
The Trial Court Properly Applied Every Factor Pursuant to N.J.S.A. § 2A:34-23.1 In Its Analysis of Equitable Distribution.	38
A. The Trial Court Properly Applied the Rothman Three Step Process in Its Analysis of Equitable Distribution of The Marital Home.	40

B. The Trial Court Properly Applied the Rothman
Three Step Process in Its Analysis of Equitable
Distribution of The Retirement Plans. . . . 42

Point Four:

There is No Basis for Appellant's Allegation of
Judicial Bias or Abuse of Discretion.45

Conclusion. 49

TABLE OF APPENDIX

	<u>Pages</u>
Plaintiff's offer of employment dated September 10, 2022	Ra1
Plaintiff's 2023 W-2 (redacted).	Ra3
Plaintiff's April 2024 paystubs.	Ra4
Charles Poliero appraisal dated July 3, 2023	Ra6
Shellpoint mortgage statement dated June 1, 2024 .	Ra26

TABLE OF AUTHORITIES

<u>CASES</u>	<u>PAGES</u>
<u>New Jersey</u>	
<u>Cesare v. Cesare</u> , 154 N.J. 394 (1998)	28, 29
<u>Curtis v. Finneran</u> , 83 N.J. 563, 569-70 (1980)	34
<u>Fagliarone v. Twp. of No. Bergen</u> , 78 N.J. Super. 154 (App. Div. 1963))	29
<u>In re Return of Weapons to J.W.D.</u> , 149 N.J. 108 (1997)	29
<u>Kenwood Assocs. v. Bd. of Adjustment of Englewood</u> , 141 N.J. Super. 1 (App.Div.1976))	34
<u>Mani v. Mani</u> , 183 N.J. 70 (2005)	32
<u>M.G. v. S.M.</u> , 457 N.J. Super. 286 (2018)	40
<u>Rothman v. Rothman</u> , 65 N.J. 219 (1974). 40, 42, 43, 44	
<u>Rova Farms Resort, Inc. v. Investors Ins. Co.</u> , 65 N.J. 474 (1974)	29
<u>Slutsky v. Slutsky</u> , 451 N.J. Super. 332, 344 (App. Div. 2017)	28
<u>State v. Marshall</u> , 148 N.J. 89 (1997)	45

Steneken v. Steneken, 367 N.J. Super. 427 (App. Div. 2004) 38, 40

Stiffler v. Stiffler, 304 N.J. Super. 96 (Ch. Div. 1997)) 32

Strahan v. Strahan, 402 N.J. Super. 298 (App. Div. 2008) 45

NEW JERSEY STATUTES

N.J.S.A. 2A:34-23.1 16, 38, 39, 48

N.J.S.A. § 2A:34-23 (b) 24, 32, 34, 37, 48

N.J.S.A. 2A:34-23 (C) 32

COURT RULES

N.J. Ct. R. 1:7-4 (a) 32

N.J. Ct. R. 1:12-1 (f) 45

MISCELLANEOUS

Canon 2(a) of the Code of Judicial Conduct 45

Canon 3(c) (1) of the Code of Judicial Conduct. 45

PROCEDURAL HISTORY

A Complaint for Divorce based on irreconcilable differences was filed by Plaintiff on December 27, 2022. Da5. An Answer and Counterclaim based on irreconcilable differences was filed on behalf of the Defendant on February 20, 2023. Da8. An Amended Answer and Counterclaim was filed on behalf of the Defendant on March 17, 2023. Da136. An Answer to the Amended Counterclaim was filed on March 27, 2023. Da150. Thereafter, a Case Management Order was entered by the Court on March 28, 2023. Da123.

The parties attended a Matrimonial Early Settlement Panel (hereinafter "MESP") on September 20, 2023, and an Intensive Settlement Conference (hereinafter "ISC") on February 21, 2024. Trial occurred on May 20, 2024, May 30, 2024, June 12, 2024, and June 17, 2024, and an oral decision was received on July 10, 2024¹.

¹ 1T - May 20, 2024 Transcript
2T - May 30, 2024 Transcript
3T - June 12, 2024 Transcript
4T - June 17, 2024 Transcript
5T - July 10, 2024 Transcript

STATEMENT OF FACTS

The parties were married on June 23, 2000, and share one child together, namely Angelica Coleman, born March 28, 2001. 5T:6-13. Plaintiff has three children from a prior relationship, a thirty-five-year-old daughter and thirty-two-year-old twin sons. 1T:13-12.

Plaintiff began employment with Division of Youth and Family Services (hereinafter "DYFS") on July 25, 1985. 1T:16-3. Upon commencing her employment with DYFS, Plaintiff began accumulating a pension plan. 1T:15-14. At the time of marriage, Plaintiff was still employed by DYFS. 1T:14-24. To Plaintiff's recollection, at the time of the marriage, she was earning approximately \$40,000.00. 1T:27-14.

Defendant commenced employment as a laborer with the Local 1174 in Allentown, Pennsylvania in 2000 shortly before the marriage. 1T:189-3. Upon commencing his employment as a laborer with the union of Allentown, Defendant began accumulating a pension plan. 1T:15-14. At the time of marriage, the Defendant was still working

as a laborer for that union. 1T:29-5. At the time of the marriage, the Defendant's net income was \$600.00 per week. 2T:71-8.

On June 27, 1997, Plaintiff purchased a home located at 2503 Spruce Avenue in Egg Harbor Township, New Jersey June 27, 1997. 1T:11-4. She purchased that home as a single parent and her children grew up in that home. 1T:85-14. She was residing in that home at the time of the marriage and the Defendant was residing in Mays Landing, New Jersey. 1T:10-7. The parties began residing at Plaintiff's premarital home on the day that they got married. 1T:10-17. They continued residing together at the home throughout the pendency of the divorce litigation. 1T:12-5.

Upon getting married, Plaintiff began providing health insurance coverage for the Defendant through her employment with DYFS. 1T:36-11. It is undisputed that following the marriage, Plaintiff continued solely paying the mortgage. 1T:22-20; 2T:73-20. She also solely paid the utilities. 1T:23-4.

In 2000, after the marriage, the parties had a discussion wherein Plaintiff advised Defendant of her intention to go to school to obtain her master's degree. 1T:21-1. Due to her employment with DYFS, Plaintiff was able to attend college and obtain a Master's Degree with all expenses paid by her employer. 1T:19-24. Plaintiff commenced that two-year program in 2000. 1T:20-4.

In 2001, during her second semester at Rutgers's University, she gave birth to the parties' daughter, Angelica. 1T:22-4. While completing that two-year Master's program, Plaintiff was not working and instead, was attending college full time, while earning one-half of her salary. 1T:20-9. During this time, the parties were still living together in Plaintiff's premarital home. 1T:20-19.

While completing her master's degree, the Plaintiff was unable to continue paying all of the bills on her own and sought financial assistance from Defendant. 1T:21-9. The Defendant advised her that she "should have rethought getting [her] master's at that time..." and she

had to figure out how to pay the bills. 1T:21-14. He did in fact not help Plaintiff pay any of the bills during that time. 1T:22-1.

During that time, Plaintiff's car was repossessed. 1T:21-16. Also, as a result of her inability to pay the bills, the home was heading into foreclosure and she filed for bankruptcy to save the home. 1T:22-14. Following the bankruptcy, Plaintiff continued solely paying the mortgage and utilities. 1T:45-13. Plaintiff was also paying the property taxes which were included with the mortgage. 1T:47-22. Plaintiff graduated from Rutgers's University in 2002 with a master's degree in social work. 1T:19-14.

Prior to 2015, the parties kept their bills separate such as separate car insurance policies (1T:42-12) and cell phone plans (1T:42-9). Plaintiff purchased groceries for the house and Defendant purchased specific items that he wanted. 1T:42-17. Also prior to 2015, the parties kept their debts separate such as credit cards (1T:44-19) and tax debt (1T:44-24).

The parties separated in 2015. 1T:40-19. The separation lasted for five months. 1T:41-18. The parties reconciled and resumed living together at Plaintiff's premarital home later in 2015. 1T:41-19.

Following the reconciliation, the Defendant began paying Plaintiff \$900.00 per month for bills. 1T:40-12. Plaintiff deposited the money into the bank account and used those funds to pay marital bills such as car insurance and the electric bill. 1T:41-5. Also following the reconciliation, the parties stopped eating out at restaurants as often. 1T:46-24. They also stopped going on vacations together. 1T:47-8. Sometime following the reconciliation, the parties purchased a motor vehicle insurance policy covering both of their vehicles. 1T:46-10. The parties remained on the same motor vehicle insurance plan until April 2023. 1T:46-16. The parties added Angelica to that policy when she began driving. 1T:46-13.

Defendant retired from his employment as a laborer in 2018. 1T:29-21. At the time of his retirement, he

was fifty-seven years old. 1T:184-15. Defendant had a discussion with Plaintiff prior to retiring and she did not voice any objection to his retirement. 2T:128-6. Defendant alleged that he has not obtained new employment, in the laborer field or any other field, due to various medical conditions such as plantar fasciitis, sleep apnea, sciatica, hypertension, knee issues and gallstones. 2T:117-13. Despite those alleged medical conditions, Defendant stated, "it was my own choice" to retire. 1T:184-19.

In 2018, upon his retirement, the Defendant received his annuity of \$50,000.00. 1T:193-20. He used some of that annuity to make repairs to the home, such as contributing to the cost of new windows and gutters. 1T:155-3.

Following his retirement, Defendant began receiving a pension from Laborer's International in the net amount of \$900.00 per month. 2T:145-13. This pension was from premarital employment. 2T:145-24. He also received a pension from Local 415 in the net amount of \$1,858.00 per

month. 2T:145-21. This pension was from premarital employment. 2T:146-12. He also received a pension from his employer during the marriage, Local 1174, in the net amount of \$901.00 per month. 2T:147-17. His final source of income was social security in the amount of \$1,802.00 per month. 2T:148-2. Defendant's total income per month was \$5,461.00 per month. 5T:41-24.

Plaintiff retired from DYFS on January 31, 2020. 1T:28-4. At the time that she retired, Plaintiff was a case work supervisor and was earning an annual income of \$103,000.00. 1T:28-8. Plaintiff had a discussion with Defendant prior to retiring and he did not voice any objection to her retirement. 1T:33-4. Upon her retirement, Plaintiff began receiving a gross monthly pension of \$5,276.05. 1T:34-13.

In 2020, the parties decided to purchase solar panels for the home. 1T:83-7. Plaintiff was unable to purchase them on her own due to her credit score and since the Defendant had a higher credit score than Plaintiff, she added him to the deed to qualify for the panels. 1T:83-

7. After being added to the deed, the Defendant continued paying Plaintiff \$900.00 per month towards the bills. 1T:49-9.

Plaintiff returned to work in October 2020. 1T:35-6. Plaintiff began working for Public Catalyst as an associate monitor. 1T:35-16. When Plaintiff was hired in 2020, she was earning \$75,000.00. 1T:35-24. Pa1. Plaintiff received a yearly Christmas bonus through Public Catalyst. 1T:36-19. At the time of trial, Plaintiff was earning \$100,000.00, which did not include her Christmas bonus. 1T:36-24. Pa3.

Angelica attended undergraduate school at Hampton University in Virginia from 2019 until she graduated in May 2023. 1T:13-1. During Angelica's senior year at Hampton in 2023, Plaintiff paid for an off-campus apartment for Angelica in lieu of Angelica residing in the on-campus dormitory. 1T:63-6. Plaintiff did that as a reward for Angelica who was an excellent student. 1T:63-8. Plaintiff could afford to pay it on her own and

did not request any contribution from Defendant. 1T:63-15.

In or about January 2024, Defendant stopped giving Plaintiff \$900.00 per month. 1T:49-9. Instead, he began giving Plaintiff \$300.00 per month and paying the electric bill himself. 1T:49-1. At the time of the trial, there was a past due balance on the electric bill of approximately \$163.00. 1T:49-22.

One source of contention for Defendant during the marriage and throughout trial was how Plaintiff spent her money, including but not limited to, giving money to her older children (3T:32-12), spending money on various expenses for Angelica (3T:24-1), and buying things on Amazon (3T:34-14). This is despite the fact that Plaintiff solely paid for all of her expenses, including her significant credit card debt.

To the contrary, the Defendant admitted that he continued spending \$162.00 per month on dog food (3T:90-6), \$300.00 per month on groceries (3T:90-10). Defendant admitted that he felt that Plaintiff should trim her

budget to pay him alimony (3T:93-1) while likewise he should not have to trim his budget to afford his expenses (3T:91-24).

Plaintiff's Case Information Statement was filed May 24, 2023. CDa19. Defendant's Case Information Statement was filed March 16, 2023. CDa2. The parties' Case Information Statements were relatively close in two of the three areas of monthly expenses.

Plaintiff's shelter expenses were \$2,913.00 per month for both joint lifestyle and current lifestyle expenses. 1T:53-16; CDa27. Defendant's shelter expenses were \$3,045.00 per month for joint lifestyle and \$2,709.00 per month for current lifestyle. 1T:53-23; CDa8.

Plaintiff's transportation expenses were \$1,846.00 per month for joint lifestyle and \$1,494.00 per month for current lifestyle expenses. 1T:54-5; CDa27. Defendant's transportation expenses were \$2,542.00 per month for joint lifestyle and \$1,491.00 per month for current lifestyle. 1T:54-12; CDa8.

Plaintiff's personal expenses were \$5,486.00 per month for joint lifestyle. 1T:56-11; CDa27. Due to a typographical error, Plaintiff's current lifestyle expenses were actually \$6,211.00 per month. 1T:57-8; Defendant's personal expenses were \$1,296.00 per month for joint lifestyle and \$1,969.00 per month for current lifestyle. 1T:57-12; CDa9.

Plaintiff's monthly debt service expenses totaled \$2,790.00 per month. 1T:59-14; CDa27. At the time of filing of the Case Information Statement, Plaintiff was also paying \$1,033.00 per month for Angelica's undergraduate college expenses. 1T:56-23; CDa27. That sum covered Angelica's rent, food, toiletries, sorority, and club dues. 1T:60-12; CDa28. Angelica was also on Plaintiff's cell phone plan. 1T:67-14.

At the time of trial, Angelica was residing in New York while she attended graduate school at Columbia University. 1T:12-18. Angelica received a scholarship for Columbia. 1T:66-1. She also had a loan that covered her tuition and room and board. 1T:66-8. Plaintiff

assisted Angelica with other out of pocket expenses through a bi-weekly allowance she called a payday. 1T:66-15. The payday was \$600.00 bi-weekly. 1T:67-5.

As of the filing of her Case Information Statement on May 24, 2023, Plaintiff had credit card debt of approximately \$18,000.00. 1T:68-6. Plaintiff testified that amount of credit card debt was not unusual for her. 1T:68-11. Some of that credit card debt was also Angelica's. 1T:68-17.

The parties used a tax preparer for their taxes. 1T:70-17. During most of the marriage, the parties filed taxes as married filing jointly. 1T:69-8. The parties filed taxes separately in 2017, 2022 and 2023. 1T:69-18. When the parties filed jointly, they frequently had a tax liability. 1T:69-14. The tax transcripts and returns admitted into evidence as P-5 through P-13 and D-5 to D-13 memorialized the years the parties filed jointly and the tax liability each year.

In 2021, the parties agreed that Plaintiff would pay the state tax payment plan until Defendant began

receiving his social security at which time he would begin paying for an equal amount of time so that the parties shared equally in that tax debt. 1T:78-17. This never occurred and as of the time of trial, Plaintiff had paid \$13,000.00 towards the state tax debt. 1T:78-20.

On July 3, 2023, the home was appraised by Charles Poliero for \$240,000.00. 1T:83-21; Pa8. As of May 10, 2024, the mortgage balance was \$120,110.18. 1T:84-10; Pa26.

At trial, the Court carefully considered the testimony, evidence and arguments of counsel and made specific findings as to the credibility of the parties. Regarding Plaintiff, the Court stated, "I found her story to be reasonable. She gave good explanations. I didn't really recall any specific contradictions in her testimony. I found Ms. Coleman to be inherently believable." 5T:8-8.

Regarding Defendant, the Court stated, "[h]e was also prepared to testify. He made good eye contact, provided prompt answers, also appeared very intelligent." 5T:8-

14. The Court went on to say that, “[h]e provided substantial details in his testimony. His story also made sense. It was reasonable. He gave good explanations. The Court didn't really find any contradictions, any major contradictions in his testimony.” 5T:8-21. “The Court believed you know, most, if not all, of what Mr. Coleman said, too. This really isn't a case that boils down to credibility. This is a case in which the Court perceives that two folks were married for a long time, a couple decades, and this was a difficult process in dissolving their marriage.” 5T:8-25-5T:9-6.

The Court also stated, “[a]nd I want the parties to understand, that again, I believe they are both really good people. It made the case a difficult case. A lot of times throughout a trial something flushes out where one person seems to be the more credible, the more reasonable, but that didn't happen in this case.” 5T:9-20.

The Court explained what if felt was the most difficult part of the case, specifically

I think what I found most difficult was the fact that both these parties, for lack of a better phrase, are like in the twilight years of their earning capacities. And reasonably so. They both worked their entire lives and worked hard, and both were able to generate substantial retirement income streams on both sides and they both deserve to be able to retire when they feel like it and be able to live, you know, a decent life. And I am hopeful that my decision will allow them both to do so on fairly equal footing.

5T:10-15. The Court viewed the two major issues in the case as alimony and equitable distribution (primarily of the marital home but also of the retirement plans).

5T:11-12.

First, the Court applied the equitable distribution factors as set forth in N.J.S.A. 2A:34-23.1. In analyzing factor (a), the Court found that it was a twenty-two and one-half year marriage. 5T:12-4. In analyzing factor (b), the Court found that both parties were 63 years old and the Court found they were relatively healthy. 5T:12-7. In analyzing factor (c), the Court considered both parties' positions regarding the home. The Court considered the fact that the home was purchased

by Plaintiff prior to the marriage and remained deeded and mortgaged in Plaintiff's sole name for more than twenty years. 5T:13-12. The Court also considered the numerous repairs Defendant testified that he made to the home. 5T:14-2. The Court also stated:

... but I don't think there is any question that both parties treated that home as their own. And Mr. Coleman did, as well. And he did long before his name was ever put on the deed. And for all of those reasons, the Court believes that he's entitled to a substantial portion of the equity in the home.

5T:14-12. Also, in analyzing factor (c), the Court considered both parties retirement plans, a significant portion of which was premarital for both parties. 5T:14-19.

In analyzing factor (d), the Court found that the parties lived a middle-class lifestyle. 5T:15-15. The Court stated, "Mrs. Coleman, during the latter part of the marriage, earned substantially more than Mr. Coleman, but they pooled their incomes and they had some arrangement in which they both contributed, not equally, but they both contributed throughout their marriage to

the carrying costs of their marital budget.” 5T:15-17. The Court indicated that in reviewing Defendant’s Case Information Statement, “there were certainly things that the Court could look at and maybe pare down, ... and pare down another thousand or two off of that.” 5T:16-22.

Also,

the Court pared down Ms. Coleman's budget quite a bit and eliminated some of the expense that really reflects expense for the children, and when the Court was done, came up with what the Court believes is a reasonable budget for both, which is probably in accord with what Mr. Coleman had suggested, but what the budget, the Court believes a fair budget for these folks had been and should be is somewhere in about the \$6,000 range.

5T:16-6. The Court found that factor (e) was not applicable. Factor (f) was not addressed.

In analyzing factor (g), the Court considered that Plaintiff earned significantly more than Defendant when she retired from DYFS and continued earning significantly more than Defendant with her employment with Public Catalyst. 5T:20-12. In analyzing factor (h), the Court considered that Plaintiff went back to college to obtain

her master's degree which allowed her to obtain "gainful employment after her retirement." 5T:21-6. Factor (i) was previously addressed in conjunction with factor (c). 5T:21-11. Factor (j) would be discussed more thoroughly in the alimony analysis. 5T:21-14.

In analyzing factor (k), the Court considered the fact that Plaintiff was prepared to buy-out Defendant's interest in the property based upon the appraised value while Defendant argued he should be permitted to buy her out but would not tell the Court what the value should be for purposes of determining the buyout. 5T:22-2.

The Court found that factor (l) was not applicable as the parties' only child was emancipated. 5T:22-18. In analyzing factor (m), the Court considered that Plaintiff was willing to be responsible for a disproportionate share of the debts. 5T:22-20. Factor (n) was not applicable. 5T:23-3. Factor (o) was not applicable. 5T:23-5. Factor (p) allowed the Court to consider its' alimony analysis in its' determination regarding equitable distribution. 5T:23-11.

In considering and applying those factors, the Court required that Plaintiff's 401(k) that accumulated from her Public Catalyst employment until the filing of the Divorce Complaint was to be equally divided between the parties. 5T:25-3.

The tax liability was resolved by agreement of the parties as placed upon the record during the trial. 5T:25-15. Specifically, Plaintiff agreed to be solely responsible for \$6,000.00 of the \$7,000.00 federal tax liability for 2021. 1T:77-1. By consent, the federal tax liability for the years they filed jointly should be apportioned between the parties with Plaintiff being responsible for sixty percent and Defendant being responsible for forty percent. 2T:97-10.

The only exception was for the federal tax liability for 2021, for which Plaintiff agreed to be responsible for \$6,000.00 of the \$7,000.00 tax liability. 2T:97-16. Plaintiff withdrew her request for reimbursement of a portion of the \$13,000.00 of that state tax debt that she

paid and instead, the parties agreed to split equally the remaining state tax debt. 1T:80-21.

The parties were ordered to continue sharing in the cost for Angelica's monthly student loan. 5T:26-22. The parties were also ordered to retain their own vehicles (5T:23-25), bank accounts (5T:35-24), and debts (5T:35-25).

In its analysis of distribution of the home, the Court again reiterated some of the important facts for its decision, specifically: 1) it was a premarital home purchased by Plaintiff for her other children (5T:28-1); 2) it has "tremendous sentimental value to Mrs. Coleman" (5T:28-5); 3) she paid "the bulk of the bills" (5T:28-8); 4) "that mortgage has remained in her name from before she ever married Mr. Coleman up until today" (5T:28-10); 5) it appears that Plaintiff is in the better financial position to buy out Defendant's interest in the home (5T:28-16); and 6) Defendant's refusal to provide an offer to buy out Plaintiff's interest in the home and to

instead argue that the home should just be listed for sale (5T:27-13).

The Court also considered Defendant's argument that the value of the home may have increased between the appraisal in Jul 2023 and the commencement of trial in May 2024. 5T:30-8. The Court permitted Defendant to retain Mr. Poliero at his sole expense to re-appraise the home to determine if there was any increase in value. 5T:30-5. Plaintiff would then have ten days to indicate in writing if she planned to buyout Defendant's interest in the property for forty percent of the equity. 5T:31-5. If Plaintiff failed to notify of that intention, Defendant would then have ten days to notify Plaintiff in writing of his intent to buy her out of the home. 5T:31-8.

The Court also considered Defendant's proposal that he be entitled to forty-five percent of the equity. 5T:28-22. The Court ultimately ordered that the equity be divided between the parties with sixty percent for Plaintiff and forty percent for Defendant. 5T:33-4.

In considering those factors, "the Court finds that it's fair and equitable under all the circumstances that each party is going to retain sole exclusive title and interest in their own retirement vehicles. There won't be any distribution of these retirement funds by either party to the other." 5T:34-5. The Court explained that if it were to simply order the division of what accumulated during the marriage, that would result in an inequitable outcome. 5T:33-17. Specifically, the Court found that once Plaintiff retired, if he was to receive a portion of her pension, she would receive less money than the Defendant because most of his retirement plans were premarital. 5T:33-17. The Court recognized that it could work short term but not long term. 5T:33-24. As such, the Court held that Defendant would retain his premarital pensions with Local 415, Local 1121, and Local 1174. 5T:34-11.

The Court also held that both parties would solely retain the marital share of their respective pensions. 5T:35-1. The Court also held that Plaintiff would be

solely responsible for repayment of her pension loan. 5T:35-9. Lastly, the Court noted that, "the way I look at it, is when Ms. Coleman pays off that debt and retires, the amount of money she will be receiving from her retirement vehicle is fairly equal within a few hundred dollars of the amount of cash flow Mr. Coleman will be receiving from his three retirement vehicles." 5T:35-16.

The Court also performed a thorough review and application of the alimony factors set forth in N.J.S.A. 2A:34-23(b). In analyzing factor (1), the Court found that the reasonable budget for the parties was \$6,000.00 per month. 5T:36-12. The Court found that Defendant would have a need once he lost his health insurance coverage that was provided by Plaintiff during the marriage. 5T:36-19. The Court also found that Plaintiff had the ability to pay while she is employed with Public Catalyst. 5T:36-22. In analyzing factor (2), the Court found that the parties were married for twenty-two and one-half years. 5T:36-25.

In analyzing factor (3), the Court found that although Defendant could not continue employment as a laborer, he could "earn a living" and the Court imputed income to him in the sum of \$22,320.00. 5T: 37-7. 6T:31-2.

In analyzing factor (4), the Court reiterated that it determined the standard of living to be a budget of \$6,000.00 per month. T7:37-20. In analyzing factor (5), the Court found that Plaintiff had a higher income capacity at that time. 5T:38-2. However, the Court recognized that, "I don't expect that's lasting forever. I mean, she's 63 years old." 5T:38-4. The Court considered the fact that, "[s]he had already retired once. She indicated and testified, and the Court believes she took this job as a way to help her children." 5T:38-5.

In analyzing factor (6), the Court considered that Defendant had been unemployed for a period of five years as of the commencement of trial. 5T:38-23. In light of that absence, the Court imputed income to him of less

than full time hours earning minimum wage. 5T:38-24. Factor 7 was not applicable 5T:39-5. Factor 8 was not heavily considered. 5T:39-11.

In analyzing factor (9), the Court considered the parties' financial contributions to the marital lifestyle, in which Plaintiff contributed more and also earned more than Defendant. 5T:40-1. The Court stated that factors ten and eleven played a large part in the Court's decision regarding alimony. 5T:40-8. The Court also reiterated its concern that if it "distributed the pensions in a different way, in three or four or five years when Ms. Coleman retires, she would be the one needing support and that to me didn't seem like a fair result." 5T:40-17. The Court considered the tax treatment of alimony to both parties. 5T:41-3. Factors thirteen and fourteen were addressed throughout the Court's decision. 5T:41-8.

The Court found that from his retirement sources of income alone, Defendant earns \$5,461.00 per month. 5T:41-24. The Court also imputed \$22,320.00 per year in

income to the Defendant. 5T:42-1. The Court calculated that after taxes, that income would amount to approximately \$1,395.00 per month. 5T:42-5. As such, between his retirement income and income imputed to him, Defendant's total monthly income would be \$6,856.00. 5T:42-6. Solely based upon that information, it would appear that Defendant cannot establish a need to satisfy his estimated \$6,100.00 monthly budget. 5T:42-8. However, the Court considered that he would need to purchase a health insurance plan, which the Court estimated may cost him \$1,000.00 per month. 5T:42-17. The Court also considered that Defendant would qualify for Medicare in April 2026. 5T:42-24.

The Court found that Plaintiff was earning approximately \$7,219.00 net per month from her employer. 5T:43-12. Plaintiff was also receiving \$3,956.00 net from her pension (after repayment of her pension loan). 5T:43-16.

The Court determined that Defendant "can make his budget with a nominal amount of alimony." 5T:47-14.

Likewise, the Court found that Plaintiff "could also make her budget after she pays the nominal amount of alimony." 5T:47-15. As such, the Court ordered Plaintiff to pay Defendant \$400.00 per month in alimony. 5T:48-2. The term of the alimony was until April 28, 2026. 5T:48-5. It was the intention of the Court for the alimony to last until he would qualify for Medicare upon his sixty-fifth birthday. 5T:48-6.

LEGAL ARGUMENT

I. The Trial Court's Findings are Entitled to Deference and Must be Affirmed Because They are Supported by Credible Evidence.

It is well recognized that "the scope of appellate review of a trial court's fact-finding function is limited." Cesare v. Cesare, 154 N.J. 394, 411 (1998). The Court has recognized that "**proper** factfinding in divorce litigation involves the Family Part's 'special jurisdiction and expertise in family matters,' which often requires the exercise of reasoned discretion." Slutsky v. Slutsky, 451 N.J. Super. 332, 344 (App. Div.

2017) (quoting Cesare, 154 N.J. at 413)) (emphasis added).

The New Jersey Supreme Court has long emphasized that “[f]indings by the trial court are binding on appeal when supported by adequate, substantial and credible evidence.” Cesare, 154 N.J. at 412. “Deference is especially appropriate when the evidence is largely testimonial and involves questions of credibility.” Id. (quoting In re Return of Weapons to J.W.D., 149 N.J. 108, 117 (1997)).

Reversal is only warranted where the findings are “so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interest of justice.” Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974) (quoting Fagliarone v. Twp. of No. Bergen, 78 N.J. Super. 154, 155 (App. Div. 1963)).

In the present matter, the Court presided over four (4) days of live testimony. The Court found “both parties credible . . . I don’t believe either party was

intentionally deceptive.” 5T:6-7. The Court also noted that “[t]his really isn't a case that boils down to credibility.” 5T:8-25.

The Court admitted various exhibits produced by both parties. 5T:6-8. The Court fully explained its reasoning for the determinations of equitable distribution and alimony. Specifically, the Court explained why permitted was permitted the first option to buy out Defendant's equity in the home. 5T:28-1. The Court permitted Defendant to obtain an updated appraisal to explore his concern that the property may have increased in value in the one year between the appraisal and commencement of trial. 5T:30-5. The Court considered Defendant's proposal that he be entitled to forty-five percent of the equity. 5T:28-22. Ultimately, the Court divided the equity in the home awarding the Plaintiff sixty percent and Defendant forty percent. 5T:33-4.

The Court also engaged in a detail consideration of the parties' respective pension plans and fully explained why those retirement vehicles should not be distributed.

5T:33-17. As such, the Court's equitable distribution determination was fully supported by the record.

Similarly, the parties' incomes were described in detail in the record. Specifically, Defendant's income was determined to be \$5,461.00 per month. 5T:41-24. The Court also imputed \$22,320.00 per year in income to the Defendant. 5T:42-1. The Plaintiff's income was determined to be approximately \$7,219.00 net per month from her employer. 5T:43-12. Plaintiff was also receiving \$3,956.00 net from her pension (after repayment of her pension loan). 5T:43-16. As such, the Court's alimony determination was also fully supported by the record.

The Trial Court engaged in a careful balancing of the parties' respective positions and neutral application of the law, resulting in detailed oral findings that were supported by adequate, substantial and credible evidence. As such, the Court's determinations regarding alimony and equitable distribution must be affirmed.

II. The Trial Court Properly Applied Every Factor Set Forth in N.J.S.A. 2A:34-23(b) In Its Analysis of Defendant's Request for Alimony.

The Courts have repeatedly recognized that alimony is an "economic right that arises out of the marital relationship and provides the dependent spouse with 'a level of support and standard of living generally commensurate with the quality of economic life that existed during the marriage.'" Mani v. Mani, 183 N.J. 70, 80 (2005) (quoting Stiffler v. Stiffler, 304 N.J. Super. 96, 99 (Ch. Div. 1997)).

When analyzing a request for alimony, New Jersey Court Rule requires that the trial court, "by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon." N.J. Ct. R. 1:7-4(a). In its' decision, "the court shall consider and make specific findings on the evidence about all of the statutory factors set forth in subsection b. of this section." N.J.S.A. 2A:34-23(C). N.J.S.A. § 2A:34-23(b) requires that:

In all actions brought before divorce .
. . the court shall consider, but not be limited to, the following factors:

- (1) the actual need and ability of the parties to pay;
- (2) the duration of the marriage or civil union;
- (3) the age, physical and emotional health of the parties;
- (4) the standard of living established in the marriage or civil union and the likelihood that each party can maintain a reasonably comparable standard of living, with neither party having a greater entitlement to that standard of living than the other;
- (5) the earning capacities, educational level, vocational skills, and employability of the parties;
- (6) the length of absence from the job market of the party seeking maintenance;
- (7) the parental responsibilities for the children;
- (8) the time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment, the availability of the training and employment, and the opportunity for future acquisitions of capital assets and income;
- (9) the history of financial or non-financial contributions to the marriage or civil union by each party including contributions to the care and education of the children and interruption of personal careers or educational opportunities;

- (10) the equitable distribution of property ordered and any payouts on equitable distribution, directly or indirectly, out of current income, to the extent this consideration is reasonable, just and fair;
- (11) the income available to either party through investment of any assets held by that party;
- (12) the tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a non-taxable payment;
- (13) the nature, amount, and length of pendente lite support paid, if any; and
- (14) any other factors which the court may deem relevant."

N.J.S.A. § 2A:34-23(b).

The Courts have recognized that "[f]ailure to make explicit findings and clear statements of reasoning "constitutes a disservice to the litigants, the attorneys, and the appellate court.'" Curtis v. Finneran, 83 N.J. 563, 569-70 (1980) (quoting Kenwood Assocs. v. Bd. of Adjustment of Englewood, 141 N.J. Super. 1, 4 (App.Div.1976)).

In this case, the Court methodically and thoughtfully applied every factor during its analysis of Defendant's alimony request and made detailed findings of fact and

conclusions of law following the application of those factors.

The Court's application of those factors is set forth in detail in the Statement of Facts. However, the most important facts and application of the statute are as follows.

In analyzing factor (1), the Court found that the reasonable budget for the parties was \$6,000.00 per month. 5T:36-12. The Court found that Defendant would have a need once he lost his health insurance coverage that was provided by Plaintiff during the marriage. 5T:36-19. The Court also found that Plaintiff had the ability to pay while she is employed with Public Catalyst. 5T:36-22.

In analyzing factor (4), the Court reiterated that it determined the standard of living to be a budget of \$6,000.00 per month. T7:37-20. In analyzing factor (5), the Court found that Plaintiff had a higher income capacity at that time. 5T:38-2. However, the Court

recognized that Plaintiff would retire from that employment eventually. 5T:38-4.

The Court found that from his retirement income alone, Defendant earned \$5,461.00 per month. 5T:41-24. The Court also imputed \$22,320.00 per year in income to the Defendant, which after taxes would amount to approximately \$1,395.00 per month. 5T:42-5. Based upon Defendant's retirement income and income imputed to him, Defendant's total monthly income would be \$6,856.00. 5T:42-6. Solely based upon that information, it would appear that Defendant cannot establish a need to satisfy his estimated \$6,100.00 monthly budget. 5T:42-8. However, the Court considered that he would need to purchase a health insurance plan, which the Court estimated may cost him \$1,000.00 per month. 5T:42-17. The Court also considered that Defendant would qualify for Medicare in April 2026. 5T:42-24. The Court found that Plaintiff was earning approximately \$7,219.00 net per month from her employer. 5T:43-12. Plaintiff was

also receiving \$3,956.00 net from her pension (after repayment of her pension loan). 5T:43-16.

The Court determined that Defendant "can make his budget with a nominal amount of alimony." 5T:47-14. Likewise, the Court found that Plaintiff "could also make her budget after she pays the nominal amount of alimony." 5T:47-15. As such, the Court ordered Plaintiff to pay Defendant \$400.00 per month in alimony. 5T:48-2. The term of the alimony was until April 28, 2026. 5T:48-5. It was the intention of the Court for the alimony to last until Defendant would qualify for Medicare upon his sixty-fifth birthday. 5T:48-6.

The \$400.00 per month limited-duration alimony award through April 2026 was clearly tailored based on income disparity, upcoming retirement, and the lifestyle maintained during the marriage. As such, the Court did not err in its' consideration and application of the factors set forth in N.J.S.A. § 2A:34-23(b) and ultimate award of alimony.

III. The Trial Court Properly Applied Every Factor Pursuant to N.J.S.A. § 2A:34-23.1 In Its Analysis of Equitable Distribution

The Courts have also recognized that, "the manner of distribution, as with the determination of alimony, remains within the broad discretion of the trial court." Steneken v. Steneken, 367 N.J. Super. 427, 435 (App. Div. 2004). Notwithstanding, N.J.S.A. § 2A:34-23.1 provides that "in making an equitable distribution of property, the court shall consider, but not be limited, the following factors:

- a. The duration of the marriage or civil union;
- b. The age and physical and emotional health of the parties;
- c. The income or property brought to the marriage or civil union by each party;
- d. The standard of living established during the marriage or civil union;
- e. Any written agreement made by the parties before or during the marriage or civil union concerning an arrangement of property distribution;
- f. The economic circumstances of each party at the time the division of property becomes effective;
- g. The income and earning capacity of each party, including educational background, training, employment skills, work experience, length of absence from the job market, custodial

responsibilities for children, and the time and expense necessary to acquire sufficient education or training to enable the party to become self-supporting at a standard of living reasonably comparable to that enjoyed during the marriage or civil union;

h. The contribution by each party to the education, training or earning power of the other;

i. The contribution of each party to the acquisition, dissipation, preservation, depreciation or appreciation in the amount or value of the marital property, or the property acquired during the civil union as well as the contribution of a party as a homemaker;

j. The tax consequences of the proposed distribution to each party;

k. The present value of the property;

l. The need of a parent who has physical custody of a child to own or occupy the marital residence or residence shared by the partners in a civil union couple and to use or own the household effects;

m. The debts and liabilities of the parties;

n. The need for creation, now or in the future, of a trust fund to secure reasonably foreseeable medical or educational costs for a spouse, partner in a civil union couple or children;

o. The extent to which a party deferred achieving their career goals; and

p. Any other factors which the court may deem relevant.

N.J.S.A. § 2A:34-23.1.

The goal in equitable distribution is "to effect a fair and just division of marital assets." Steneken v. Steneken, 367 N.J. Super. 427, 434 (App. Div. 2004). Notably, "equitable distribution does not presume an **equal** distribution." M.G. v. S.M., 457 N.J. Super. 286, 295 (2018) (*citing Rothman*, 65 N.J. at 232 n.6,) (emphasis added). The Supreme Court has outlined a three (3) step process to utilize when analyzing a request for equitable distribution: (1) identify marital assets; (2) value them; and (3) distribute them equitably. Rothman v. Rothman, 65 N.J. 219, 232 (1974).

A. The Trial Court Properly Applied the Rothman Three Step Process in Its Analysis of Equitable Distribution of The Marital Home

The Court's decision regarding equitable distribution of the marital home was correct. In applying the Rothman three step process, the Court made the following findings.

First, the Court identified it as a marital asset based upon Plaintiff adding Defendant to the deed during the marriage. 5T:14-12.

Second, the Court tentatively valued the home at \$240,000.00. 5T:7-7. That was based upon Mr. Poliero's appraisal, which was completed on July 3, 2023. Ra6. However, the Court granted the Defendant, at his sole expense, the ability to hire Mr. Poliero to reappraise the property. 5T:30-16. The Court stated that it would use the new appraised value for purposes of calculating equitable distribution. 5T:30-21.

Third, the Court determined that the equity would be divided between the parties with sixty percent for Plaintiff and forty percent for Defendant. 5T:33-4.

In its analysis of distribution of the home, the Court reiterated some of the important facts for its decision, specifically: 1) it was a premarital home purchased by Plaintiff for her other children (5T:28-1); 2) it has "tremendous sentimental value to Mrs. Coleman" (5T:28-5); 3) she paid "the bulk of the bills" (5T:28-

8); 4) "that mortgage has remained in her name from before she ever married Mr. Coleman up until today" (5T:28-10); 5) it appears that Plaintiff is in the better financial position to buy out Defendant's interest in the home (5T:28-16); and 6) Defendant's refusal to provide an offer to buy out Plaintiff's interest in the home and to instead argue that the home should just be listed for sale (5T:27-13).

Based upon the above, the Trial Court properly applied the Rothman three step process in its methodical consideration and ultimate equitable distribution of the marital home. As such, the Court's determination regarding equitable distribution of the marital home was supported by adequate, substantial and credible evidence and must be upheld.

B. The Trial Court Properly Applied the Rothman Three Step Process in Its Analysis of Equitable Distribution of The Retirement Plans

The Court's decision regarding equitable distribution of the retirement plans was correct. In

applying the Rothman three step process, the Court made the following findings.

First, the Court identified the pensions of both parties. Defendant had two premarital pensions through Local 415 and Local 1121. 5T:35-16. Defendant also accumulated a pension during the marriage through his employment with Local 1121. 5T:35-15. Plaintiff had a pension through her employment with DYFS, a portion of her pension was premarital. 5T:35-5. Plaintiff also had a 401(k) through her part time employment which accumulated fully during the marriage. 5T:25-2.

Second, the Court valued them. Defendant's pensions were in pay status and he was receiving a combined monthly income of \$5,461.00. Plaintiff's pension was in pay status and she was receiving \$3,956.00 net from her pension (after repayment of her pension loan). 5T:43-16.

Third, the Court distributed them equitably. The Court recognized that if the parties' sole source of

income was their retirement plans, the Defendant would earn more than the Plaintiff.

The Court placed emphasis on the fact that Defendant had a significant amount of income generated from his premarital pensions that were not subject to equitable distribution. 5T:33-20. If the Court merely considered the marital shares of each, upon Plaintiff's retirement, Defendant would be receiving more income than her due to his premarital pensions and if the Court determined that he was entitled to a significant share of hers. 5T:33-22.

Based upon the above, the Trial Court properly applied the Rothman three step process in its methodical consideration and ultimate equitable distribution of the retirement plans. As such, the Court's determination regarding equitable distribution of the retirement plans was supported by adequate, substantial, and credible evidence and must be upheld.

IV. There is No Basis for Appellant's Allegation of Judicial Bias or Abuse of Discretion

The Appellant's assertion that the trial court acted with bias is unsupported by the record.

Judges are to "act at all times in a manner that promotes public confidence" and "must avoid all impropriety and appearance of impropriety." Canon 2(a) of the Code of Judicial Conduct. Canon 3(C)(1) of the Code of Judicial Conduct states that "[a] judge should disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned." Additionally, Rule 1:12-1(f) directs judges not to sit in any matter "when there is any ... reason which might preclude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so." N.J. Ct. R. 1:12-1(f).

The New Jersey Courts have held that "bias is not established by the fact that a litigant is disappointed in a court's ruling on an issue." State v. Marshall, 148 N.J. 89, 186 (1997); see also Strahan v. Strahan, 402 N.J. Super. 298, 318 (App. Div. 2008).

In this matter, the Court was not biased in any way. The transcript from July 10, 2024 (5T) reveals that the Court demonstrated professionalism, neutrality, and a thoughtful approach throughout. The Court carefully considered the testimony, evidence and arguments of counsel and made specific findings as to the credibility of the parties. Regarding Plaintiff, the Court stated, "I found her story to be reasonable. She gave good explanations. I didn't really recall any specific contradictions in her testimony. I found Ms. Coleman to be inherently believable." 5T:8-8.

Regarding Defendant, the Court stated, "[h]e was also prepared to testify. He made good eye contact, provided prompt answers, also appeared very intelligent." 5T:8-14. The Court went on to say that, "[h]e provided substantial details in his testimony. His story also made sense. It was reasonable. He gave good explanations. The Court didn't really find any contradictions, any major contradictions in his testimony." 5T:8-21. "The

Court believed you know, most, if not all, of what Mr. Coleman said, too." 5T:8-25.

The Court further stated, "[t]his really isn't a case that boils down to credibility. This is a case in which the Court perceives that two folks were married for a long time, a couple decades, and this was a difficult process in dissolving their marriage." 5T:9-1. The Court also stated, "[a]nd I want the parties to understand, that again, I believe they are both really good people. It made the case a difficult case. A lot of times throughout a trial something flushes out where one person seems to be the more credible, the more reasonable, but that didn't happen in this case." 5T:9-20.

The Court's recognition of both parties' credibility contradicts any claim of bias by the Defendant. It must be noted that the Trial Court gave Defendant the opportunity to obtain an updated appraisal of the home. 5T:30-5. This was despite the fact this position was not

indicated prior to trial and the appraiser was retained by Defendant. 1T:96-8.

There was no bias in this matter. Defendant is merely unhappy with the Court's decision and is seeking that this Court substitute its own decision instead. There was no abuse of discretion in this case. The trial court's findings of fact and conclusions of law were based upon the applicable statutes, case law, and the factual record and accordingly should be upheld.

Conclusion

The trial court's rulings on both alimony and equitable distribution are the product of a full evidentiary record, careful application of statutory law, and thoughtful judicial discretion. The Court presided over a multi-day trial, heard extensive testimony, reviewed dozens of exhibits, and delivered a reasoned and well-supported oral opinion. Its' findings were grounded in the statutory factors set forth in N.J.S.A. § 2A:34-

23(b) and N.J.S.A. § 2A:34-23.1 and consistent with binding precedent.

Appellant's arguments ask this Court to substitute its judgment for that of the trial court. However, the Appellate Division is constrained by a deferential standard of review and there is no credible basis to conclude that the trial judge's determinations were arbitrary, capricious, or unsupported by the record.

For all of these reasons, the Final Judgment of Divorce entered on July 16, 2024, should be affirmed in its entirety.

Respectfully submitted,
Kelly McGriff Law, LLC



Kelly T. McGriff, Esquire
Attorney for Plaintiff Respondent
Robin Coleman

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A-000139-24

RECEIVED
APPELLATE DIVISION

JUN 30 2025

SUPERIOR COURT
OF NEW JERSEY

ROBIN COLEMAN

CIVIL ACTION

Plaintiff-Respondent

ON APPEAL FROM

SUPERIOR COURT OF NEW JERSEY

V

CHANCERY DIVISION FAMILY PART

ATLANTIC COUNTY

KARL COLEMAN

DOCKET NO. FM-01-379-23

Defendant-Appellant

HONORABLE STEVEN SCHEFFLER, J.S.C.

Sat below

REPLY BRIEF AND APPENDIX

FOR

APPELLANT KARL COLEMAN

KARL COLEMAN

5 SCHOOL VIEW DR. APT.1

ABSECON N.J. 08201

609-515-0062

kvc415@comcast.net

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-000139-24

ROBIN COLEMAN

Plaintiff-Respondent

V

KARL COLEMAN

Defendant-Appellant

CIVIL ACTION
ON APPEAL FROM
SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION FAMILY PART
ATLANTIC COUNTY
DOCKET NO. FM-01-379-23

HONORABLE STEVEN SCHEFFLER, J.S.C.
Sat below

REPLY BRIEF AND APPENDIX

FOR

APPELLANT KARL COLEMAN

KARL COLEMAN
5 SCHOOL VIEW DR. APT.1
ABSECON N.J. 08201
609-515-0062
kvc415@comcast.net

TABLE OF CONTENTS

	PAGE
PRELIMINARY STATEMENT	1
ARGUMENT	
I THE RESPONDENT'S ASSERTION OF NO BASIS FOR CLAIM OF JUDICIAL BIAS ARE NOT SUPPORTED BY TESTIMONY AND THE RECORD. THE COURT FOUND NO CREDIBILITY ISSUES IN THE CASE, HOWEVER IT IGNORED, DISREGARDED AND OMITTED EVIDENCE WHICH SHOULD HAVE BEEN CONSIDERED CONCERNING THE PLAINTIFF'S CREDIBILITY.THE PLAINTIFF DID NOT COME IN WITH CLEAN HANDS AND HER TESTIMONY WAS IMPLAUSIBLE, AND CONTRADICTORY. THEREFORE, THE COURTS FAILURE TO ACT AND EXAMINE, MAKE ITS FINDINGS ON CREDIBILITY ERRONEOUS, RESULTING IN PREJUDICE TOWARDS THE DEFENDANT AND ABUSE OF ITS DISCRETION.	2
II PLAINTIFF ARGUMENT (B) ROTHMAN 3 STEP PROCESS WAS NOT CORRECTLY APPLIED FOR PENSION ASSETS.	10
III PLAINTIF ARGUMENT (A) ROTHMAN 3 STEP PROCESS WAS NOT APPLIED CORRECTLY FOR HOME ASSET.	11
IV THE TRIAL COURTS FINDINGS ARE NOT ENTITLED TO DEFERENCE AND MUST BE REVERSED BECAUSE THEY ARE NOT	12

**SUPPORTED BY ADEQUATE, SUFFICIENT, CREDIBLE EVIDENCE
PRESENT IN TESTIMONY AND THE RECORD.**

**V. PLAINTIFF'S ARGUMENT (ALL ALIMONY CRITERIA IS
CORRECTLY ADDRESSED) IS INCORRECT AND BIASED.
CAPRICIOUSNESS WAS DISPLAYED IN ITS ANALYSIS.** 13

CONCLUSION 14

TABLE OF APPENDIX

appendix document

appendix page number

Exhibit R) Plaintiff Bank Statement

DRa153

TABLE OF AUTHORITIES

<u>Authority</u> <u>number</u>	<u>Brief Page</u>
U. S. Supreme Court Unclean Hands Doctrine	5
Case Law:	
<u>ABF Freight., Inc. v. NLRB</u> 510 U.S. 317, 323 (1994)	6
<u>Cathcart v. Robinson</u> 30 U.S. 264, 276 (1831)	5,6
<u>Kavanaugh v. Quigley,</u> 63 N.J. Super 153,158 (App. Div. 1960)	13
<u>Keystone Driller Co. v. Gen Excavator Co.,</u> 290 U.S. 240, 244-45 (1933)	5
<u>Morton Salt Co. v. Suppiger Co.</u> 314 U.S. 488,494 (1942)	6
<u>Precision Instruments Mfg. Co. v. Auto Maint. Mach. Co.</u>	5,6

324 U.S. 806, 814 (1945)

PRELIMINARY STATEMENT

In analyzing the respondent brief, it is obvious that most points have been addressed in the appellant's initial brief. However, it is necessary to address several points; Credibility, standard of review/deference, criteria in Equitable Distribution and Alimony statutes, judicial bias and abuse of discretion. It should be noted the plaintiff's attorney did not rebutt with facts any issues presented by the defendant and substantiated by testimony and the record. The attorney continued the same untruths and misrepresentations relied on at the trial. She is relying on the court's opinion to be given deference and the facts not being examined or challenged. However, the opinions of the court and the facts should not be granted deference for they are not supported by sufficient, substantial credible evidence in testimony or the record. It should be noted, the defendant not seeking relief because he is disappointed in the outcome of the trial or seeking the appellate court to substitute its opinion for that of the lower court. The defendant is seeking relief because of a unjust, inequitable clearly wrong and prejudiced ruling by the trial court. This ruling extremely harmed the defendant denying his right to an asset which he owned and contributed to. This ruling could not have been made by a court with such experience unless there was something else.

- I. THE RESPONDENT'S ASSERTION OF NO BASIS FOR CLAIM OF JUDICIAL BIAS ARE NOT SUPPORTED BY TESTIMONY AND THE RECORD. THE COURT FOUND NO CREDIBILITY ISSUES IN THE CASE, HOWEVER IT IGNORED, DISREGARDED AND OMITTED EVIDENCE WHICH SHOULD HAVE BEEN CONSIDERED CONCERNING THE PLAINTIFF'S CREDIBILITY. THE PLAINTIFF DID NOT COME IN WITH CLEAN HANDS AND HER TESTIMONY WAS IMPLAUSIBLE AND CONTRADICTORY. THEREFORE, THE COURTS FAILURE TO ACT AND ITS FINDINGS ON CREDIBILITY ARE ERRONEOUS RESULTING IN PREJUDICE TOWARDS THE DEFENDANT AND ABUSE OF DISCRETION.

Most of the arguments put forth by the plaintiff's attorney have been rebutted and proved to be contrary to evidence and testimony in the defendant's initial brief. Her brief continues in the same half-truths and misrepresentations conveyed during the trial. They will be addressed now. The plaintiff attorney raised the issue; there is no basis for Judicial Bias or credibility issues and referenced in detail the court's findings that both parties were credible. However, she omitted the very first statement that spoke volumes about the plaintiff's testimony and the capriciousness of the court. The court found and I quote "I found Ms. Coleman's testimony to be based on, at least what she perceived was an accurate recollection (5T,8,6-7). This was akin to saying, this athlete was a legend in his own mind, not in everyone else's mind. The court's analysis was not based on the plaintiff's testimony, lining up with the facts of the case rather than what she believed in her mind

was the truth. The court's statements concerning the plaintiff's credibility are mere statements contrary to the facts. The plaintiff's testimony on the issues the court relied on to make its final decisions were limited, cursory and perfunctory at best. Consider her testimony on these issues; 1) The plaintiff paid all the bills, defendant paid nothing. Her testimony was that the defendant would know better than her. (1T,157,16-21)(1T, 124, 9-14)(2T,73-74,12-25,1-22)(1T, 104-105,17-25,1-6)(1T,167-169,12-16,25-1). How realistic and believable is that especially as addressed in the defendant's brief. The respondent's brief stated the plaintiff began paying 900.00 per month after 2015. Therefore, they want you to believe he began paying 16 years into the marriage. Apparently, the trial court believed that. During the first two years of marriage the plaintiff only made half of her salary \$20,000 per year and the defendant earned close to 50,000. There was no testimony of the electricity being cut off or a family of 6 not having food or sewer or cable not paid. The testimony was to the plaintiff filing bankruptcy because the mortgage wasn't paid which she was responsible for and her cars being repossessed.

2) Testimony on the auto accident that she claimed she had. The testimony of the plaintiff was sketchy at best, and the court was informed before she testified about her non-involvement in this accident. (1T,161,1-25)(1T,133,2-21)(2T,142,10-12)(1T,117,2-7)(Exhibit P, Da127). Her deceptive answer of

one is listed, not I had one accident. She did not have an accident and did not want to say she had one to the court.

3) Testimony by the plaintiff about the homestead rebate that she stole from the defendant as the court was considering equitable distribution of the home. (1T,142,3-25)(1T,143,1-17)(3T,74,12-16). The court was silent on the issue.

4) Testimony of earning 103,000 from DYFS when she retired in January 2020 (1T,28,13-15). The record reveals that in 2019 the plaintiff earned 88,000 from DYFS employment (Exhibit U, Da148). If she retired in January 2020, her highest earnings from DYFS were 88,000. Her earnings for the year 2020 came from one month with DYFS, eight months from her pension and three months from public catalyst. Therefore, she never achieved the point of earning 103,000 per year from DYFS. Yet the court believed her as the defendant did just because she said it and not because of what the record reflects. The court found no contradictions.

5). Plaintiff's testimony about a mortgage crime (1T,109,20-25)(1T,110,1-15)(1T,160,2-25)(3T,36,7-25)(3T,37,1-3).

6). There were countless answers I don't know, I don't remember and commenting and butting in during the defendant's testimony. Her attitude was indifferent and hostile resulting in admonishments from both attorneys (1T,124,9-17)(1T,133,2-21). However, the court was silent, never a word

about the tremendous income disparity or her fiscal irresponsibility, just praises for her master's degree and all the things she is doing for the kids.

The plaintiff came into court asking for equitable distribution, however, did not come in with clean hands. The doctrine of unclean hands has been around since before the United States and was endorsed early in history by the U.S. Supreme Court which considered it well settled law. Cathcart v. Robinson 30 U.S. 264, 276 (1831). Precision Instruments Mfg. Co. v. Auto. Maint. Mach. Co. 324 U.S. 806, 814 (1945). Concerning equity; One of the elementary and fundamental conceptions of equity jurisprudence is if a person comes into equity he must come with clean hands.

[T]hat whenever a party who, as actor, seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him in limine; the court will refuse to interfere on his behalf to acknowledge his right, or to award him any remedy. Keystone Driller Co. v. Gen. Excavator Co., 290 U.S. 240, 244-45 (1933).

The earliest court in the United States to adopt this maxim was the Supreme Court of New Jersey. Although the doctrine concerning equity was used to curtail tactical behavior which enables the party to profit from its wrongdoing, the main purpose was to protect the judicial system. First and foremost, the courts are concerned with their own uprightness when they apply the clean hands doctrine. It is not a matter of protecting one party. It becomes a matter of public policy making it the duty or responsibility for the courts to invoke

the doctrine. When implementing the unclean hands doctrine, it protects judicial integrity because if a party with unclean hands is allowed to recover in an action it causes doubts concerning justice that the judicial system is supposed to provide. The Supreme Court described the misconduct as “a flagrant affront to the truth-seeking function of adversary proceedings.”

ABF Freight., Inc. v. NLRB, 510 U.S. 317, 323 (1994) (“false testimony in a formal proceeding is intolerable. We must neither reward nor condone such a flagrant affront to the truth-seeking function of adversary proceedings”).

Relying on U.S. courts citation of “any willful act” (“Any willful act concerning the cause of action which rightfully can be said to transgress equitable standards of conduct is sufficient cause for the invocation of the maxim....”). A situation showing a specific intent to deceive may satisfy unclean hands. Precision Instrument 324 U.S. at 814-815 (1945).

U.S. Supreme Court cases indicate it is not necessary that the conduct be illegal. Cathcart v. Robinson 30 U.S. 264, 276-77 (1831).

U.S. Supreme Court decisions require a connection between the matter or conduct in unclean hand questions or matters before the court. ABF Freight Sys., v. NLRB, 510 U.S. 317, 329-30 (1994).

U.S. Supreme Court indicates that the clean hands doctrine applies regardless if the other party has suffered or has not been injured from the actions. Morton Salt Co. v. G.S. Suppiger Co. 314 U.S. 488, 494 (1942).

The plaintiff committed 3 crimes during the course of the divorce trial involving assets under consideration for equitable distribution. The court ignored them, never commenting on them.

1). The plaintiff testified to a mortgage fraud crime involving the purchase of a

home for her older daughter. Although in sketchy testimony, she testified of not using her own bank account. It is widely known when giving a gift in the purchasing of a home, mortgage companies want to see your accounts and assets to determine if the person giving the gift has the ability. The defendant testified that it was the plaintiff's funds and her account that was used (3T,35-36). The plaintiff's bank information that was submitted to the court for the time of this trial and purchase of the home clearly shows the plaintiff's consistent monthly income and where it was derived. However, it also shows at that point of time an abnormally high bank balance, and the abnormally high deposit to the account and then almost identical withdrawal a few days later (Exhibit R, DRa198-201).

2). The plaintiff testified of stealing the homestead rebate from the defendant. (1T,142,3-25)(1T,143,1-17)(3T,74,12-16).

3). The plaintiff lied to the court about an accident involving a vehicle which was totaled and eligible for equitable distribution. The plaintiff's daughter had an accident. The plaintiff arrived at the scene before the police and lied to them saying that she was the operator to avoid penalties for the daughter. This information was supplied to the court at the beginning of the trial yet ignored by the court (1T,161,1-25)(1T,133,2-21)(2T,142,10-12)(Exhibit P, Da128-129)

The clean hands doctrine should have applied. No equitable distribution should have been given, and her testimony should not have been believed. The court is the fact finder. If it ignores exhibits, refuses to find the facts or its rulings deviate from evidence when provided, it's an abuse of its discretion or disservice to the appellate court, litigants and the public. These 3 alone should have raised red flags concerning the credibility of the plaintiff. However, there was an abundance of testimony from the defendant concerning the plaintiff's credibility. It was ample testimony that the plaintiff was not forthcoming with the court concerning her bank account, savings and financial dealings. The plaintiffs CIS indicated at the start of the trial, three bank accounts containing \$160, \$68 and \$68 while earning over \$180,000 per year (Exhibit H, Da57). The defendant testified that the plaintiff was hiding her funds by sending thousands of dollars to her adult sons in the military (1T,112-113)(3T,32-37)(3T,92,19-25). The defendant's unrebutted testimony showed the parties had security boxes in the home where funds were secured in the event that the IRS would freeze their accounts because they had a large tax liability (3T,17,3-25)(3T,18,1-4). The court found "it's nothing wrong with funneling money to adult children". The defendant finds there is something wrong, taking money out of the household funds while having 18,000 in credit card debt and not

paying a 60,000 plus tax liability that was created by a lack of withholding on the plaintiff's income.

The issue of the clean hands doctrine has a direct correlation with the respondent's assertion of no judicial bias, however it is not limited to that one issue. The failing to recognize and invoke this doctrine creates doubt and distrust of the court and the judicial system as referenced earlier in the brief. It is the Judges duty, responsibility to protect the integrity of the court. This is the foremost reason for this doctrine. The issue need not be argued by the defendant, the trial court should have acted sua sponte. Although Judges are given broad discretion in these areas, no discretion should be given in the instant case considering the lack of sufficient credible evidence, errors and judicial bias towards the defendant. The court silence in the face of 3 crimes is indefensible and a disservice to the appellate court and the public. It is no longer only an issue of credibility for the plaintiff but an issue of integrity for the court and judicial system. The responsibility is now dumped in the lap of the appellate court. The Appellate court should act on its own, sua sponte and preclude the lower court from distributing or in the instant case not distributing the pension assets in the erroneous, unfair, unjust and inequitable way that it has. It is the appellate courts opportunity and responsibility to restore the

public's trust in the judicial system one case at a time starting with this initial case as research reveals public trust is waning.

II. PLAINTIFF ARGUMENT (B) ROTHMAN 3 STEP PROCESS WAS NOT CORRECTLY APPLIED FOR PENSION ASSETS.

The court never mentioned the premarital portion of the plaintiff's pension.

The court never provided the present value of the asset or used the coverture fracture to determine how much of a retirement asset is considered marital property. This is step two in the three step process the court did not satisfy.

The court never relied on a professional company to obtain this value, the professional company never gave a report. The plaintiff's brief as did the trial court underreported the plaintiff's net monthly income 3956.00 and stated it was after the plaintiff's loan. The court relied on these facts, however the plaintiff's monthly income was 4125.00 and after the 724.00 loan was paid its 4849.00. The court never found that comparing the parties' monthly pensions, the defendant earned more as stated by the plaintiff attorney. It should be noted, the attorney never cited where in the transcripts the court said this.

Every fact that I have stated has already been cited in the initial brief. The attorney also cited where the court found the defendant would receive more income than the plaintiff due to his premarital pensions. However, we don't know this to be fact because the court never provided any figures to substantiate this. In addition, the court never considered the plaintiff's

premarital assets. It should be noted; the court also said in this citing, the plaintiff would be upside down, also that this would work in the present time but not in the future. This is criteria (F) “at the time of distribution” that the court ignored and the attorney ignores here. The court was talking about three to five years into the future when the plaintiff gives up her second job. The courts mathematical calculations concerning the party’s income 3-5 years into the future, were also proved to be erroneous. The appellate court must reverse due to insufficient, inadequate, credible evidence supporting the court's findings.

III. PLAINTIFF ARGUMENT (A) ROTHMAN 3 STEP PROCESS WAS NOT APPLIED CORRECTLY FOR HOME ASSET.

Again, this issue was addressed substantially in initial brief. The court did not grant the defendant the opportunity to reappraise the property. The court punished the defendant for what it believed the defendant did not make an offer for the home. The court failed to recognize that the plaintiff disregarded the order for both parties to obtain an appraisal. The court failed on several factors that were to be considered for equitable distribution. On the Rothman three-step process the court never found the present value of the asset. The plaintiff’s attorney continued with the lie that the plaintiff paid the bulk of the bills, and the court agreed parroting this sentiment with the same language as her final summation. The attorney cited, the court found the plaintiff in a better

position to buy out the home. The court ignored testimony and the record; the defendant was first approved to refinance the home and approved for a mortgage. The court favored the plaintiff and desired her to have the home. The defendant's testimony that the plaintiff was in a better position to enter the housing market was the reasoning he should retain the home. The court and the attorney misrepresented the testimony to make it reflect that the defendant just wanted to sell the home. The defendant testified, the selling of the home would afford the parties more income to pay off legal debt and receive more for the home and both parties land on their feet. The court did not apply every factor to be considered for equitable distribution of the home or the pension asset.

IV. THE TRIAL COURT'S FINDINGS ARE NOT ENTITLED TO DEFERENCE AND MUST BE REVERSED BECAUSE THEY ARE NOT SUPPORTED BY CREDIBLE EVIDENCE.

We understand concerning an appeal the trial court's opinions are binding if they are supported by adequate, substantial and credible evidence. Although the court has recognized the family parts jurisdiction and expertise in family matters, it requires a proper fact-finding function which was grossly lacking in the instant case. Reversal is warranted because these court findings are grossly, outrageously, manifestly unsupported by and inconsistent with the competent, relevant and reasonably credible evidence presented in this case. It clearly is an affront to the interests of justice. Deference is appropriate when the

evidence concerning an issue is testimonial or involves credibility. It has already been shown that the court's findings on the credibility of the plaintiff are contrary to evidence and testimony. The issue in question, equitable distribution of pension assets does not primarily involve the party's testimony. It involves the factual findings of the court, whether they are sufficiently credible or erroneous. Deference should not be given to this court's findings. Clearly the court's findings were not factual. They were clearly erroneous and inequitable. They were hypothetical, biased and unsupported by facts in the record or professional analysis. A clear injustice resulted from the court's decision. If a court makes a decision under a misconception of applicable law, the appellate court need not grant the usual deference but must consider the trial court's action in light of the applicable law in order to avoid a manifest denial of justice. Kavanaugh v. Quigley, 63 N.J. Super 153,158 (App. Div. 1960).

V. PLAINTIFF'S ARGUMENT (ALL ALIMONY CRITERIA IS CORRECTLY ADDRESSED) IS INCORRECT AND BIAS AND CAPRICIOUSNESS WAS DISPLAYED IN ITS ANALYSIS.

The courts analysis of the alimony statute was filled with statements contrary to testimony and the facts of the case. The court talked about things that had nothing to do with the criteria it was analyzing. It misrepresented testimony in criteria 10 stating the defendant thought the plaintiff was too generous with the

children, when his testimony was about her spending while her bills were not being paid. 13) Pendente lite support: There was none given however, the court tried to make it look like the plaintiff paid the majority of the parties liabilities for the last couple years that they lived together with no specific findings of fact. 11) Investments available to the parties. The court again considered the premarital assets of the defendant and not the premarital assets of the plaintiff and these are not investments held by the parties the only investment held by the party is a 401K that the plaintiff has, yet the court is silent on it. 8) In its capriciousness, the court said that it wouldn't be fair for the defendant to recreate himself concerning employment, that he could live comfortably without returning to work. Yet in criteria 3 the court said the defendant could go back to work and make a living. Then in considering the need and time or reeducation to reenter the workforce he didn't weigh that heavily.

CONCLUSION

When evidence requires the exercise of discretion, the appellate court must reverse based on the misapplication of controlling principles or clearly erroneous assessment of the evidence. In this instant, the court not only misapply criteria (F) for equitable distribution, it's mathematical calculation for the plaintiff's income three to five years into the future was erroneous. The

court's decision was against logic and reasoning and caused injustice and injury to the defendant by denying substantial rights to an asset which he owned, and income needed to survive. This misapplication of the law is an abuse of the court's discretion, an error in judgement, arbitrary and not justified by the facts or the law. An improper factor was relied on and proper factors were ignored or not weighed correctly (plaintiff's standard of living 3-5 years in future among others). The court mysteriously departed from established policies (QDRO, coverture fracture, present values, the time of distribution, economic circumstances of the parties etc.), lacking rational explanations, only giving summary or conclusory statements. This in itself, is arbitrary and capricious and lacks necessary legal foundation. In the instant case, the court's findings could not have been reasonably reached by the facts and evidence in the record. The appellate court rarely uses its original fact-finding jurisdiction. Rarely does not denote never uses its original jurisdiction. This is an exact case where it is necessary and warranted. It is necessary to correct an injustice, to ensure justice for the defendant and maybe a greater necessity, to protect the integrity of the judicial system. For the law has a need for consistency and reliability that requires a check and balance on whimsical authority. The standard of review for abuse of discretion does not give the trial court's decisions immunity.

DATE: 6-27-25


KARL COLEMAN