MARY E. OXLEY DEAN,

Plaintiff-Respondent,

v.

JOHN G. DEAN, IV,

Defendant-Appellant.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-002817-24

Civil Action

Date Submitted: June 26, 2025

On Appeal From the Order of the Superior Court, Chancery Division, Family Part, Middlesex County; FM-12-871-20

Sat Below:

The Honorable Jeffrey R. Brown, J.S.C.

BRIEF OF DEFENDANT-APPELLANT, JOHN G. DEAN, IV

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PRELIMINARY STATEMENT

This appeal seeks reversal of Paragraph 1 of the trial court's April 22, 2025 order (Da1-Da6) denying Defendant-Appellant John G. Dean, IV's (hereinafter "Mr. Dean") motion for reconsideration of the Family Part's March 10, 2025 order, specifically Paragraphs 1 through 4 (Da7-Da11). The trial court's March 10, 2025 order denied Mr. Dean's request to modify and/or terminate his limited durational alimony obligation of $1,850 biweekly, *without prejudice*.

Mr. Dean presented clear and convincing evidence that his gross annual income had decreased by at least $40,000 from his prior employment with the United States Department of Defense (hereinafter "DOD"), from which Mr. Dean retired on January 31, 2024. At the time of his retirement, Mr. Dean's *GS-15* federal government employee pay scale salary was $176,458 gross per year based on his "*Step 5*" experience level. Mr. Dean was eligible to retire from DOD in early November 2023 with full benefits. Mr. Dean is now employed as a professor at the Whitman School of Management at Syracuse University, earning $140,000 gross annually.

As detailed further below, Mr. Dean filed a cross-motion in late January 2025 seeking to terminate, or in the alternative modify, his limited durational alimony obligation based on changed circumstances. During oral argument on February 28, 2025, prior to making his decision, the trial judge stated, "I think everyone is going

to have to re-read *Innes v. Innes*. But off the top of my head, my recollection was that once a pension is distributed for equitable distribution purposes, we then don't recount that stream of income" [1T9: 7-11].

The trial court's March 10, 2025 order ignored the *Innes* holding, counting previously distributed pension funds towards Mr. Dean's present income for alimony modification purposes. The trial court's March 10, 2025 ruling, and subsequent April 22, 2025 denial of reconsideration per R. 4:49-2, directly contradict the trial court's own stated reliance on *Innes*. Even if the trial court had not explicitly referenced the applicable *Innes* holding on the record, *Innes* remains controlling law, and the matter should be remanded to the trial court with instructions to follow *Innes* when addressing Mr. Dean's alimony modification request. The trial court also failed to explain its refusal to schedule a plenary hearing to determine alimony modification, despite the submission of contradictory certifications.

The trial court ignored well-settled case law and deprived Mr. Dean of an appropriate plenary hearing during which competent evidence could be reviewed and analyzed. By explicitly referencing the Supreme Court's *Innes* holding, the trial court was obligated to, at minimum, explain why its ruling failed to consider the guidance of *Innes*.

PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

The parties were married on October 26, 2006, and divorced by a Judgment of Divorce from Bed and Board on December 17, 2019 (Da44-Da45) per N.J.S.A. 2A:34-3, with an appended Marital Settlement Agreement (MSA) dated August 7, 2019 (Da46-Da66). Mr. Dean was not represented by counsel during the negotiation and drafting of the MSA, and Plaintiff-Respondent Mary E. Oxley Dean (hereinafter "Plaintiff") was represented by her prior counsel, Denise A. Wennogle, Esq. (Wennogle Law, LLC). The Judgment of Divorce from Bed and Board was subsequently converted to a Final Judgment of Divorce in Middlesex County on August 24, 2021 (Da67-Da68).

The parties' August 7, 2019 MSA addressed limited durational alimony and equitable distribution, specifically the distribution of various retirement accounts, including Mr. Dean's VA Pension, Federal Government Pension (FERS), and Thrift Savings Plan (TSP). Per Article I, Paragraph 1.2 of the MSA, Mr. Dean agreed to pay Plaintiff "limited term alimony" in the amount of $1,850 biweekly, or $47,000 per year. Paragraph 1.3 of the MSA stated in pertinent part with respect to alimony (Da48):

> Alimony shall be payable by the Husband to the Wife until the Husband actually retires and the Wife commences receipt of 65% of the Husband's pension and Thrift Savings Plan.

---

[1] The Procedural History and Statement of Facts are combined herein for ease of reference, and because the relevant and material facts of this matter are directly intertwined with the chronological procedural history below.

There was no anti-*Lepis* language in the MSA, and Mr. Dean was therefore entitled to move for a modification of his limited durational alimony obligation based on changed circumstances.

Per Article II, Paragraph 2.9 of the MSA (Da51-Da53), the parties addressed distribution of the above-referenced retirement accounts. At the time of the parties' divorce from Bed and Board, Plaintiff had already received her agreed-upon 65% share of Mr. Dean's TSP retirement account via QDRO, utilizing the services of All Pro QDRO. The parties agreed to execute a second TSP QDRO upon Mr. Dean's retirement from the federal civil service to distribute the remainder of the marital portion of the TSP.

Plaintiff's prior counsel, Ms. Wennogle, failed to submit the necessary paperwork to All Pro QDRO for completion of the second QDRO after entry of the Final JOD in August 2021, resulting in a lengthy delay in processing the QDRO upon Mr. Dean's retirement. Ms. Wennogle's office was in possession of both the second draft TSP QDRO, as well as the FERS Pension draft QDRO, but neither was submitted in a timely manner for necessary pre-approval.

By Order dated February 22, 2024 (Da69-Da75), the trial court directed Plaintiff, "immediately upon receipt of FERS pension benefits," to notify Mr. Dean, and "the parties shall thereafter enter into a Consent Order terminating Defendant's alimony obligation, effective the date Plaintiff begins receiving her FERS pension

benefits." (Da72). For months following entry of the February 22, 2024 order, Plaintiff refused to cooperate with securing her share of the FERS pension distribution, ignoring repeated requests by counsel to take proactive measures to contact FERS representatives so that her receipt of pension benefits could be expedited.

Plaintiff was provided with a direct phone number to FERS, along with a direct mailing address that is set aside for alternate payee's of the plan. Plaintiff was also provided with her Civil Service Active (CSA) identifier, but did not make a good-faith effort to comply with contacting FERS in any capacity. Plaintiff continued to assert, with no competent evidence, that Mr. Dean was not actually retired from the Department of Defense. Plaintiff was provided with Mr. Dean's Standard Form 50 retirement document from the Defense Threat Reduction Agency ("DTRA"), but she continued to claim that Mr. Dean was not retired in multiple e-mails to our office.

In late September 2024, Plaintiff retained new counsel, Rebecca A. Hand, Esq. (Cosner Law Group). However, no update was provided as to Plaintiff's cooperation with FERS, and Ms. Hand sent correspondence demanding that our office follow-up on the second TSP QDRO (Da76). As previously noted, Mr. Dean was forced to spend additional funds to remedy Ms. Wennogle's failure to begin the process of executing the second TSP QDRO per the MSA, and our office became

solely responsible for ensuring that both the FERS Pension and second TSP QDRO were executed and processed.

From the date of his retirement from DOD -- January 31, 2024 -- to mid-December 2024, Mr. Dean was obligated to continue paying approximately $4,000 per month in limited durational alimony to Plaintiff despite Plaintiff's documented failure to facilitate her receipt of FERS benefits. With no income source other than his VA Pension benefits, Mr. Dean had no alternative but to secure new employment to maintain his alimony payments to Plaintiff.

Plaintiff's January 6, 2025 motion to compel Mr. Dean to "resume payment of his alimony obligation" was disingenuous and bereft of context (Da77-Da80). Plaintiff's application glossed over her refusal to proactively engage with FERS to receive her monthly benefits, and made no mention of her prior counsel's failure to initiate processing of the second TSQ QDRO. Mr. Dean's January 28, 2025 cross-motion to terminate, or modify, his limited durational alimony obligation was based on his substantially reduced salary with Syracuse University, and Plaintiff's abject failure to cooperate in good-faith with the process of implementing the FERS Pension distribution and second TSP QDRO, to her own financial detriment.

In Paragraph 4 of the trial court's March 10, 2025 order (Da10), entered after oral argument on February 28, 2025, the trial court mistakenly included Mr. Dean's

VA Pension/disability income in calculating Mr. Dean's gross income for alimony modification purposes. The order stated (Da10):

> ***However, assuming these VA benefits remain unchanged since the time the parties' MSA was drafted and have not increased over time, his [Mr. Dean's] new gross annual income would be $209,650*** **(emphasis added).**

The trial court's ruling directly contradicted statements made by the trial judge at oral argument, notably the following:

> **I think everyone is going to have to reread *Innes v. Innes*. But off the top of my head, my recollection was that once a pension is distributed for equitable distribution purposes, we then don't recount that stream of income.**
>
> **[1T9:7-11]**

Not only did the trial court fail to apply the *Innes* holding in its order after expressly citing it on the record, but Mr. Dean was denied due process by the trial court's refusal to schedule a plenary hearing after the submission of conflicting certifications. Plaintiff's argument that Mr. Dean continues to earn an income commensurate with his time-of-divorce earnings is predicated on the false premise that previously distributed retirement accounts should be incorporated in calculating Mr. Dean's income for support modification purposes. This directly contradicts Innes, and cannot withstand scrutiny unless well-settled case law is disregarded.

LEGAL ARGUMENT

I. THE TRIAL COURT ERRED IN DENYING RECONSIDERATION OF PARAGRAPHS ONE THROUGH FOUR OF ITS MARCH 10,

2025 ORDER PER R. 4:49-2, AND MISAPPLIED THE SUPREME COURT'S *INNES* HOLDING DESPITE EXPLICITLY REFERENCING SAME ON THE RECORD (Da1-Da6).

In the Supreme Court's January 1990 decision, Innes v. Innes, 117 N.J. 496, 514, the Court held that "payments generated by pension benefits that had been previously equitably distributed are *not* income for purposes of alimony modification." Id. at 514. The Court's ruling, which represented its interpretation of the Legislature's September 1988 amendment to the alimony statute (Senate Bill No. 976), confirmed that the amendment was "designed to avoid double-dipping." Id. at 508-509.

The term "double-dipping," which the Court stated "most frequently occurs" in the context of post-judgment alimony modification applications, refers to attempts to allocate previously distributed retirement assets, specifically pension benefits, towards the alimony payor's total gross income for support modification purposes. For example, in Innes, the Morris County trial court mistakenly included the Plaintiff ex-Husband Frank Innes' pension and annuity funds, which "flowed from assets that had already been equitably distributed," as part of his total income in addressing Mr. Innes' alimony modification request. Id. at 502-503.

The Supreme Court affirmed the Appellate Division's Innes holding that the amendment to the alimony statute controlled, and that the trial court had improperly engaged in "double-dipping" of Mr. Innes' pension and annuity funds with respect

to alimony modification. The Supreme Court cited the crucial provision of the statutory amendment, which stated (Id. at 505-506):

> When a share of a retirement benefit is treated as an asset for purposes of equitable distribution, the court shall not consider income generated thereafter by that share for purposes of determining alimony.

The Court held that the above statutory amendment applied to post-judgment applications for alimony modification ("we also hold that it is applicable to both initial alimony orders *and* modifications of earlier alimony awards"), and this holding remains good law. Id. at 508.

Here, there is no dispute that per Article II. ("Equitable Distribution"), Paragraph 2.9 of the parties' MSA, the following retirement assets were equitably distributed at the time of the parties' divorce:

- Husband's VA Pension;
- Husband's Federal Government Pension (FERS); and
- Husband's Thrift Savings Plan (TSP).

In arriving at an income figure of $209,650 for Mr. Dean for alimony modification purposes, the trial court explicitly referenced Mr. Dean's "VA benefits" (Da10). The only *VA* retirement benefit referenced in the parties' MSA was Mr. Dean's VA Pension, which was previously equitably distributed. This is a clear and unambiguous example of the trial court disregarding Innes, and any

attempt by the appellate court to align the trial judge's ruling with the well-established Innes holding cannot withstand scrutiny.

Reconsideration is a matter within the "sound discretion of the Court, to be exercised in the interest of justice." D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990). Reconsideration is appropriate for cases that fall into "that narrow corridor" in which either a) The Court has expressed its decision based upon a palpably incorrect or irrational basis; or b) It is obvious that the Court either did not consider, or failed to appreciate significance of probative, competent evidence. D'Atria at 401-402; *See* R. 4:49-2.

The trial court denied Mr. Dean's motion for reconsideration of its March 10, 2025 order, per R. 4:49-2, based on its analysis that Mr. Dean's gross income had decreased by "7% per year," relying on Mr. Dean's time-of-divorce income with the Department of Defense of approximately $151,000 gross annually rather than his income of approximately $180,000 at the time of his retirement. The trial court then backed into the justification of its decision based on Innes, stating that Mr. Dean's reliance on Innes was "misplaced" (Da3), but misidentifying the parties -- and their respective positions -- in explaining its muddled decision. The trial court mistakenly stated in Paragraph 1 of its April 22, 2025 order:

> Plaintiff [Ms. Oxley Dean] argues that Innes does not apply since Defendant's VA pension and disability income were not subject to equitable distribution in the first place; therefore, this Court correctly

> considered these income streams in assessing Defendant's continued ability to pay alimony (Da3).

Plaintiff's counsel erroneously argued that Innes was not applicable, but the trial court appears to be taking the position that Mr. Dean's VA Pension and disability were *not* equitably distributed when there is no evidence to support this false assertion. Per above, Mr. Dean's retirement assets were clearly equitably distributed in Paragraph 2.9 of the negotiated MSA.

The trial court further confused the issue by claiming, "the parties themselves voluntarily decided to deviate from that [Innes] holding by expressly considering these two sources of income when determining Defendant's alimony obligation at the time of the divorce" (Da3). It is unclear how parties can "deviate" from a holding of the New Jersey Supreme Court, and no language in the parties' MSA supports such an unusual and obscure deviation from case law. The trial court then stated that it could not "comprehend any conceivable reason why these income streams would be considered in determining alimony at the time of the divorce but not on a future modification application" (Da4).

The trial court was obligated to abide by the Innes holding, whether or not the parties considered Mr. Dean's VA pension/disability income in determining his initial alimony obligation at the time of divorce. The fact remains that Mr. Dean's retirement assets, including his VA pension/disability, were equitably distributed at the time of divorce, and the trial court engaged in prohibited double-dipping by

relying on those income sources in denying Mr. Dean's request to modify his limited duration alimony. The trial court substituted its own circular logic for the Innes holding, asserting that by referencing income from retirement assets at the time of divorce, whether equitably distributed or not, the payor was somehow prevented from relying on Innes in the context of post-divorce modification litigation.

Should the appellate court permit this ruling to stand, it would in essence sanction the overturning of Innes by a trial court. The Supreme Court's Innes holding was meant to address this exact scenario, where previously distributed retirement assets are improperly added back into a payor's income stream in the context of post-judgment alimony modification. The trial court is seeking to rewrite Innes, replacing the Court's concise holding with additional, confusing and unwarranted modification criteria.

If the holding in the matter below were adopted by other Family Part trial courts, a payor seeking post-divorce modification of alimony would have to demonstrate that his/her initial alimony obligation was not based even partially on income from retirement assets before they can rely on Innes to protect them in post-judgment modification litigation. The trial court's ruling is therefore palpably incorrect and irrational, and reconsideration should have been granted.

II. THE TRIAL COURT ERRED IN DENYING MR. DEAN'S REQUEST FOR A PLENARY HEARING DESPITE THE SUBMISSION OF CONFLICTING CERTIFICATIONS FROM THE PARTIES (Da1-Da6).

It is well-established that a plenary hearing is necessary when a "genuine issue exists as to a material fact." Tretola v. Tretola, 389 N.J. Super. 15, 20 (App. Div. 2006); Fusco v. Fusco, 186 N.J. Super. 321, 329 (App. Div. 1982). A plenary hearing is required because trial judges "cannot resolve material factual disputes upon conflicting affidavits and certifications." Harrington v. Harrington, 281 N.J. Super. 39, 47 (App. Div. 1995); Eaton v. Grau, 368 N.J. Super. 215, 222 (App. Div. 2004).

Here, the parties' respective certifications were diametrically opposed with respect to the crucial issue of whether the trial court can, or should, utilize previously distributed pension income in determining post-divorce alimony modification. Plaintiff's counsel's February 24, 2025 letter brief argued that *Innes* should be disregarded altogether, couching her baseless and misleading assertion in the context of Mr. Dean "misstating" the trial judge's explicit remarks during oral argument (Da26-Da29).

Plaintiff's counsel referred to our reliance on *Innes* as "misplaced," thereby expressing her apparent disagreement with the trial court's purported reliance on *Innes*. Plaintiff's counsel engaged in misdirection in her letter brief, stating, "The assets at issue in the equitable distribution are a separate FERS pension and a separate TSP account. Defendant's VA disability income and VA pension income

were not subject to equitable distribution, and thus *Innes* does not apply" (Da28-Da29). This statement by Plaintiff's counsel is provably false per the MSA.

In the previously cited excerpt of the trial court's March 10, 2025 Order, specifically Paragraph 4, the trial judge explicitly referenced Mr. Dean's "VA benefits" as the basis for determining that Mr. Dean's gross income was actually unchanged. Plaintiff's counsel's attempt to conflate the issues of Plaintiff's receipt of her share of the FERS Pension and TSP account with the trial court's mistaken inclusion of previously distributed VA pension and disability funds was disingenuous and misleading.

The Supreme Court in Innes did not decide whether alimony should be modified, confirming that the question of modification is "best left to the sound discretion of the trial court" at a plenary hearing. Id. at 514.

For the reasons set forth above, the trial court's denial of reconsideration should be reversed, and the matter remanded to the trial court for scheduling of a plenary hearing.

III. THE TRIAL COURT ERRED IN ANALYZING MR. DEAN'S ALIMONY MODIFICATION REQUEST BASED EXCLUSIVELY ON HIS TIME-OF-DIVORCE INCOME RATHER THAN HIS INCOME AT THE TIME OF HIS RETIREMENT FROM THE DEPARTMENT OF DEFENSE (Da2).

Prior to its flawed analysis of Innes, the trial court's April 22, 2025 order, specifically Paragraph 1, stated the following with respect to Mr. Dean's alimony modification request (Da2):

> Defendant [Mr. Dean] continues to argue that his income decreased by approximately $40,000 per year, since at the time he left the federal government, he was earning $180,000 per year. However, the relevant income figure in determining whether a substantial change in circumstances has taken place is the amount Defendant was earning at the time of the divorce, not the amount he was earning when he left employment years after the parties' divorce.

Per Lepis v. Lepis, 83 N.J. 139, 151-152 (1980), trial courts have recognized "changed circumstances" warranting support modification in a variety of circumstances, including an increase in the cost of living, an increase or decrease in the supporting spouse's income, and illness or disability, among other factors. Id. at 151; Martindell v. Martindell, 21 N.J. 341, 353 (1956). In Crews v. Crews, 164 N.J. 11 (2000), the Supreme Court of New Jersey reaffirmed the basic two-step analysis set forth in Lepis, specifically the initial requirement of a *prima facie* showing of changed circumstances before the trial court orders discovery of an ex-spouse's financial status. Crews at 28-29.

In Beck v. Beck, 239 N.J. Super. 183 (App. Div. 1990), the Plaintiff-Appellant ex-Husband cross-moved to terminate, or in the alternative reduce, his alimony obligation in response to Defendant-Respondent ex-Wife's enforcement motion. The parties were divorced in June 1979, and prior modification orders were entered

by the Passaic County Family Part in May 1980, August 1985, and September 1986. As part of the modification application which ultimately led to the Appellate Division's March 1990 decision, Plaintiff-Appellant demonstrated a decline in his gross income from $155,000 in 1987 to $118,000 in 1988. Id. at 188-189.

The Appellate Division in *Beck* held that the changed-circumstances determination should be made by comparing the parties' respective financial circumstances "at the time the motion for relief is made with the circumstances which formed the basis for the last order fixing support obligations." Beck at 190. However, the Appellation Division acknowledged that "intervening incremental changes" in income may not be sufficient to warrant relief, but "may be sufficient in the aggregate." Id. at 190.

Here, the trial judge did not cite any case law in support of his claim that "the relevant income figure in determining whether a substantial change in circumstances has taken place" is the amount that the supporting spouse was earning "at the time of the divorce." No case law -- either published or unpublished -- since Lepis has fully endorsed this view, and the Appellate Division in Beck was careful to narrowly tailor its holding addressing the dates upon which to analyze the supporting spouse's income. Cases such as Crews refer to the "marital standard of living," but there is no case law holding that a supporting spouse's time-of-divorce income must supersede his/her most recent income in analyzing changed circumstances.

If the trial court's interpretation of Lepis were adopted, a supported spouse could not seek an upward alimony modification upon learning that their ex-spouse's income had tripled post-divorce. Application of the Dean holding would result in that supported spouse's application being denied based on the payor's most recent income level being deemed irrelevant.

Mr. Dean's income peaked at $180,000 gross annually at the time of his retirement from the federal civil service in early 2024, and his is now earning approximately $140,000 gross annually with Syracuse. By strictly referencing Mr. Dean's income at the time of divorce in December 2019, the trial court is ignoring Mr. Dean's 2024 income without explanation.

Further, the parties' divorce was not finalized until August 2021 when the Bed and Board Divorce was converted to a Final Judgment of Divorce. If August 2021 is considered the parties' actual divorce date, we do not know what Mr. Dean's income was at that time, rendering the trial court's analysis moot. If the trial court were strictly focused on Mr. Dean's "time-of-divorce" income, they should have inquired about Mr. Dean's income in August 2021, not December 2019.

CONCLUSION

For the reasons expressed herein, the trial court erred in denying Mr. Dean's motion for reconsideration of Paragraphs 1 through 4 of the March 10, 2025 order. The trial court's March 10, 2025 and April 22, 2025 orders blatantly disregarded

Supreme Court case law, specifically Innes v. Innes, without a coherent or credible explanation. After explicitly citing Innes on the record at oral argument on February 28, 2025, the trial judge entered subsequent orders that misapplied the Innes holding, erroneously rewriting the Supreme Court's language to align with the trial court's preferred outcome.

Mr. Dean was denied the opportunity for a plenary hearing to adequately review competent evidence, despite the submission of conflicting certifications, and the trial court inexplicably did not consider Mr. Dean's income at the time of his retirement from the DOD in January 2024. Lastly, per Paragraph 2 of the trial court's March 10, 2025 order, Mr. Dean was ordered to pay Plaintiff counsel fees in the amount of $2,500 based on the trial judge's finding that Mr. Dean had acted in "bad faith" (Da9-Da10). This counsel fee award should also have been vacated as part of the motion for reconsideration of Paragraphs 1 through 4 of the March 10, 2025 order, as Mr. Dean's argument was credible and made in good-faith.

We thank the appellate court for its courtesies in reviewing this submission.

Respectfully,
SIEGEL LAW
Attorneys for Defendant-Appellant,
John G. Dean, IV

By: *Robert H. Siegel, Esq.*

Dated: June 25, 2025

Superior Court New Jersey
Appellate Division

Docket No.: A-002817-24

MARY E. OXLEY DEAN.

Plaintiff-Respondent,

v.

JOHN G. DEAN, IV,

Defendant-Appellant.

CIVIL ACTION

ON APPEAL FROM ORDER OF THE SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION – FAMILY PART COUNTY OF MIDDLESEX

Docket No. FM-12-871-20

Sat Below:

HON. JEFFREY R. BROWN, J.S.C.

BRIEF IN OPPOSITION ON BEHALF OF PLAINTIFF-RESPONDENT MARY E. OXLEY DEAN

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PRELIMINARY STATEMENT

Plaintiff-Respondent Mary E. Oxley Dean ("Plaintiff" or "Ms. Oxley Dean") respectfully submits this brief in opposition to the appeal filed by Defendant-Appellant John G. Dean, IV ("Defendant" or "Mr. Dean") from the April 22, 2025 Order of the Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, issued by Judge Jeffrey R. Brown, J.S.C., which denied Defendant's motion for reconsideration of the court's March 10, 2025 Order enforcing Plaintiff's alimony rights and awarding counsel fees.

Defendant's appeal is without merit and reflects an ongoing effort to evade his court-ordered obligations by mischaracterizing the terms of the Marital Settlement Agreement and omitting key facts. At the time of the divorce, Mr. Dean was employed by the United States Department of Homeland Security and was also receiving a military pension from the Department of Veterans Affairs, as well as veterans' disability benefits. His income at that time, derived from these three sources, formed the basis of the agreed-upon alimony obligation. Although he claimed in the underlying proceedings to have retired, the record demonstrates that he had not retired and that his income remained substantially the same as it was when the agreement was executed and alimony was established. In fact, Mr. Dean resumed full-time employment following his purported retirement and failed to disclose that

employment to the court. His attempt to assert a substantial change in circumstances justifying a termination or reduction in alimony lacked both legal and factual support.

The Trial Court thoroughly reviewed the parties' certifications and relevant financial documentation and found no basis to terminate or modify alimony. The agreement expressly provides that alimony will terminate only upon Mr. Dean's actual retirement and Plaintiff's receipt of her share of Defendant's Federal Employees Retirement System ("FERS") and Thrift Savings Plan ("TSP") accounts. Mr. Dean improperly relied on his own failure to finalize the Qualified Domestic Relations Orders as a means to extinguish his alimony obligations. Because Mr. Dean has not actually retired, and because Plaintiff has not received distributions from either account, the termination conditions have not been satisfied. As a result, the Trial Court correctly concluded that there was no newly discovered evidence, no legal error, and no factual dispute that warranted reconsideration. The modest award of counsel fees was appropriate in light of Defendant's repeated failure to comply with his obligations and the unnecessary motion practice that ensued. The Trial Court's orders should be affirmed in their entirety.

PROCEDURAL HISTORY

The parties were married on October 26, 2006, and divorced by Final Judgment of Divorce from Bed and Board entered by the Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, on December 17, 2019. (Da44–45). The parties executed a Marital Settlement Agreement ("MSA") on August 7, 2019, which was incorporated into a Final Judgment of Divorce from Bed and Board entered by the Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County on December 17, 2019. (Da46-66; Pa007-27). A conversion to a Final Judgment of Divorce was later entered on August 24, 2021. (Pa067).

On June 10, 2021, a Consent Order was entered modifying the alimony obligation by $50 per month. (Pa092) .

On February 22, 2024, the Trial Court held oral argument on a Motion filed by Mr. Dean to terminate his alimony obligation based on his alleged retirement from federal service. (Da69). The court denied the application and ruled that pursuant to the terms of the MSA, alimony would not terminate until Mr. Dean actually retired and Plaintiff began receiving her share of both his FERS pension and TSP retirement accounts, which had not yet occurred. (Da69-75). In its decision, the Trial Court specified that "Defendant certifies (and confirmed via sworn testimony at oral argument) that his retirement from

his employment with the U.S. Department of Defense is effective January 31, 2024." (Da70). The Court further specified that "[t]he Court notes that it is basing the termination of Defendant's alimony obligation on his representation that he is retiring, which the Court interprets as a permanent retirement, not merely moving from one position to the next after a brief (or more long term) pause." (Da73).

On April 2, 2024, Defendant filed another motion to terminate his alimony obligation. (Da09). Neither that motion nor the subsequent Reply Certification filed by Defendant on May 17, 2024, disclosed to the Court that he had recently accepted new full-time employment. (Da08–9).

On April 24, 2024, Syracuse University issued a press release announcing Defendant's new employment with the institution. (Pa43-46; Da08).

On June 7, 2024, the Trial Court entered an order addressing the Qualified Domestic Relations Order ("QDRO") for the TSP account and confirming that Defendant's alimony obligations remained in effect. (Pa029).

In December 2024, Defendant unilaterally ceased making alimony payments without obtaining leave from the court. (Da09).

On January 6, 2025, Plaintiff filed a motion to enforce litigant's rights, seeking to compel Defendant to resume his biweekly alimony payments of $1,858 as required under the Marital Settlement Agreement incorporated into

the Final Judgment of Divorce. (Da77; Pa001). Plaintiff also requested counsel fees and sanctions due to Defendant's noncompliance. Id.

On January 27, 2025, Defendant filed a cross-motion seeking to terminate his alimony obligation, asserting that the conditions for termination set forth in the Marital Settlement Agreement had been met. In the alternative, he requested a reduction in the alimony amount based on his purported retirement. (Pa055).

On February 4, 2025, Plaintiff filed a reply certification and opposition, affirming that she had not received any distribution from Defendant's FERS or TSP accounts, advising the court that Defendant was employed full-time by Syracuse University contrary to his prior representations, and asserting that his income had not substantially changed since the time of the divorce when the alimony amount was established (Pa082).

On February 14, 2025 and February 28, 2025, the court held oral argument on the motions before the Honorable Jeffrey R. Brown, J.S.C. (Da07).

On March 10, 2025, the court issued an order granting Plaintiff's enforcement motion, finding Defendant in violation of litigant's rights, ordering the resumption of alimony, denying Defendant's cross-motion to terminate alimony, and awarding Plaintiff $2,500 in counsel fees. (Da07-11)

On March 17, 2025, Defendant filed a motion for reconsideration. (Da12-25)

On March 27, 2025, Plaintiff submitted a letter brief in opposition to the motion for reconsideration. (Da26-29; Pa088).

On April 1, 2025 (dated April 2, 2025), Defendant filed a reply certification in further support of his reconsideration motion. (Da30-35).

On April 22, 2025, the court issued a comprehensive order denying Defendant's motion for reconsideration, reaffirming its interpretation of the Marital Settlement Agreement and concluding that no newly discovered evidence or legal error warranted relief. (Da01-06).

On May 14, 2025, Defendant filed this Appeal seeking review of the March 10, 2025, and April 22, 2025, Orders. (Da36-39).

STATEMENT OF FACTS

The parties divorced in August 2019 after a long-term marriage. (Da44). Their Marital Settlement Agreement ("MSA") was incorporated into the Final Judgment of Divorce and provided for the equitable distribution of Defendant's FERS or TSP account, along with alimony to Plaintiff in the amount of $1,858 biweekly. [1] (Da44-66; Pa007-27; Pa092-93). The alimony obligation was based on Defendant's then-income of approximately $151,291 in base federal salary, along with $47,138 in VA pension and $22,512 in VA disability benefits, for a total gross annual income of $216,213. (Pa008-9).

Under the MSA, Defendant's alimony obligation was to continue until his actual retirement and Plaintiff's commencement of her receipt of 65% share of his FERS pension and TSP. (Pa009). In December 2024, Defendant unilaterally ceased alimony payments, claiming he had retired. (Da09). However, after leaving federal employment effective January 31, 2024, Defendant accepted full-time employment with Syracuse University beginning in April 2024, earning $140,000 annually as Associate Director of Defense Programs. (Pa042). This income was only slightly less than his prior federal salary of $151,291 and, when combined with his continued VA pension and

[1] This $50 monthly contribution was added by court order dated May 13, 2021. (Pa092-93).

disability payments, maintained his total income near or above the level it was at the time of divorce. (Da02-03).

Despite the modest change in income, Defendant filed a motion on April 2, 2024, seeking to terminate alimony. (Da30-35). He did not disclose his new employment or updated income to the Court, either in his motion or in his May 17, 2024, reply certification. (Da01-06; Da07-11). Instead, he represented that he had fully retired and was no longer working, which was contradicted by subsequent evidence and a Syracuse University press release. Id.

On March 10, 2025, the Court granted Plaintiff's motion to enforce litigant's rights and ordered Defendant to resume full alimony payments and bring arrears current. (Da07-11). The Court denied Defendant's cross-motion to terminate alimony, finding that his reduction in income was de minimis and that he had failed to establish a prima facie case of changed circumstances. It noted that Defendant's overall financial picture, including his continued receipt of VA benefits, did not support modification. Id.

The Court further found that Defendant acted in bad faith by failing to comply with disclosure obligations and misleading the Court about his employment status, and awarded Plaintiff $2,500 in counsel fees. (Da01-06; Da07-11).

On April 22, 2025, the Court denied Defendant's motion for reconsideration, reaffirming that Defendant had not presented any newly discovered evidence or demonstrated any error of law that would justify disturbing the March 10, 2025, ruling. (Da01-06).

Defendant's appeal followed.

LEGAL ARGUMENT

I. THE TRIAL COURT PROPERLY DENIED RECONSIDERATION OF PARAGRAPHS ONE THROUGH FOUR OF THE MARCH 10, 2025 ORDER UNDER Rule 4:49-2

The Honorable Jeffrey R. Brown, J.S.C., correctly denied Defendant's motion for reconsideration of the March 10, 2025, Order, which had denied Defendant's motion to modify or terminate his limited duration alimony obligation. Contrary to the claims in Defendant's appellate brief, the Trial Court did not misapply the standard for reconsideration under Rule 4:49-2, nor did it erroneously disregard the holding of Innes v. Innes, 117 N.J. 496 (1990). Instead, the court appropriately found that Defendant had failed to demonstrate a substantial, permanent, or unanticipated change in circumstances, and had not shown that the court's prior ruling rested on a palpably incorrect or irrational basis or failed to consider competent evidence.

Defendant's motion for reconsideration failed to meet the narrow standard set forth in Cummings v. Bahr, 295 N.J. Super. 374, 384 (App. Div. 1996), and D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990), which permit relief only where the court's decision was palpably incorrect or irrational, or where probative, competent evidence was overlooked. Defendant did not present any newly discovered evidence, nor did he identify any legal authority that was misapplied or overlooked by the Trial Court. Rather,

Defendant merely repeated arguments that the court had already considered and rejected, based on the language of the MSA and the factual record. As the court found, the fact that Defendant was dissatisfied with the outcome does not constitute grounds for reconsideration.

On appeal, Defendant continues to mischaracterize the circumstances surrounding the FERS and TSP QDROs, relying on these issues as a red herring to distract from the dispositive fact that the termination conditions set forth in the parties' Marital Settlement Agreement ("MSA") have not been satisfied. The MSA unambiguously provides that alimony may terminate only upon Defendant's actual retirement and Plaintiff's receipt of both the FERS pension and the TSP distribution. (Pa009). Defendant's complaints regarding the processing timing of the QDROs for the TSP and FERS accounts were the subject of Defendant's prior motion practice in 2024, and the trial court made no finding that acted inappropriately in the processing of the QDROs. (Da69-75; Pa29-32). These issues were not the subject of the underlying motions that are the subject of this appeal.

Defendant's contention that Plaintiff agreed to the termination of alimony upon receipt of the FERS pension is a clear misrepresentation of the record. Plaintiff's January 6, 2025 certification, along with the correspondence attached thereto, unequivocally rejected any such agreement and reaffirmed

that the express conditions for termination had not been satisfied. (Pa003–004, Pa054.) The trial court properly found no ambiguity in the parties' Marital Settlement Agreement and no factual dispute as to whether its three specified termination conditions had been met - they had not.

The trial court appropriately exercised its discretion in denying reconsideration, as Defendant failed to identify any newly discovered evidence or legal error warranting relief under Rule 4:49-2.

II. THE TRIAL COURT DID NOT MISAPPLY INNES V. INNES AND PROPERLY TREATED VA BENEFITS AS INCOME

Defendant's primary argument on appeal, that the Trial Court misapplied Innes v. Innes, 117 N.J. 496 (1990) by including VA pension and disability benefits in calculating income, is based on a false factual predicate. The record confirms that those benefits were not equitably distributed as assets in the parties' Marital Settlement Agreement ("MSA"), but rather were included as income for support purposes. (Pa008–09.) Paragraph 1.1 of the MSA expressly references Defendant's base salary of $151,291, VA pension of $47,138, and VA disability income of $22,512 as the basis for calculating his $1,858 biweekly alimony obligation. Id. The FERS pension and TSP accounts, which were subject to equitable distribution and would be addressed through QDROs, are distinct from the VA pension and disability income, which were considered

in the context of alimony support. Accordingly, the court properly considered those same income streams in evaluating Defendant's post-judgment modification request. The prohibition against "double dipping" in Innes has no application where, as here, the benefits were counted as income to Defendant and not equitably distributed as property to Plaintiff.

Finally, Defendant's claim that the court ignored Innes is plainly contradicted by the record. The Trial Court directly addressed Innes and explained that even if the holding applied, the parties had chosen to deviate from it by expressly treating the VA benefits as income in their MSA. (Da03). The court further noted that the parties counted this income when alimony was initially calculated, and Defendant cannot now claim that it must be excluded. (Da03-4). Regardless, the court concluded that the Innes prohibition did not apply because the benefits had not been distributed as marital property. Id. The Trial Court's reasoning was both legally sound and firmly grounded in the record.

III. THE TRIAL COURT CONSIDERED DEFENDANT'S EARNINGS IN THE CONTEXT OF HIS ALIMONY OBLIGATION AND PROPERLY DENIED A PLENARY HEARING

Defendant's assertion that the Trial Court erred in denying a plenary hearing is unavailing. A plenary hearing is not required unless the moving

party first establishes a prima facie showing of changed circumstances and identifies a genuine and material factual dispute requiring resolution through testimony. Lepis v. Lepis, 83 N.J. 139, 151 (1980); Eaton v. Grau, 368 N.J. Super. 215, 222 (App. Div. 2004). Here, the Court correctly found that Defendant failed to meet either threshold. (Da05–06).

The Trial Court reviewed Defendant's submissions and properly determined that there was no material dispute of fact warranting a plenary hearing. Defendant had previously certified—under oath—that his retirement was effective January 31, 2024. Based on this representation and the express terms of the Marital Settlement Agreement, the Court found that alimony would terminate only upon Plaintiff's receipt of both the FERS and TSP distributions (Da69–75). It is now undisputed that Defendant remains employed and that the TSP account has not yet been distributed.[2] Accordingly, the conditions for termination have not been met, and Trial Court correctly denied the cross-motion to terminate alimony without a plenary hearing.

Defendant also mischaracterizes the Trial Court's consideration of his income. The Trial Court did not ignore Defendant's higher post-divorce earnings at the Department of Defense; rather, it acknowledged his alleged

[2] Plaintiff further maintains that the FERS pension payment(s) have not yet been distributed to her either. (Pa082-85).

prior salary of $180,000 and properly found that the relevant baseline for support purposes was the income disclosed and relied upon in the Marital Settlement Agreement. (Da02-5; Da10-11). The MSA explicitly listed Defendant's income at the time of divorce as consisting of $151,291 in base salary, $47,138 in VA pension, and $22,512 in VA disability benefits, for a total of $216,213. (Pa008–9). When Defendant began his new position at Syracuse University in April 2024, he reported earning $140,000, and assuming his VA benefits were unchanged, his gross income remained approximately $209,650—a reduction of less than three percent. (Da02–03). Such a minor fluctuation does not constitute a substantial change in circumstances and does not justify a plenary hearing.

Moreover, Defendant's Case Information Statement failed to include updated values for his VA pension and disability income or provide a clear picture of his household finances. (Da03; Pa094-109). This selective and incomplete disclosure rendered the application unreliable. As the Trial Court noted, such omissions appeared designed to obscure the true extent of his resources. (Da04).

The argument that Defendant's current income represents a "substantial change" is further undermined by the fact that his income reportedly increased to approximately $180,000 in the years after the MSA, yet no application was

made at that time to modify or increase alimony. Now, having voluntarily accepted a position with lower compensation, Defendant seeks to characterize that reduction as a basis for relief. However, because the original alimony obligation was not modified when his income increased, his current earnings—being comparable to or slightly below the MSA baseline—do not represent a new change in circumstances warranting modification.

Finally, the Trial Court properly exercised its discretion in concluding that a plenary hearing was unnecessary and that Defendant's unilateral cessation of support payments in December 2024 constituted bad faith. (Da05–06). Defendant stopped paying alimony despite two prior court rulings reaffirming his obligation and without seeking judicial relief. This conduct further justified the denial of his motion and supported the partial award of fees to Plaintiff.

In sum, Defendant failed to demonstrate a substantial, unanticipated, or permanent change in circumstances. His income remains materially consistent with the levels used to establish the original alimony award, and his motion was based on incomplete, misleading disclosures. The Trial Court's decision was grounded in well-settled law and supported by the record. No plenary hearing was required.

IV. THE AWARD OF COUNSEL FEES WAS APPROPRIATE AND SUPPORTED BY THE RECORD

Rule 5:3-5(c) permits the Family Part to award counsel fees based on the financial circumstances of the parties, the reasonableness of their positions, and whether the parties acted in good or bad faith. The award here, $2,500, was modest, supported by Plaintiff's certification of services, and justified by Defendant's bad faith conduct.

Defendant misled the Trial Court by omitting material information about his post-retirement employment and attempted to preempt judicial review by halting alimony without a court order. He pursued reconsideration on meritless grounds, forcing Plaintiff to incur additional fees. Under these circumstances, the award was not only appropriate, it was necessary to enforce compliance with the court's orders. The Trial Court articulated its reasons and relied on established criteria under Rule 5:3-5(c). This Court should defer to that determination absent an abuse of discretion, which has not been shown.

CONCLUSION

For the foregoing reasons, the Trial Court's Orders dated March 10, 2025, and April 22, 2025, should be affirmed in their entirety. Defendant-Appellant failed to establish any substantial, permanent, or unanticipated change in circumstances warranting modification or termination of his alimony obligation. The Trial Court correctly applied the relevant legal standards, made detailed factual findings supported by the record, and exercised its discretion appropriately in denying both the motion to terminate alimony and the motion for reconsideration. The award of counsel fees was also proper in light of Defendant's bad faith conduct and repeated noncompliance. Accordingly, Plaintiff-Respondent respectfully requests that this Court deny the appeal and affirm the Trial Court's rulings.

Respectfully Submitted,

By: */s/Rebecca A. Hand*

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Dated: July 24, 2025

MARY E. OXLEY DEAN,

Plaintiff-Respondent,

v.

JOHN G. DEAN, IV,

Defendant-Appellant.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-002817-24

Civil Action

On Appeal From the Order of the Superior Court, Chancery Division, Family Part, Middlesex County FM-12-871-20

Sat Below:

The Honorable Jeffrey R. Brown, J.S.C.

REPLY BRIEF OF DEFENDANT-APPELLANT, JOHN G. DEAN, IV

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REPLY BRIEF – PRELIMINARY STATEMENT

Plaintiff-Respondent's (hereinafter "Plaintiff') Brief in opposition to Defendant-Appellant John Dean's (hereinafter "Mr. Dean") appeal of the trial court's March 10, 2025 and April 22, 2025 orders is bereft of any substantive legal argument explaining the trial court's unambiguous misapplication of the Supreme Court's holding in Innes v. Innes, 117 N.J. 496 (1990). Plaintiff engages in misdirection by citing the trial court's reliance on Lepis to justify the trial judge's improper application of the Innes prohibition on so-called "double dipping." Plaintiff's apparent argument is circular, as proper application of Innes would have demonstrated the necessary changed circumstances to modify Mr. Dean's limited durational alimony obligation, thereby satisfying the Lepis criteria.

Plaintiff states on Page 10 of her opposition brief:

> *The [trial] court appropriately found that Defendant [Mr. Dean] had failed to demonstrate a substantial, permanent, or unanticipated change in circumstances, and had not shown that the court's prior ruling rested on a palpably incorrect or irrational basis or failed to consider competent evidence.*

The above excerpt illustrates the flimsy nature of Plaintiff's argument, which rests almost entirely on a mistaken expectation that the appellate court will simply rubber stamp the trial court's failure to properly apply Innes to the specific facts of this case. Plaintiff argues that by virtue of making the same arguments below on an application for reconsideration, whether or not the moving party's legal arguments

are valid or persuasive, Mr. Dean's arguments should simply be dismissed by the trial court based on their repetitive nature. Such a restrictive standard would render all applications for reconsideration moot on their face.

Plaintiff's brief ironically refers to the parties' multiple QDROs to divide Mr. Dean's FERS Pension and TSP retirement accounts as "red herrings," but does not address the undisputed fact that Mr. Dean's retirement accounts, including his VA Pension, FERS Pension and Thrift Savings Plan (TSP), were equitably distributed at the time of the parties' Divorce from Bed and Board, per Paragraph 2.9 of the August 7, 2019 Marital Settlement Agreement (MSA). The only red herrings are set forth in Plaintiff's opposition brief, which relies predominantly on case law peripheral to the specific issue on appeal, and proposes an interpretation of R. 4:49-2 that would result in successful applications for reconsideration at the trial court level becoming totally obsolete.

Plaintiff's argument that because Mr. Dean's pension income was taken into consideration in formulating his limited durational alimony obligation, this matter is somehow immune from the proper application of Innes, is legally deficient and misleading. The purpose of Innes was to prevent trial courts from allocating equitably distributed retirement funds, specifically pension income, as income to the payor spouse in post-judgment alimony modification matters. If litigants in Mr.

Dean's position cannot rely on Innes, then the Supreme Court should alter or modify its holding before other trial courts disregard, or ignore, well-settled case law.

Lastly, Plaintiff's claim that the trial court's award of counsel fees was appropriate is based on the trial court's misapplication of Innes. Plaintiff states that Mr. Dean pursued reconsideration on "meritless grounds," but Plaintiff's opposition brief does not include a single compelling or cogent legal justification for the trial judge's inexplicable decision to disregard the Innes holding below.

LEGAL ARGUMENT

I. PLAINTIFF-RESPONDENT'S ANALYSIS OF *INNES* IS MISLEADING, INACCURATE, AND AN IMPLICIT SUGGESTION THAT THE APPELLATE COURT IGNORE SUPREME COURT PRECEDENT (Da1-Da6).

As noted above, Plaintiff asserts that reconsideration should never be granted where the same legal argument is made twice at the trial court level, no matter how credible or persuasive the argument. Plaintiff then engages in a brief, self-serving and evasive analysis of Innes, asserting that Mr. Dean's appeal is based on a "false factual predicate." Plaintiff argues, without citing any statutory or case law authority, that "the prohibition against 'double-dipping' in Innes has no application where, as here, the benefits were counted as income to Defendant and not equitably distributed as property to Plaintiff."

Not only is Plaintiff's primary argument concocted out of thin air, in the absence of any legal authority, but it also deliberately ignores the full text of the

parties' MSA, making selective, out-of-context reference to Paragraph 1.1. Plaintiff states that because Mr. Dean's annual VA Pension benefits were considered in establishing his initial limited durational alimony obligation, per Paragraph 1.1 of the MSA, such payments are thereafter separate and immune from the application of Innes. Plaintiff then attempts to distinguish the FERS Pension and TSP accounts from Mr. Dean's VA Pension, claiming -- falsely -- that because they required post-divorce QDROs for division, only the FERS Pension and TSP accounts were subject to equitable distribution.

Plaintiff's argument is erroneous and misleading in three key respects: (1) There is no provision in Innes stating that its holding does not apply to cases in which multiple pensions were equitably distributed at the time of divorce, with certain retirement assets not requiring a Domestic Relations Order (DRO), (2) Retirement assets can be considered in formulating an initial alimony award *and* equitably distributed for purposes of the application of Innes, and (3) Plaintiff continues to derive a financial benefit from Mr. Dean's VA Pension; she is a named irrevocable beneficiary of the VA Pension, along with the FERS Pension and TSP accounts per Paragraph 2.10 of the MSA.

The crux of Plaintiff's position is that the VA Pension is distinguishable from the FERS Pension and TSP accounts for purposes of Innes even though each of the retirement accounts was clearly listed under Article II. ("Equitable Distribution") of

the MSA. Plaintiff falsely asserts that she has received no post-divorce financial benefit from equitable distribution of Mr. Dean's VA Pension, despite clear evidence to the contrary.

Plaintiff's cherry-picked analysis of the MSA treats Mr. Dean's VA Pension as a lump sum rather than an annual benefit, and ignores the continuing financial benefit that Plaintiff derives from the VA Pension -- as an irrevocable beneficiary and her receipt of $50.00 per month towards her healthcare coverage -- while proposing that the appellate court view the VA Pension as somehow separate and distinct from the FERS Pension and TSP. Plaintiff's argument is contrived and cynical; the VA Pension, FERS Pension, and TSP accounts are each listed in the MSA under the clear Equitable Distribution heading, "Pensions and Other Deferred Retirement Accounts" (See Article II., ¶2.9), and the fact that certain retirement assets required post-judgment QDRO distribution does not change their status as retirement assets for purposes of Innes.

Plaintiff's opposition brief makes no mention of Paragraph 1 of the April 22, 2025 order, wherein the trial court stated, "To the extent the holding in *Innes* might otherwise be applicable to this matter, the parties themselves voluntarily decided to deviate from that holding by expressly considering these two sources of income when determining Defendant's alimony obligation at the time of the divorce."

If Plaintiff and Mr. Dean truly intended to "deviate" from the Innes holding, it is highly likely that such a crucial provision would have been incorporated into the MSA. The reality is that no such deviation was ever considered by the parties, and the trial court is seeking to bolster its deficient ruling by concocting an implied waiver with no basis in law or fact.

It is well-established that divorcing parties can waive future support modification by including an anti-*Lepis* clause in a negotiated MSA. However, the trial court's unsupported claim that the parties herein somehow implicitly agreed to an anti-*Innes* clause in their MSA is entirely baseless, and would set a dangerous precedent moving forward.

II. THE TRIAL COURT'S AWARD OF LEGAL FEES WAS BASED ON A CLEAR AND UNAMBIGUOUS MISAPPLICATION OF *INNES* (Da1-Da6).

Plaintiff disingenuously asserts that the trial court's award of legal fees payable by Mr. Dean in the amount of $2,500 was warranted, because Mr. Dean "misled" the trial court with respect to his employment at Syracuse University. If the trial court had properly applied Innes to the facts of this matter, the trial judge would either have modified Mr. Dean's limited durational alimony obligation to align with his reduced income, or scheduled a plenary hearing.

If the trial court's counsel fee award were based strictly on adherence to prior orders, Plaintiff's noncompliance with multiple prior orders should have warranted

a substantial fee award payable to Mr. Dean. As detailed in Mr. Dean's initial brief, Plaintiff deliberately prolonged the QDRO process herein by refusing to proactively contact FERS representatives to receive her pension benefits, resulting in months-long delays. Plaintiff's intent was to prevent her own receipt of retirement benefits so that even if Mr. Dean retired, she could demand limited durational alimony payments indefinitely.

CONCLUSION

For these reasons and those expressed in our initial brief, this matter should be remanded to the trial court with instructions to apply Innes, and for the scheduling of a plenary hearing to determine alimony modification.

We thank the court for its courtesies.

Respectfully,
SIEGEL LAW
Attorneys for Defendant-Appellant, John G. Dean, IV

By: *Robert H. Siegel, Esq.*

Dated: July 29, 2025