Cohabitation

William W. Goodwin and Diana N. Fredericks

Decisional law is an evolutionary process, and cases addressing post-judgment cohabitation's impact on alimony obligations are no exception. The purpose of this article is to assist practitioners in deciphering this area of the law as it has evolved over the past 38 years, especially as the cases can appear conflicting at times. This review of cohabitation is especially timely in light of the Appellate Division's May 7, 2013, decision in *Reese v. Weis*,[1] which addresses two issues prior case law has not: 1) What constitutes "an economic benefit"; and 2) when does such a benefit warrant termination—rather than modification—of alimony. The goal of this article is to assist practitioners in drafting effective settlement agreements and guiding clients where post-divorce cohabitation is contemplated by the alimony recipient (or suspected by the payor).

The History of Cohabitation Case Law

Garlinger v. Garlinger[2]

In this 1975 Appellate Division case, the husband filed an order to show cause to terminate alimony based on the former wife's residency with her boyfriend. At the hearing, the wife testified she received no support from her boyfriend except occasional gifts and dinners out.[3] Following the hearing, the trial court entered an order suspending the husband's alimony obligation retroactive to when cohabitation commenced.

The former wife appealed. On appeal, the husband argued that the wife's "illicit relationship," in itself, negated his obligation to pay alimony.

While holding that "un-chastity" of a former wife did not, in and of itself, form a basis to terminate or even reduce alimony, the appellate court observed cohabitation is a factor to be considered "to the extent that it may bear upon the amount of, and the necessity for, the allowance."[4]

Thus, the Appellate Division held that the impact of cohabitation (or un-chastity) on a pre-existing alimony obligation has nothing to do with the morals of the participants in a post-marital relationship, and everything to do with their economic interdependence or lack thereof.

Five years after the *Garlinger* decision, the Supreme Court decided *Lepis*,[5] wherein the Court held an award of alimony may be modified following a divorce whenever changed circumstances substantially modified the economic conditions of the parties. Among the changed circumstances, the trial court must consider "the dependent spouse's cohabitation with another."[6] This, in effect, confirmed a place for the *Garlinger* holding in the lexicon of cohabitation in New Jersey.

Gayet v. Gayet[7]

Eight years after *Garlinger*, the issue of cohabitation made its way again to the Supreme Court. In *Gayet v. Gayet*,[8] the husband filed a post-judgment motion to terminate alimony, alleging his former wife was living with another man "as husband and wife." The trial court ordered discovery and a plenary hearing.

In a divided decision, the Court recognized there were two conflicting policies in play: The statutory provision that alimony ends upon remarriage of the payee spouse (N.J.S.A. 2A:34-25), and the rights of privacy and developing personal relationships following a divorce. The *Gayet* Court concluded the Appellate Division had properly balanced these policies in *Garlinger*. The Supreme Court famously stated: "The extent of *actual economic dependency*, not one's conduct as a cohabitant, must determine the duration of support as well as its amount…[and that] economic realities should dictate the result."[9]

The *Gayet* Court also confirmed that cohabitation constituted changed circumstances sufficient to meet the first prong of *Lepis*, thus permitting the moving party the opportunity for discovery and, if appropriate, a hearing. The majority in *Gayet* did not define cohabitation, but simply noted "we are satisfied that our Courts will have little difficulty in determining the true nature of the relationship."[10]

Frantz v. Frantz[11]

The 1992 Chancery Division case of *Frantz* involved a former wife's application to reinstate alimony, which had previously been terminated due to her cohabitation.

Interestingly, at the time of the former wife's application, she acknowledged that she was cohabiting with another man. Her argument was that neither her contributions to him, nor his to her, justified the termination of alimony.

In his ruling, Judge Mark A. Sullivan, Jr. held it would be unreasonable to place the burden of proof on the former husband, as he does not have access to the evidence necessary to support that burden. Thus, once a *prima facie* showing of cohabitation has been made, "this Court feels that the burden of proof (that the cohabitant is neither supporting nor being supported by the payee former spouse) should shift to the supported spouse."

By 1992, therefore, the New Jersey courts had laid the groundwork for cohabitation's effect on alimony and the associated burdens of proof and persuasion. However, the following issues remained unaddressed, at least at the appellate level:

1. What constitutes cohabitation sufficient to meet the first prong of *Lepis*?
2. Once cohabitation has been established, who has the burden of proof regarding whether or not alimony should be modified/terminated (while this had been addressed in *Frantz*, that was a trial court opinion)?
3. What economic data are relevant to the trial court's consideration, and how should the courts use that information to determine whether alimony should be modified and, if so, by what quantum?
4. Does the duration of the cohabitation play a role in the court's calculus?
5. Were the cohabitation to terminate, could/should alimony be reinstated at its former level?
6. If the parties to a marital settlement agreement were to include a provision to terminate alimony upon cohabitation, would it be enforced by a court of equity?

Fortunately for practitioners and their clients, case law in this state has developed in all the above areas, answering some of those questions with finality and others with at least some guidance.

Ozolins v. Ozolins[12]

In *Ozolins*, the parties were divorced in 1990, following a 25-year marriage. Their settlement agreement called for alimony in the amount of $1,500 per month on a "permanent" basis. The husband filed a motion alleging the former wife was cohabiting. The trial court ordered a plenary hearing, during which the former wife acknowledged living with a male friend for "economic reasons only."[13]

The trial court terminated alimony, holding that once the husband had made a *prima facie* showing of cohabitation the wife had the burden of proof to show that she still required alimony. Failure to do so justified a termination. On appeal, the Appellate Division for the first time addressed the issue of presumptions and burdens of proof: "There is a rebuttable presumption of changed circumstances arising upon a *prima facie* showing of cohabitation. The burden of proof, which is ordinarily on the party seeking modification, shifts to the *dependent spouse*."[14]

Accordingly, the trial court decision in *Frantz* had essentially been approved at the appellate level.

Boardman v. Boardman[15]

In *Boardman*, the breadwinner was the former wife who, at the time of trial following a 23-year marriage, earned $275,000 per year. The husband had never earned "more than a token income," despite several graduate degrees. Following a trial, the court imputed $20,000 per year in income to the husband and awarded him $2,000 per month as permanent alimony.

On appeal, the *Boardman* court focused on the lower court's decision that the wife's alimony obligation would terminate upon the husband's cohabitation with an unrelated female. Citing to *Gayet* and *Ozolins*, the Appellate Division stated:

> The law does not support the automatic termination of court-ordered alimony upon cohabitation with an unrelated female. If plaintiff cohabits with another woman, defendant will have the opportunity to seek a reduction in alimony by obtaining discovery and showing either that plaintiff's economic needs have decreased because the woman is contributing to his support, or that he is subsidizing her at defendant's expenses.[16]

Note the language that at least implies the supporting spouse has the burden of 'showing' the supported spouse no longer needs alimony in view of cohabitation. Query whether this conflicts with *Ozolins* or is simply a case of less than careful drafting of that portion of the opinion.

Melletz v. Melletz[17]

In *Melletz*, the parties were divorced in 1991. Notably, their agreement provided alimony would be suspended for any period of time during which the wife cohabi-

tated with an unrelated male. Cohabitation was liberally defined to include "generally residing together in common residence" and engaging in certain activities such as cooking meals together at the residence, maintaining clothing at the other's residence and sleeping together at the residence of one or the other.[18] The clause further provided cohabitation would exist even if the male maintained a separate residence. The clause in question specifically stated that the provision "was specifically negotiated for..." and was "a bargained for agreement."[19] The clause also provided "the economic contribution component of *Gayet* shall not be applicable and that mere cohabitation, as defined herein, shall be the basis for suspension of the husband's alimony obligation."[20]

The husband filed a motion to suspend alimony on the basis of the wife's alleged cohabitation. At the plenary hearing, the testimony revealed the husband had begun conducting surveillance of the wife's condominium unit before the uncontested hearing. Thus, the husband was aware of the wife's relationship with a male friend *prior* to the completion of the negotiations and the execution of their marital settlement agreement. Therefore, the trial court found that the cohabitation clause in the agreement was "unfair, inequitable, and unenforceable."[21]

The husband appealed. The issue before the Appellate Division was whether parties could vary the parameters of the economic contribution rule by contract. In a strongly worded opinion by Judge William Dreier, the Appellate Division affirmed the lower court and declined to enforce the clause on public policy grounds:

> Here the one sided agreement attempts to control the wife's behavior in terms of suspension of her total alimony, even though the prohibited behavior may have no economic impact on her life. This is basically an *in terrorem* clause seeking to regulate the ex-wife's otherwise legal activities.[22]

The Appellate Division continued, "[m]atters of personal preference, residence, or occupation, insofar as they do not reflect changes in income or expenses or other matter of recognized mutual concern, simply are not the business of a former spouse."[23] Accordingly, the *Melletz* court held that "apart from the economic impact upon either need or the ability to pay recognized in *Gayet*[]...the payor spouse may not through loss or suspension of statutory alimony control the social activities of the payee."[24]

Konzelman v. Konzelman[25]

In *Konzelman*, the Supreme Court was asked to construe a property settlement agreement terminating the former wife's alimony if she cohabited, and to rule upon its enforceability. Following a 27-year marriage, the parties were divorced in Oct. 1991. Their settlement agreement provided that alimony would terminate if the wife cohabited with an unrelated adult male for a period of four consecutive months.

In Feb. 1993, the husband hired private investigators who produced evidence of a third-party male residing with the former wife. The parties filed cross-motions relating to alimony and cohabitation.

After a plenary hearing, the trial court found the wife was cohabitating with her boyfriend. The evidence included surveillance, eyewitness observations, and photos establishing the boyfriend was staying at the wife's home. The trial court also considered evidence of vacations the wife and boyfriend took together paid for by the boyfriend, that the wife and boyfriend spent holidays together with their respective families, that they opened and maintained a joint savings account, that the boyfriend paid for a swimming pool at the wife's home, that the boyfriend performed maintenance at her home, and that he had the code to disarm the alarm system to gain access to her home.

Despite finding cohabitation, the trial court refused to enforce the termination clause of the settlement agreement, relying instead on *Gayet* and its progeny. The trial court found the boyfriend was providing support to the extent of $170 per week and reduced alimony from $700 per week to $530 per week. The parties filed cross-appeals.

The Appellate Division reversed and held the cohabitation clause was enforceable, stating "...there are no considerations of public policy which should prevent competent parties to a divorce from freely agreeing that if the dependent spouse enters into a new relationship which, but for the license is tantamount to a marriage, the economic consequences of the new relationship will be the same as those of a remarriage."[26]

The Supreme Court in *Konzelman* recognized two competing public policy considerations: 1) The Court's long standing policy favoring consensual agreements as a means of resolving marital controversies and the related public policy favoring the stability of arrangements, once made; and 2) the principle that settlement agreements in marital cases are enforceable *in equity*, and that "contract principals have little place in the law of domestic relations."[27]

As in *Melletz*, the issue before the *Konzelman* Court was whether an agreement to terminate alimony obligations based upon cohabitation can be enforceable without regard to the economic consequences of the new relationship.

The Court first recognized the Legislature already provided that permanent alimony terminates upon remarriage without regard to the economic consequences to the wife as a result of the new relationship.[28] The Court then cited, with approval, the language of the Appellate Division:

> [T]here are no considerations of public policy which should prevent competent parties to a divorce from freely agreeing that if the dependent spouse enters into a new relationship which, but for the license, is tantamount to a marriage, the economic consequences of the new relationship will be the same as those of remarriage.

Thus, the Supreme Court concluded that "based on minimum standards to assure their mutuality, voluntariness and fairness, cohabitation agreements may be enforced."[29]

The *Konzelman* Court made crystal clear that a termination upon cohabitation clause required more than "a mere romantic, casual or social relationship." The Court approved the Appellate Division's standard of defining cohabitation as a domestic relationship "whereby two unmarried adults live as husband and wife." [30]

In so holding, the Court also provided some guidance to lower courts, counsel and parties regarding what constitutes cohabitation. The Court used such terms as "serious," "lasting," "stable," and "enduring" in describing such relationships. The Court also identified at least some "duties and privileges" that are commonly associated with marriage that should be assessed in determining whether or not cohabitation exists. "These can include, but are not limited to, living together, intertwined finances such as joint bank accounts, shared living expenses and household chores and recognition of the relationship in the couples' social and family life."[31]

Finally, the Court recognized that the Appellate Division had declined to decide whether the four-month period specified in the *Konzelman* property settlement agreement was sufficient to justify enforcement of the provision. The Supreme Court stated instead that the trial court's finding that the wife's cohabitation "has been of long duration and was still continuing at the time of trial" was amply supported, and her relationship was, therefore, sufficiently "stable and enduring to render enforcement of the provision fair and equitable under the circumstances." [32]

Thus, the use of a '*Konzelman* clause' became relevant to practitioners.

Conlon v. Conlon[33]

The following year, a Chancery Division decision provided further guidance on the effect of cohabitation on alimony obligations. The Conlons were married in 1979 and separated in 1993. In a post-judgment motion, Judge Thomas W. Cavanagh Jr. was asked to terminate alimony as a result of the wife's alleged cohabitation. In the absence of any discovery, without a plenary hearing, and most significant, *without* a *Konzelman* clause in the underlying settlement agreement, he declined.

The settlement agreement included a 12-year term alimony obligation but was silent regarding cohabitation. During the fourth year of the payment schedule, the husband filed a motion to terminate alimony predicated upon his assertion that the wife was cohabiting with an unrelated adult male.

Judge Cavanagh rejected the husband's reasoning and denied his application.

> The *sine qua no* of the *Konzelman* decision was the contractual understanding of the parties....The critical factor in gauging the effect of cohabitation on alimony is a review of the reduction in financial need of the dependent former spouse after appropriate discovery....The majority opinion in *Konzelman* neither abrogated nor diminished the well-developed authority which culminated in the *Gayet* pronouncement regarding cohabitation and the modification of alimony.[34]

In rendering its decision, the *Conlon* court made two additional points: First, Judge Cavanagh noted that while a number of jurisdictions had adopted statutes equating cohabitation to remarriage for the purposes of automatic termination of alimony, New Jersey had not. Second, the court required a plenary hearing to explore what reasonable expectations, if any, the parties had at the time of their negotiations and settlement concerning cohabitation and its impact on alimony.[35]

Palmeire v. Palmeire[36]

The 2006 Appellate Division decision in *Palmeire* also involved a post-judgment application by a former husband to terminate alimony. The parties had an unusual clause in their settlement agreement providing that the husband's obligation to pay alimony would terminate upon "the wife's residing with an unrelated person or vice versa, *regardless of the financial arrangements between the wife and said unrelated person*."[37]

Suspicious that his former wife was residing with an unrelated adult male, the husband filed a motion to terminate alimony. Based upon the certifications, including the log of the husband's private investigator, the court found the wife and the third party resided together at her home, and terminated alimony. The Appellate Division reversed and remanded.

The *Palmeire* court "seriously question[ed] whether the language of the provision at issue or the proofs proffered are sufficiently clear to justify termination of alimony under the standard of enforceability recognized in *Konzelman*[]."[38] The *Palmeire* court criticized the broad language of the agreement, noting that a reasonable interpretation might justify termination of alimony were the former wife to provide shelter to an ailing relative or receive care from a live-in nurse.

Cohabitation Now...*Reese v. Weis*[39]

In a recent Appellate Division decision, the parties divorced in 1996 following a 13-year marriage that produced three children. As part of the settlement, the husband agreed to pay the wife permanent alimony. Approximately two years later, the wife jointly purchased a home with her boyfriend. The wife, her three children, the boyfriend, and his two children resided together in this home.[40]

In Aug. 2008, the husband filed an application to terminate alimony based upon the wife's long-term cohabitation. While the record is not clear, it appears the only cohabitation clause related to the obligation on the part of the husband to maintain life insurance to secure his alimony obligation. The trial court conducted a plenary hearing. The evidence revealed that while the wife and her boyfriend generally maintained separate accounts, they did have one joint account to share certain expenses. Testimony also revealed the boyfriend provided substantial lifestyle enhancements. For example, he singlehandedly paid for a $120,000 safari vacation to Africa enjoyed by the wife and her children, ski trips to Vail, trips to Greece and Italy, a trip to the Rose Bowl in California, tickets to the U.S. Open tennis tournament in New York, and a vacation to the Galapagos Islands. The boyfriend also paid certain everyday expenses, including the wife's vehicle expenses and her health insurance. He also lavished gifts upon her, including tennis lessons, designer handbags, and jewelry.

The trial court concluded the wife failed to show that her expenses were satisfied by her separate income receipts, such as her alimony, child support and other unearned income sources. The court also noted the cohabitation continued for five years longer than the underlying marriage. As a result, the trial court terminated alimony. The wife appealed the termination and the husband cross-appealed the effective date.

The Appellate Division, through Judge Marie E. Lihotz, asked and answered two questions of first impression:

1. What defines "an economic benefit"?
2. Under what circumstances does such a benefit warrant termination, rather than modification, of alimony?

The *Reese* court discussed the standard of an economic benefit, holding that the trial court must first analyze the financial arrangements between the wife and cohabitant. First, the court must determine whether or not she is receiving a *direct* economic benefit; in other words, is the cohabitant contributing to his or her necessary expenses, such as food, shelter, transportation, clothing and insurance?

Second, even if the cohabitant is not providing a direct economic benefit, the trial court must consider whether or not she is receiving an *indirect* economic benefit. A common example would be if she had moved into her cohabitant's home without having to contribute toward any of the expenses.

The *Reese* court did not stop at this analysis, providing that trial courts must also consider "more subtle economic benefits" resulting from the parties' intertwined finances:

> When the parties' financial obligation arrangements are comingled, blurring the demarcation of economic responsibility, subsidization of expenses by one party for the benefit of the other may occur...and the ability to prove economic independence may diminish or possibly disappear.[41]

The *Reese* court rejected the wife's argument that her annual expenditures justified a continued need for support because she used her alimony to satisfy her basic needs, relying upon her boyfriend to provide an enhanced (above marital) lifestyle. In affirming the trial court, the *Reese* court concluded that "taken together, the facts demonstrate significant direct and indirect economic benefits flowed from [the boyfriend] to [the wife] along with the provision of lifestyle enhancements. The records support the Trial Judge's findings that not only was [the wife] able to be relieved of certain costs and expenses, she also was able to augment her standard of living."[42] "The unequivocal testimony verified the combined family operated as a single household that did not separate the financial responsibilities of [the wife] from those of [her boyfriend]."[43]

The wife argued that she needed all of the alimony to meet the marital lifestyle, and that the funds provided by her boyfriend allowed her to live an enhanced lifestyle. The Appellate Division rejected that argument on two bases: First, she did not satisfy her burden of proof. Second, and perhaps more important, the purpose of alimony is not to allow the former spouse to live an enhanced lifestyle subsidized by a third party, but rather to live at the marital lifestyle. Thus, if a third party is providing a support sufficient to meet the marital lifestyle, alimony is no longer necessary.[44]

In its analysis, the *Reese* court moved beyond the arithmetical 'nuts and bolts,' stating that

> [i]n this regard, we note the discretionary determination to modify or terminate alimony is informed by more than the objective calculation of the specific monies provided by the cohabitant....In determining whether an award of alimony continues to be 'fit, reasonable and just'...the Court must consider the *characteristics* of the new relationship of the dependent spouse and the cohabitant. Considerations that may be weighed when making such a determination include the length of cohabitation, the duration of receipt of the economic benefits, particularly in light of the length of the prior marriage, and whether the committed cohabiting relationship exhibits the indicia of marriage.[45]

Conclusion

As outlined above, the cohabitation cases in New Jersey can be separated into two distinct lines: Those where an anti-cohabitation clause has been incorporated into a settlement agreement, and those where one has not.

Regarding the first line of cases, *Konzelman* established that anti-cohabitation clauses are enforceable, but not *always*. Enforceability appears to depend on the language in the agreement and the nature of the post-divorce relationship between the alimony recipient and the cohabitant. Regarding the language, provisions that define the nature of the cohabitation as something less than long term and stable are likely to be viewed as inappropriately controlling and void as against public policy. Even where the appropriate *Konzelman* language is present in a settlement agreement, the trial court will carefully explore the nature and extent of the cohabitation relationship before such a termination clause is enforced.

Regarding the second line of cases, the following lessons bear repeating:

1. "Cohabitation" is a term of art. Payors whose former spouses engage in one-night stands are best advised not to waste their money on a doomed application to terminate alimony.
2. Cohabitation is best established via long-term surveillance conducted by a professional. Because this can be a significant expense, exacerbated by the significant expense of litigation, clients paying $250 per month, especially on a limited duration basis, should be encouraged to engage in a cost/benefit analysis and the uncertainty of litigation.
3. Once cohabitation is established, the burden of proof shifts to the recipient to prove he or she is not being supported by the cohabitant, nor is the cohabitant supporting him or her.
4. Because of point 3, alimony recipients who are contemplating cohabiting, yet hope to retain their full alimony award, should be counseled on the following:
   a. Maintaining joint bank accounts or joint assets of any kind should be discouraged.
   b. Overhead expenses should be shared equally and other expenses should be allocated based on consumption to the extent reasonably possible.
   c. Courts will consider the extent to which the cohabitant affords the payee the opportunity to enhance his or her lifestyle. A payee should not be surprised by a reduction in his or her alimony, even if he or she follows rules a. and b., if he or she is able to maintain a standard of living

significantly higher than that enjoyed during the marriage.

d. Proving cohabitation is not 'all about the money.' Especially when considering the possibility of terminating alimony, courts will inquire into the nature and extent of the relationship. Regarding the nature of the relationship, the courts will look to see if the parties have truly separated their finances. For example, if they have a joint checking account, is the account reconciled each month to make sure neither party subsidized the lifestyle of the other? Are credit card bills analyzed each month to ensure the party who incurred the charge paid for it with his or her separate resources? With respect to the extent, courts will compare the duration of the cohabitating relationship to that of the underlying marriage.

Over the past 30 years, the number of parties living together in monogamous relationships in the absence of marriage has increased substantially. Many of these situations arise in the context of divorced parties. Thus, it is anticipated this area of the law will continue to evolve. ■

William W. Goodwin is a senior partner with Gebhardt & Kiefer, P.C., in Clinton. Diana N. Fredericks is a junior partner in the firm.

Endnotes

1. 430 N.J. Super. 552 (App. Div. 2013).
2. 137 N.J. Super. 56 (App. Div. 1975).
3. *Garlinger*, 137 N.J. Super. at 59.
4. *Garlinger*, 137 N.J. Super. at 63.
5. *Lepis v. Lepis*, 83 N.J. 139 (1980).
6. *Lepis*, 83 N.J. at 151.
7. *Gayet v. Gayet*, 92 N.J. 149 (1983).
8. *Gayet*, 92 N.J. at 150.
9. *Gayet*, 92 N.J. at 154.
10. *Gayet*, 92 N.J. at 155.
11. 256 N.J. Super. 90 (Ch. Div. 1992).
12. 308 N.J. Super. 243 (App. Div. 1998).
13. *Ozolins*, 308 N.J. Super. at 246.
14. *Ozolins*, 308 N.J. Super. at 248-9.
15. 314 N.J. Super. 340 (App. Div. 1990).
16. *Boardman*, 314 N. J. Super. at 347.
17. 271 N.J. Super. 359 (App. Div. 1994).
18. *Melletz*, 271 N.J. Super. at 361.
19. *Melletz*, 271 N.J. Super. at 361-2.
20. *Melletz*, 271 N.J. Super. at 362.
21. *Melletz*, 271 N.J. Super. at 361.
22. *Melletz*, 271 N.J. Super at 365.
23. *Melletz*, 271 N.J. Super. at 366.
24. *Melletz*, 271 N.J. Super. at 367.
25. 158 N.J. 185 (1999).
26. *Konzelman*, 158 N.J. at 161.
27. *Lepis v. Lepis*, 83 N.J. 139, 148 (1980) (emphasis added).
28. N.J.S.A. 2A:34-25.
29. *Konzelman*, 158 N.J. at 161.
30. *Konzelman*, 158 N.J. at 202.
31. *Ibid.*
32. *Konzelman*, 158 N.J. at 203.
33. 335 N.J. Super. 638 (Ch. Div. 2000).
34. *Conlon*, 335 N.J. Super. at 650.
35. *Conlon*, 335 N.J. Super. at 651-2.
36. 388 N.J. Super. 562 (App. Div. 2006).
37. *Palmieri*, 388 N.J. Super. at 563 (emphasis added).
38. *Palmieri*, 388 N.J. Super. at 564.
39. 430 N.J. Super. 552 (App. Div. 2013).
40. *Reese*, 430 N.J. Super. at 558-9.
41. *Reese*, 430 N.J. Super. at 576.
42. *Reese*, 430 N.J. Super. at 579.
43. *Reese*, 430 N.J. Super. at 580.
44. *Reese*, 430 N.J. Super. at 579.
45. *Reese*, 430 N.J. Super. at 582.