

Alimony And Retirement Age: A Clarification

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On February 22, 2016, New Jersey Appellate Division Judge Marie E. Lihotz decided the case of *Landers v. Landers* (available at: <http://caselaw.findlaw.com/nj-superior-court-appellate-division/1726674.html>). The decision in *Landers* marks the first “published” decision that addresses the September 2014 amendments to New Jersey’s alimony statute, N.J.S.A. 2A:34-23. Although the Legislature made several amendments to the statute, the amendments relevant to the *Landers* case involve the retirement of the “Payor” or “Obligor” spouse (in other words, the spouse who is paying alimony). Prior to the 2014 amendments, the burden to modify or terminate an alimony obligation remained with the Payor spouse to demonstrate “changed circumstances.” Following the 2014 amendments, a Payor who has attained his or her full retirement age, became entitled to a “presumption” in favor of termination. In the simplest of terms, a general fact-pattern that discloses the following: “I am 66; I want to retire; my income will be reduced by 65%; and, accordingly, I can no longer afford to pay alimony,” is treated differently in divorces finalized after the September 2014 amendments.

In any event, back to *Landers*. There, the Payor-Husband filed a Motion seeking termination of his alimony obligation to his Wife. The Husband suffered from a litany of health issues, including a prior bout with cancer and various physical injuries. His post-retirement income consisted of social security retirement (SSR) benefits and the pension he received as part of the equitable distribution of marital assets at the time of divorce (i.e., a pension that the Husband earned during the marriage, a portion of which the Wife already received in the divorce and thus not calculable as part of the Husband’s ability to pay alimony pursuant to N.J.S.A. 2A:34-23(b)). The Trial Court handling the matter concluded that the Husband was entitled to the post-amendment presumption and, therefore, terminated the Husband’s alimony obligation. The Wife filed an appeal.

On appeal, Judge Lihotz ruled that the “presumption” afforded to Payor-spouses who divorced after the September 2014 amendments could not be applied to pre-September 2014 divorces. Accordingly,

Judge Lihotz reversed and remanded the matter to the Trial Court to assess the matter under the correct pre-September 2014 framework. The primary takeaways from Landers are as follows:

1. The “full retirement age” contained in the statute applies to divorces that occurred both prior to, and after, the September 2014 amendments. Note: in most cases, this is simply the age at which the Payor would receive full Social Security retirement benefits.
2. The attainment of “full retirement age” is deemed to be a “good faith retirement” in divorces that occurred both prior to, and after, the September 2014 amendments.
3. If a Payor spouse who was divorced prior to the September 2014 amendments seeks to retire at his or her “full retirement,” the burden remains on the Payor spouse to “demonstrate that modification or termination of alimony is appropriate.”
4. If a Payor Spouse who was divorced after the September 2014 amendments seeks to retire at his or her “full retirement,” the Payor is afforded a presumption in favor of retirement (in essence, the Payor no longer has the same burden as the example in #3). Note: this is the major change resulting from the 2014 amendments.

Although the Legislature amended New Jersey’s alimony statute in several regards, the fact still remains that disputes over the length of alimony, type of alimony, and, amount of alimony (the most often litigated aspect of alimony), require strategy, a well-articulated set of facts, a cogent legal argument, and the preparation of legal documents that may either “carry the day” in court – or lead to less than desirable consequences. In many cases, this requires the services of a good, reputable, attorney who can navigate through the facts and legal arguments on your behalf. That is not to say that you cannot attempt to resolve disputes on your own, however, my appellate practice often finds my representation of individuals who have been “penny-wise” and...well, you know. In other words, get it done right the first time!