No. _____

SUPREME COURT OF THE UNITED STATES

DANIEL T. MORGAN

Petitioner

v.

SHERI A. MORGAN

Respondent

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPERIOR COURT OF
PENNSYLVANIA

APPENDIX
TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

J-A32019-17

2018 PA Super 212

DANIEL T. MORGAN	: IN THE SUPERIOR
	: COURT OF
	: PENNSYLVANIA
	:
V.	:
	:
SHERI A. MORGAN	:
	:
Appellant	: No. 1770 MDA 2016

Appeal from the Order Entered September 27, 2016
In the Court of Common Pleas of Franklin County
Civil Division at No(s):
2007-1502

DANIEL T. MORGAN	: IN THE SUPERIOR
	: COURT OF
	: PENNSYLVANIA
Appellant	:
	:
V.	:
	:
SHERI A. MORGAN	: No. 1841 MDA 2016

Appeal from the Order Entered September 27, 2016
In the Court of Common Pleas of Franklin County
Civil Division at No(s):
2007-1502

DANIEL T. MORGAN	:	IN THE SUPERIOR
	:	COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
V.	:	
	:	
SHERI A. MORGAN	:	
	:	
	:	No. 128 MDA 2017

Appeal from the Order Entered January 12, 2017
In the Court of Common Pleas of Franklin County
Civil Division at No(s):
2007-1502

BEFORE: OTT, J., DUBOW, J., and STRASSBURGER*, J.

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* Retired Senior Judge assigned to the Superior Court.

OPINION BY DUBOW, J.: **FILED JULY 20, 2018**

In these consolidated cross appeals, Sheri A. Morgan ("Wife") and Daniel T. Morgan ("Husband") both appeal from the September 27, 2016 Order, which, *inter alia*, reduced Husband's alimony

obligation. Husband also appeals the January 12, 2017 Order that denied his Motion to Strike the September 27, 2016 Order. After careful review, we vacate the September 27, 2016 Order and remand this case with instructions.

PROCEDURAL AND FACTUAL HISTORY

Husband and Wife were married on May 18, 1984, and have three adult children; the youngest suffers from autism and requires supervision and care. During the marriage, Husband earned various advanced degrees, including a Law Degree, Masters in Business Administration, Masters of Laws in Taxation, and a Certified Public Accountant certification; Wife earned her Bachelors of Science in Nursing. At the time of the parties' separation, Husband earned a salary of $144,000.

On March 18, 2003, the parties entered into a Marital Settlement Agreement ("Agreement") on the record, which provided that Husband would pay Wife $5,000 per month in alimony until at least June 30, 2007. After July 1, 2007, either party could petition the Court to modify the amount of alimony, restricted only by the provision that the trial court could not reduce alimony below $1,000 until July 1, 2007 or later.

On March 20, 2003, the parties were divorced pursuant to a Judgement of Divorce entered in Montgomery County, Maryland, which incorporated, but did not merge, the parties' Agreement.

On May 3, 2007, Husband filed a certified copy of the Divorce Decree in Franklin County, PA. On May 4, 2007, Husband filed a Petition to Modify

Alimony to $1000 per month. Wife filed a cross-petition to increase alimony above $5000 per month.

On December 5, 2007, the trial court granted Husband's Petition and reduced Husband's alimony obligation to $1000 per month. Wife timely appealed. On appeal, this Court vacated a portion of the Order, remanded the case, and instructed the trial court to require Husband to demonstrate "a substantial change in circumstances that justify reducing the award" and then analyze the requisite factors set forth at 23 Pa.C.S. § 3701(b)(1)-(17). *Morgan v. Morgan*, No. 50 MDA 2008, unpublished memorandum at 11 (Pa. Super. filed November 13, 2008)("MORGAN I").

On January 14, 2011, after a hearing, the trial court issued an Order again granting

Husband's Petition to Modify Alimony and reducing alimony to $1000 per month retroactive to July 1, 2007. ("January 2011 Hearing"). Wife timely appealed the trial court's order.

While Wife's appeal was pending, Wife discovered that at the January 2011 Hearing, Husband produced to the court false documentation and testimony regarding his income, including two sets of false tax returns. Wife filed in this Court a Motion to Supplement the Record and a Motion for Immediate Interim Relief. Superior Court denied these motions and affirmed the decision of the trial court. ***See Morgan v. Morgan***, 40 A.3d 194 (Pa. Super. 2011)(unpublished memorandum)("MORGAN II").

On January 24, 2012, Wife filed with the trial court a Petition to Modify Alimony based on

Husband's fraud. At the hearing, the parties stipulated

that Husband's income was, in fact, higher than Husband had presented at the January 2011 Hearing.[1] The parties also stipulated that Wife's 2015 annual income was $43,200.

The parties further stipulated that 1) the hourly rates that Wife's attorneys charged were reasonable; 2) Husband would not challenge line-item charges from Wife's attorneys; and 3) it was not necessary for Wife to call an expert witness to testify as to the services provided.

Although the trial court acknowledged that Husband willfully presented false evidence of his income at the January 2011 Hearing and

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[1] In particular, the parties stipulated that Husband's income was as follows: $415,000 in 2007; $384,000 in 2008; $340,096 in 2009; $528,984 in 2010; $474,572 in 2011; $452,141 in 2012; $588,996 in 2013; $584,051 in 2014; and approximately $663,324 for 2015.

characterized Husband's conduct as "despicable," the trial court determined that it was bound by the factors listed in 23 Pa.C.S. § 3701 and issued the same Order that it had issued at the January 2011 Hearing. See Order, dated 9/27/16. Husband's alimony obligation remained at $1000 per month from July 1, 2011, through June 30, 2022.

The parties had stipulated that attorney's fees that Wife incurred were reasonable. The trial court, however, only required Husband to reimburse Wife for 75% of those fees. Moreover, the trial court only required Husband to reimburse Wife for those fees Wife incurred from the date she discovered Husband's fraud, not from the date he committed the fraud.

Wife filed a timely Notice of Appeal. Wife and the trial court complied with Pa.R.A.P 1925.

Husband filed a timely cross appeal, but failed to serve the appeal on the trial court. Consequently, the trial court did not order Husband to file a Pa.R.A.P. 1925(b) Statement.[2]

On January 11, 2007, Husband filed a Motion to Strike the September 27, 2016 Order. On January 12, 2017, the trial court denied Husband's Motion to Strike. Husband timely appealed. Both Husband and the trial court complied with Pa.R.A.P. 1925. Upon Motion from Husband, this Court consolidated the above-captioned appeals.

ISSUES RAISED ON APPEAL

Wife's Issues

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[2] Pa.R.A.P. 902 states, in pertinent part, "[f]ailure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but it is subject to such action as the appellate court deems appropriate, which may include, but is not limited to, remand of the matter to the lower court so that the omitted procedural step may be taken." We decline to remand the case due to Husband's failure to serve a copy of the Notice of Appeal on the trial court.

Wife raises the following issues on appeal:

I. Did the trial court abuse its discretion and err as a matter of law in concluding that an inequitable result would occur if it applied the doctrine of unclean hands to preclude analysis of the alimony factors, despite the trial court finding that the doctrine was applicable to the case and that [Husband]'s fraudulent conduct was within the purview of the doctrine?

II. Did the trial court abuse its discretion and err as a matter of law in determining that the amount of counsel fees to be considered for reimbursement were only the fees accumulated subsequent to the discovery of [Husband]'s fraud, therefore denying any consideration of the counsel fees accumulated while [Husband] perpetrated his fraud, despite determining that [Husband] was not entitled to a reduction in his alimony for the same period due to his fraud, and in arbitrarily awarding only 75% of the counsel fees incurred subsequent to the discovery of [Husband]'s fraud?

III. Did the trial court abuse its discretion and err as a matter of law where it correctly recognized the applicability of the *falsus in uno, falsus in omnibus* doctrine where [Husband]'s fraud was material to the alimony modification determination, but declined to apply the doctrine to any of the

likely and necessarily fraudulent testimony and production of [Husband], and in finding any of [Husband]'s testimony credible where in every instance where there was a way to check the veracity of [Husband]'s testimony, it was proven to be false?

IV. Did the trial court abuse its discretion and err as a matter of law in concluding that despite [Husband]'s fraud, [Husband] established a substantial and continuing change to meet the threshold requirement for alimony modification?

V. Did the trial court abuse its discretion and err as a matter of law in finding, after reanalysis of the alimony factors in light of [Husband]'s fraud, [Husband] to be entitled to any reduction to his alimony obligation, let alone a reduction in his alimony obligation after July of 2011, where [Husband]'s fraud was committed from the outset of the case, [Husband] perpetuated his fraud through the proceedings well after July of 2011, and where the trial court's Opinion of January 14, 2011 was premised upon findings of fact that were determined by the trial court based on fraudulent testimony and production from [Husband] which the trial court failed to fully recognize and address in its reanalysis of the factors in its Opinion and Order of September 27, 2016?

VI. Did the trial court abuse its discretion and err as a matter of law in determining that [Husband]'s fraudulent testimony and fraudulent production was not arbitrary, vexatious, or in bad faith?

Wife' Brief at 5-7 (reordered for ease of disposition; some capitalization omitted).

Husband's Issues

1. A court cannot alter a contract, and a judgment without subject matter jurisdiction is void. The trial court has determined, three times, that the parties contracted, in March 2003, that alimony would end in July 2007; nonetheless, the trial court has altered the contract by adding four years of alimony. Could the court alter the contract?

2. A judgment without subject matter jurisdiction is void. The trial court altered the parties' alimony contract based on Domestic Relations Code section 3701(b), which applies when alimony is awarded by a court. Did such statute provide the trial court with subject matter jurisdiction?

3. Relitigation of a final judgment is precluded, and a judgement without subject matter jurisdiction is void. The trial court allowed its final judgment to be relitigated, resulting

in the judgement on appeal. Could the final judgment be relitigated?

4. Jurisdiction of appeals from trial court orders lies with the Superior Court, exclusively, and a judgment without subject matter jurisdiction is void. After the Superior Court affirmed the trial court's final order, the trial court altered the affirmance. Did the trial court have jurisdiction to alter the affirmance?

5. A trial court has a maximum of 30 days to modify an order, but cannot do so after the order has been appealed, and a judgment without subject matter jurisdiction is void. After appeal of the trial court's (final) order, the trial court modified such order by entering the order on appeal. Was such modification permissible?

6. Orders were entered based on a judgment without subject matter jurisdiction. Were such orders valid?

Husband's Brief at 4-5.

LEGAL ANALYSIS – WIFE'S ISSUES

The Trial Court Abused its Discretion When it Failed to Apply the Doctrine of Unclean Hands

In her first issue, Wife avers that the trial court abused its discretion when it failed to apply the doctrine of unclean hands after determining that its application would be inequitable, despite finding that Husband's fraudulent conduct was within the purview of the doctrine. Wife's Brief at 21. Wife asserts that Husband committed intentional and premediated fraud upon the trial court for the last ten years and "in every instance where there was a way to check the truth or falsity of [Husband]'s testimony, it was proven to be false." *Id.* at 26, 28. Wife argues that the application of the doctrine of unclean hands is the only equitable recourse, and the trial court abused its discretion when it failed to apply the doctrine, vacate its decision to grant Husband's Petition to Modify, and determine that the doctrine completely bars

Husband's request for the reduction of his alimony obligation. *Id.* at 23, 27. We agree.

We review spousal support cases for an abuse of discretion. ***Dudas v. Pietrzykowski***, 849 A.2d 582, 585 (Pa. 2004). We must determine whether the trial court "has overridden or misapplied the law, or has exercised judgment which is manifestly unreasonable, or the product of partiality, prejudice, bias or ill will as demonstrated by the evidence of record." *Id.* (citation omitted).

As an initial matter, we conclude that the trial court properly determined that Husband's fraudulent production and testimony is "within the purview of the unclean hands doctrine." Trial Court Opinion and Order, dated 9/27/16, at 11. The doctrine of unclean hands generally operates only

to deny equitable, and not legal, remedies. *Universal Builders, Inc. v. Moon Motor Lodge, Inc.*, 244 A.2d 10, 14 (Pa. 1968). This Court has concluded that "[a] marital support agreement incorporated but not merged into the divorce decree survives the decree and is enforceable at law or equity." *Stamerro v. Stamerro*, 889 A.2d 1251, 1258 (Pa. Super. 2005).

The Divorce Code specifically states that "**[i]n all matrimonial causes, the court shall have full equity power and jurisdiction** and may issue injunctions or other orders which are necessary to protect the interests of the parties **or to effectuate the purposes of this part and may grant such other relief or remedy as equity and justice require.**" 23 Pa.C.S. § 3323(f) (emphasis added).

We first consider whether the trial court abused its discretion when it determined that application of the doctrine of unclean hands to this case would be inequitable and refused to apply it. It is well settled that a party "who comes into a court of equity must come with clean hands. The doctrine of unclean hands requires that one seeking equity act fairly and **without fraud or deceit as to the controversy at issue.**" ***Lee v. Lee***, 978 A.2d 380, 387 (Pa. Super. 2009) (internal citations omitted)(emphasis added). The doctrine "is derived from the unwillingness of a court to give relief to a suitor who has so conducted himself as to shock the moral sensibilities of the judge[.]" ***In re Estate of Pedrick***, 482 A.2d 215, 222 (Pa. 1984). "A court may deprive a party of equitable relief where, to the detriment of the other party, the party applying

for such relief is guilty of bad conduct relating to the matter at issue." ***Terraciano v. Com., Dep't of Transp., Bureau of Driver Licensing***, 753 A.2d 233, 237 (Pa. 2000). Finally, the doctrine of unclean hands "gives wide range to the equity court's use of discretion in refusing to aid the unclean litigant" and in exercising this discretion, the equity court is free to refuse to apply the doctrine if consideration of the record as a while convinces the court that application of the doctrine will cause an inequitable result. ***Shapiro v. Shapiro***, 204 A.2d 266, 268 (Pa. 1964) (citations omitted).

The facts of this case fall squarely within the doctrine of unclean hands. Husband's fraudulent conduct took place from the inception of this alimony modification case in May 2007 and

through the January 2011 Hearing. Husband's fraud included producing to the court two different sets of false tax returns, false financial documents, and a false mortgage application as well as testifying falsely to the court regarding his income, assets, and spending. The trial court specified Husband's fraudulent conduct as follows:

> This Court has identified various instances in which Dan committed fraud in these alimony proceedings. Dan concedes that in discovery of these alimony proceedings in April 2010, he produced false tax returns for the years 2007-09. *See* Dan Morgan Dep. at 42, May 18, 2012. He failed to include any bonuses that he earned from 2007-09, any consulting fees earned in 2007-08, or stock proceeds from 2009. ***See id.*** at 61-62. Dan falsely testified in 2010 that he received no bonuses, stock options or stock grants. ***See id.*** at 46. Dan also testified that he is unsure whether he was aware of his July 2, 2007 grant of restricted stock units when he denied owning any stock or stock options on August 16, 2007. ***See*** T.P., Support Appeal Hearing, at 27-29, September 20, 2012.
>
> In December 2011, Dan produced a second set of false tax return for the years 2007-10. ***See id.*** at 47-51. While the 2008 and 2009 returns were only

slightly altered, Dan's 2007 return reflected an adjusted gross income approximately $130,000 less than Dan's actual adjusted gross income. ***See id.*** at 58-59.

Dan initially testified that his significant other, Ms. Langbein, paid the down payment on the couple's home purchased in 2008, but later testified that he "guessed" that the $75,000 withdrawn from his bank account the day of settlement went towards the down payment. ***See*** T.P., Alimony Hearing, at 43, May 24, 2010; ***see also***, T.P., Support Appeal Hearing, at 38-39, 163-65, July 2, 2012. Dan also produced a fraudulent mortgage application in connection with the 2008 home purchase, and continues to deny that he has ever had assets in the amount reflected in the subsequently produced and actual mortgage application. ***See*** T.P., Support Appeal Hearing, at 11-14, September 20, 2012.

Dan testified in September 24, 2007 that his ING bank account always had zero balance, but later conceded that his ING account had an opening balance of $65,000 on September 20, 2007. ***See*** T.P., Support Appeal Hearing, at 148, 156-57, July 2, 2012. Dan further conceded that he had $82,000 to $88,000 more from December 2007 through January 2008 than what he submitted in a financial statement. ***See id.*** at 157. Additionally, Dan conceded that he provided untruthful testimony regarding international travel. ***See id.*** at 165-69.

Dan responded to interrogatories in April 2010 that he had no employment contract with Tyco. ***See*** T.P., Support Appeal Hearing, at 30-31, September 20, 2012. Dan acknowledges that he received an offer letter from Tyco, and signed said letter on December 27, 2006 under the terms "[p]lease sign below to signify your acceptance of our offer of employment and its terms." ***Id.*** at 31-33. Dan disputes that the offer letter is an employment contract. ***See id.*** at 31-33, 36. Dan also argues that the offer letter language "will receive an option grant and restricted stock grant in line with grant guidelines for your position and level" does not guarantee him either option grants or restricted stock grants. ***Id.*** at 34. Dan did testify that he only received stock options in 2007, but has received restricted stock grants every year since becoming employed by Tyco. ***See id.*** at 35-36.

Trial Court Order and Opinion, dated 9/27/16, at 4-6 (footnotes omitted). Our review of the record supports the trial court's findings.

Despite the trial court characterizing Husband's deceitful conduct over a period of more than five years as "despicable actions" and a "fraud upon the court," the trial court declined to apply the doctrine of unclean hands. The trial court

refused to assert its equitable powers and instead applied the alimony factors using Husband's new evidence that he presented after his Wife discovered the fraud. *Id.* at 11. We find this to be an abuse of discretion.

When Husband filed his Petition to Modify Alimony, he was requesting that the court use its equitable powers to modify his alimony obligation. In light of the fraud that Husband committed not only on the court, but also to the parties and judicial system itself, the trial court should have invoked the doctrine of unclean hands and denied Husband's request to modify Husband's alimony obligations. Although this conclusion involves disregarding the Section 3701(b) factors, Husband committed a fraud on Wife and the judicial system on the most important issue in the Petition to

Modify. This fraud is particularly egregious because Husband, as an attorney, is an officer of the court and has a professional obligation to not "knowingly make a false statement of material fact or law to the tribunal." Rules of Professional Conduct, Rule 3.3(a).

While it is hard to quantify the far-reaching effects of Husband's years of fraud upon the court and Wife, the fraud resulted in multiple lower court hearings and two appeals to this Court over the past ten years. This was unquestionably detrimental to Wife. ***See Terraciano, supra*** at 237. Husband's misconduct was not limited to a small or unimportant portion of the case; rather, for five years, most of the evidence that Husband fraudulently produced and testified to dealt with

his financial status, the most significant issue in the Petition to Modify.

This Court finds Husband's conduct to be appalling; it most certainly shocks the moral sensibilities of this Court. We agree with Wife that the only equitable result is to deny Husband's Petition to Modify Alimony *ab initio*, i.e, from the beginning. *See* 23 Pa.C.S. § 4352(e) (stating that a support obligation may be modified retroactively "if the petitioner was precluded from filing a petition for modification by reason of a . . . misrepresentation of another party or other compelling reason and if the petitioner, when no longer precluded, promptly filed a petition."). The trial court abused its discretion when it failed to grant this relief.

The Trial Court Abused its Discretion When it Failed to Award Wife the Full Amount of

Attorneys' Fees that Wife Incurred From the Inception of Husband's Fraud

In her next issue, Wife avers that she is entitled to a full award of attorneys' fees form the inception of Husband's fraud. Wife's Brief at 60. The trial court only awarded Wife attorneys' fees from the date Wife discovered the fraud, not when Husband began perpetrating the fraud, and only awarded 75% of such fees.

The parties stipulated that the hourly rates that Wife's attorneys charged were reasonable, Husband had no objection to line items on the bills and there was no necessity for Wife to call an expert witness to testify as to the services provided. In light of the stipulations, the trial court should have limited its analysis to whether Wife was entitled to the stipulated amount of attorneys' fees. Once the trial court did so, it should not have

overridden the parties' stipulation and made a separate determination of the reasonableness of those fees.

We review a trial court's decision to grant or deny attorney's fees for an abuse of discretion. ***Brody v. Brody***, 758 A.2d 1274, 1281 (Pa. Super. 2000). If a party to a divorce action shows actual need, an award of counsel fees is appropriate to put the parties on par in maintaining or defending that action. ***Verholek v. Verholek***, 741 A.2d 792, 799 (Pa. Super. 1999). Further, "a party to an action may be awarded counsel fees when another party engages in dilatory, obdurate, or vexatious conduct during the pendency of a matter." ***Id.*** (citing 42 Pa.C.S. § 2503(7)).

Instantly, the trial court found Husband's fraudulent conduct to be both obdurate and

dilatory, and "squarely within the purview of [42 Pa.C.S. § 2503(7)] permitting an award of counsel fees to [Wife]."[3] Trial Court Order and Opinion, dated 9/27/16, at 28. Despite this finding, the trial court awarded only 75% of the attorneys' fees and only those fees that Wife incurred **after** she discovered Husband's fraud. We conclude that this was an abuse of discretion.

In an analogous case, ***Krebs v. Krebs***, 975 A.2d 1178 (Pa. Super. 2009), when a husband fraudulently concealed increases to his income from 2001 through 2006 in order to avoid paying additional child support, this Court found that Husband's fraudulent conduct was the sole cause of

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[3] This Court has defined "obdurate" as "stubbornly persistent in wrongdoing." ***In re Estate of Burger***, 852 A.2d 385, 391 (Pa. Super. 2004). "Conduct is 'dilatory' where the record demonstrates that counsel displayed a lack of diligence that delayed proceedings unnecessarily and caused additional legal work." ***Id.***

the proceedings resulting in the attorneys' fees in question. ***Krebs, supra*** at 1182. Accordingly, this court held that the trial court abused its discretion when it awarded only one-third of the attorneys' fees that the wife incurred during the case instead of the full amount requested. ***Id.***

Here, comparable to ***Krebs, supra***, Husband's fraudulent conduct is the sole cause of the ten years of legal proceedings that resulted in Wife's legal fees. Moreover, the parties stipulated to the reasonableness of the attorneys' fees. Accordingly, the trial court abused its discretion when it not only awarded only 75% attorneys' fees, but also only awarded them from the time of discovery of Husband's fraud. Instead, the trial court should have awarded 100% of Wife's attorneys' fees and awarded them from the

inception of Husband's fraud, namely the filing of the 2007 Petition to Modify Alimony.

Moreover, we conclude that Husband's Application for stay of Trial Court Order dated September 27, 2016 Pending Appeal was dilatory, obdurate, and vexatious, and grant Wife's Re-Application for Counsel Fees and Costs Under Pa.R.A.P. 2744.[4]

CONCLUSION

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[4] Rule 2744 states:

> In addition to other costs allowable by general rule or Act of Assembly, an appellate court may award as further costs damages as may be just, including
>
> 1) a reasonable counsel fee and
>
> 2) damages for delay at the rate of 6% per annum in addition to legal interest,
>
> if it determines that an appeal is frivolous or taken solely for delay or that the conduct of the participant against whom costs are to be imposed is dilatory, obdurate or vexatious. The appellate court may remand the case to the trial court to determine the amount of damages authorized by this rule.

Pa.R.A.P. 2744

In conclusion, the trial court abused its discretion when it failed to apply the doctrine of unclean hands and to grant Wife's request to deny Husband's 2007 Petition to Modify Alimony *ab initio*. The trial court also abused its discretion when it failed to award 100% of the attorneys' fees incurred by Wife from the inception of the case. We remand and instruct the trial court to 1) deny Husband's 2007 Petition to Modify Alimony *ab initio*; 2) reinstate the alimony award of $5000.00 per month to Wife retroactively; 3) award 100% of the attorney's fees incurred by Wife from the inception of the case in 2007; and 4) calculate and award the attorney's fees incurred by Wife in preparation of the Answer to Husband's Application for Stay pursuant to Pa.R.A.P. 2744. In light of our disposition, we do not need to address

the remainder of Wife's issues and, likewise, do not need to address any of Husband's issues. Consequently, we deny as moot Wife's Re-Application for Quashal of [Husband]'s Appeals Docketed at 1841 MDA 2016 and 128 MDA 2017.

Order vacated. Case remanded with instructions. Jurisdiction relinquished.

Judge Ott joins the Opinion.

Judge Strassburger files a Concurring Statement in which Judge Ott and Judge Dubow join.

Judgment Entered.

Joseph D. Seletyn
Joseph D. Seletyn, Esq.
Prothonotary

Date: 07/20/2018

J-A32019-17

2018 PA Super 212

DANIEL T. MORGAN	:	IN THE SUPERIOR
	:	COURT OF
	:	PENNSYLVANIA
	:	
V.	:	
	:	
SHERI A. MORGAN	:	
	:	
Appellant	:	No. 1770 MDA 2016

Appeal from the Order Entered September 27, 2016
In the Court of Common Pleas of Franklin County
Civil Division at No(s):
2007-1502

DANIEL T. MORGAN	:	IN THE SUPERIOR
	:	COURT OF
	:	PENNSYLVANIA
	:	
Appellant	:	
	:	
V.	:	
	:	
SHERI A. MORGAN	:	No. 1841 MDA 2016

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Appeal from the Order Entered January 12, 2017
In the Court of Common Pleas of Franklin County
Civil Division at No(s):
2007-1502

BEFORE: OTT, J., DUBOW, J., and STRASSBURGER*, J.

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* Retired Senior Judge assigned to the Superior Court.

CONCURRING STATEMENT BY STRASSBURGER, J.: **FILED JULY 20, 2018**

I join the Majority Opinion in its entirety. I write separately because Husband's fraudulent actions defrauded not just Wife but also the judicial system and his profession. Therefore, the Opinion

here should be referred to the District Attorney of Franklin County and the Disciplinary Board.

Judge Ott joins the Concurring Statement.

Judge Dubow joins the Concurring Statement.

J. A27022-11

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

DANIEL T. MORGAN,	: IN THE SUPERIOR : COURT OF : PENNSYLVANIA
Appellee	:
	:
v.	:
	:
SHERI A. MORGAN,	:
	:
Appellant	: No. 334 MDA 2011

Appeal from the Order entered January 14, 2011 in the Court of Common Pleas of Franklin County, Civil Division, No. 2007-1502

BEFORE: GANTMAN, LAZARUS, and OLSON, JJ.

MEMORANDUM BY LAZARUS, J.: FILED: December 16, 2011

Sheri A. Morgan ("Wife") appeals from the order entered on January 14, 2011 by the Honorable Carol Van Horn in the Court of Common Pleas of Franklin County. Upon review, we affirm in part and reverse in part.

The factual and procedural history of this contentious domestic relations matter has been recited by the trial court in its various opinions and will not be extensively detailed here. Pursuant to the terms of a property settlement agreement, Daniel T. Morgan ("Husband") filed a petition to decrease alimony on May 4, 2007. After conducting hearings in the matter, the trial court entered an order on December 5, 2007, which reduced Husband's monthly alimony obligations from $5,000 to $1,000. On appeal by Wife, this Court vacated the trial court order in part and remanded for proceedings in accordance with the memorandum decision. ***See Morgan v. Morgan***, 50 MDA 2008 (filed 11/13/08). On remand, the trial court held further hearings,

ultimately issuing an opinion addressing the statutorily-defined factors set forth in 23 Pa.C.S.A. § 3701(b),[1] as directed by this Court. The trial court reaffirmed its earlier decision to reduce Husband's alimony obligation to $1,000 per month and decided several additional outstanding issues.

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[1] Section 3701(b) sets forth the factors a court must consider in determining whether alimony is necessary and the nature, amount, duration and manner of payment thereof. Those factors include: (1) the parties' relative earnings and earning capacities; (2) the parties' ages and the physical, mental and emotional conditions; (3) the parties' sources of income, including, but not limited to, medical, retirement, insurance or other benefits; (4) the expectancies and inheritances of the parties; (5) the duration of the marriage; (6) the contribution by one party to the education, training or increased earning power of the other party; (7) the extent to which the earning power, expenses or financial obligations of a party will be affected by reason of serving as the custodian of a minor child; (8) the standard of living of the parties established during the marriage; (9) the relative education of the parties and the time necessary to acquire sufficient education or training to enable the party seeking alimony to find appropriate employment; (10) the parties' relative assets and liabilities; (11) the property brought to the marriage by either party; (12) the contribution of a spouse as homemaker; (13) the relative needs of the parties; (14) marital misconduct of either party during the marriage; (15) the Federal, State and local tax ramifications of the alimony award; (16) whether the party seeking alimony lacks sufficient property to provide for the party's reasonable needs; and (17) whether the party seeking alimony is incapable of self-support through appropriate employment. *See* 23 Pa.C.S.A. § 3701(b).

Wife filed a timely appeal, in which she raises numerous issues related to, *inter alia*, the trial court's reduction of Husband's alimony payment, Husband's obligation to obtain and maintain a life insurance policy for the benefit of Wife, Husband's obligation to pay personal expenses incurred by the parties' college-age children and the trial court's refusal to award Wife all counsel fees requested in contempt proceedings. Upon review, we conclude that all but one of Wife's issues are meritless.[2]

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[2] In his appellate brief, Husband does not directly respond to any of the issues raised by Wife in her brief. Rather, Husband raises numerous issues of his own. However, Husband has neither appealed nor cross-appealed the decisions of the trial court. As such, the "issues" raised in his brief are not properly before this Court and will not be considered.

First, Wife alleges that the trial court erred in finding that Husband "substantially satisfied" the terms of the marital settlement agreement requiring him to maintain a life insurance policy for her benefit. Wife argues that the trial court's finding was in error in light of the plain language of the parties' agreement. Wife takes particular issue with the court's finding that Husband's insurance obligation was "intended to decrease over time" as Husband's alimony and support obligations decreased. Wife argues that this conclusion is not supported by the plain language of the agreement, which provides for no decrease and no possibility of court modification. We agree.

Private support agreements are subject to contract principles and are enforceable in an action at law for damages or in equity for specific

performance. *Stamerro v. Stamerro*, 889 A.2d. 1251, 1257 (Pa. Super. 2005) (citation omitted). When interpreting a marital settlement agreement, the trial court is the sole determiner of facts and, absent an abuse of discretion, we will not usurp the trial court's fact-finding function. ***Id.*** (citation and quotation omitted). Because contract interpretation is a question of law, this Court is not bound by the trial court's interpretation. ***Id.*** (citation and quotation omitted). Our standard of review over questions of law is *de novo* and our scope of our review is plenary. ***Id.*** (citation and quotation omitted). However, we are bound by the trial court's credibility determinations. ***Id.*** (citation omitted).

Here, the marital settlement agreement, which was placed on the record in open court but

not independently reduced to writing, provides as follows:

> MR. MAXWELL [ATTORNEY FOR WIFE]: Husband will obtain $500,000 of term insurance and pay for the insurance by September 1, 2003, and maintain it. I guess we didn't say - we said, as long as he has an obligation.
>
> THE COURT: If you buy a term life insurance policy, it's going to decrease each year. If you're trying to coincide it with the ending of the youngest child reaching 18?
>
> MR. MAXWELL: At least, but I believe there is also an obligation of the alimony. **Can we agree that it will be through the end of the alimony period to wife?**
>
> MR. MORGAN [*PRO SE*]: Right, in light of - **yes, that's fine.**
>
> MR. MAXWELL: With wife as beneficiary.

N.T. Circuit Court of Montgomery County, Maryland, 3/18/03, at 9 (emphasis added).

Husband testified that it took him two years after the September 1, 2003 deadline to obtain the

policy and, when he finally did so, it was only for $375,000.[3] In its findings of fact, the trial court concluded as follows:

> f. Husband was responsible to obtain and maintain life insurance, to begin in the amount of $500,000.00 with Wife named beneficiary, to be held through the end of the period during which he is obligated to Wife. **The amount was intended to decrease over time in conjunction with his commitment to pay support for the children until they reached age eighteen, and to pay alimony in any amount to Wife.**

Trial Court Findings of Fact, 1/14/11, at ¶ 31.f (emphasis added). Accordingly, the trial court found that Husband, in obtaining a policy for $375,000, had "substantially satisfied his obligation" to Wife. Trial Court Opinion, 1/14/11, at 95.

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[3] The entire policy obtained by Husband was worth $750,000. However, Husband made his girlfriend beneficiary of one half and Wife the beneficiary of the other.

Marital settlement agreements are private undertakings between two parties, each having responded to the give and take of negotiations and bargained consideration. ***Stamerro***, 889 A.2d at 1258 (citation and quotation omitted). A marital support agreement incorporated, but not merged, into the divorce decree survives the decree and is enforceable at law or. equity. ***Id.*** The terms of a marital settlement agreement cannot be modified by a court in the absence of a specific provision in the agreement providing for judicial modification. ***Id.*** Moreover,

> When interpreting the language of a contract, the intention of the parties is a paramount consideration. In determining the intent of the parties to a written agreement, the court looks to what they have clearly expressed, for the law does not assume that the language was chosen carelessly. When interpreting agreements containing clear and unambiguous terms, we need only examine the writing itself to give effect to

> the parties' intent. In other words, the intent of the parties is generally the writing itself.

Id.

Instantly, the parties' marital settlement agreement was incorporated, but not merged, into the decree of divorce. Moreover, unlike the alimony provision, the insurance provision does not provide for the possibility of downward modification under any circumstances.[4] The language of the settlement agreement, as stated in the Maryland court on March 18, 2003 and reduced to writing in the transcript of that hearing, is clear and unambiguous. Attorney Maxwell, representing Wife, stated that the parties agreed that Husband would maintain a life insurance policy for Wife's benefit in the amount of $500,000. N.T. Circuit

[4] Although, during the recitation of the terms of the insurance provision, the Maryland court interjected a statement about term life insurance decreasing each year, that statement was clearly not a part of the parties' agreement.

Court of Montgomery County, Maryland, 3/18/03, at 9. He thereafter noted that the parties agreed the policy would remain in place "as long as [Husband] has an obligation." ***Id.*** At this point, the court interjected a comment regarding term life insurance decreasing over time and asked whether the insurance obligation would end when the Morgans' youngest child turned 18. ***Id.*** Attorney Maxwell responded by noting that there was also an alimony obligation and asking Husband whether he would "agree that [the policy's duration] will be through the end of the alimony period to wife?" ***Id.*** Husband agreed and the parties moved on to the next section of the agreement. ***Id.*** Thus, succinctly stated, the parties agreed that: (1) husband would purchase $500,000 worth of life insurance (2) with Wife as beneficiary (3) to be in

effect through the end of the alimony obligation. Accordingly, the trial court's conclusion that "[t]he amount [of insurance] was intended to decrease over time in conjunction with [Husband's] commitment to pay support [and] alimony" was in contravention of the plain meaning of the agreement and its finding of "substantial compliance" was in error. Husband is obliged to maintain insurance in the amount of $500,000, with Wife as beneficiary, until such time as his alimony obligations to Wife, as set forth in the agreement, cease.

After a thorough review of the record, the parties' briefs, and the relevant law, we dispose of Wife's remaining issues on the basis of the extremely thorough, thoughtful, well-reasoned and

legally sound opinions authored by Judge Van Horn. Specifically, we find as follows:

1. The trial court did not disregard the directives of this Court on remand, ***see*** Trial Court Opinion, 3/23/10, at 9-10.

2. The trial court did not find that Husband's inability to pay was a defense to his contractual obligation to pay alimony and/or college expenses, ***see*** Trial Court Opinion, 1/14/11, at 82 ("Inability to pay is not a defense to obligations under [a] contract, but it may indeed lessen the required penalty in contempt."); Trial Court Opinion, 4/1/11, at 16-1.

3. The trial court did not err in finding that the parties Intended that Husband's alimony payments would be subject to modification when Husband's financial circumstances changed as a result of his obligations with regard to the children's college expenses and, moreover, this determination was not solely or even primarily dispositive of the issue of modification, ***see*** Trial Court Opinion, 1/14/11, at 44-50 (discussion regarding parties' intent regarding modification), 50-75 (discussion of factors under 23 Pa.C.S.A. § 3701(b) as instructed by this Court in prior memorandum); Trial Court Opinion, 4/1/11, at 6, 10-11.

4. The trial court did not err in applying the reduction in alimony retroactive to 7/1/07 and crediting resulting overpayments to alimony, college expenses and attorney's fees, ***see*** Trial Court Opinion, 1/14/11, at 75; Trial Court Opinion, 4/1/11, at 8-9.

5. The trial court did not err by refusing to order additional discovery, nor did the court "forc[e] Wife to proceed to trial without [essential] discovery," ***see*** Trial Court Opinion, 1/14/11, at 91-93; Trial Court Opinion, 4/1/11, at 14-15.

6. The trial court did not demonstrate "bias, prejudice, lack of impartiality or the appearance thereof, capricious disbelief or prejudgment" in its consideration and treatment of the statutory factors. Rather, the court carefully considered the facts as it found them and applied "the Divorce Code in a compassionate and reasonable manner to effectuate the overriding goal of achieving economic justice between the parties." *Schneeman v. Schneeman*, 615 A.2d 1369, 1378 (Pa. Super. 1992). *See* Trial Court Opinion, 1/14/11, at 50-75; Trial Court Opinion, 4/1/11, at 3-4, 5-9.

7. The trial court did not err by granting Husband equitable relief despite multiple breaches of the marital settlement agreement. Rather, the relief granted was contemplated by the parties, provided for

under the agreement, and determined pursuant to the dictates of this Court on remand. Moreover, the record amply supports the trial court's finding that "[b]oth parties . . . disobeyed the provisions of the Agreement they entered, each has sought to disadvantage the other, each has behaved poorly. Yet as to the behavior or Husband, the [c]ourt simply does not have evidence showing he acted 'unfairly, fraudulently, or deceitfully in this matter,' so that the doctrine of unclean hands would bar his [request] for reduction." Trial Court Opinion, 1/14/11, at 96, citing ***Terraciano v. Commonwealth Dept. of Trans.,*** 753 A.2d 233, 238 (Pa. 2000). ***See also*** Trial Court Opinion, 1/14/11, at 93-96; Trial Court Opinion, 4/1/11, at 16-20.

8. The trial court did not err in finding that Husband was not responsible for personal expenses incurred by the parties' two elder children while at college, ***see*** Trial Court Opinion, 1/14/11, at 79-81; Trial Court Opinion, 4/1/11, at 11.

9. The trial court did not err by reducing legal fees requested by Wife in contempt proceedings, ***see*** Trial Court Opinion, 1/14/11, at 75-82; Trial Court Opinion, 4/1/11, at 12-14.

Order affirmed in part and reversed in part; case remanded to the trial court for the entry of an order consistent with the mandates of this memorandum.[5] Jurisdiction relinquished. Judgment Entered.

Deputy Prothonotary

Date: December 16, 2011

[5] During the pendency of this appeal, Wife filed two applications for relief, one to supplement the record and another for immediate interim relief. Both of those applications are hereby denied.

J. A27014/08

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

DANIEL T. MORGAN,	: IN THE SUPERIOR : COURT OF : PENNSYLVANIA
Appellee	:
	:
v.	:
	:
SHERI A. MORGAN,	:
	:
Appellant	: No. 50 MDA 2008

Appeal from the Order entered December 5, 2007
In the Court of Common Pleas of Franklin County
Civil at No(s): 2007-1502

BEFORE: PANELLA, CLELAND, JJ. and McEWEN, P.J.E.

MEMORANDUM: FILED: November 13, 2008

Appellant, Sheri A. Morgan ("Wife"), appeals from the order entered on December 5, 2007, by the Honorable Carol Van Horn, Court of Common Pleas of Franklin County. The order directed the downward modification of alimony paid by Daniel

T. Morgan ("Husband") to Wife pursuant to the parties' Marital Settlement Agreement ("Agreement") and Section 3701 of the Divorce Code, 23 PA.CONS.STAT.ANN. After careful review, we vacate in part, affirm in part, and remand for further consideration in accordance with this memorandum.

The parties were married on May 18, 1984 and have three children; the youngest child suffers from autism, a condition that will require special care for the duration of his life. The other children are over 18 years of age and are enrolled at private universities. These children have also experienced health issues throughout their lives that have required special care, *i.e.*, the oldest son has a significant bipolar disorder and the daughter has a heart condition and possible melanoma. The health

conditions of the children required a home-schooled education, a task
that was performed dutifully by Wife throughout the children's lives.

During the marriage, Husband earned his J.D." M.B.A., L.L.M. in Taxation, and C.P.A. certification. In early 2002, when the couple separated, Husband earned a salary of $144,000. Wife earned a bachelor's degree in nursing during the marriage, but her employment was sporadic due to the care that she provided to meet the special health and educational needs of the parties' children.

On March 18, 2003, the parties entered into an Agreement on the record which granted $5,000 per month in non-modifiable alimony to Wife, payable through June 30, 2007, and an additional

$1,786.00 per month in child support. Pursuant to the Agreement, $1,000 of the alimony remained non-modifiable for a period of 15 years post-July 1, 2007, but either party could petition to increase, decrease or terminate the remaining $4,000 in alimony as of that date.[1] 1 At the time the

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[1] The Agreement specifically set forth the following, in pertinent part:

> Number one, the house at Hunt Club Drive will be conveyed by quit claim deed from husband to wife promptly, when it can be prepared.
>
> Wife will apply for a new mortgage in the amount of $470,000.00. If she is successful, then out of the proceeds of that mortgage, the deed of trust note, wife will pay the debts that are scheduled...Then wife will list the home for sale. She will sell the home and pay these scheduled debts from the proceeds of the sale of the home to the extent that there are proceeds to pay...For some reason, if there are not available proceeds, husband will be responsible for the remaining debts...[H]usband will select which debts are paid and will be responsible for the remaining debts and indemnify wife against any loss regarding the remainder of the debts that are scheduled.
>
> ...Wife will receive the title to the 1997 Suburban.
>
> ...The acrylic stock will be split 50/50.

Agreement was executed, the parties stipulated that Pennsylvania law would apply for purposes of

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...There is a time share that they have in Orlando...The
husband will pay the annual dues on it.

..With respect to alimony, there will be $5,000 per month of non-modifiable alimony payable on the first of each month through June 30, 2007, modifiable by the Court. Beginning on July I, 2007, ...that $1,000 of the $5,000 would remain non-modifiable and would be payable over the ensuing 180 months, that is to say 15 years, beginning on June 1, 2007. Although the payment would remain at $5,000, unless and until either party moves to either increase, decrease, or terminate...$5,000 through and including June 30, 2007. Starting July 1, 2007, $1,000 of it non-modifiable through 180 months, 15 years, but the payment will be constant. It will continue at $5,000, unless and until either party moves to terminate, reduce, or increase, based on whatever factors they believe are appropriate. It is further understood that the $1,000 of non-modifiable alimony that will be decreed to be paid beginning on July 1, 2007, is that while that is being paid, that either party will remain free to argue with respect to any additional alimony, which will be of an indefinite nature.
A.
...Husband will obtain $500,000 of term insurance and pay for the insurance by September 1, 2003, and maintain it.
...With respect to college, husband will pay [3/4 of the expenses] for college, 4 years of college...subject to the approximate limits of what it would cost to attend the State of Maryland.

...Child support is the amount of ...$1,786.00.

N.T., Hearing, 3/18/03, at 12a-19a.

future proceedings, although the Agreement was executed in Maryland.

On March 20, 2003, the parties were divorced pursuant to a Judgment of Divorce entered in Montgomery County, Maryland, which incorporated, but did not merge, the parties' Agreement. A certified copy of the Divorce Decree was filed on May 3, 2007 in Franklin County, Pennsylvania.

Thereafter, on May 4, 2007, Husband filed a petition to modify alimony with the trial court contending that it was the intention of the parties to reduce the $5,000 in monthly alimony at the time the parties' two older children reached the age of majority, effective July 1, 2007.[2] At the hearing

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[2] As an aside, we note that pursuant to 26 U.S.C.A. § 71(c)(2)(B), alimony payments, which are deductible, cannot be tied to a significant event in a child's life, such as reaching the age of majority, or they could be re-characterized, as non-

on his petition, Husband acknowledged that his salary had increased from $144,000 to $225,000 over the four years following the parties' divorce. At the conclusion of the proceedings, the trial court found in favor of Husband via an order entered on December 5, 2007, directing that the alimony award be reduced to $1,000 effective July 1, 2007, payable to Wife through June 1, 2022, and providing for a credit of alimony paid in excess of this $1,000 for the period July 1, 2007 through December 5, 2007. Thereafter, Wife filed a timely appeal to this Court.

On appeal, Wife raises the following issues for our review:

A. WHETHER THE TRIAL COURT ERRED IN ITS DETERMINATION THAT ALIMONY SHOULD BE REDUCED ON THE BASIS OF APPLICATION OF

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deductible child support. ***See Isralsky v. Isralsky***, 824 A.2d 1178, 1190 (Pa. Super. 2003).

ONLY TWO OF THE FACTORS SET FORTH AT SECTION 3701(b) OF THE DIVORCE CODE, SUBSECTIONS (16) AND (17), WHICH ERRONEOUSLY APPLIED A "THRESHOLD" REQUIREMENT TO WIFE, AND FAILED TO REQUIRE A SHOWING OF A SUBSTANTIAL CHANGE IN CIRCUMSTANCES BY HUSBAND WARRANTING A DOWNWARD ALIMONY MODIFICATION?

B. WHETHER THE TRIAL COURT ERRED IN GRANTING EQUITABLE RELIEF TO HUSBAND WHERE HE CONTINUOUSLY AND FLAGRANTLY DISREGARDED HIS OBLIGATIONS UNDER THE PARTIES' AGREEMENT?

Wife's Brief at 4.

Our standard of review pertaining to an award of alimony is as follows:

> The role of an appellate court in reviewing alimony orders is limited; we review only to determine whether there has been an error of law or abuse of discretion by the trial court. Absent an abuse of discretion or insufficient evidence to sustain the support order, this Court will not interfere with the broad discretion afforded the trial court.

Smith v. Smith, 904 A.2d 15, 20 (Pa. Super. 2006) (citation omitted).

"An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will...discretion is abused." ***Christianson v. Ely***, 575 Pa. 647, 655, 838 A.2d 630, 634 (2003) (citation and internal quotation marks omitted). "A finding of such abuse is not lightly made and must rest upon a showing of clear and convincing evidence." ***Brower v. Brower***, 604 A.2d 726, 729 (Pa. Super. 1992) (citation omitted).

"When interpreting a marital settlement agreement, the trial court is the sole determiner of facts and absent an abuse of discretion, we will not

usurp the trial court's fact-finding function." ***delCastillo v. delCastillo***, 617 A.2d 26, 28 (1992), ***appeal denied***, 535 Pa. 668, 634 A.2d 1116 (1993).

Preliminarily, we note that Wife's alimony was originally allocated pursuant to a marital settlement agreement that was incorporated, but not merged, into the divorce decree. This agreement specifically provided that either party could move to terminate, reduce, or increase Wife's alimony payments in excess of $1,000, which equated to $4,000, subsequent to July 1, 2007. As such, we turn first to the law that addresses the appropriate legal principles to be applied to such an agreement before addressing Wife's contentions on appeal.

Generally, our courts have consistently adhered to the principle that "[m]arital settlement

agreements are private undertakings between two parties, each having responded to the give and take of negotiations and bargained consideration." ***Stamerro v. Stamerro***, 889 A.2d 1251, 1258 (Pa, Super. 2005) (citation and internal quotations omitted). "A marital support agreement incorporated but not merged into the divorce decree survives the decree and is enforceable at law or equity." ***Id.*** (citation omitted). "A settlement agreement between [spouses] is governed by the law of contracts unless the agreement provides otherwise." **delCastillo**, 617 A.2d at 28 (emphasis added). Thus, "[t]he terms of a marital settlement agreement cannot be modified by a court in the absence of a specific provision in the agreement providing for judicial modification." ***Stamerro***, 889 A.2d at 1258; 23 PA.CONS.STAT.ANN. § 3105(c).[3]

[3] Section 3105 of the Divorce ecce sets forth the following, in

In applying the foregoing principles to this specific agreement, we initially conclude that Wife's alimony award was, at a minimum, subject to modification by the trial court. However, we are constrained to agree with Wife's argument that the trial court abused its discretion by relying solely on two of the factors set forth at Section 3701(b) of the Divorce Code, subsections (16) and (17), in reducing the award, and by failing to require a presentation by Husband that he had sustained a substantial change in his circumstances justifying such a reduction, in contravention of relevant law.

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pertinent part:

> (c) **Certain provisions not subject to modification.** --In the absence of a specific provision to the contrary appearing in the agreement, a provision regarding the disposition of existing property rights and interests between the parties, alimony, alimony pendente lite...shall not be subject to modification by the court.

23 PA.CONS.STAT,ANN. § 3105(c).

We acknowledge that an award of alimony aims to "ensure that the reasonable needs of the person who is unable to support himself or herself through appropriate employment, are met." ***Teodorski v. Teodorski***, 857 A.2d 194, 200 (Pa. Super. 2004). However, "[a]limony is based upon reasonable needs in accordance with the lifestyle and standard of living established by the parties during the marriage, as well as the payor's ability to pay." ***Teodorski***, 857 A.2d at 200. "The Divorce Code dictates that in determining the nature, amount, duration and manner of payment of alimony, the trial court *must* consider *all* relevant factors, including those statutorily prescribed at 23 PA.CONS.STAT.ANN. § 3701(b)(1)-(17). ***See Smith v. Smith***, 904 A.2d 15, 20 (Pa. Super. 2006) (emphasis added); ***Isralsky***, 824 A.2d at 1188.

Moreover, when considering a petition for modification of an alimony award, the court must receive evidence by the petitioner demonstrating a substantial and continuing change in his or her circumstances that justifies a revision of the award. *See* 23 PA.CONS.STAT.ANN. § 3701(e); ***McFadden v. McFadden***, 563 A.2d 180, 182 (Pa. Super. 1989).

Here, although the trial court indicated in its order and Rule 1925(a) opinion that the reduction in alimony was made after a thorough review of all of the relevant factors set forth at Section 3701(b), we find that the trial court only specifically referenced two of the seventeen factors contained in this section as being relevant to its decision, noting that "in the present case, Wife is not unable to work, nor does the Court feel as though her needs

are reasonable." Opinion, 2/18/08, at 9. The trial court repeatedly emphasized that Wife's failure to obtain suitable employment as a nurse during the four years following the parties' divorce was unacceptable, despite hearing facts establishing that Wife was enrolled full-time in a nursing graduate degree program during the four-year period following the parties' divorce with only two more years until completion of her dissertation, which would provide her with a higher paying position upon graduation and permit her to contribute substantially to the family in the future.

The trial court heard uncontested testimony that Wife had dutifully remained the primary custodian of the parties' disabled son since the parties' separation, which precluded Wife from full-time employment during that time. Finally, the

trial court received testimony from Wife addressing the family's affluent lifestyle during the marriage, one of the factors provided at Section 3701(b), and that Wife's recent purchase of a large home was required to accommodate the physical and mental needs of her children, notably, the parties' disabled son who will require specialized care throughout the duration of his life. Although we note that the trial court was free to give little credit to this testimony, at a minimum, this information should have been addressed as part of the trial court's analysis of the Section 3701(b) factors.

Most significantly, at no place in its order or subsequent opinion did the trial court make any reference to evidence posited by Husband indicating that a significant change in his circumstances warranted the reduction in alimony

award, a showing that was clearly required under the Divorce Code and well-established law. ***See*** 23 PA,CONS.STAT.ANN, § 3701(e); ***McFadden v. McFadden***, 563 A.2d at 182 (alimony and property settlement agreement that was specifically incorporated into divorce decree, and not merged, could be modified as to alimony if petitioning spouse proved that continuing and substantial change in circumstances had occurred). Ironically, our review of the record indicates that the only significant change in Husband's circumstances was his *increase* in income from $144,000 to $225,000, and the fact that two of his children had reached the age of majority at the time of his petition, neither of which amply supported a downward modification of Wife's alimony. ***See Wing v. Wing***, 488 A.2d 11, 14 (Pa. Super. 1985) (holding that the

trial court did not abuse its discretion in determining that there was not a significant change in circumstances to warrant reducing the alimony award, noting that an increase in salary by spouse receiving alimony did not, ipso facto, require a reduction in her alimony award, and payor's unemployed status did not diminish his capacity to earn).

Based on our review of the trial court's order and subsequent opinion, we find that the trial court abused its discretion by not requiring Husband to present facts demonstrating a significant change in his circumstances that warranted a reduction in Wife's alimony as required by relevant law, and moreover, by failing to address all of the statutorily-defined factors set forth at 23

PA.CONS.STAT.ANN. § 3701(b) as mandated by the Divorce Code.

Accordingly, we vacate that portion of the trial court's order reducing alimony and providing Husband with a credit toward back alimony paid, and remand with the direction that the trial court require a showing by Husband of his substantial change in circumstances that justify reducing the award, and full consideration by the trial court of all of the requisite factors set forth at 23 PA.CONS.STAT.ANN. § 3701(b)(1)-(17).[4]

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[4] Paragraph three of the trial court's order remains in effect as follows:

> 3. Husband remains under obligation for a portion of the childrens' college expenses and he shall make payments directly to their educational institutions upon written notice by Defendant of the college tuition and related expenses of the bills as they come due.

See Order, 12/5/07.

Wife next contends that trial court erred in granting equitable relief to Husband despite his continuous and flagrant disregard of his obligations under the parties' agreement. In that we have already vacated that portion of the trial court's order reducing the alimony paid to Wife in favor of Husband, it is unnecessary to consider Wife's second contention on appeal, as it is moot.

Order vacated in part, and affirmed in part. Case remanded for further proceedings in accordance with this memorandum. Jurisdiction relinquished.

Judgment Entered:

James D. McCullough
Deputy Prothonotary

Date: November 13, 2008

IN THE SUPREME COURT OF
PENNSYLVANIA
MIDDLE DISTRICT

DANIEL T. MORGAN,	:	No. 710 MAL 2018
Petitioner	:	Application for Reconsideration
	:	
v.	:	
SHERI A. MORGAN,	:	
Respondent		

DANIEL T. MORGAN,	:	No. 711 MAL 2018
Petitioner	:	Application for Reconsideration
	:	
v.	:	
SHERI A. MORGAN,	:	
Respondent		

ORDER

PER CURIAM

AND NOW, this 2nd day of May, 2019, Petitioner's Application for Reconsideration is **DENIED**. Respondent's Application for Sanctions to Include Counsel Fees, Costs, and Delay Damages Pursuant to Pa.R.A.P. 2744 is also **DENIED**.

A True Copy Elizabeth E. Zisk
As Of 05/02/2019

Attest: Elizabeth E. Zisk
Chief Clerk
Supreme Court of Pennsylvania

IN THE SUPREME COURT OF
PENNSYLVANIA
MIDDLE DISTRICT

DANIEL T. MORGAN,	: No. 710 MAL 2018
Petitioner	:Petition for Allowance of Appeal from the Order of : the Superior Court :
v.	:
SHERI A. MORGAN,	:
Respondent	

DANIEL T. MORGAN,	: No. 711 MAL 2018
Petitioner	:Petition for Allowance of Appeal from the Order of : the Superior Court
v.	:
SHERI A. MORGAN,	:
Respondent	

ORDER

PER CURIAM

AND NOW, this 20th day of March, 2019, the Petition for Allowance of Appeal is **DENIED**. The Application for Order of Supreme Court to Direct Daniel T. Morgan to Post Appropriate Security Pursuant to Pennsylvania Rule of Appellate Procedure 2572(d) is **DENIED AS MOOT**.

A true Copy Amy Dreibelbis, Esquire

As Of 03/20/2019

Attest: Amy Dreibelbis
Deputy Prothonotary
Supreme Court of Pennsylvania

J. A32019/17 Filed 09/21/2018

IN THE SUPERIOR COURT OF PENNSYLVANIA MIDDLE DISTRICT

DANIEL T. MORGAN	:No. 1770 MDA 2016
	:
v.	:
SHERI A. MORGAN	:
Appellant	

DANIEL T. MORGAN	:No. 1841 MDA 2016
Appellant	:
v.	:
SHERI A. MORGAN	:

DANIEL T. MORGAN	:No. 128 MDA 2017
Appellant	:
v.	:
SHERI A. MORGAN	:

ORDER

IT IS HEREBY ORDERED:

THAT the application filed August 1, 2018, requesting reargument of the decision dated July 20, 2018, is DENIED.

PER CURIAM

IN THE COURT OF COMMON PLEAS
OF THE 39TH JUDICIAL DISTRICT OF
PENNSYLVANIA
FRANKLIN COUNTY BRANCH

Daniel T. Morgan,	: Civil Action - Law
Plaintiff/Petitioner,	:
v.	: No. 2007-1502
Sheri A. Morgan,	:
Defendant/Respondent,	: Divorce

PLAINTIFF/PETITIONER'S PETITION TO MODIFY ALIMONY

Plaintiff/Petitioner, Daniel T. Morgan, by and through his attorney, Michael J. Connor, Esquire, of Barley Snyder, LLC, files the following Petition to Modify Alimony and avers as follows:

1. Daniel T. Morgan, Plaintiff/Petitioner ("Petitioner"), is an adult individual residing

at 7 Amy Drive, East Windsor, Mercer County, New Jersey 08520.

2. Sheri A. Morgan, Defendant/Respondent ("Respondent"), is an adult individual residing at 431 Leitersburg Street, Greencastle, Franklin County, Pennsylvania 17225.

3. Pursuant to a Judgment of Absolute Divorce, the parties were divorced on March 20, 2003 in the Circuit Court for Montgomery County, Maryland.

4. A Certified Copy of the Divorce Decree has been filed on May 3, 2007, in the Court of Common Pleas of Franklin County, Pennsylvania.

5. Pursuant to the Judgment of Absolute Divorce, the provisions of an Agreement the

parties placed on the record in open Court on March 18, 2003, was incorporated, but not merged, into the Judgment of Divorce. A copy of the Agreement is attached as Exhibit "A."

6. Pursuant to said Agreement, Petitioner agreed to pay Respondent $5,000, per month, of non-modifiable alimony, payable on the first of each month, through June 30, 2007, modifiable by any Court.

7. Pursuant to said Agreement, starting July 1, 2007, $1,000 of the alimony remains non-modifiable, however, either party could move to either increase, decrease or terminate the remaining $4,000 of modifiable alimony.

8. As of July 1, 2007, two of the parties' three children will have reached the age of majority.

9. Petitioner avers that it was the intention of the parties to have alimony in the amount of $5,000 be non-modifiable until two of the parties' three children reach the age of majority.

10. Petitioner avers that it was the intention of the parties, that once two of the three children had reached the age of majority, it would be appropriate to request a Court to modify the alimony.

11. Counsel for Petitioner contacted pro se Respondent regarding this Petition, and Respondent does not concur with the relief requested.

WHEREFORE, pursuant to the provisions of the Agreement entered into by the parties, Petitioner requests this Honorable Court to modify alimony, so that it is reduced to $1,000 per month, for the remaining term as indicated in the Agreement.

Respectfully submitted,

BARLEY SNYDER, LLC

Dated: 5/4/07

By: Michael J. Connor
Michael J. Connor, Esquire
Attorney for Plaintiff/Petitioner
247 Lincoln Way East
Chambersburg, PA 17201
(717) 264-6494
I.D. No. 75927

1904121

I verify that the statements made in the Petition are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S. Section 4904, relating to unsworn falsification to authorities.

Daniel T. Morgan
Daniel T. Morgan, Plaintiff/Petitioner

1904121

IN THE COURT OF COMMON PLEAS
OF THE 39TH JUDICIAL DISTRICT OF
PENNSYLVANIA
FRANKLIN COUNTY BRANCH

Daniel T. Morgan,	: Civil Action - Law
Plaintiff/Petitioner,	:
v.	: No. 2007-1502
Sheri A. Morgan,	:
Defendant/Respondent,	: Divorce

CERTIFICATION OF SERVICE PER LOCAL RULE 206.4(c)(v)

This is to certify that in this case, assigned to Judge [*a judge has not been assigned*], complete copies of all papers contained in the Plaintiff/Petitioner's Petition to Modify Alimony, have been served upon the following persons, by the following means and on the dates stated:

Name and Address: Means of Service: Date of Service:

Sheri A. Morgan Proof of Mailing – First-Class Mail
431 Leitersburg St. May 4, 2007
Greencastle, PA 17225
Defendant/Respondent

BARLEY SNYDER

Dated: 5/4/07

By: Michael J. Connor
Michael J. Connor, Esquire
Attorney for Plaintiff/Petitioner
247 Lincoln Way East
Chambersburg, PA 17201
I.D. No. 75927
(717) 264-6494

1904121

IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND

SHERI A. MORGAN	:	
Plaintiff	:	
vs.	:	Family Law No. 23252
DANIEL T. MORGAN	:	
Defendant	:	

JUDGMENT OF ABSOLUTE DIVORCE

The above-captioned matter having come on for hearing on the merits before the undersigned on March 17 and 18, 2003, testimony having been taken and other evidence received, and the entire proceedings having been considered, it is this 20th day of March, 2003, by the Circuit Court for Montgomery County, Maryland,

ADJUDGED that the parties be and they are hereby awarded an absolute divorce on the grounds of voluntary separation, and it is further

ORDERED that the provisions of the agreement of the parties placed on the record in open court on March 18, 2003, a transcript of which will be filed in the court jacket, be and the same are hereby incorporated, but not merged, in this judgment to the extent that the Court has jurisdiction, and it is further

ORDERED that Defendant's Exhibit #8 introduced into evidence at the hearing and attached hereto is hereby made a part of this Judgment of Absolute Divorce, and it is further

ORDERED that if the defendant incurs support payment arrears amounting to more than

thirty (30) days of support, the defendant shall be subject to earnings withholding, and it is further

ORDERED that the defendant is required to notify the court within ten (10) days of any change of address or employment so long as the order of support remains in effect, and failure to comply with said requirement will subject the defendant to a penalty not to exceed $250.00, and may result in the defendant's not receiving notice of proceedings for earnings withholding, and it is further

ORDERED that the costs of this proceeding be assessed as prepaid.

James L. Ryan
JAMES L. RYAN
Judge of the Circuit Court for
Montgomery County, Maryland

cc: James S. Maxwell, Attorney for Plaintiff
Brian M. Barke, Attorney for Plaintiff
Daniel T. Morgan, Defendant, Pro Se

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

SHERI A. MORGAN, :

Plaintiff, :

vs. : Family Law 23252

DANIEL T. MORGAN, :

Defendant, :

HEARING

Rockville, Maryland March 18, 2003

Montgomery Transcribers, Inc.

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

SHERI A. MORGAN, :

Plaintiff, :

vs. : Family Law 23252

DANIEL T. MORGAN, :

Defendant, :

Rockville, Maryland

March 18, 2003

WHEREUPON, the proceedings in the above-entitled matter commenced

BEFORE: THE HONORABLE JAMES L. RYAN, JUDGE.

APPEARANCES:

FOR THE PLAINTIFF:

JAMES S. MAXWELL, Esq.
51 Monroe Place; Suite 806
Rockville, MD 20850

FOR THE DEFENDANT:

Daniel T. Morgan, Pro Se
4601 S. Balsam Way
Littleton, CO 80123

Montgomery Transcribers, Inc.

[Wife's counsel, Mr. Maxwell] Now, the more interesting one. With respect to alimony, there will be $5,000 per month of non-modifiable alimony payable on the first of each month through June 30, 2007, modifiable by any Court. Beginning on July 1, 2007, and this is where I would need the guidance of the Court. I recall that one can divide alimony into a component that is non-modifiable and a component that may be modifiable.

That was the agreement, that $1,000 of the $5,000 would remain non-modifiable and would be payable over the ensuing 180 months, that is to say 15 years, beginning on June 1, 2007. Although the payment would remain at $5,000, unless and until either party moves to either, increase, decrease, or terminate. So, to repeat myself, if I need to, $5,000 through and including June 30, 2007.

Starting July 1, 2007, $1,000 of it non-modifiable through 180 months, 15 years, but the payment will be constant. It will continue at $5,000, unless and until either party moves to terminate, reduce, or increase, based on whatever factors they believe are appropriate.

It is further understood that the $1,000 of non-modifiable alimony that will be decreed to be paid beginning on July 1, 2007, is that while that is being paid, that either party will remain free to argue with respect to any additional alimony, which will be of an indefinite nature.

That it is appropriate, under the circumstances, then obtaining that the alimony shall be decreased, increased, or terminated. Before I go on, does that sound like a kosher –

THE COURT: It is fine with me, if you all agree. Sure.

. . . .

CERTIFICATE

Montgomery Transcribers, Inc., hereby certifies that the attached pages represent an accurate transcript of the duplicated electronic sound recording of the proceedings in the Circuit Court for Montgomery County in the matter of:

Family Law 23252

Sheri A. Morgan,

Plaintiff,

v.

Daniel T. Morgan,

Defendant.

By:
Cynthia Willie
Cynthia Willie
Transcriber