Is Crews v. Crews Destined to be the Next Circle Chevrolet?

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INTRODUCTION

"It was condemned virtually unanimously, in print, in seminars . . . and in practice . . . [i]t touched a raw nerve . . . and provoked a consensus backlash that could not be disregarded by our Supreme Court."\(^1\) This celebration of the demise of the New Jersey Supreme Court's decision in Circle Chevrolet Co. v. Giordano, Halleran & Ciesla\(^2\) was prompted by the overruling of Circle Chevrolet in Olds v. Donnelly.\(^3\) However, the court would stir up new controversy within the legal community a mere three years later in Crews v. Crews.\(^4\) Once again, the court issued an opinion, which, whatever its abstract merits, generated enormous practical difficulties.

In Crews v. Crews, the supreme court ordered the lower courts to make specific findings on marital standard of living in all divorce cases where alimony is an issue, whether the issue is contested or uncontested.\(^5\) Although prior law required such findings in contested cases,\(^6\) uncontested cases were not previously subject to such a requirement. Instead, couples enjoyed the freedom to settle the issue of alimony without the need for findings on their marital

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\(^{5}\) Id. at 26, 751 A.2d at 532.

\(^{6}\) See N.J. STAT. ANN. § 2A:34-23(b) (West 2001).
standard of living. But Crews made clear that any alimony awards, without the required findings, would be insufficient. Crews, a contested case, lacked such specific findings; thus, the court remanded the case for compliance with its decision.

Crews raised a number of controversial issues. For instance, controversy erupted regarding whether the New Jersey Supreme Court elevated marital standard of living above the other qualifying factors of New Jersey's maintenance statute. Practitioners and commentators further argued over whether Crews altered the relevant period for measuring marital standard of living. But the most contentious issue, as well as the most volatile, is the possible retroactive effect of the Crews mandate, and the extent of any such retroactivity.

Crews also created practical implications that extend beyond the dicta of the decision. These implications bear a direct relationship to the scope of the Crews mandate, which encompasses contested, as well as uncontested, cases. These practical implications include: the potential for more litigation; an increase in cost and time to both litigants and the courts; an increase in the complexity of divorce cases; and a lack of freedom of choice and privacy for litigants during a very difficult emotional period.

There are three major bases for a supreme court overruling its own decision: error, changing social mores, and the impracticality of the decision. The Crews decision is not technically erroneous. Further, the current social climate seems to support its holding. Thus, Crews is not problematic in the abstract. But, the practical dilemmas it raises are too glaring to ignore. The disastrous outcomes likely to emerge from the application of Crews in the coming years.
illustrate the court's initial misjudgment. The court must step in and correct its own mistake. Precedent exists for the court to correct a decision fraught with practical difficulties. In 1997, the New Jersey Supreme Court did exactly that when in Olds it rectified the blunder it made just two years earlier in Circle Chevrolet.

This Comment addresses the precedential bases for a supreme court overruling its own precedent. This Comment particularly addresses the third basis—the decision is impractical or unworkable. It compares Crews with Circle Chevrolet and concludes by recommending intervention by the New Jersey Supreme Court. It recommends that the court once again end the disastrous effects of one of its own decisions. This Comment specifically calls for a partial reversal of Crews and for limited retroactive application of the Crews mandate to previously-contested alimony cases.

I. THE HISTORY OF ALIMONY LAW IN NEW JERSEY

A. Statutory Law

An alimony award, also referred to as a maintenance award, is an award in favor of the economically dependent spouse, to be paid by the economically independent spouse upon the cessation of a marriage.22 An effective alimony award maintains the dependent spouse at a standard of living reasonably comparable to that enjoyed during the marriage.23 There are four types of alimony awards available in New Jersey.24 Depending on applicable circumstances, a court may award any of these four types to a dependent spouse,25 either exclusively or in conjunction with another form.26

The four types of alimony are permanent alimony,27 rehabilitative alimony,28 limited duration alimony,29 and reimbursement alimony.30 Permanent alimony provides support to the dependent spouse until either spouse dies or until the dependent

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23 Lepis, 83 N.J. at 150, 416 A.2d at 51; see Michael Booth, Marital Standard of Living to be Gauged Before Alimony is Awarded, Changed, N.J. L.J., June 5, 2000.
26 Id.
27 Id. § 2A:34-23(b)-(c).
28 Id. § 2A:34-25(b)-(d).
29 Id. § 2A:34-23(b)-(c).
30 Id. § 2A:34-23(b)-(c), (e).
spouse remarries. Permanent alimony is usually proper upon the cessation of a long-term marriage where economic dependency was established during the marriage. Rehabilitative alimony is a short-term award in favor of the dependent spouse; it is meant to support the dependent spouse until he or she can support him or herself. Rehabilitative alimony is normally appropriate when the marriage did not last very long and the dependent spouse has the capacity to enhance and improve his or her earning capacity upon further training and/or education.

The third form of alimony, an award of limited duration alimony, is appropriate where the prior two forms of alimony are inapplicable “but where, nonetheless, economic assistance for a limited period of time would be just.” Finally, reimbursement alimony is an equitable award that compensates or reimburses a spouse who made financial sacrifices so that his or her spouse could “forego gainful employment while securing an advanced degree or professional license to enhance the parties’ future standard of living.”

A court must consider several factors when determining the appropriate form and the appropriate amount of alimony in any given case. One factor is “[t]he standard of living established in the marriage and the likelihood that each party can maintain a reasonably comparable standard of living.” The statutory list of

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51 See Cox, 335 N.J. Super. at 483, 762 A.2d at 1050-51.
52 See id.
53 See id. at 474-75, 762 A.2d at 1045-46.
54 See id.
55 Id. at 477, 762 A.2d at 1047 (internal citation omitted).
56 Id. at 475, 762 A.2d at 1046 (citing Mahoney v. Mahoney, 91 N.J. 488, 500-01, 453 A.2d 527, 533-34 (1982)).
57 N.J. STAT. ANN. § 2A:34-23(b)(1)-(13), (c); see Cox, 335 N.J. Super. at 473, 762 A.2d at 1045.
58 Id. § 2A:34-23(b)(4). The other factors courts must consider include:
   (1) The actual need and ability of the parties to pay;
   (2) The duration of the marriage;
   (3) The age, physical and emotional health of the parties; . . .
   (5) The earning capacities, educational levels, vocational skills, and employability of the parties;
   (6) The length of absence from the job market of the party seeking maintenance;
   (7) The parental responsibilities for the children;
   (8) The time and expense necessary to acquire sufficient education or training and employment . . . and the opportunity for future acquisitions of capital assets and income;
   (9) The history of the financial or non-financial contributions to the marriage by each party including contributions to the care and
factors is not exhaustive, but the court must at least consider the enumerated factors when awarding alimony. In fact, the statute explicitly requires that, when a party requests permanent alimony, the court make specific findings on these factors.

Divorcing couples, usually with the aid of family law practitioners, often agree on the alimony payments that the dependent spouse shall receive, and on the duration of the award period. Couples often enter into separation agreements and then present their agreements to the court for incorporation into the final divorce decree. The court is not bound by an interspousal agreement and may choose to enforce the terms of the interspousal agreement only to the extent it is equitable to both parties.

Regardless of whether an alimony award is contested or uncontested, the court's power over the award does not end after the judgment of divorce. The court retains the equitable power to modify an alimony award when there is a showing of changed circumstances by the moving party. The standard for changed circumstances is the same for both contested and uncontested cases—"whether the former marital standard of living is being maintained." Some generally accepted changes in circumstance include: a rise in the cost of living, a lasting change in the

education of the children and interruption of personal careers or educational opportunities;

10. The equitable distribution of property ordered and any payouts on equitable distribution, directly or indirectly, out of current income, to the extent this consideration is reasonable, just and fair;

11. The income available to either party through investment of any assets held by that party;

12. The tax treatment and consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a non-taxable payment; and

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

Id. § 2A:34-23(b)(1)-(3), (5)-(13).

30 Id. § 2A:34-23(b)(13).

40 Id. § 2A:34-23(b) ("[T]he court shall consider . . .") (emphasis added).

41 Id. § 2A:34-23(c).

42 See Lepis, 83 N.J. at 146, 416 A.2d at 48.

43 See id., 416 A.2d at 49.

44 See id.

45 See id.

46 See id. at 145, 416 A.2d at 48; see also N.J. STAT. ANN. § 2A:34-23 ("Orders so made may be revised and altered by the court . . . as circumstances may require.").

47 Lepis, 83 N.J. at 145, 149, 416 A.2d at 48, 50.

48 Id.

49 Id. at 152-53, 416 A.2d at 52.

supporter’s income; a medical condition that arose after the original decree; a change in the living situation of the dependent spouse, including cohabitation with another; a change in employment status or income of the dependent spouse; and changes in federal income tax law. Courts have been unwilling to find a change of circumstances when the conditions are merely temporary or where their effects are speculative.

B. Common Law

Commentators describe the treatment of alimony in New Jersey as confused, inconsistent, and lacking in predictability. Recent judicial decisions indicate that alimony is a constantly developing area of the law. Prior to Creus, the groundbreaking decision in this area of law was Lepis v. Lepis. Lepis established a three-prong alimony analysis: (1) the dependent spouse’s economic need; (2) the dependent spouse’s ability to meet those needs; and (3) “the supporting spouse’s ability to maintain the dependent spouse at the former [marital] standard” of living. Lepis also reaffirmed the long-standing principle that the appropriate alimony standard is the marital standard of living. The divorcing couple establishes the standard of living during the marriage, which the court subsequently attempts to replicate in the divorce decree.

Lepis clarified that alimony awards are always subject to

55 See Acheson, 24 N.J. Misc. 133, 46 A.2d 817.
56 Lepis, 88 N.J. at 151, 416 A.2d at 51.
58 83 N.J. 139, 416 A.2d 45 (1980).
59 Id. at 152, 416 A.2d at 52.
60 Id. at 150, 416 A.2d at 51.
61 Id., 416 A.2d at 50-51. A settlement agreement between the parties may also refer to the marital standard of living. Id.
modification upon a requisite showing by the movant. The initial award merely defines the present obligations of the parties. However, a movant must prove a change in circumstances to be eligible for modification of the initial award. To increase the award, the movant must show a present inability to maintain the marital standard of living with the initial award. Pursuant to Lepis, a two-step modification process exists:

1. The movant bears the prima facie burden of proving changed circumstances. These circumstances must substantially affect the movant’s ability to maintain a proper standard of living.

2. The court then measures the respondent’s ability to pay the support requested or which is appropriate under the new circumstances.

In 1993, the New Jersey Appellate Division faced the issue of whether couples could contractually avoid Lepis’ analysis of changed circumstances. In Morris v. Morris, a divorcing couple entered into a property settlement agreement, which included an alimony award for the dependent spouse. The agreement also contained alimony modification provisions disallowing modification unless the payor spouse became physically disabled. In addition, these provisions included an “anti-Lepis” clause: “[t]he parties hereby waive their rights for modification based upon changed circumstances as set forth in the case of Lepis v. Lepis, 83 N.J. 139, 416 A.2d 45 (1980).”

Following the agreement, the payor spouse suffered financial difficulties and requested relief from the alimony modification provisions. The trial court, however, enforced the agreement and denied relief to the payor spouse. The appellate division affirmed.
reasoning that the parties may establish reasonable standards for alimony, other than the need-based standard of *Lepis.* The caveat to this rule is that, if the parties’ chosen standards ever become unreasonable, a court may, "in extreme cases," equitably adjust the standards.

While several cases after *Morris* further refined the scope of the state’s maintenance statute, the most important, at least in hindsight, was *Carter v. Carter,* in which a dependent spouse sought permanent alimony two years after her rehabilitative alimony award expired. The trial judge granted permanent alimony, and the payor spouse appealed. The court found N.J.S.A. 2A: 34-23(b)’s mandate of specific findings on rehabilitative alimony to be “a clear direction to the Family Part that it must adhere to the statutory requirement in every case, whether contested or uncontested.” Since the trial judge had originally merely granted the divorce and incorporated an agreement of the parties that included an award of rehabilitative alimony, without making specific findings, the appellate division reversed and remanded for reconsideration. Although focused on rehabilitative alimony, *Carter* foreshadowed *Crews.*

II. CREWS V. CREWS

Mr. and Mrs. Crews shared a lavish marital lifestyle during the fourteen years of their marriage. In 1994, the parties’ divorce trial began, with the parties disagreeing on many issues, including a proper alimony award for Mrs. Crews. Mrs. Crews and her attorney ultimately refused to participate in the proceedings after the court

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78 Id.
79 Id. at 246, 622 A.2d at 913 (emphasis added).
82 Id. at 37, 722 A.2d at 978.
83 Id.
84 Id. at 42, 722 A.2d at 981.
85 Id. at 39-40, 722 A.2d at 979-81.
86 Crews, 164 N.J. at 18, 751 A.2d at 528.
87 Id. at 17, 751 A.2d 527.
88 Id. at 17-18, 751 A.2d at 527-28. The trial began after the court granted twelve adjournments to Mrs. Crews and her attorney. Id.
89 Id. at 17, 751 A.2d at 527.
denied Mrs. Crews a thirteenth adjournment. The divorce proceedings continued on a default basis.

The trial court’s written opinion on the economic issues provided little on the issue of alimony, writing only one paragraph about the alimony award. The court awarded Mrs. Crews rehabilitative alimony because of her earning potential and her current need. Neither the written opinion nor the final divorce decree set out findings regarding the marital standard of living enjoyed by the couple. This failure occurred although relevant economic information on the parties’ marital standard of living, such as Mrs. Crews’ Case Information Statement, was available to the court. Mrs. Crews filed a motion for reconsideration, which was denied. She then appealed the trial court’s decision, but the appellate division affirmed the alimony award. Mrs. Crews applied for certification to the New Jersey Supreme Court, but was once again denied.

In 1997, the alimony award ceased. Mrs. Crews, however, failed to attain the income level predicted by the trial court. In addition, Mrs. Crews claimed changed circumstances based on the improved financial condition of Mr. Crews. On these bases, Mrs. Crews moved in 1998 to reinstate and increase alimony, and to convert the alimony from rehabilitative to permanent. The lowest court denied Mrs. Crews’ motion. The appellate court affirmed. This time, the New Jersey Supreme Court granted certification on the issue of whether a dependent spouse is relegated to a reduced

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90 Id. at 17-18, 751 A.2d at 527-28.
91 Crews, 164 N.J at 17-18, 751 A.2d at 527-28.
92 Id., 751 A.2d at 527.
93 Id., 751 A.2d at 527-28.
94 Id. at 18-19, 751 A.2d at 528-29.
95 Id. at 17-19, 751 A.2d at 527-28.
96 Id. at 19, 751 A.2d at 528.
97 Crews, 164 NJ at 19-20, 751 A.2d at 528-29.
98 Id. at 20, 751 A.2d at 529.
100 Crews, 164 N.J. at 22, 751 A.2d at 530.
101 Id. at 21, 751 A.2d at 529.
102 Id. at 22, 751 A.2d at 530.
103 Id.
104 Id. at 23, 751 A.2d at 530.
105 Crews, 164 N.J. at 23, 751 A.2d at 530.
standard of living fixed by a final judgment of divorce when, due to post-judgment changed circumstances, the payor spouse has the ability to support the dependent spouse at the actual marital standard of living.\textsuperscript{107}

Justice Jaynee LaVecchia, writing her first opinion for the New Jersey Supreme Court,\textsuperscript{108} was joined by Justices Poritz, O’Hern, Stein, and Verniero \textsuperscript{109} in reversing the appellate division and remanding to the chancery division, family part, for further fact-finding on the marital standard of living.\textsuperscript{110} The court also remanded for adjudication of an appropriate alimony award based on the determined standard of living.\textsuperscript{111}

\textit{Crews} began by reaffirming the basic principle of \textit{Lepis v. Lepis} - "the goal of a proper alimony award is to assist the supported spouse in achieving a lifestyle that is reasonably comparable to the one enjoyed while living with the supporting spouse during the marriage."\textsuperscript{112} The court also reaffirmed the importance of the marital standard of living.\textsuperscript{113}

Justice LaVecchia then set down a mandate for all divorcing couples in New Jersey: there must be specific findings of fact on marital standard of living in all divorce proceedings where one party seeks alimony.\textsuperscript{114} The court referred to existing or future maintenance awards, without these findings, as incomplete and inadequate.\textsuperscript{115} Justice LaVecchia also required a finding on whether the award will enable the parties to maintain a standard of living that is reasonably comparable to their marital standard of living.\textsuperscript{116}

The most controversial aspect of the court’s mandate was its applicability to both contested and uncontested cases.\textsuperscript{117} For

\textsuperscript{107} \textit{Crews}, 164 N.J. at 16, 22, 751 A.2d at 526, 530.
\textsuperscript{109} \textit{Crews}, 164 N.J. at 15, 37, 751 A.2d at 525, 538. Justices Coleman and Long did not participate in the decision. See Kathleen Brady, \textit{Husband and Wife: Findings on Standard of Living During Marriage are Essential to Resolve Modification Motion}, N.J. LAW., June 5, 2000, at 28.
\textsuperscript{110} \textit{Crews}, 164 N.J. at 36, 751 A.2d at 538.
\textsuperscript{111} Id.
\textsuperscript{112} Id. at 16, 751 A.2d at 526-27 (citing \textit{Lepis}, 83 N.J. at 150, 416 A.2d at 51).
\textsuperscript{113} Id., 751 A.2d at 527. Justice LaVecchia referred to marital standard of living as the "touchstone" for alimony awards and for any subsequent modification request. Id.
\textsuperscript{114} Id. at 25, 751 A.2d at 531-32.
\textsuperscript{115} Id. at 26, 751 A.2d at 532.
\textsuperscript{116} \textit{Crews}, 164 N.J. at 26, 751 A.2d at 532.
\textsuperscript{117} Id. at 25, 751 A.2d at 531-32.
uncontested cases, Crews requires that "the parties . . . place on the record the basis for the alimony award including . . . establishment of the marital standard of living, before the court accepts the divorce agreement." Justice LaVecchia cautioned that the parties’ Case Information Statements alone did not fulfill the requirement. Justice LaVecchia, however, suggested that explicit stipulations by the parties on marital standard of living might satisfactorily substitute for specific findings in uncontested cases.

The supreme court further stated that only after the trial court made specific findings of fact on marital standard of living could a court evaluate a modification request based on changed circumstances. In addition, the court found specific findings on marital lifestyle necessary before a supported spouse, living below the marital standard of living, could request a higher award based on the supporting spouse’s higher post-judgment income.

III. THE AFTERMATH OF CREWS

A. Controversial Implications of the Decision

New Jersey family law practitioners immediately expressed grave concern over the implications of Crews. Commentators and practitioners heatedly argued over what the decision meant for New Jersey alimony law, including whether Crews increased the significance of standard of living to become the pivotal factor in a determination of alimony; whether the applicable measuring point for modification is the initial divorce decree (or separation agreement) or the lifestyle established during the marriage, and whether the decision would apply retroactively and, if so, how far back it would extend. Three years after the decision, Crews still remains a focal point of controversy, as practitioners and members of the bench in New Jersey try to grapple with its full implications.

118 Id. at 26, 751 A.2d at 532.
119 Id.
120 Id. at 27, 751 A.2d at 532.
121 Id. at 25, 751 A.2d at 531.
122 Crews, 164 N.J. at 26, 29, 751 A.2d at 532, 534.
124 Id.
125 See Cammarere, supra note 123, at 3 (noting that the Crews decision "clearly continues to generate intense discussion among lawyers and bar groups"); Newsome, supra note 57, at 8 (commenting that "the court created additional headaches for family lawyers and judges along with a body of how-to-seminars and articles").
One of the controversial aspects of Crews is the decision’s emphasis on marital standard of living. Although the Crews court suggested that all of the enumerated factors of New Jersey’s maintenance statute deserve consideration for a proper alimony award, the court required specific findings of fact only on marital standard of living. Justice LaVecchia focused on the importance of marital standard of living throughout the opinion and disallowed alimony awards lacking specific findings on this factor.

Some commentators believe that the New Jersey Supreme Court intruded into the legislative domain by singling out marital standard of living for specific findings. This school of commentators does not dispute marital standard of living as an important factor in the determination of alimony, but it argues that there is no basis for holding marital lifestyle to be the crucial factor. New Jersey’s maintenance statute lacks any suggestion that marital standard of living is the key factor. The statute explicitly mandates the court’s consideration of all twelve enumerated factors. In addition, the

126 See Newsome, supra note 57, at 8.
127 N.J. STAT. ANN. § 2A:34-23(b) (West 2001).
128 Crews, 164 N.J. at 26, 751 A.2d at 532.
130 See Cammarere, supra note 123, at 3 (arguing that Crews went so far as to hold that a couple’s marital standard of living determines the alimony award); Frank A. Louis, The Marital Lifestyle: To Whom Does It Belong, in THE CREWS DECISION: THE MOST IMPORTANT ALIMONY CASE SINCE LEPIS (N.J. INST. FOR CONTINUING LEGAL EDUC., New Brunswick, NJ), Oct. 28, 2000, at 19, 32 (noting the legislature’s failure to signify one factor as more important than another); Newsome, Alimony Problems, supra note 58, at 8 (arguing that the New Jersey Supreme Court expanded Lepis and placed critical importance on marital standard of living).
131 See Louis, supra note 130, at 19; Marzano-Lesnevich & Lamolino, supra note 57, at SS-1.
132 See Louis, supra note 130, at 32; Snyder, supra note 108, at S-48. Other commentators disagree. They argue that marital standard of living has always played a pivotal role in alimony law. See Dale E. Console, Note, CREWS MEMO II, THE CREWS DECISION: THE MOST IMPORTANT ALIMONY CASE SINCE LEPIS (N.J. INST. FOR CONTINUING LEGAL EDUC., New Brunswick, NJ), Oct. 28, 2000, at 171, 173-74. In fact, the language of the modification standard—“whether the former marital standard of living is being maintained”—illustrates the long-standing emphasis of marital standard of living. Lepis, 83 N.J. at 152, 416 A.2d at 51. They argue that in the years following Lepis, this factor sank more towards equipoise with other factors; however, Crews brought it back to the forefront—back to where it always belonged. See Booth, supra note 23 (quoting Dale E. Console, Esq., Mrs. Crews’ attorney as stating "[Crews is] going to allow [dependent spouses] to get back to the standard of living during the marriage, which I think has always been the law"); Console, supra, at 172 (noting that Crews is a “resounding reaffirmation of long-standing principles that have all too often gotten lost in the shuffle”).
133 See N.J. STAT. ANN. § 2A:34-23(b).
134 Id. § 2A:34-23(b)(1)-(12). A court should also consider any other relevant
statute requires findings on the appropriate enumerated factors, without singling out any particular factor. 136

Whether or not Crews elevated the importance of marital standard of living is obviously essential to any future alimony awards. If this factor is equivalent to the other enumerated factors, then courts must make specific findings on all factors. Further, one would anticipate that actual awards would be different if other factors were given comparable importance. If marital standard of living actually predominates, however, then a court must tailor its award and findings to this factor.

Another troublesome ambiguity flowing from Crews involves the applicable measuring point for modification. 136 Lepis held that a modification request should be measured against the standard of living set out in the initial divorce decree or property settlement agreement. 137 But Crews stated that modification must be based on whether a dependent spouse can “maintain a lifestyle reasonably comparable to the standard established during the marriage.”138

Some commentators feel that Crews altered the applicable modification comparison point. 139 Under their view, Crews forces the modifying court to analyze the purported changed circumstances against the specific findings on standard of living, rather than against the alimony award found in the decree or agreement. 140 Such commentators believe that Crews presumes that few divorce decrees or agreements accurately reflect marital lifestyle. 141 If this pessimistic view of Crews is accurate, all divorce decrees and consensual agreements lack effect as to the issue of alimony if they do not find or stipulate as to marital standard of living because there must be a plenary hearing as to that standard before any “modification” can be made. Many family law practitioners disagree with this assessment because they do not believe that Crews changed the substantive law of Lepis. Although Crews recites a modification standard that reads differently than Lepis, Crews also states that “[i]dentifying the marital standard of living at the time of the original divorce decree . . .

facts. Id. § 2A:34:23(b)(13).
135 Id. § 2A:34:23(c).
137 Lepis, 83 N.J. at 150, 416 A.2d at 50.
138 Crews, 164 N.J. at 17, 751 A.2d at 527; see Donahue, supra note 136, at 16-17.
139 See Donahue, supra note 136, at 16-17.
140 Id.
141 Id.
becomes critical . . . to any subsequent assessment of changed circumstances. Based on such language, these commentators argue that the Crews court never presumed erroneous portrayals of marital standard of living. Rather, Crews proposed that, if a trial court made proper findings on marital standard of living, then the standard stated in the decree or agreement would be the same as the standard established during the marriage. Thus, the proper modification measuring point would be irrelevant because modification would always be measured against marital standard of living.

Although the significance of standard of living and the applicable modification measuring point are important issues, the real controversy deals with the possible retroactive application of Crews. If it is applied retroactively, various practitioners and commentators fear the unsettling effects on thousands of awards. Generally, judicial decisions apply retroactively. Under certain circumstances, however, a judicial decision’s retroactive effect may be limited. This may be done, when, first, litigants reasonably relied on the previous law in ordering their affairs; second, when retroactive application would not advance the goals underlying the new rule of law; and, finally, when such application would be unfair to litigants or overly burden the judicial system.

Crews failed to address the extent, if any, of retroactive application of the supreme court’s mandate, opening the door for commentators to argue over the appropriate scope of retroactive treatment. While it seems likely that Crews will apply retroactively to

142 Crews, 164 N.J. at 25, 751 A.2d at 531.
143 See Donahue, supra note 136, at 15.
144 See id.
145 See Rocco Cammarere, On the Money: Court Fixes Alimony, N.J. Law., June 5, 2000, at 1 (commenting on the possibility of wholesale reopening of divorce decrees if Crews applies retroactively); John E. Finnerly, Construing Crews: A Nod to Common Sense, The CREWS DECISION: THE MOST IMPORTANT ALIMONY CASE SINCE LEPIS (N.J. INST. FOR CONTINUING LEGAL EDUC., New Brunswick, NJ), Oct. 28, 2000, at 1, 7-8 (providing illustration of likely effect of broad retroactive application of Crews); Snyder, supra note 108, at S-48 (noting the concern over whether consensual agreements prior to Crews will be upheld if lacking specific findings).
147 Id.
148 Id.
149 Id.
150 Id.
some extent, commentators disagree, however, over the proper scope of retroactive application. A few commentators predict the applicability of Crews to all existing settlement agreements and alimony decisions. Others feel that full retroactive effect would be unfeasible and unfair; therefore, they believe its retroactive effect should be limited in some respect.

Retroactive application would have profound ramifications. One family law practitioner offered the following illustration of this point:

Suppose a supported spouse reads about Crews, calls [her attorney] and brings in her ten year old divorce Judgment. The Judgment contains no finding with respect to lifestyle and simply awards a sum of alimony. When the client consults with [her attorney], she indicates that she knew that the original award was not sufficient to maintain a lifestyle reasonably comparable to the marital lifestyle. Over the last ten years, she has learned that her prediction was correct. She reports that it has gotten harder and harder for her and that her former husband has been prospering and gotten promotion after promotion, moved into bigger houses, is driving fancier cars, and going on longer vacations . . . Does she not have a right in connection with Crews to make an application for a determination of what the marital lifestyle was at the time of the divorce and to establish that the support award did not enable her to maintain a reasonably comparable lifestyle?

According to Crews, a finding on marital lifestyle is required in alimony adjudication. In the above illustration, the requisite finding is missing. If Crews applies retroactively, the dependent spouse can petition the court to determine marital lifestyle right now—ten years later.

All pre-Crews consensual agreements and judicial determinations are suspect at this point, at least until a clear determination is made regarding retroactivity. If applied retroactively, the decision may lead to hundreds, if not thousands, of petitions for reconsideration of

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152 See supra note 146.
153 See Cammarere, supra note 145, at 1 (noting that Crews "[represents] a possible field day in reopening past alimony decisions"); Finnerty, supra note 145, at 7 (providing illustration of likely effect of retroactive application).
155 See Finnerty, supra note 145, at 7-8.
156 Id. at 7.
157 Id. at 7-8.
alimony judgments and petitions to avoidance alimony provisions in property settlement agreements. Even if reconsideration is not sought immediately, dependent spouses may seek modification of the original alimony award at some time in the future. If *Crews* applies retroactively and a finding on marital standard of living is absent from an original decree or agreement; a modification determination would require the court to recreate the original proceedings, while now making the appropriate findings.\(^{158}\)

Retroactive application of *Crews* is likely to lead to an increased backlog in the New Jersey court system. This, in turn, is likely to increase the overall costs to the system. In addition, litigants will have to again expend money to reassess alimony. Stability and certainty would disappear for divorced parties, even when a decade or more has passed since the original decree.\(^{159}\) Proper retroactive application may turn on when litigants received notice (actual or constructive) of the specific findings requirement. Although not specifically enumerated until 1988, marital lifestyle was a common law consideration in awarding alimony.\(^{160}\) In 1988, the New Jersey legislature amended the maintenance statute to specifically include consideration of the standard of living established during the marriage.\(^{161}\) Then, in 1999, the New Jersey legislature further amended the statute to require specific findings on the enumerated factors, including marital standard of living.\(^{162}\)

One New Jersey appellate court, without much discussion, applied *Crews* retroactively.\(^{164}\) In *Cox v. Cox*,\(^{165}\) the trial court awarded limited-duration alimony in 1998 to the dependent spouse even though the parties shared a long-term marriage and there was "substantial disparity between the parties' incomes."\(^{166}\)

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\(^{158}\) Fact-finding at this point may result in a determination that the supported spouse should have been receiving more alimony all along. For cases subsequent to *Crews*, the standard of living inquiry is done when the evidence is fresh. Retroactive application to a five-year old decision, however, means that marital standard of living will have to be reconstructed and the evidence recreated.

\(^{159}\) *See Crews*, 164 N.J. at 27-28, 751 A.2d at 533; Finnerty, *supra* note 154 (citing *Smith v. Smith*, 72 N.J. 350, 360, 371 A.2d 1, 13 (1977)).


\(^{161}\) *See Lepis*, 83 N.J. 139, 416 A.2d 45; Khalaf v. Khalaf, 58 N.J. 63, 275 A.2d 132 (1971); Bonnano v. Bonnano, 4 N.J. 268, 72 A.2d 318 (1950); *see also Console*, *supra* note 132, at 178-79.


\(^{165}\) *Id.*

\(^{166}\) *Id.* at 471-72, 762 A.2d 1043-44.
court reversed, finding limited-duration alimony improper because permanent alimony was more appropriate under the facts.\textsuperscript{167} However, due to the lack of specific findings on the statutory factors of N.J.S.A. 2A:34-23(b), the appellate division ordered such findings upon remand.\textsuperscript{168} The Cox court cited Crews for the proposition that "[t]he trial judge's findings on this issue failed to . . . make the clear and definitive findings as to the parties' marital standard of living which are essential to any permanent alimony award determination."\textsuperscript{169} Thus, although the original alimony adjudication occurred in 1998, the Cox court applied both the 1999 statutory requirement and the Crews mandate on specific findings. Whether this application was proper remains open to question.

\textit{B. Practical Ramifications of Crews}

Beyond its possible retroactive application, Crews, created serious practical problems, which mere tweaking cannot solve. These include disincentives to settlement and the difficulty of resolving an issue as amorphous as lifestyle.

After Crews, familial litigation is bound to increase and the settlement rate is bound to decrease. This is ironic since it has been the policy of New Jersey to encourage amicable settlements of disputes, especially family disputes. "It has long been the policy of New Jersey . . . to encourage resolution between litigants, especially in areas of personal rights."\textsuperscript{170} Nothing is more personal to litigants than issues involving their families. New Jersey recognizes the unique suitability of alternative dispute resolution to familial disputes.\textsuperscript{171} This recognition is exemplified through the state's mandatory mediation program for almost all custody and visitation disputes.\textsuperscript{172} In addition, the state has been recently moving toward mandatory mediation of the financial aspects of divorce, such as alimony.\textsuperscript{173} Familial matters

\begin{itemize}
\item \textsuperscript{167} Id. at 485, 762 A.2d at 1052.
\item \textsuperscript{168} Id.
\item \textsuperscript{169} Cox, 335 N.J. Super. at 485, 762 A.2d at 1052 (citing Crews, 164 N.J. at 16-17, 24, 751 A.2d at 526-27, 531).
\item \textsuperscript{170} Finnerty, supra note 154.
\item \textsuperscript{171} See Konzelman v. Konzelman, 158 N.J. 185, 729 A.2d 7 (1999). Since the early 1990's, family mediation has become a major alternative dispute resolution method utilized in New Jersey. Hanan M. Isaacs, Mediation of Separation and Divorce Disputes: A Practitioner's Perspective, 155 N.J. Law., Sept. 1993, at 30, 34; see also Finnerty, supra note 154.
\item \textsuperscript{172} N.J. Ct. R. 1:40-5.
\item \textsuperscript{173} See id. 5:5-5. In addition, Rule 5:5-2 requires the parties to exchange Case Information Statements and Notice of Application for Equitable Distribution and Other Relief early on in the litigation process, making further discovery largely
\end{itemize}
are ripe for amicable resolution because amicable resolution costs less than litigating, disposes of emotional issues faster and less publicly, and provides a higher level of control to the participants.\textsuperscript{174}

In considerable tension with this policy, \textit{Crews} requires a determination on marital standard of living even when the parties settle.\textsuperscript{175} Parties may be unwilling to invest the time and emotional resources necessary to hammer out an agreement on this issue when that agreement can, at least, in theory be undone by the court. Further, the possibility that the other party might reject any agreement he or she consented to effectively negates the value of any such resolution.

The New Jersey Supreme Court recognized this problem and attempted to provide an alternative in order to encourage consensual resolution. When the parties desire settlement, the court suggested that specific findings could be avoided if the parties are willing to stipulate on two things: (1) their marital standard of living, and (2) that the agreement will maintain the dependent spouse at a reasonably comparable level.\textsuperscript{176}

Unfortunately, a stipulation alternative does not avoid many problems. Divorcing couples rarely agree on sensitive issues such as marital standard of living,\textsuperscript{177} even if they are willing to settle on support terms. As one practitioner stated, “[n]o one in their right mind would resolve cases with concessions that would be the seeds of constant reapprication to the court.”\textsuperscript{178} For example, if parties stipulate that the alimony award will not maintain the dependent spouse at the marital standard of living, the dependent spouse can request an increase each time the payor spouse comes into good fortune.\textsuperscript{179} Conversely, if the parties stipulate to a marital standard of living below the actual standard, the dependent spouse will be barred from seeking more unless her circumstances change post-judgment.\textsuperscript{180}

In short, parties are unlikely to reach a middle ground on this issue precisely because it leaves the future so open-ended.\textsuperscript{181}

unnecessary. \textit{Id.} 5:5-2; see Isaacs, \textit{supra} note 171, at 50.
\textsuperscript{175} \textit{Crews}, 164 N.J. at 26-27, 751 A.2d at 532.
\textsuperscript{176} \textit{Id.; see Finnerty, supra note 154} (further explaining the stipulation alternative).
\textsuperscript{177} See Cammarere, \textit{supra} note 125, at 3.
\textsuperscript{178} Finnerty, \textit{supra} note 154.
\textsuperscript{179} \textit{Crews}, 164 N.J. at 27, 33, 751 A.2d at 532, 536; see Finnerty, \textit{supra} note 154.
\textsuperscript{180} \textit{Crews}, 164 N.J. at 33-34, 751 A.2d at 536.
\textsuperscript{181} \textit{Weisshaar v. Weisshaar}, 360 N.J. Super. 281, 822 A.2d 656 (App. Div. 2003), \textit{cert. granted} 177 N.J. 495, 828 A.2d 922 (2003), raises this precise issue and provides the
Due to the unlikelihood of party stipulation, the rate of settlements will probably suffer. Under Crews, if the parties agree not to agree on marital lifestyle, a trial court cannot accept the settlement. Instead, the trial court must make its own findings on marital standard of living. Of course, this thwarts the parties' desire to settle the issue of alimony. In addition, the parties must now litigate the issue of marital lifestyle. By thwarting the parties' settlement desire, Crews sacrifices the long-time objective of the New Jersey family law community—to amicably resolve domestic relations matters. The irony of this ramification, and its attendant side effects, is that it stems from a contested case—a case in which the dependent spouse and her attorney left the courtroom and refused to participate in the proceedings.

The second problem Crews poses is an increase in the cost, time and complexity associated with reaching an appropriate alimony award. Marital lifestyle is a "highly controversial and oftentimes indefinable standard." Although the parties' Case Information Statements contain detailed financial information, Justice LaVecchia expressly repudiated the CIS as a substitute for either a stipulation or a finding by the court on marital standard of living. The supreme court viewed the CIS as representing a snapshot—the current financial picture—not the overall financial picture of the parties court the opportunity to correct the excesses of Crews. In Weishaus, the Appellate Division affirmed the lower court's rejection of a settlement agreement because the parties deferred agreement on marital lifestyle. Id. at 290. The court then indicated how, absent such an agreement, the trial court should approach that question on remand. Id. at 290-92. The grant of certification by the Supreme Court obviously opens the possibility for reconsideration of the requirement of findings on this issue when the parties agree to disagree on it.

See Booth, supra note 23, (quoting Mr. Crews' attorney, Francis Donahue, Esq.: "[Crews is] going to lead to more litigation and make it more difficult to settle cases . . . [n]ow you're going to have protracted litigation over just what was the marital standard of living."); Finnerty, supra note 154; Cammarere, On the Money, supra note 146, at 1 (quoting Mrs. Crews' attorney, Dale E. Console, Esq.: "[Crews is] going to change how we approach these things . . . [S]pouses who don't agree on the standard could decide to litigate the issue.").

Crews, 164 N.J. at 26, 751 A.2d at 532; see Finnerty, supra note 154.

Crews, 164 N.J. at 26, 751 A.2d at 532; see Finnerty, supra note 154.

See Finnerty, supra note 154.

See id.; Cammarere, supra note 145, at 1.

See supra notes 178-181 and accompanying text.

See Finnerty, supra note 154.

See id.; Cammarere, supra note 145, at 1.

See Newsome, supra note 57, at 8.

Crews, 164 N.J. at 26-27, 751 A.2d at 532.
during the marriage.¹⁹²

A lifestyle determination is complex, whether done by the court or the parties themselves. Due to the complexity inevitably stemming from an accurate marital lifestyle determination, the time required to either resolve or litigate the issue of alimony increases.¹⁹³ Furthermore, as the complexity of the issue increases, the need for accuracy correspondingly increases.¹⁹⁴ The best method of proving marital standard of living is through an expert, such as a forensic accountant,¹⁹⁵ who can look at the spending habits of the parties during the marriage and then assess what the parties actually lived on during the marriage.¹⁹⁶ In addition, the accountant can examine the advantages enjoyed by the couple during the marriage due to good financial fortune.¹⁹⁷ Greater reliance on experts inevitably increases the costs to both the system and to the individual litigants. Although in contested cases this parade of horribles may be unavoidable, it is hard for justify when both parties truly want to settle.

Practically speaking, Crews deprives divorcing couples of the freedom of choice they once enjoyed in New Jersey. Even if the parties desire amicable resolution, an inability to agree on marital lifestyle will force them to become adversaries. Divorce brings very emotional issues to the forefront.¹⁹⁸ When faced with such strong emotions, individuals feel the need for control over their lives.¹⁹⁹ In addition, many individuals in domestic turmoil prefer to deal with their emotions privately.²⁰⁰ By requiring divorcing parties to either come to a decision on marital standard of living or have the decision taken from them by the court, Crews eliminates the control previously felt by New Jersey’s divorcing couples. Further, Crews places litigants in the position of essentially choosing between two unattractive options: (1) litigate the issue in a public forum and place your emotions on public record; or (2) stipulate to a marital lifestyle that may not be accurate just to maintain a modicum of privacy and control during an emotional time.

¹⁹² Id. at 27, 751 A.2d at 532.
¹⁹³ See Cammarere, supra note 145, at 1. In addition, if the parties refuse to stipulate and litigation follows, finality may be more than a year away. See Isaacs, supra note 170, at 34.
¹⁹⁴ See Finnerty, supra note 154.
¹⁹⁵ Id.
¹⁹⁶ Id.
¹⁹⁷ Id.
¹⁹⁸ See Isaacs, supra note 171, at 34.
¹⁹⁹ See id. at 30, 34.
²⁰⁰ See id.
After considering the practical ramifications discussed thus far, the inevitable question arises regarding the court’s justifications for the decision. Policy seemed to play a vital role in the Crews decision, although it was buried within dicta.\textsuperscript{201} There, Justice LaVecchia referred to studies concluding “that the standard of living for a woman decreases 30\% after a divorce, while men enjoy a 10\% increase in living standards on average.”\textsuperscript{202} Justice LaVecchia characterized these figures as “troubling.”\textsuperscript{203} In addition, the Crews court postulated that a dependent spouse deserves more than maintenance at a mere subsistence level.\textsuperscript{204} Instead, the supported spouse deserves to be maintained at a level comparable to the marital standard of living.\textsuperscript{205}

Thus, Crews recognizes the historical decrease in dependent spouses’ standards of living when compared to the marital lifestyle.\textsuperscript{206} By doing so, Crews provides a policy rationale for its requirement of a specific finding of marital lifestyle. Presumably, this will assist the dependent spouse to attain a reasonably comparable standard of living. Yet, even accepting this policy rationale still does not explain the courts’ extreme myopia regarding practical issues.

Following Crews, members of the New Jersey bench quickly developed individual interpretive tools for applying Crews to divorcing parties.\textsuperscript{207} For example, Judge Zampino\textsuperscript{208} developed and utilized his own questionnaire for the parties to complete upon settlement of alimony.\textsuperscript{209} This questionnaire is meant to comply with the supreme court’s requirement of specific findings on marital standard of living in uncontested cases.\textsuperscript{210} Judge Zampino permits

\textsuperscript{201} Crews, 164 N.J. at 31-32, 751 A.2d at 535.
\textsuperscript{202} Id. at 32, 751 A.2d at 535 (internal citations omitted).
\textsuperscript{203} Id.
\textsuperscript{204} Id. at 34, 751 A.2d at 536.
\textsuperscript{205} Id.
\textsuperscript{206} Id. at 32, 34, 751 A.2d at 535-36.
\textsuperscript{208} Judge Zampino sits in Essex County Court’s Civil Division, Family Part.
\textsuperscript{209} Judge Thomas P. Zampino, Crews Statement (subsequent to May 2000) (unpublished form, on file with Judge Zampino’s chambers).
\textsuperscript{210} The form is specifically entitled “Crews Statement.” Id. The questionnaire states that “[t]he Court requires that there should be a limited record as to marital lifestyle for use should there be later proceedings, seeking modification.” Id. It then asks the litigants whether the parties agree or not as to whether the agreed upon alimony “will enable each party to live a lifestyle ‘reasonably comparable’ to the marital standard of living.” Id. If the parties do not feel that the agreed upon amount will maintain the marital standard of living, the parties must state the
stipulation in lieu of specific findings. 211

Family law attorneys also developed and use their own interpretive forms to comply with Crews in uncontested cases. 212 Some practitioners have the parties stipulate as to the actual and/or imputed income of the parties, as well as the likely alterations in income of both parties. 213 In addition, these practitioners list the components frequently falling within the concept of marital standard of living, such as vacation homes and savings or investment accounts. 214 Those items to which the parties agree are specifically indicated and the parties then sign in the presence of witnesses as to the stipulated information. 215 Practitioners seem more uneasy than members of the bench about how much information Crews requires because of their desire to avert future financial risk for their clients; 216 therefore, they tend to be over inclusive. 217 This fear understandably follows from Justice LaVecchia’s stern warning that a settlement, that fails to comport with Crews, is wholly inadequate and will fail. 218

The New Jersey Supreme Court Family Division Practice Committee Subcommittee on General Procedures recognized the

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211 If the parties agree that the settlement will permit the parties to live a reasonably comparable lifestyle to that enjoyed during the marriage, then the parties do not have to state anything more. Rather, the parties just have to sign the Crews Statement. Crews states that the Case Information Statements of the Parties is not a substitute for the parties’ stipulation to marital standard of living. 164 N.J. at 27, 751 A.2d at 532. As stated previously, some commentators feel that this statement suggests that the Crews’ mandate is met if the parties merely stipulate as to marital standard of living in uncontested cases. See Finnerty, supra note 145, at 3.


213 See Vuotto & Genalb, supra note 212, at 263.

214 See id.

215 See id. at 264-65.

216 See id. at 263-65.

217 See Louis, supra note 212, at 181-87. Mr. Louis, a New Jersey family law attorney, requires his clients to complete a very detailed summary and explanation of items commonly supporting the concept of marital standard of living, such as clothing and charge accounts. Id. In addition, if the client feels that there are other items that contribute to marital lifestyle, Mr. Louis requires the client to explain these items in detail. Id. This provides Mr. Louis with a clear understanding of what his client thought of marital standard of living, which also provides a basis for a settlement agreement adhering to Crews. Id.

218 Crews, 164 N.J. at 26, 751 A.2d at 532.
confusion in the legal community following Crews.\footnote{164 N.J. 11, 751 A.2d 524 (2000). See Supreme Court Family Division Practice Committee Subcommittee on General Procedures, Preliminary Statement Concerning Crews v. Crews, The Crews Decision: The Most Important Alimony Case Since Lepis (N.J. Inst. for Continuing Legal Educ., New Brunswick, NJ), Oct. 28, 2000, at 249-250 [hereinafter Subcommittee, Preliminary Statement] (specifically stating that its purpose was "[t]o assist the Family Part bench as it considers the implications of dictum contained in [Crews], particularly as it applies to uncontested divorce hearings in which the parties and counsel seek to incorporate by reference or attachment agreements that include provision for permanent alimony.").} The subcommittee issued a “Preliminary Statement Concerning Crews v. Crews,”\footnote{Id. at 249.} which focused on uncontested cases and indicated that, due to Crews, the parties must expressly tackle the issue of marital standard of living as it relates to any agreement.\footnote{Id. The subcommittee suggests that this can be done by posing the following question to the parties: DO YOU AGREE THE SETTLEMENT YOU HAVE REACHED WILL PERMIT YOU TO LIVE AT A STANDARD OF LIVING REASONABLY COMPAREABLE TO THAT DURING THE MARRIAGE TAKING INTO CONSIDERATION ALL OF THE FINANCIAL ARRANGEMENTS SET FORTH IN THE AGREEMENT OR SETTLEMENT? \textit{Id.} at 250.} The subcommittee went on to state that, if the settlement includes a permanent alimony provision, the family court must make “appropriate findings” on standard of living and on whether the agreed-upon award will allow the parties to maintain a standard of living reasonably comparable to that enjoyed during the marriage.\footnote{Id. The subcommittee suggests that if the parties cannot agree as to marital standard of living, the parties be asked to “briefly describe what you believe to have been your standard of living.” \textit{Id.} at 250.} According to the subcommittee, if the parties fail to agree on marital lifestyle, the family court must provide a brief description of such lifestyle in the record.\footnote{Id. at 249-50. The subcommittee recommends that the court present the following inquiry to the parties in such a situation: IF YOU CAN AGREE ON WHAT THE STANDARD OF LIVING WAS BUT CANNOT AGREE THAT THE STANDARD OF LIVING WILL BE MAINTAINED UNDER THIS AGREEMENT, ARE YOU REASONABLY SATISFIED THAT ALL OF THE PROVISIONS OF THE SETTLEMENT AS A WHOLE ARE NONETHELESS FAIR AND EQUITABLE AND ARE THEREFORE WILLING TO ACCEPT THE FULL SETTLEMENT? \textit{Id.} at 250.} If disagreement centers on the ability to maintain marital lifestyle, the court must make findings on whether or not “each party is reasonably satisfied that all of the provisions of the settlement as a whole are fair, equitable, and acceptable.”\footnote{Id. at 250.}
Unfortunately, no meaningful court guidance has yet been provided in the wake of Crews to confirm that these approaches are adequate.\textsuperscript{225}

\section*{IV. Precedent for a Supreme Court Overruling a Previous Decision}

New Jersey trial and appellate courts must follow the law set down by the New Jersey Supreme Court under the doctrine of stare decisis.\textsuperscript{226} Although stare decisis promotes stability, efficiency, equality and a sense of justice, blind adherence to precedent is judicially irresponsible and unfair to society as a whole.\textsuperscript{227} Therefore, both the United States Supreme Court and state supreme courts overrule their own decisions in proper circumstances.\textsuperscript{228} In fact, the United States Supreme Court first overruled one of its own decisions in 1810.\textsuperscript{229}

There are three common bases for supreme courts overruling their own decisions: (1) the prior decision was erroneous,\textsuperscript{230} (2) social

\begin{footnotesize}
\textsuperscript{225} Although Cox v. Cox, 335 N.J. Super. 465, 762 A.2d 1040 (App. Div. 2000) was decided after Crews and cites it, Cox does not interpret the scope of the supreme court’s mandate. \textit{Id.} In fact, Cox only summarily cites Crews for the proposition that specific findings are required under the maintenance statute. \textit{Id.} at 485, 762 A.2d at 1052.


\textsuperscript{227} See Padden, supra note 226, at 1691, 1694.


\textsuperscript{229} See Padden, supra note 226, at 1694 (citing Hudson v. Guestier, 10 U.S. (6 Cranch) 281 (1810), \textit{oversuing} Rose v. Himley, 8 U.S. (4 Cranch) 241 (1805)).

\textsuperscript{230} See, e.g., Arrow Builders Supply Corp. v. Hudson Terrace Apts., Inc., 15 N.J. 418, 105 A.2d 387 (1954), \textit{oversuing} Mills & Co. v. Hegeman-Harris Co., 94 N.J. Eq. 802, 125 A. 127 (1923) (overruling the latter because it erroneously interpreted New Jersey’s Mechanic’s Lien Law); People v. Kazmierczak, 605 N.W.2d 667 (Mich. 2000), \textit{oversuing} People v. Taylor, 564 N.W.2d 24 (Mich. 1997) (overruling because the latter erroneously read and applied federal constitutional law as articulated by Supreme Court decisions on the motor vehicle exception to the search warrant
\end{footnotesize}
mores have changed and the law should reflect the current social climate,\textsuperscript{231} and (3) the decision itself has proven impractical or unworkable.\textsuperscript{232} \textit{Crews v. Crews} falls within the third basis—the decision has proven itself impractical or unworkable.\textsuperscript{233}

The first rationale for a court overruling itself is that the decision was erroneous from the start.\textsuperscript{234} When something is wrong, the instinctual response is to correct it. Precedent may deserve respect,\textsuperscript{235} but “[a] countervailing tradition allows a court to overrule precedent to correct its errors.”\textsuperscript{236} Justice requires correction of judicial errors to properly serve litigants, whether the errors are those of the present judiciary or its predecessors.\textsuperscript{237} The previous analysis, however, concluded that the New Jersey Supreme Court did not commit error in its decision in \textit{Crews v. Crews}\textsuperscript{238} in the sense that it adopted a plausible interpretation of the statute.

The second rationale for supreme courts overruling precedent is that the social climate, which existed at the time of the original decision, later shifted.\textsuperscript{239} A temporary sway in public sentiment is not enough.\textsuperscript{240} Instead, a “deep-seated shift in fundamental morals” is necessary.\textsuperscript{241} \textit{Crews} also fails to fall within this traditional rationale because the decision is not in conflict with current social mores.\textsuperscript{242}

\begin{footnotesize}
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\item requirements of the Fourth Amendment); see also Rehnquist, supra note 226, at 358.
\item See, e.g., \textit{Brown}, 347 U.S. 483, overruling \textit{Plessy}, 163 U.S. 537 (overruling the latter because the underlying idea of separate but equal was found inconsistent with the contemporary values of society); \textit{Coop. Fire Ins. Ass'n of Vt. v. White Caps, Inc.}, 694 A.2d 34 (Vt. 1997), overruling both \textit{Nelson v. Travelers Ins. Co.}, 30 A.2d 75 (Vt. 1943) and \textit{Houran v. Preferred Accident Ins. Co. of N.Y.}, 195 A.2d 253 (Vt. 1938) (overruling the latter decisions because the more modern view, that an insurance company needs to show prejudice before it is relieved of its duty to defend a claim based on late notice, was the rule currently comporting with society’s values); see also, \textit{Padden, supra note 226}, at 1694; Rehnquist, supra note 226, at 358.
\item See, e.g., \textit{Olds v. Donnelly}, 150 N.J. 424. 696 A.2d 633 (1997), overruling \textit{Circle Chevrolet v. Giordano, Halleran, & Giesla}, 142 N.J. 280, 662 A.2d 509 (1995) (overruling the latter because of the struggle that arose after \textit{Circle Chevrolet} to define its boundaries and to apply the rule of the case in the appropriate manner); see also, \textit{Padden, supra note 226}, at 1694; Rehnquist, supra note 226, at 358.
\item See infra Part V for further discussion.
\item See supra note 230.
\item See Kniffin, supra note 227, at 84.
\item See \textit{Arrow Builders Supply Corp. v. Oakmont Corp.}, 15 N.J. at 426, 105 A.2d at 391.
\item 164 N.J. 11, 751 A.2d 524 (2000); see infra Part V for further discussion.
\item See supra note 230.
\item See \textit{Rehnquist, supra note 226}, at 359.
\item Id.
\item See infra Part V for further discussion.
\end{itemize}
\end{footnotesize}
Indeed, there has been scarcely any time for social mores to change since *Crews* was handed down.

Finally, supreme courts traditionally overrule precedent because a decision has proven itself impractical or unworkable. Supreme courts invoke this rationale if the original rule of law “is [incapable] of providing manageable standards for its application.” The need to reverse may arise after the courts encounter difficulties in applying the precedent. Other times, the legal community’s protests set the overruling mechanism in motion. As stated previously, the *Crews* decision is impractical; thus, it falls within this third category of overruling rationales.

Just five years prior to *Crews*, the New Jersey Supreme Court decided *Circle Chevrolet*. The conflict that emerged immediately following *Circle Chevrolet* illustrated the impractical nature of the decision. Therefore, just two years later, the supreme court overruled itself in *Olds v. Donnelly*. This Comment urges the New Jersey Supreme Court to look at the impracticality of *Crews*, to look at its own precedent for overruling based on this rationale, and to take appropriate remedial action as discussed below.

A. *Circle Chevrolet Co. v. Giordano, Halleran & Ciesla*—An Illustration of the Third Rationale and Precedent for the New Jersey Supreme Court

*Circle Chevrolet* purported to be a simple application of the “entire controversy” doctrine. That concept, unique to New Jersey, originated and developed in the twentieth century as an effort to promote judicial fairness and efficiency by requiring all related

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243 See supra note 232.
244 Padden, supra note 226, at 1695. But, if the original, deciding court could have reasonably foreseen the difficulties in application and chose to put forth the rule of law regardless, this rationale may be unavailable because of the presumption that the court rejected these problems from the outset. Id.
245 See Kniffin, supra note 228, at 54.
250 Id., overruled by Olds v. Donnelly, 150 N.J. 424, 696 A.2d 633 (1997). See Boyle, supra note 245, at 311; What Goes Around, supra note 1, at 6. The focus on *Circle Chevrolet* in this part of the Comment is essential because many of the same forces, which led to *Circle Chevrolet*'s demise, are at work in the aftermath of *Crews*.
251 See Boyle, supra note 246, at 310.
252 See id. at 311-12.
claims to be raised in one action. That is, fairness and efficiency were to be achieved through adjudication of the entire legal controversy in a single litigation in a single court. In 1995, the New Jersey Supreme Court extended the entire controversy doctrine to cover legal malpractice claims. Following Circle Chevrolet, a client had to sue his attorney for legal malpractice in the underlying action, "even when the attorney [was] currently representing the client in [the] underlying action." If the client failed to do so, the client forfeited the right.

Almost immediately after the New Jersey Supreme Court handed down Circle Chevrolet, the New Jersey legal community strenuously voiced its opposition to it. The ruling "provoked a firestorm of reaction" among New Jersey judges and attorneys. Receiving near unanimous condemnation, the decision provided an impetus for scholarly articles, seminars and media attention as the New Jersey legal community struggled to define Circle Chevrolet's boundaries. The lower courts' dockets became "flooded" with cases in which litigants tried to determine whether the court's holding applied to them.

The legal community swiftly pointed out the practical difficulties with the extension of the entire controversy doctrine to legal malpractice claims in Circle Chevrolet. One practical quandary of Circle Chevrolet was that the attorney-client relationship became a potential source of tension and suspicion, rather than one of trust.

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253 See Circle Chevrolet, 142 N.J. at 289, 662 A.2d at 513.
254 See id.
256 Id. at 289, 662 A.2d at 513.
257 Id.
258 See Boyle, supra note 246, at 335; What Goes Around, supra note 1, at 6.
260 See Boyle, supra note 246, at 355; What Goes Around, supra note 1, at 6; see also Albert L. Cohn & Terri Smith, Symposium, Practice and Malpractice After Circle Chevrolet: Some Practical Considerations of the Entire Controversy Doctrine, 28 RUTGERS L.J. 79 (1996).
261 See What Goes Around, supra note 1, at 6.
262 See Boyle, supra note 246, at 335-36 (discussing the backlash created by Circle Chevrolet among practicing attorneys); Cohn & Smith, supra note 260, at 84 (noting the tension that inevitably would arise once an attorney relayed to the client any potential malpractice claim, even if the litigant chose to waive any such claim); Rocco Cammarere, Napolitano Leads Fight Against Jinder Rule, N.J. LAW., Jan. 27, 1997, at 3 (recognizing the immediate fight by the New Jersey legal community to eradicate Circle Chevrolet's mandate).
263 See Boyle, supra note 246, at 335; Cohn & Smith, supra note 260, at 84; see also
At any moment during the litigation, the attorney-client relationship could itself become adversarial in the midst of an ongoing adversarial process. In addition, the decision enhanced the possibility of guarded disclosure, rather than full disclosure, between litigants and their attorneys. Although the ethical obligation of confidentiality is broad, an attorney’s right to defend herself trumps the attorney’s ethical duty of confidentiality to the extent reasonably necessary to defend her against a malpractice claim. Thus, a client might not divulge information to his attorney, who he may have to sue for legal malpractice during the underlying action, because of fear that confidential information will become public knowledge.

Moreover, the legal community protested the failure of Circle Chevrolet to fulfill the goals of the entire controversy doctrine. Two of the goals of the entire controversy doctrine are judicial economy and efficiency. Circle Chevrolet failed to accomplish either of these goals. Practically speaking, the decision actually resulted in judicial inefficiency and judicial waste. Following Circle Chevrolet, clients who sought a legal malpractice claim had to expend additional funds to obtain new counsel and to pursue this new issue. In addition, these litigants had to endure further delay in the judicial process and further complication of existing litigation.


See Boyle, supra note 246, at 335; Cohn & Smith, supra note 260, at 84.

Olds, 150 N.J. at 441, 696 A.2d at 642 (noting that the “requirement that clients join their attorneys in the original lawsuit jeopardizes attorney-client confidences”).

NEW JERSEY RULES OF PROFESSIONAL CONDUCT R.P.C. 1.6 (c)(2) (2001) (“A lawyer may reveal such information to the extent the lawyer reasonably believes necessary . . . to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client . . . .”); see Olds, 150 N.J. at 441, 696 A.2d at 642 (recognizing that when a client sues his current attorney for malpractice, the lawyer may reveal otherwise confidential information involving the exact subject matter of the underlying action).

Circle Chevrolet, 142 N.J. 280, 662 A.2d 509.

See Olds, 150 N.J. at 440, 696 A.2d at 641 (where the supreme court finally stated, “Candor compels that we acknowledge that the application of the entire controversy doctrine to legal-malpractice claims has not fulfilled our expectations.”); see also Boyle, supra note 246, at 336.

See Boyle, supra note 246, at 318-19.

Olds, 150 N.J. at 441, 696 A.2d at 641-42.

Id. (admitting that Circle Chevrolet not only failed the supreme court’s expectations, but also increased the time, money and complexity to the litigants); see Boyle, supra note 246, at 335-36.

See supra Part III.B for a discussion on the practical problems relating to inefficiency in the judicial system.

See id.
Ultimately, *Circle Chevrolet* "touched a raw nerve . . . and provoked a consensus backlash that could not be disregarded by [the New Jersey] Supreme Court."\(^{274}\) Just two years later, the New Jersey Supreme Court took a justifiable, yet bold, step when it overruled *Circle Chevrolet*.\(^{275}\) In 1997, the supreme court held that the entire controversy doctrine "no longer compels the assertion of a legal-malpractice claim in an underlying action that gives rise to the claim."\(^{276}\) By reversing *Circle Chevrolet*, the supreme court recognized the practical difficulties that arose upon its conception, while acknowledging the third traditional overruling rationale.\(^{277}\)

**B. The Policy Considerations of Overruling Precedent**

Although a decision may fall within one of the three reversal rationales, the choice to overrule precedent should not be taken lightly.\(^{278}\) There are several policy bases underlying stare decisis, which a supreme court should consider prior to reversing precedent.\(^{279}\)

One important value sustaining adherence to precedent is fairness.\(^{280}\) It would seem unfair to apply one law to individual A, but the next morning, apply new law to individual B.\(^{281}\) Moreover, the doctrine of stare decisis produces stability in a sometimes harsh legal landscape.\(^{282}\) During litigation, individual parties may feel overwhelmed. The existence of a tradition built on following that which came before, however, permits a litigant to feel confidence in the legal system.\(^{283}\)

The predictable nature of precedent also allows litigants and practitioners to feel secure in the probable resolution of the issues.\(^{284}\) This, in turn, helps attorneys advise clients not just as to potential outcomes, but also as to whether settlement is in one's best interests.\(^{285}\) Planning for future events is also facilitated by confidence.

\(^{275}\) Olds, 150 N.J. 424, 696 A.2d 633 (overruling Circle Chevrolet); see Boyle, *supra* note 246, at 337; What Goes Around, *supra* note 1, at 6.
\(^{276}\) Olds, 150 N.J. at 443, 696 A.2d at 643.
\(^{277}\) Id.
\(^{278}\) See Paul S. Gillies, Overruling, 23 VT. BAR J. & L. DIG. 12, 13 (1997).
\(^{280}\) See id.
\(^{281}\) See id. at 347.
\(^{282}\) See id.
\(^{283}\) See id.
\(^{284}\) See Gillies, *supra* note 278, at 13.
\(^{285}\) See id.; Rehnquist, *supra* note 226, at 348. Predictability also benefits members
in a stable legal regime. Another policy basis for adhering to precedent is judicial efficiency. This rationale inevitably flows from the policy grounds previously stated. For instance, if clients and practitioners can predict the likely result of litigation, they are more likely to settle disputes. Members of the bench can also more efficiently adjudicate results when they do not have to reinvent the wheel.

These policy bases for adhering to precedent largely relate to litigants, but there are institutional concerns as well. Supreme court decisions, both state and federal, are worthy of respect. If a supreme court reverses its own precedent, however, especially only a short time after rendering the original decision, the legitimacy of the court may be compromised. Thus, stare decisis builds up the credibility of the court because judges do not appear to be indulging in personal biases when they follow established precedent. Members of the bench are instead recognized for following established judicial norms. In other words, adhering to precedent creates an appearance of justice within our legal system that should not be lightly brushed aside.

V. RECOMMENDATIONS: PARTIAL OVERRULING OF CREWS AND LIMITED RETROACTIVE EFFECT OF THE AFFIRMED PORTION

A. A Partial Reversal of Crews

Following the Crews decision, the New Jersey legal community
expressed its unhappiness and disbelief over the supreme court’s ruling in a way akin to that following Circle Chevrolet.\textsuperscript{293} The controversy spurred commentators to write numerous articles and led practitioners to hold several seminars on the subject.\textsuperscript{294} Almost three years after the decision, controversy still lingers and the legal community still cries out for relief,\textsuperscript{295} which may be forthcoming.\textsuperscript{296}

In regard to contested cases, the Crews mandate was entirely appropriate and should be upheld. Crews also created two major problems, however, which must be resolved. First, the decision created numerous impracticalities in the realm of uncontested alimony cases. In addition, the decision left the door open for unfettered retroactive application of the Crews mandate.\textsuperscript{297}

The decision, as it pertains to contested cases, did not change alimony law in New Jersey.\textsuperscript{298} Since 1988, New Jersey statutory law has listed marital standard of living as a factor for consideration.\textsuperscript{299} And, since 1999 the statute has required specific findings on this and other enumerated factors.\textsuperscript{300} Unfortunately for dependent spouses, many members of the bench failed to follow the latter statutory requirement and dependent spouses suffered economic hardship.\textsuperscript{301} In fact, it was this exact type of failure by the Crews trial court\textsuperscript{302} that ultimately resulted in the present problem.

For contested cases, Crews fails to meet any of the traditional rationales for overruling supreme court precedent.\textsuperscript{303} The holding, as it relates to contested cases, is clearly not erroneous because it obeys the express language of New Jersey’s maintenance statute. There is also no evidence that social mores have changed since

\textsuperscript{293} Immediately following Crews, the legal community was in an uproar about what the decision meant for matrimonial cases, both past and future.

\textsuperscript{294} See discussion, supra Part III of this Comment.

\textsuperscript{295} See Cammarere, supra note 123, at 3.

\textsuperscript{296} Weishaus v. Weishaus, 360 N.J. Super. 281, 822 A.2d 656 (App. Div. 2003), cert. granted 177 N.J. 495, 828 A.2d 922 (2003), affirmed the rejection of a settlement agreement because the parties deferred agreement on marital lifestyle and indicated how, absent such an agreement, the trial court should approach that question on remand. The grant of certification by the Supreme Court obviously opens at least the possibility for reconsideration of the requirement of findings on this issue when the parties agree to disagree on it.

\textsuperscript{297} Id.

\textsuperscript{298} Snyder, supra note 108, at S-52.

\textsuperscript{299} See discussion supra Part III.A.

\textsuperscript{300} See id.

\textsuperscript{301} See Booth, supra note 23; Cammarere, supra note 145, at 1.

\textsuperscript{302} Crews, 164 N.J. at 16, 751 A.2d at 527.

\textsuperscript{303} See generally Crews, 164 N.J. 11, 751 A.2d 524.
The supreme court just decided  

Crews  

in May of 2000.  

A shift, if any, in social norms since that time could not be regarded as dramatic, or lasting, enough to support reversal.

Although one could argue impracticality, in that specific findings on marital standard of living in contested cases will increase the burden on judicial resources, this argument should be raised with the legislature and not with the New Jersey Supreme Court. The New Jersey legislature first mandated such findings; the supreme court merely reiterated the ignored principle. The  

Crews  

mandate, as it affects contested cases, has not prompted public outcry, except cries of praise for reaffirming a forgotten principle.  

Thus for contested cases,  

Crews  

is wholly proper.

  

Crews  

should be overruled, however, as it pertains to uncontested cases. Similar to  

Circle Chevrolet  

,  

Crews  

involved a haphazard expansion of an already established legal doctrine.  

Moreover, just as the supreme court recognized and remedied the dilemmas created by  

Circle Chevrolet  

, the court must recognize and remedy the dilemmas created by  

Crews  

. New Jersey statutory law and common law lacked foundation for the  

Crews  

mandate, which mirrors the lack of foundation for expansion of the entire controversy doctrine in  

Circle Chevrolet  

. New Jersey’s maintenance statute explicitly applies only to awards made by the court.  

In addition, the specific findings requirement expressly pertains to cases where a party requests permanent alimony and evidence is provided on the issue.  

Unless a consensual agreement is rejected, the court should not accept evidence on the issue of alimony. Therefore, no authority exists supporting the expansion of the specific findings mandate to uncontested cases.

Moreover, there is a precedential basis for partial reversal of  

Crews  

—the decision is impractical and unworkable as applied to uncontested cases.  

Crews  

closely reflects  

Circle Chevrolet  

in this respect. Just as  

Circle Chevrolet  

was overruled because of the impractical and

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904  

Id.

905  

Id.

906  

See Booth, supra note 23; Cammarere, supra note 145, at 1.

907  

Circle Chevrolet  

expanded the entire controversy doctrine too far when it found the entire controversy doctrine to include legal malpractice claims, even against an attorney still in the case. 142 N.J. 280, 662 A.2d 509; see Boyle, supra note 246, at 310-11. Similarly,  

Crews  

expanded the statutory requirement of specific findings too far when it expanded the requirement to consensual settlements, while failing to consider the implications of the expansion. 164 N.J. 11, 751 A.2d 524; see Finnerty, supra note 145.

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N.J. STAT. ANN. § 2A:34-23(b).

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Id. § 2A:34-25(c).
unworkable nature of its rule of law, Crews should be partially overruled because of the impractical and unworkable nature of the holding as applied to uncontested cases. As discussed in Part III, the potential consequences and practical ramifications of Crews are vast for uncontested cases. Similar to Circle Chevrolet, requiring courts, practitioners, and litigants to face such difficulties is unfair and dangerous. Requiring specific findings on a volatile and almost indefinable issue, when the parties desire settlement, produces practical problems that the New Jersey Supreme Court must not ignore.

Not unlike Circle Chevrolet’s mandate, the requirement of specific findings in uncontested cases potentially places those involved in an unwarranted adversarial relationship. This leads to fewer consensual agreements, even though such agreements are especially encouraged in matrimonial actions. As with Circle Chevrolet, the New Jersey Supreme Court has increased the cost to parties both financially and emotionally. Crews also increases the time needed for resolution, the complexity of the issues, and the need for experts. As a natural byproduct of these effects, courts are likely to become further backlogged, which harms society as a whole.

Besides the impracticality of the decision, Crews has already proven unworkable in regards to uncontested cases. This is evidenced by the disparity between the interpretation of courts and practitioners on what is required by the decision. Although the Supreme Court Family Division Practice Committee Subcommittee on General Procedures formulated a preliminary statement to assist interpretation efforts, the subcommittee essentially failed in its effort to make Crews clearer in application. The subcommittee merely restated the language of Crews as it pertains to uncontested cases.

The subcommittee’s recommended initial inquiry, if answered

312 See discussion supra Part III.B.
313 For fuller discussion of the proposal, see supra Part III.B and accompanying footnotes.
314 See Cammarere, supra note 123, at 3. At the 2001 Association of Trial Lawyers of America-New Jersey Annual Boardwalk Seminar in Atlantic City, the question remained of how to comply with Crews. Id. This was months after the subcommittee issued its preliminary statement.
315 See supra Part III.B for illustration of this fact.
affirmatively by the parties, suggests that stipulation by the parties is enough to satisfy Crews.\textsuperscript{310} If the parties refuse to stipulate, however, then the subcommittee's suggestions lack substance. If the parties fail to agree as to marital standard of living, the court must make findings on this issue and the settlement may then be found insufficient. This result is wholly inadequate, as described in Part III.B. of this Comment. Moreover, if the parties agree to marital lifestyle but not to the ability to maintain it, the subcommittee's recommendation to family courts—to inquire as to the fairness and equitable nature of the agreement—is clearly inconsistent with Crews. The latter inquiry does not result in specific findings on marital standard of living, which Crews requires.\textsuperscript{317} Thus, the subcommittee did not alleviate the application headache Crews poses to practitioners and members of the bench.

Almost identical to Circle Chevrolet, the backlash from Crews has been plentiful and scathing. Crews has led to numerous articles, varying interpretations, and plenty of how-to seminars. Just as Circle Chevrolet was nearly condemned due to its practical implications, so too has Crews been in regards to consensual agreements. The Crews decision as applied to uncontested cases is simply impractical and unworkable. Although stare decisis is worthy of respect, it is not worthy of blind allegiance. Furthermore, although reversing precedent so soon after its pronouncement raises concerns of legitimacy, justice should not be subordinated to a court’s interest in saving face. Therefore, just as the New Jersey Supreme Court did in 1997,\textsuperscript{318} the supreme court should step in to alleviate the judicial headache created by the court’s overzealous expansion of a well-established legal doctrine. The supreme court should reverse Crews as it pertains to uncontested cases.\textsuperscript{319}

\textbf{B. Limited Retroactive Application of Contested Cases}

This Comment recommends that the Crews mandate be upheld as it pertains to contested cases.\textsuperscript{320} This Comment does not discuss in detail how Crews affects contested cases because of the largely uncontroversial nature of the mandate as applied to contested cases.

\textsuperscript{310} See supra text accompanying notes 176-81.
\textsuperscript{317} Crews, 164 N.J. 11, 751 A.2d 524.
\textsuperscript{318} Olds, 150 N.J. 424, 696 A.2d 633.
\textsuperscript{320} See discussion supra Part IV.A.
One issue pertaining to contested cases, however, requires further mention. As discussed in Parts III.A. and III.B. of this Comment, one potential consequence of Crews is that it will be applied retroactively.

"Ordinarily, judicial decisions apply retroactively." At times, however, policy considerations weigh in favor of limited retroactive application. This Comment recommends that Crews, as applied to contested cases, be retroactively applied in a limited fashion—merely to decisions following the 1999 amendment to New Jersey's maintenance statute. Although New Jersey statutory law enumerated marital standard of living as a relevant factor since 1988, specific findings were not required until 1999. Crews merely reinforced the 1999 legislative amendment. Litigants, then, are justified in relying on the "specific findings" requirement since 1999, but not prior to that year.

Moreover, the general purpose of the specific findings requirement is to ensure that both parties are being maintained at

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322 Id.; see supra Part III.B for further discussion on the applicable policy considerations.
323 Legislative pronouncements are not automatically applied retroactively. See Innes v. Innes, 117 N.J. 496, 510, 569 A.2d 770, 777 (1990). When determining whether legislation should apply retroactively or only prospectively, it is proper to look at the interpretation needed to "make [the law] workable and give it its most sensible interpretation." Id., 569 A.2d at 777. For instance, in Innes, the New Jersey Supreme Court found that the equitable distribution statute would not make sense or be truly effective unless applied retroactively. Id., 569 A.2d at 778.

In addition, it is proper to compare the preexisting law to the new law when determining the proper application of a piece of legislation. Id. The more similar the new law is to preexisting law, the stronger the argument for retroactive application of the new law. Id. Finally, courts look to the reasonable expectations of the parties. Id. at 511, 569 A.2d at 778. "The test of [reasonable] expectation[s] is whether the parties relied on prior law to their detriment, such that retroactive application would cause a 'deleterious and irrevocable' result." Innes, 117 N.J. at 511, 569 A.2d at 778 (citing Gibbons v. Gibbons, 86 N.J. 515, 523-24 (1981)).

Since legislation can be applied retroactively in appropriate circumstances, one could argue that Crews should be applied retroactive to 1999 because the statutory amendment could be applied in such a way. The most sensible interpretation, however, of the statutory requirement of specific findings is only achieved if applied prospectively. It would not make sense to open up past divorce decrees because a court failed to do something it was never required to do in the first place—make specific findings. In addition, the statutory amendment requiring specific findings was not in the prior statute. Although standard of living was an enumerated factor, there was no mandate that specific findings as to it. Finally, and most importantly, parties have relied on the decrees set out by the courts on alimony, and it would be unfair and ultimately deleterious to allow courts to now change these decrees because specific findings were never made by courts having no duty to make such findings.
lifestyles reasonably comparable to that enjoyed during the marriage. Retroactive effect prior to 1999 would serve this purpose, but it would be difficult if not impossible, to now re-create a marital standard of living from cases adjudicated ten years ago. Even if re-creation were possible, the presumption of adequate support would be hard to overcome when a dependent spouse has maintained herself on the alimony award for ten years. Finally, retroactivity prior to 1999, “potentially would expose the judicial system to the undue burden of resolving numerous concluded matters.”\textsuperscript{324} Thus, \textit{Crews} should be limited in its retroactive application to 1999.

CONCLUSION

Once again, the New Jersey Supreme Court has stirred the legal community into a frenzy. \textit{Crews v. Crews} mandated specific findings on marital standard of living in all divorce cases—both contested and uncontested. This mandate is impractical and unworkable as applied to uncontested cases. The practical implications and difficulties of \textit{Crews} cannot be ignored. Just as the public outcry forced the New Jersey Supreme Court to rethink and eventually reverse \textit{Circle Chevrolet}, the backlash from \textit{Crews} merits similar attention from the court.

Although supreme courts strongly resist overruling their own decisions, justice sometimes requires stare decisis to be subordinated to more pressing concerns. Similar to \textit{Circle Chevrolet}, the \textit{Crews} ruling falls within the established reversal rationale of impracticality. However, the decision is only unworkable as it pertains to uncontested cases. \textit{Crews} should be partially affirmed, as relates to contested cases, and partially overruled, as pertains to uncontested cases. Even as to contested cases, \textit{Crews’} mandate should be retroactively applied in a limited fashion—only to decisions after the 1999 statutory amendments.

\textsuperscript{324} \textit{Olds}, 150 N.J. at 450, 696 A.2d at 646.