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[***Bhatti v. Bhatti***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:7WS2-Y101-2R6J-22VV-00000-00&context=)

Superior Court of New Jersey, Appellate Division

May 2, 2006, Argued; June 16, 2006, Decided

DOCKET NO. A-2753-04T5

**Reporter**

2006 N.J. Super. Unpub. LEXIS 1319 \*; 2006 WL 1650715

MANOJ K. BHATTI, Plaintiff-Appellant, v. VINITA BHATTI, Defendant-Respondent.

**Notice:** NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY RULE 1:36-3 FOR CITATION OF UNPUBLISHED OPINIONS.

**Prior History:** **[\*1]**On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Middlesex County, FM-12-470-03.

**Core Terms**

alimony, rehabilitative, factors, punitive damages, compensatory, domestic, marriage, violence, parties

**Counsel:** Elliot H. ***Gourvitz*** argued the cause for appellant (Elliot H. ***Gourvitz*** and Associates, attorneys; Ari H. ***Gourvitz***, on the brief).

John D. Murray argued the cause for respondent (Cooper and Murray, attorneys; Mr. Murray on the brief).

**Judges:** Before Judges Kestin, R. B. Coleman and Seltzer.

**Opinion**

PER CURIAM

Plaintiff appeals from the financial provisions of a Dual Judgment of Divorce entered on December 27, 2004. We affirm.

The evidence produced at trial revealed that plaintiff is an American citizen of Indian descent and defendant is an Indian citizen. Although they had not previously met, they were married in India on March 10, 2002, pursuant to an arrangement made by their parents. They returned to the United States and were remarried in a civil ceremony on April 2, 2002, apparently because the U. S. Immigration and Naturalization Service [[1]](#footnote-1)1 required such a ceremony before a non-resident alien could obtain permanent residence status. Two days later, on April 4, 2002, defendant, with plaintiff acting as her sponsor, filed a formal application for permanent residence status. She also applied **[\*2]**for a permit to allow her to work in the United States.

The relationship quickly deteriorated amid cross-allegations of domestic violence and defendant's charges that plaintiff had converted personal property she had brought with her from India. Both parties sought restraining orders pursuant to the Prevention of Domestic Violence Act, [*N.J.S.A. 2C:25-17 to -35*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5F0Y-BNR1-6F13-04CK-00000-00&context=). The judge hearing those complaints found that plaintiff had assaulted defendant and that defendant had not committed any acts of domestic violence against plaintiff. Accordingly, plaintiff was restrained from contact with defendant and was ordered to provide temporary support.

Plaintiff's complaint for divorce was filed on August 23, 2002, not quite five months after the marriage. Defendant filed a counterclaim in which she sought a divorce; alimony and equitable distribution; the return of her personal property alleged to have been converted by plaintiff; and punitive and compensatory damages for assault and battery, conversion, and infliction of emotional distress. She also sought counsel fees. Before the **[\*3]**final judgment was entered, defendant obtained an order compelling plaintiff to pay monthly *pendente lite* support in the amount of $ 1,894. The amount was determined after an examination of the expenses claimed on the Case Information statement submitted with her application for support.

The issues were tried over five days during which the judge heard testimony with respect to the circumstances of the marriage; the financial condition of the parties; and defendant's allegations that plaintiff had physically attacked her and stolen her personal property, including jewelry. On December 27, 2004, the judge rendered a written opinion in which he disposed of the economic issues. He awarded rehabilitative alimony of $ 1,894 per month for a three-year period commencing December 27, 2004; found that plaintiff had assaulted defendant and awarded her $ 4 in nominal compensatory damages and $ 5,000 in punitive damages; found that plaintiff had converted defendant's jewelry and required him to pay compensatory damages of $ 37,424 and $ 10,000 in punitive damages; and awarded counsel fees. The judge's rulings were incorporated into a Judgment of Divorce dated December 27, 2004. The judgment permitted **[\*4]**an application for counsel fees that were subsequently fixed, by order dated March 3, 2005, in the amount of $ 34,972.90. [[2]](#footnote-2)2

Plaintiff objects to each provision. We need not comment extensively on the conflicting testimony received by the judge respecting defendant's tort claims. With respect to the *Tevis* [[3]](#footnote-3)3 claims, the judge accepted defendant's testimony and found that plaintiff had assaulted her four times in the months of April, May, July, and September. Although the injuries sustained were minimal, the judge found that "plaintiff's actions were calculated attempts to dehumanize **[\*5]**the defendant" and awarded punitive damages.

As to defendant's claim that plaintiff had taken her jewelry and personal property, the court rejected plaintiff's testimony finding it to be "inconsistent and lacking in credibility." He accepted defendant's evidence with respect to the nature and value of the property. The judge then found the conduct to have been intentional and awarded $ 10,000 in punitive damages in addition to the $ 37,424 of compensatory damages. In awarding punitive damages, the judge considered the appropriate factors, including the plaintiff's annual income of $ 125,000.

As to each of these rulings, plaintiff alleges that "the trial court abused its discretion and its decision was against the weight of the evidence." Although there was conflicting evidence with respect to these claims, the judge resolved the factual disputes in favor of defendant. That resolution, largely dependent on a credibility assessment, and the consequent award of both compensatory and punitive damages, is entitled to great deference from us. *[Cesare v. Cesare](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3SX7-DK90-0039-40G6-00000-00&context=)*[*, 154 N.J. 394, 411-12, 713 A.2d 390 (1998)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3SX7-DK90-0039-40G6-00000-00&context=). Because the findings are founded on substantial credible evidence **[\*6]**in the record and because the legal determinations drawn from those facts are appropriate, the judge's conclusions may not be disturbed on this appeal. *[Rova Farms Resort v. Investors Ins. Co.](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RRM-XDM0-003C-N34X-00000-00&context=)*[*, 65 N.J. 474, 484, 323 A.2d 495 (1974)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RRM-XDM0-003C-N34X-00000-00&context=); *[Rolnick v. Rolnick](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S3J-WCR0-003C-P4VP-00000-00&context=)*[*, 262 N.J. Super. 343, 358-59, 621 A.2d 37 (App. Div. 1993)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S3J-WCR0-003C-P4VP-00000-00&context=).

Plaintiff also complains of the award of alimony in the amount of $ 1,894 per month for three years. The judge found that plaintiff had an earning capacity of $ 125,000 per year and that defendant was prohibited by federal law from obtaining employment in the United States. That disability resulted, the judge found, from plaintiff's withdrawal of his sponsorship of defendant in the United States. Plaintiff does not dispute that defendant cannot work. The judge specifically found that "defendant has shown good faith in acting as quickly as possible in attempting to get a work permit which up to this time has not been approved by Immigration and Naturalization Services and will not be approved for sometime in the future."

Given those facts, the judge concluded that defendant was entitled to rehabilitative alimony. He recognized that the factors to be considered in making any alimony award are set out in [*N.J.S.A. 2A:34-23(b)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5F0Y-BKK1-6F13-048B-00000-00&context=). **[\*7]**The relevant factors here include: the need and ability of the parties to pay; the duration of the marriage; the age, physical and emotional health of the parties; the earning capacities, educational levels, vocational skills, and employability of the parties; the time and expense necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment; and any other factors deemed relevant by the court. When rehabilitative alimony is considered, the court must be presented with a plan "in which the payee shows the scope of rehabilitation, the steps to be taken, and the time frame, including a period of employment during which rehabilitation will occur." [*N.J.S.A. 2A:34-23(d)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5F0Y-BKK1-6F13-048B-00000-00&context=).

The judge considered each of these factors. If his opinion did not track the order of the statute, it was, nevertheless, for purposes of justifying an award of rehabilitative alimony, sufficient. We recognize, as did the trial judge, that this marriage was of limited duration. The length of the marriage, however, is only one of the factors to be considered. In these unique circumstances, the judge's determination to award rehabilitative alimony, tied to the period **[\*8]**within which plaintiff's application for permission to work in the United States might be processed, was well within the judge's discretion.

The amount of the award was fixed with respect to the prior representations by defendant of her needs, which the judge determined to be "valid." "Our review of the amount of an alimony award is limited. A trial court's rulings in such matters are discretionary and not overturned unless the court abused its discretion, failed to consider controlling legal principles or made findings inconsistent with or unsupported by competent evidence." *[Gordon v. Rozenwald](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4H0S-GYC0-0039-42CM-00000-00&context=)*[*, 380 N.J. Super. 55, 76, 880 A.2d 1157 (App. Div. 2005)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4H0S-GYC0-0039-42CM-00000-00&context=). We have no reason to disturb the judge's discretionary ruling respecting alimony.

The award of counsel fees is also discretionary. *[Salch v. Salch](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S3J-WJ60-003C-P1BY-00000-00&context=)*[*, 240 N.J. Super. 441, 443, 573 A.2d 520 (App. Div. 1990)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S3J-WJ60-003C-P1BY-00000-00&context=). The judge concluded that plaintiff was the only person able to afford fees, that defendant had acted in good faith, and that she had presented a meritorious position. His analysis was sufficient to satisfy his obligation to consider the relevant factors. [*R. 5:3-5(c)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5TD9-9YF0-004F-J331-00000-00&context=). He excluded from his consideration those fees attributable to the appearances in the domestic violence **[\*9]**cases and accepted the certification of defendant's counsel as otherwise reasonable. Those findings of fact, and the award based on those findings, are unexceptionable.

Plaintiff's final argument relates to plaintiff's assertion [[4]](#footnote-4)4 that the trial judge told counsel that he, the judge, had discussed matters relating to the trial with the judge who had tried the domestic violence complaints. Although it is clearly improper to solicit factual information outside the record, the extremely short passage to which plaintiff makes reference does not suggest to us that the trial judge did anything other than make a passing reference to a colleague about a trial in which he was engaged. Such conversations should be discouraged, at least until the trial is concluded, but nothing in this record provides even a hint that the trial judge's decision was tainted by improper considerations.

Affirmed.

**End of Document**

1. 1On March 1, 2003, the Immigration and Naturalization Service became known as the U. S. Citizenship and Immigration Service. [↑](#footnote-ref-1)
2. 2Our April 19, 2005, order permitted an amendment to the Notice of Appeal to include an appeal from the March 3, 2005, order awarding fees. Defendant has advised us that those fees have now been paid and has suggested that the payment of the fees renders the appeal of the judge's order moot. We disagree. Since there was no stay of the order compelling the payment of fees, plaintiff was required to comply with the judge's order. [*R. 2:9-5*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5TD9-9YG0-004F-J3M1-00000-00&context=). The fact that he did so does not prevent him from pursuing the appeal or, should the judge's order with respect to the fees be reversed, obtaining a return of the fees paid. [↑](#footnote-ref-2)
3. 3*[Tevis v. Tevis](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RRM-X3S0-003C-N28M-00000-00&context=)*[*, 79 N.J. 422, 400 A.2d 1189 (1979)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3RRM-X3S0-003C-N28M-00000-00&context=). [↑](#footnote-ref-3)
4. 4Plaintiff's brief quotes four sentences without any citation to the transcript. No citation has been provided to us despite counsel's agreement, at our request made at oral argument, to supply that citation. [↑](#footnote-ref-4)