

## FAMILY LAW

# Whose Lifestyle Is It Anyway?

Pros and cons of the lifestyle analysis

By **Alexandra M. Kachala** and  
**Michael H. Karu**

**W**hile dependency, visitation, and other family related issues should be the most important ones, invariably the financial aspects take over. We see disagreements on everything. In many cases, the financial minutia of the dissolving marriage may be examined in the form of a “lifestyle analysis,” but is it really necessary, and does the cost justify the benefit?

First, let’s define “lifestyle analysis.” According to BusinessDictionary.com, “lifestyle” is defined as:

A way of living of individuals, families (households), and societies, which they manifest in coping with their physical, psychological, social, and economic environments on a day-to-day basis. Lifestyle is expressed in both work and leisure behavior patterns and (on an individual basis) in activities, attitudes, interests, opinions, values, and allocation of income.

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*Kachala is an associate at Ziegler and Zemsky, a matrimonial and family law firm located in Essex County. Karu, CPA/CFE, is a member of Levine, Jacobs & Company, a Livingston-based accounting and consulting firm. He is qualified by the Superior Court of New Jersey, Family Part, as an expert witness.*



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It also reflects people’s self-image or self-concept; the way they see themselves and believe they are seen by the others. Lifestyle is a composite of motivations, needs, and wants and is influenced by factors such as culture, family, reference groups, and social class.

The “analysis” is the process whereby the income and expenses of that lifestyle are quantified, allowing for a determination of the standard of living of the parties. These quantifications sometimes play important roles in the calculation and negotiation of alimony and support amounts. Then

again, sometimes they don't. The process can be extremely time-consuming and, accordingly, costly. Given the time and cost, certain questions must be asked. Is it truly necessary? Will it bring the matter closer to settlement? Which spouse will benefit from its preparation? Does the potential benefit obtained outweigh the cost of preparation? Who pays for it?

From an accounting perspective, we start with the parties' bank accounts. Presumably, they have a checking account, which is the typical starting point. All of the receipts and disbursements for a set period of time, usually three to five years, are summarized. Many preparers will use QuickBooks, which we find to be accurate and quick. Once the transactions are entered, reconciliations are done to ensure that everything that has been entered has been done so correctly. The same procedure is followed for each bank account and credit card until everything has been entered. Once everything has been input, reports are generated detailing the sources of their funds and how those funds were used. But have we really accomplished anything? The technical answer is "maybe."

While most experts utilize three to five years of a family's lifestyle to arrive at a more accurate lifestyle valuation, it is significant to note that case law does not require this. For example, in *Tannen v. Tannen*, 416 N.J. Super. 248 (App. Div. 2010), the wife's financial expert analyzed two years of financial data to reach a conclusion as to marital lifestyle. As a result of the brevity of the period, the trial court discounted the expert's opinion. However, the Appellate Division reversed the trial court's decision to reject the financial expert's opinion because it was based upon only two years of family expenses. To the contrary, the Appellate Division held as follows:

Our decision in *Weishaus* did not require a litigant to furnish at least three years of financial data, nor did we intend to constrict the trial judge's consideration of the issue in such mechanistic fashion. In discussing lifestyle expenses, we said in a footnote that the period to be considered ... will depend upon the circumstances of the marriage. For example, in a long term marriage with a consistent lifestyle, the last three years of cohabitation may be an appropriate period to consider. When the parties' financial circumstances were inconsistent from year to year, a different period may be appropriate, all in the judge's discretion.

*Tannen*, at 276.

Accordingly, in the event an expert is able to quantify the lifestyle with precision in two years and the parties agreed that their lifestyle was enhanced throughout the course of the marriage, the consideration of the final two years of cohabitation may be appropriate in certain limited circumstances.

It is no surprise that the marital lifestyle is generally one of the most disputed issues in every matrimonial litigation. During trial, both parties testify at length with respect to each and every case information statement (CIS) that had been filed since the commencement of the litigation. The spouse that is the anticipated payor of alimony will, naturally, testify that the parties had a lower-middle class lifestyle during the course of the marriage. Conversely, the litigant that is the anticipated recipient of alimony will testify that the parties and their child(ren) led an upper class lifestyle

during the course of the marriage. By way of an example, the payee testifies (at times, ad nauseum) that the parties exclusively shopped at major department stores such as Neiman Marcus and Bloomingdales; purchased solely organic products at Whole Foods or Kings; exclusively vacationed at Four Seasons resorts approximately four to eight times per year; the children only attended private schools; and, the parties ate at expensive non-chain restaurants nearly every weekend.

### Is It Truly Necessary?

According to N.J.S.A. 2A:34-23(b), (the alimony statute), it is significant. The alimony statute asserts that 14 factors shall be considered when determining an award of spousal support. One of the factors that must be analyzed by the court is "[t]he standard of living established in the marriage or civil union and the likelihood that each party can maintain a reasonably comparable standard of living, with neither party having a greater entitlement to that standard of living than the other." N.J.S.A. 2A:34-23(b)(4) (emphasis added). Therefore, one would presume that a marital lifestyle analysis is, in fact, necessary in a contested divorce matter—especially if each party has polarized positions regarding the type of marital lifestyle that was led during the marriage.

In order to resolve this issue, a marital analysis should be performed by either one litigant or by a joint expert. As set forth above, bank statements are analyzed and receipts and disbursements are summarized over a certain time period. Computations of Schedule A (shelter), B (transportation), and C (personal), are conducted and formulated into a report. Adjustments

are made for omissions of certain expenditures and/or for non-recurring lifestyle expenditures. Occasionally, an analysis of all deposits and spending is provided in the report in the event income or cash-flow is an issue. And, ultimately, the report will compare the averaged marital lifestyle during the marriage to the proposed, averaged post-marital lifestyle for the payee. After *Lombardi v. Lombardi*, courts must consider regular savings during a long-term marriage in an alimony award, which is discussed more fully below. *Lombardi v. Lombardi*, 2016 N.J. Super. LEXIS 123.

### **Which Spouse Will Benefit from Its Preparation?**

Generally, the spouse that will benefit from the marital lifestyle analysis is the spouse that anticipates receiving alimony (payee). In the event the payor spouse disagrees with the payee spouse's expert's report, or the joint report, then he/she is entitled to retain his/her own expert in order to prepare a rebuttal report. The rebuttal report sets forth their independent analysis of the marital lifestyle and reaches a separate conclusion given the alleged errors and assumptions provided in the original report.

At the end of the day, litigants acquire lifestyle reports in order to be properly prepared for trial. Of course, the majority of matrimonial cases settle. However, for a small handful of litigants, it is their inevitable fate to proceed to trial. Accordingly, trial briefs and exhibits are prepared. Attorneys properly prepare and coach

their clients for their day on the witness stand, and each litigant is eager to present his/her version of the marital lifestyle and is overly hopeful that the court will take same into copious consideration.

It is well known that the court is required to "consider and assess evidence with respect to all relevant" factors and specify if it is determined that certain factors are more or less relevant than others. Unless the court finds otherwise, *no factor* shall carry more weight than any other factor. Nonetheless, the payee spouse remains confident that the court will diligently listen and carry more weight to the marital lifestyle factor more than any other factor delineated in N.J.S.A. 2A:34-23(b).

There are specific cases that absolutely mandate a marital lifestyle analysis be conducted. Cases such as *Lombardi*, wherein the parties disputed the amount of alimony to be awarded to wife. In *Lombardi*, the parties stipulated that they spent approximately \$22,900 per month in order to maintain their lifestyle, exclusive of gifts to the children and savings. The wife estimated that the parties saved approximately \$67,000 as husband's income ranged from \$1,087,000 to \$2,275,000 during the five years immediately preceding the filing of the complaint for divorce. Each party agreed that the husband's earnings allowed them to enjoy a comfortable, but not extravagant, lifestyle. The wife sought an alimony award in the amount of \$16,291 per month in order to support herself and the three children at a standard of living comparable to that

enjoyed during the marriage, and she also sought an additional \$30,000 per month for savings.

After considering the evidence, the court established a monthly alimony award in the amount of \$7,600 without including an amount of savings, even though the court found it was a component of the marital lifestyle. The trial judge determined that the wife required alimony to meet her needs at the marital standard of living, which the court characterized as "modest middle-class lifestyle." The wife appealed the trial court's decision and the appellate division reversed the wife's alimony award, holding that the trial court must give due consideration to evidence of regular savings adhered to by the parties during the marriage in its assessment of the marital lifestyle. As such, the wife's award of \$7,600 per month was overturned, and the trial court was to recalculate an appropriate award for her. Further, the trial court was specifically directed to consider the fact that the parties saved extensively during the marriage, and same was a crucial component in the parties' budget each month (as reflected on their respective CIS's.)

Ultimately, while a marital lifestyle analysis is essential when there is a substantial earning spouse, the parties will save considerably by simply completing their respective CIS's accurately and agreeing on their combined income and outgo. Otherwise, an expert must determine the appropriate and accurate spending of each spouse as well as any potential savings component. ■