

Do New Jersey Courts Have The Power To Restrain A Spouse From Accessing The Marital Residence If The Other Spouse Fears Contracting The Novel COVID-19?

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In the midst of this pandemic, exposing another person to [COVID-19](#) could very well be deadly. In a situation of divorcing cohabitants, this issue takes on great significance. So what does one spouse do when the other spouse has been or could have been exposed to or has COVID-19 and wants to continue to reside in the marital residence with the other party? What if the non-exposed spouse has existing health issues that places her/him at a greater risk of contracting the virus?

In New Jersey, a spouse could file an emergent application with the Court to restrain the exposed spouse from returning to the marital home. However, a Court might not grant such an application on the basis of conflicting affidavits that set forth opposing arguments. It may order a hearing before deciding to bar one owner from his/her own home. This type of hearing is known as a “Roberts” hearing, getting its name from Roberts v. Roberts, 106 N.J. Super. 108 (Ch. Div. 1969), in which case the wife sought to bar the husband from the marital home based upon physical extreme cruelty. The Court in Roberts would not decide the wife’s application on the basis of conflicting affidavits and ordered a hearing. Roberts hearings have been few and far between over the years, especially after the passage of the Prevention of Domestic Violence Act in New Jersey.

According to an article in the New York Post, a New York resident recently filed an application to prevent her (allegedly) alcoholic husband from returning to their apartment. She alleged that he had been in and out of rehabilitation centers since December and would require 24-hour nursing care from multiple health care providers. She further argued that she already has a serious lung disease and should not be placed at risk by her husband who could have been exposed to the COVID-19 on numerous occasions.

Does a Court grant this type of application with or without a hearing in New Jersey? A New Jersey Court must consider all relevant facts including the age and health of each party, the financial situation

of the parties, the factual circumstances of one spouse's exposure to the virus, and the risks to each party should the application be granted or denied. Each case is fact sensitive and must be adjudicated by a Court on the unique circumstances of each case.

If there is no pending matrimonial action, an urgent application for a restraining order would have to be made supported by a verified Complaint, which would also seek a divorce. If a divorce action is already pending, an Order to Show Cause can be filed seeking immediate relief based upon immediate and irreparable harm to the applicant if the request for restraints is not granted.