Parents Who Agreed to Emancipate Estranged Daughter Are Entitled To A Hearing After Trial Court "Unemancipates" And Requires College Contribution

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In 2017, the Appellate Division of New Jersey (Judge Lihotz) decided Ricci v. Ricci, No. A-1832-14T1 and A-2409-14T1. The second docket number relates to an intervenor (the parties' daughter), which makes the case quite interesting.

Mr. and Mrs. Ricci divorced when Caitlyn was four years of age. *Little did they know at that time that they would forever be "enshrined" in the New Jersey Superior Court Reporters*. Nevertheless, Caitlyn lived primarily with Mrs. Ricci during her childhood.

On to the interesting stuff...

Caitlyn graduated from high school in June 2012. Caitlyn, who apparently dealt with substance abuse issues and had problems with both parents, initially enrolled part-time in a community college (at her parents' behest). However, Caitlyn became further estranged from her parents and moved in with her grandparents in February 2013.

Mr. and Mrs. Ricci subsequently agreed that Caitlyn was "emancipated" and filed a consent order with the court to that effect.

Caitlyn moved to intervene in her parents' matrimonial case. The trial court granted her intervenor status and required Mr. and Mrs. Ricci to pay the tuition cost for Gloucester County Community College , which was less than $2,000. The court concluded — without a hearing — that Caitlyn was "unemancipated". A short time later, Caitlyn again sought college contribution for tuition and expenses at Temple University — Caitlyn again prevailed.

On appeal, the Appellate Division remanded the matter for a plenary hearing to determine, as a threshold issue, whether Caitlyn should be deemed "emancipated". If Caitlyn is not emancipated (or "unemancipated"), the trial court must then consider the factors set forth in Newburgh v. Arrigo, 88 N.J. 529, 543 (1982), where the Supreme Court of New Jersey held that "the privilege of parenthood carries with it the duty to assure a necessary education for children."

The case leaves me with a few comments and questions.

First, a comment. The issue of emancipation is a fact-sensitive one. Emancipation is the conclusion of the "fundamental dependent relationship" between parents and children. See Dolce v. Dolce, 383 N.J. Super. 11, 17 (App. Div. 2006). Emancipation does not necessarily occur at a particular age (although, there are statutory presumptions related to termination of child support). Newburgh, supra, 88 N.J. at 543. The proper emancipation analysis will evaluate "the prevailing circumstances including the child's need, interests, and independent resources, the family's reasonable expectations, and the parties' financial ability, among other things." Dolce, supra, 383 N.J. Super. at 18 (citing Newburgh, supra, 88 N.J. at 545).

Second, for reference, the Newburgh factors are:

(1) whether the parent, if still living with the child, would have contributed toward the costs of the requested higher education; (2) the effect of the background, values and goals of the parent on the reasonableness of the expectation of the child for higher education; (3) the amount of the contribution sought by the child for the cost of higher education; (4) the ability of the parent to pay that cost; (5) the relationship of the requested contribution to the kind of school or course of study sought by the child; (6) the financial resources of both parents; (7) the commitment to and aptitude of the child for the requested education; (8) the financial resources of the child, including assets owned individually or held in custodianship or trust; (9) the ability of the child to earn income during the school year or on vacation; (10) the availability of financial aid in the form of college grants and loans; (11) the child's relationship to the paying parent, including mutual affection and shared goals as well as responsiveness to parental advice and guidance; and (12) the relationship of the education requested to any prior training and to the overall long-range goals of the child.

Third, this cases raises an important question left unanswered by the Rachel Canning case***1***: when an estranged child sues her in-tact married parents for college education costs and support, how can a reviewing court justify creating a financial obligation on divorced or divorcing spouses, but decline to

create that obligation on an in-tact couple?

Would the United States Constitution or the New Jersey Constitution come into play at that point?

On what grounds should courts treat the children of in-tact parents differently than the children of divorced parents?

On the flip-side, why should divorced parents arguably have a different financial obligation for college than non-divorced spouses? What about the notion that "[t]he parental obligation to support children until they are emancipated is fundamental to a sound society." Kiken v. Kiken, 149 N.J. 441, 446 (1997).

What level of scrutiny would a court provide a classification based on marital status? Marital status clearly does not warrant strict scrutiny, right? Would the fundamental right attendant to parenting, see Moriarty v. Bradt, 177 N.J. 84, 101 (2003), cert. denied, 540 U.S. 1177 (2004)***2***, trump an application of Newburgh to an in-tact married couple? Would your answer be any different if the parents decided that they wanted their child to have "skin in the game" through student loans? Would the child then have a *parens patriae* argument if he or she could go to Princeton, but her parents made her attend the Gloucester Community College?