Seeking Injunctive Financial Relief in the Family Part: Eating (and Digesting) 'Crowe'

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"Order to Show Cause Denied. This application involves financial relief. *See Crowe v. De Gioia*, 90 N.J. 126 (1982). File a Motion in the ordinary course." Whether you have been on the winning or losing side of this type of decision, you have seen similar legal "reasoning." But, did you know that financial matters—or, more properly stated, the consequences that flow from financial matters—may be ripe for consideration under *Crowe*?

Most practitioners are aware that *Crowe* requires a party seeking injunctive relief to demonstrate by clear and convincing evidence that: (1) irreparable harm is likely if the relief is denied; (2) the applicable underlying law is well-settled; (3) the material facts are not substantially disputed and there exists a reasonable probability of ultimate success on the merits; and (4) the balance of the hardship to the parties favors the issuance of the requested relief. *Id.* at 132-34; *see also Brown v. City of Paterson*, 424 N.J. Super. 176, 183 (App. Div. 2012). Unfortunately, *Crowe* has turned into a legal reference used in rote fashion to dispose of any Order to Show Cause seeking financial relief, without regard for the factual underpinnings and legal reasoning undergirding the Supreme Court's decision. However, the "*Crowe* factors" can—and should—be used to address emergent financial issues in Family Part matters.

Blasphemous, you say, trial court judges routinely conclude that *Crowe* is reserved for matters that do *not* involve finances. Indeed, judges frequently cite *Crowe* in support of their denials—and they are often wrong. *Crowe* is, at its core, a palimony case involving financial relief. The Supreme Court's decision in *Crowe* stemmed from a movant's successful application in the Chancery Division for pendente lite support and to prevent eviction from her home—a home owned by her long-time romantic partner (Mr. De Gioia). *Crowe*, 90 N.J. at 129. Following the Chancery Division order, the

Appellate Division reversed and vacated the interim relief. *Crowe v. De Gioia*, 179 N.J. Super. 36 (App. Div. 1981). The Supreme Court granted leave to appeal; maintained the interim support order pending its decision; and, on the merits, reinstated temporary support pending final disposition in the Chancery Division. *Crowe*, 90 N.J. at 134-35. After reading *Crowe,* it becomes easy to discern why.

Ms. Crowe and her children had been supported by De Gioia for nearly 20 years. They had been living, rent-free, in a home owned by De Gioia. De Gioia, "a person of substantial means, would suffer relatively inconsequential expense if relief [had been] granted. By contrast, withholding support from Crowe would [have been] devastating." *Id.* at 134. In fact, she would have been rendered homeless and would have required "public assistance." *Id.* at 136. Of course, the ultimate issue—whether the unmarried Crowe could establish an enforceable promise—was properly left to the trial court; but, due to the severe, deleterious circumstances that Crowe faced in the absence of preliminary relief, the Supreme Court rightly preserved the "status quo" pending a plenary hearing.

Against that backdrop, why do trial court judges rely on *Crowe* to deny worthwhile applications? For example, an application to compel a contractually obligated, financially able parent to pay college tuition where, in the absence of payment, the child will be removed from school? Why do judges deny emergent applications where a financially able spouse has not paid support and the attendant effect of non-payment is: (i) that adequate funds are not available for groceries and to pay the utilities, including an internet bill (a needed "luxury" for home-schooling and work during COVID lockdowns); (ii) a home will fall into foreclosure, thus impacting a party's credit; or worse, (iii) the payee spouse faces eviction from her apartment. *These are real-world examples* denied under the cloak of *Crowe*'s purported unavailability simply because the relief sought is "financial" in nature.

Words matter in our profession; how those words are used in the overall scheme of a decision also matter. As noted in this article, *Crowe* provides: "a preliminary injunction should not issue except when necessary to prevent irreparable harm." *Crowe* also offers the following maxim: "[h]arm is generally considered irreparable in equity if it cannot be redressed adequately by monetary damages." *Id.* at 132-33. But, did you appreciate the use of the word "adequately" in that sentence? Have you read the next sentence from *Crowe*? "In certain circumstances, *severe personal inconvenience* can constitute irreparable injury justifying issuance of injunctive relief." *Ibid.* (Emphasis added). It follows, therefore,

that severe personal inconveniences may be within that category of relief that cannot be "adequately" addressed with a later award of damages.

It is clear from Crowe that courts must consider the consequences that will perforce result if the requested financial relief is denied. To an extent, nearly every emergent application for financial relief is premised upon an allegation of "personal inconvenience"; in turn, you must amplify how the absence of the requested financial relief in your case will immediately impact the moving party. This begs the question: what is a "severe personal inconvenience?" *Crowe*, of course, gives guidance on that score: basic essentials, such as food and shelter, are ripe for preliminary injunctive relief particularly where maintenance of things like the ability to buy food and shelter are merely preservation of the status quo. So, too, did the *Crowe* court require De Gioia to pay for Crowe's "necessary medical, dental and pharmaceutical bills." *Id.* at 136. In a different vein, in *Jones v. Hayman*, 418 N.J. Super. 291, 301 (App. Div. 2011), the court concluded that female inmates were suffering "beyond a severe personal inconvenience" after being "'deprived of psychiatric and medical care, [and] items of basic hygiene ....'" *Ibid.* (Internal citations omitted).

In addition, it does not follow from *Crowe* that injunctive relief to preserve assets should always be denied. For example, if the parties to a divorce are owners of a business that is subject to distribution, injunctive relief (in the form of a receiver, fiscal agent, or other restraints) may be appropriate. *Cf. Balsamides v. Protameen Chemicals*, 160 N.J. 352, 356 (1999) (providing shareholder with preliminary injunctive relief regarding governance and business operations including appointment of a director after fight "broke out" at the business). A court may also provide injunctive relief to restrain a party from disclosing trade secrets or confidential information; or from otherwise damaging the goodwill of a business, *cf. Sun Dial Corp. v. Rideout*, 16 N.J. 252 (1954). It would logically follow that this relief would be available to divorcing parties who own a business.

Crowe also provides guidance on the other end of the spectrum. In that regard, both the trial court and Supreme Court concluded that De Gioia did not have an obligation to provide an automobile for Crowe because it was "not essential[.]" *Crowe*, 90 N.J. at 136. In addition, both the Appellate Division and Supreme Court concluded that the trial court improperly restrained De Gioia's use of assets. *Ibid.* It bears noting that the holdings regarding the automobile and restraints on assets were fact-specific to

Crowe. But *cf. Camaraza v. Bellavia Buick Corp.*, 216 N.J. Super. 263, 267 (App. Div. 1987) (recognizing, as dicta in a negligence case, the "substantial personal inconvenience due to the lack of an automobile … [,]" which includes being "forced to walk to work or to take inconvenient public transportation.").

Here are a few helpful tips to get beyond a denial. First, although matrimonial attorneys often file applications for injunctive relief, many do not file an accompanying brief. Pursuant to Rule 4:52-2, a party seeking injunctive relief during the pendency of an action must follow the requirements of Rule 4:52-1. Subsection (c) of Rule 4:52-1 provides, in part: "Briefs shall be submitted in support of the application for an interlocutory injunction." Although Family Part judges may ignore this requirement, do not give the judge (or your adversary) a procedural ground upon which to deny your application.

Second, provide the court with a legal basis to grant injunctive relief. If you are seeking financial relief, emphasize the underlying basis of the Supreme Court's *Crowe* decision was an application for interim financial relief. If you are faced with business preservation issues, rely on the cases cited in this article as well as statutory guidance for appointment of receivers or special fiscal agents. Moreover, if you are merely seeking maintenance of the status quo—for example, the provision of necessities or living accommodations—you have a stronger argument. *Crowe*, 90 N.J. at 133.

Third, articulate the factual basis for the court upon which it can conclude that the injunctive relief sought is to preserve the status quo and/or avoid severe personal inconvenience. Clearly identify the harm your client will immediately suffer if the relief sought is denied, and why your client cannot wait for the "ordinary course." This is a fact-sensitive issue that will pivot on the facts in your case. For example, a stay-at-home parent who is deprived of access to *any* vehicle is a different circumstance than a stay-at-home parent who has access to the Range Rover, but not the Mercedes (in other words, do not be gluttonous).

Finally, do not view the phrase "status quo" in a mechanical way. You should view your application for injunctive relief different from, and with an eye toward, a motion for pendente lite financial support. The latter may include things like a savings component, tennis lessons, or vacation component, while the former—injunctive relief—is more circumscribed where financial relief is sought.

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