

A Look Ahead: The Future Impact of Recent Legislation

By Alyssa Engleberg, Kaitlyn Lapi, and Matheu Nunn

The filling of judicial vacancies and lifting of the moratorium on matrimonial trials are not the only changes we have experienced this year. In January 2024, New Jersey Gov. Phil Murphy signed a rash of bills into law, some of which will undoubtedly affect our practice as family law practitioners in the foreseeable future. For that reason, it is important to explore the legislation expected to have the most significant impact.

Death and Divorce

The abyss created by the *Carr*¹ black hole has seemingly been eradicated with the amendments to N.J.S.A. 3B:5-3(d), N.J.S.A. 3B:8-1, and N.J.S.A. 2A:34-23(h)(2). As to the latter, the added provision states:

[i]f a complaint not dismissed pursuant to R.4:6-2 of the Rules of Court has been filed for an action under paragraph (1) of this section, and (a) either party to the litigation dies prior to the entry of the final judgment, or (b) if the parties had and remained entered into a validly executed equitable distribution cut-off agreement, termination agreement, or marital settlement agreement where the underlying subject matter of the agreement is divorce, dissolution of civil union, termination of domestic partnership, or divorce from bed and board at the time of death of the decedent occurring prior to the entry of the final judgment, the court's authority to effectuate an equitable distribution of the property shall not abate. Pursuant to subparagraph (a)(3) of R.4:3-1 of the Rules of Court, all such matters shall be filed and heard in the Family Part of the Chancery Division of the Superior Court.²

In other words, the parties' divorce can continue, or commence if the parties entered into a cut-off agreement, termination agreement, or marital settlement agreement,

despite the death of one party prior to the entry of a final judgment of divorce. Interestingly, within mere days of Murphy passing this legislation, the amended statute was applied in the published case of *Roik v. Roik*.³

In *Roik*, the plaintiff filed a Complaint for Divorce and thereafter, the parties signed a Marital Settlement Agreement.⁴ Unfortunately, the plaintiff died before entry of the Final Judgment of Divorce and the trial judge found the MSA was unenforceable "because there was no way of discerning, by voir dire, the parties' mutual intent, and whether they knowingly and voluntarily entered their agreement."⁵ The Appellate Division highlighted public policy considerations in reversing the lower court decision and remanding with a directive "to grant the estate's request to substitute as the real party in interest and enter a judgment incorporating the MSA."⁶ Reviewing this aspect of the *Roik* decision leads to the inevitable conclusion that the result may have been the same regardless of the recent legislation. However, the Appellate Division continued its decision to explicitly address the applicability of the statute relating to cases in the pipeline, including the matter at hand.⁷ Specifically, it held the statute was intended to apply retroactively to cases pending prior to the effective date⁸ of the statute.⁹

Although the amended statutes may have closed the *Carr* "black hole," it is anticipated there may be other obstacles to navigate within this uncharted territory. By way of example, the difficulties of litigating a contentious divorce involving allegations of dissipation or the validity of a prenuptial agreement may prove exceptionally challenging when the other "party" is the executor of an estate. Furthermore, N.J.S.A. 2A:34-23(h)(2) only addresses equitable distribution and thus, it begs the question of whether the Family Court is authorized to simultaneously consider any unfulfilled "security" obligations for a potential alimony and/or child support obligation if the matter proceeds to a contested trial, or alternatively, whether those claims must still be pursued in the Probate part.¹⁰

In sum, we expect that *Roik* is the first of many cases to address issues in this context.

Coercive Control and Domestic Violence

A client's portrayal of their spouse or significant other as a "controlling narcissist" has become commonplace in our practice. Unfortunately, the victimized spouse in these situations often feels powerless to escape while abusers are routinely emboldened due to flaws in the justice system. In recent years, however, there has been widespread awareness and consequently, amplified efforts to codify this form of silent abuse—ultimately, resulting in the passage of groundbreaking amendments to N.J.S.A. 2C:25-29.

Before delving into these amendments, it is important to briefly explore the relatively short legislative history leading to this overhaul. A keyword search of "coercive control" of the legislative sessions, commencing within the 2000-2001 session and beyond, does not yield a singular result until the 2020-2021 legislative session. Specifically, on Dec. 6, 2021, legislation was first introduced in the Assembly to include "coercive control" within the definition of domestic violence.¹¹ As such, this would allow a party to obtain a restraining order on the basis of "coercive control." Upon commencement of the 2022-2023 legislative session, this identical legislation was immediately re-introduced within the Assembly on Jan. 11, 2022, and thereafter, introduced to the Senate on Feb. 28, 2022.¹² The legislation subsequently made its way through several subcommittees¹³ but came out the other side with a complete makeover.

In the final version of this bill passed by the Assembly and Senate, coercive control was completely removed from the definition of domestic violence and instead, relocated to N.J.S.A. 2C:25-29. Thereby, when determining the necessity of a restraining order, i.e. the second prong of the *Silver*¹⁴ analysis, the Court shall now consider:

Any pattern of coercive control against a person that in purpose or effect unreasonably interferes with, threatens, or exploits a person's liberty, freedom, bodily integrity, or human rights with the court specifically considering evidence of the need for protection from immediate danger or the prevention of further abuse. If the court finds that one or more factors of coercive control are more or less relevant than others, the court shall make specific written

findings of fact and conclusions of law on the reasons why the court reached that conclusion. Coercive control may include, but shall not be limited to:

- (a) isolating the person from friends, relatives, transportation, medical care, or other source of support;
- (b) depriving the person of basic necessities;
- (c) monitoring the person's movements, communications, daily behavior, finances, economic resources, or access to services;
- (d) compelling the person by force, threat, or intimidation, including, but not limited to, threats based on actual or suspected immigration status;
- (e) threatening to make or making baseless reports to the police, courts, the Division of Child Protection and Permanency (DCPP) within the Department of Children and Families, the Board of Social Services, Immigration and Customs Enforcement (ICE), or other parties;
- (f) threatening to harm or kill the individual's relative or pet;
- (g) threatening to deny or interfere with an individual's custody or parenting time, other than through enforcement of a valid custody arrangement or court order pursuant to current law including, but not limited to, an order issued pursuant to title 9 of the revised statutes; or
- (h) any other factors or circumstances that the court deems relevant or material.

Notably, however, it appears there remain ongoing efforts to incorporate "coercive control" within the definition of domestic violence. On Jan. 9, 2024, merely one day after Murphy signed the above legislation into law, another bill was introduced in the Assembly for this identical amendment.¹⁵ While it does not appear there is much traction or widespread support to expand the definition of domestic violence at this time, the court's interpretation and application of this concept may ultimately yield additional legislation on this topic.

Expanding Protection to an Unborn Child in Restraining Orders

In the landmark decision of *B.C. v. T.G.*, the court was faced with a dilemma in deciding whether a pregnant woman's unborn child could be included

as a protected party under New Jersey's Prevention of Domestic Violence Act when she was the victim of assault.¹⁶ In recognizing a "fetus" is not a "person" under New Jersey law, the court creatively included an "advance protection provision in plaintiff's restraining order, expressly providing that plaintiff's unborn child shall, upon birth, be automatically deemed an additional protected person unless or until further order."¹⁷ Not surprisingly, this holding prompted legislative action to codify these protections.

Specifically, amendments to N.J.S.A. 2C:25-26, N.J.S.A. 2C:25-27, and N.J.S.A. 2C:25-29, provide that if a plaintiff is pregnant and requests protections for the unborn child, the court may include the child as part of the temporary or final restraining order following birth. Thus, a postpartum plaintiff will not be left vulnerable or required to return to court commensurate with the child's birth.¹⁸ In that regard, however, it seems these safeguards only apply if the plaintiff is pregnant and, in all candor, that relief may not go far enough. For instance, assume plaintiff is male, has two minor children, and his

new girlfriend is pregnant when he obtains a restraining order against his ex-girlfriend for stalking him. While he can likely include his new girlfriend and minor children as protected parties, is he required to immediately return to court following the birth of his newborn child to add them onto the restraining order?

Conclusion

In sum, the recently passed legislation was certainly necessary to resolve longstanding issues and recognize newer, evolving concepts impacting our society. It will be interesting to see whether these amendments serve their intended purposes or as often happens, cause disparate results and/or create additional issues, which must ultimately be addressed through *further* legislation. ■

Alyssa Engleberg is a partner and Kaitlyn Lapi is an associate at Hagan, Klein, & Weisberg, LLC, a firm dedicated solely to the practice of matrimonial law. Matheu D. Nunn is a partner at Einhorn, Barbarito, Frost & Botwinick, P.C., where he chairs the family law and appellate practices.

Endnotes

1. *Carr v. Carr*, 120 N.J. 336 (1990).
2. N.J.S.A. 2A:34-23(h)(2).
3. *Roik v. Roik*, ___ N.J. Super. ____ (App. Div. 2024).
4. ⁴ *Id.* (slip op. at 3-4).
5. ⁵ *Id.* (slip op. at 6, 9).
6. ⁶ *Id.* (slip op. at 17).
7. ⁷ *Id.* (slip op. at 18).
8. ⁸ The amended statutes were effective "immediately." *Id.* (slip op. at 19).
9. ⁹ *Id.* (slip op. at 22-23).
10. *See Woytas v. Greenwood Tree Experts, Inc.*, 237 N.J. 501, 505 (2019).
11. Assembly No. 6128, State of New Jersey, 219th Legislature (Dec. 6, 2021).
12. Assembly No. 1475, State of New Jersey, 220th Legislature (Jan. 11, 2022); Senate No. 1809, State of New Jersey, 220th Legislature (Feb. 28, 2022).
13. Assembly Judiciary Committee, Assembly Law and Public Safety Committee, Assembly Appropriations Committee, and Senate Judiciary Committee.
14. *Silver v. Silver*, 387 N.J. Super. 112 (App. Div. 2006).
15. Assembly No. 1516, State of New Jersey, 221st Legislature (Jan. 9, 2024).
16. *B.C. v. T.G.*, 430 N.J. Super. 455, 457-58 (Ch. Div. 2013).
17. *Id.* at 462, 468.
18. *See Id.* at 467 (recognizing that "a new parent may be either unable or unwilling to immediately return to domestic violence court immediately following childbirth, for various reasons, including but not limited to (a) need for rest and recovery from difficult labor, (b) medical complications for mother or child following delivery, and/or (c) an innate desire to physically be with the baby and personally focus on the newborn's needs, rather than either carrying the baby to the courthouse or leaving the infant in someone else's care.").