DATE **NAME OF CASE (DOCKET NUMBER)**

8-10-20 SYNCHRONY BANK v. APRIL DANIELS (DC-004705-16)

A levy was placed on a bank account belonging to defendant judgment-debtor. Defendant objected to the levy on the grounds that the only money in the account was from the part of defendant's wages that were exempt from a wage garnishment. The question presented is whether a levy can be made on money deposited in a bank account from wages that were previously subject to garnishment. Based on the applicable statutes, the court found that previously garnished wages deposited in a bank account does not exempt the money from levy.

6-25-20 LAKEWOOD MEMORIAL PARK ASSOCIATION v. BURLINGTON COUNTY CONSTRUCTION BOARD OF APPEALS, ET AL. (L-003629-19)

Lakeview Memorial Park Association v. Burlington County Construction Board of Appeals involves a novel question of whether the New Jersey Cemetery Act, N.J.S.A. 45:27-1 to -41, preempts local municipal regulation in accordance with the Municipal Land Use Law, N.J.S.A. 40:55D-1 to -63. Specifically, this opinion examines the interplay between the two statutory schemes to determine whether the local municipality has the power to require zoning permits pursuant to local ordinances for mausoleum construction where the Department of Community Affairs has already approved the site plans for the construction in accordance with N.J.S.A. 45:27-27(b). The Supreme Court's only decision related to this matter, Trinity Cemetery Association v. Township of Wall, only speaks to municipal regulation of cemeteries in the Court's concurrences, authored separately by Justice Zazzali and Justice Verniero, and does not speak directly to whether the Cemetery Act preempts municipal regulation pursuant to the MLUL. See 170 N.J. 39 (2001).

In reviewing this question, this opinion finds that the Legislature empowered the local municipalities, pursuant to the MLUL, to enact ordinances to regulate the use and development of land. As part of the regulation of land use and development, a municipality may require site plan approval to oversee the effect of the development on the public health and safety. The municipality's power to regulate as such is not preempted by the DCA's power to approve site plans for construction pursuant to the Cemetery Act. Therefore, the plaintiff-cemetery in this matter was required to follow municipal regulations and obtain the requisite zoning permits and site plan approval before beginning its mausoleum expansion project.

6-9-20 C.N. v. S.R. (FD-13-0928-19)

This non-dissolution case addresses whether partition of a residence remains an equitable remedy among unmarried, cohabitating intimates engaged in a joint venture following 2010 amendments to the Statute of Frauds – a question of first impression.

In 2010, the Statute of Frauds was amended to extend its writing requirement to any "promise by one party to a non-marital personal relationship to provide support or other consideration for the other party." N.J.S.A. 25:1-5(h). Although the amendment clearly made unwritten palimony agreements unenforceable, no published opinion has yet addressed whether, in the absence of a writing, the equitable remedy of partition among unmarried, cohabitating intimates survived.

Here, although the deed and mortgage to the home were in S.R.'s name only, C.N. was heavily involved in the home's purchase by, among other things: communicating with the realtor; providing $10,000 of the $15,000 down payment; being solely responsible for the inspection; negotiating a $10,000 seller's concession; and being a named insured. Once in the home, although S.R. largely paid the monthly mortgage, C.N. was responsible for the majority of the home's upkeep costs, such as gas, electric, water, sewer, security, landscaping services, garbage, and pest control. He oversaw contractors. He purchased furniture. And, he worked with a lawyer to appeal a tax assessment.

After reviewing pre-amendment precedent, the plain text of the statutory amendment that used palimony language from a precedential Appellate Division opinion, and the legislative history undergirding enactment of N.J.S.A. 25:1-5(h) – legislative history that expressly discussed palimony caselaw, yet was silent as to partition – the court holds that, in the absence of a writing, partition of a residence remains an equitable remedy among unmarried, cohabitating intimates engaged in a joint venture.

6-9-20 RAQUEL S. FERRER v. DENNIS COLON (FD-07-2392-07)

This matter was before the court on applications filed by both parties seeking relief concerning child support and custody. In its written opinion, the court addressed the issue of whether, for purposes of calculating child support, the court may find a parent to be underemployed, and impute to that parent income based on available overtime, where the available overtime is greater than the amount of overtime the parent had worked in the past.

The court held that a parent was not "voluntarily underemployed" for not working all available overtime, without regard to past practices. The court held that for purposes of calculating child support, the parent's income is his or her salary plus an additional amount based on past earnings from overtime and second jobs.

5-15-20 STATE OF NEW JERSEY V. A.R. INDICTMENT NOS. 00-09-1483 AND 01-02-0229(CONSOLIDATED) (00-09-1483/01-02-0229)

This case presents the question of whether petitioner A.R.'s convictions fall within the "crime-spree" exception contained within N.J.S.A. 2C:52-2(a), making them eligible for expungement. Specifically, the granting or denying of petitioner's expungement petition turns on the phrase: "crimes [which are] interdependent or closely related in circumstances and were committed as part of a sequence of events that took place within a comparatively short period of time." N.J.S.A. 2C:52-2(a). Petitioner and the State concede that this phrase is undefined in the statute, yet offer competing interpretations. The State proposes a strict interpretation of this language, whereas petitioner asserts that the expungement statute – as remedial legislation – should be liberally interpreted. This court concludes that a liberal interpretation of this language is consistent with the general purpose of the expungement statute. Petitioner's convictions are "closely related in circumstances" because they stem from two instances where he engaged in the unlawful sale of narcotics to a "friend" and an undercover officer, and were committed over a period of six weeks, which is a "comparatively short period of time." Therefore, petitioner's convictions are eligible for expungement pursuant to N.J.S.A. 2C:52-2(a).

5-7-20 S.C. V. J.D. (FV-13-1110-19)

This domestic violence case concerns the breadth of "household member" jurisdiction in the context of a modern, blended-family where the parties are adult, half-siblings who shared meaningful, regular parenting time with their common father during their youth – though never resided together. Throughout their youth, the parties regularly and consistently spent substantial periods of time at their common father's home, including the defendant spending overnights every other weekend during the school year and more extended times during the summer at their father's home. Although he did not have a bedroom, he had a fixed sleeping arrangement and drawers containing underwear, gym shorts, and toiletries. During and after college, their in-person contact decreased, but they still gathered informally and at family milestones and vacations.

In view of those facts, for purposes of the Prevention of Domestic Violence Act's ("PDVA") jurisdictional "household member" requirement, the court holds that a child whose parents are separated during youth but who spends meaningful, regular periods of time at a parent of alternate residence's home such that he or she is substantially integrated into that household may have two "households" creating jurisdiction vis-à-vis a victimized half-sibling who resided solely with the common parent. "Household member" as used in the PDVA's definition of "victim of domestic violence" must be sufficiently flexible to accommodate the ever-changing dynamics of modern families. To restrict a child whose parents are separated to only one household despite meaningful, regular time in a second household would untenably alter the statutory construct, discriminate against members of blended families, and unduly restrict the broadly designed, legislatively crafted protections afforded victims of domestic violence.

3-16-20 S.K. VS. P.D. (FD-07-0775-08)

This matter was before the court on defendant's application to disestablish paternity, terminate child support, and vacate child support arrears. After genetic testing confirmed that defendant was not the child's biological father, the court granted those parts of the application seeking to disestablish paternity and terminate ongoing support.

The court denied that part of defendant's application seeking to vacate arrears. In particular, the court rejected defendant's argument that the arrears could be vacated on equitable principles.

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2-27-20 UTS BECHMAN, LLC V. LIZA WOODARD (LT-17399-19)

This case addresses the question of whether a residential landlord's failure to comply in all respects with N.J.S.A. 2A:50-70 (a tenant protection measure within the New Jersey Foreclosure Fairness Act, N.J.S.A. 2A:50-69 to -71) precludes the landlord's right to evict a tenant for non-payment of rent when the tenant's defense is that the rent has been paid to the former landlord because the tenant was unaware of the existence of the new landlord. The court answered the question in the affirmative.

2-27-20 STATE OF NEW JERSEY V. LEONARDO MARTINEZ GOLLES (INDICTMENT NO.17-09-1231)

In February 2017, defendant was charged with the crime of possession with intent to distribute marijuana in a quantity greater than twenty-five pounds and was released on home arrest with electronic monitoring (PML3+EM). On December 17, 2018, defendant entered a guilty plea to count one of the indictment, as amended to a second-degree offense. In consideration for the guilty plea, the State agreed to recommend a maximum sentence of a five-year state prison term. Defendant requested an extended sentencing date to "put his life in order" before commencing the custodial term. The court set April 5, 2019, as the sentence date and, in its discretion, continued defendant on pretrial release.

Defendant retained new counsel and on June 10, 2019, present counsel for defendant filed a motion to withdraw the guilty plea, requesting that the sentence be adjourned and that he continue free on pretrial release, pending the return of the motion. Defendant argued that pursuant to the Criminal Justice Reform Act (CJR), N.J.S.A. 2A:162-15 to -26, he was entitled to remain on release until sentencing or the resolution of the motion to vacate the plea. The court denied the request to remain free, holding that CJR did not vest defendant with any substantive or procedural grounds to remain free on pretrial release after entering a plea of guilty. Instead, in its discretion, the court remanded defendant pending same.

The matter presents the novel issue as to whether a defendant is entitled to continue pretrial release pursuant to CJR.

1-30-20 JERSEY CITY REDEVELOPMENT AGENCY V. RJ WOODWARD, LLC (L-005231-17)

This application raises a novel question concerning whether an error made by condemnation commissioners should negatively impact the right of the defendant property owner to file an appeal of the commissioners' award. More specifically, if the commissioners' award is filed without the statutorily required oath, does the time limit to appeal the award start to run when the award is filed or when the oath is subsequently filed? The court also considered whether good cause exists to extend the time to file the appeal. In a case of first impression, the court held that the report was not considered "filed" until the oath was filed; thus, the appeal was timely as it was filed within forty-five days of the filing of the commissioners' oath.

1-8-20 JOHN DOE 1 v. ARCHDIOCESE OF PHILADELPHIA, AND ST. CHARLES BORROMEO SEMINARY (L-000950-16)

Plaintiff, John Doe, initiated this tort action in New Jersey against the Archdiocese of Philadelphia and St. Charles Borromeo Seminary (hereinafter "Archdiocese defendants"). The Archdiocese defendants filed a motion to dismiss plaintiff's complaint raising the defenses of lack of personal jurisdiction, statute of limitations and forum non conveniens. The motion was initially denied and a plenary hearing on the issue of the statute of limitations was scheduled; however, that hearing was adjourned nearly one year as the court permitted an additional period of discovery. The Archdiocese defendants subsequently renewed their prior motion seeking a decision as to whether Pennsylvania or New Jersey law applies. The choice-of-law question raised in the motion is particularly important because under Pennsylvania law, plaintiff's mental state cannot toll the statute of limitations. After oral argument, the court determined it would not violate the Archdiocese defendants' due process rights to subject them to in personam long-arm jurisdiction of the courts of New Jersey. Additionally, the court conducted a forum non conveniens analysis, and found New Jersey to be an appropriate forum for this action. The court next must determine if New Jersey's statute of limitations precludes further adjudication of this claim. A plenary hearing, pursuant to Lopez v. Swyer, 62 N.J. 267 (1973), will be scheduled.

10-21-19 DAVID M. NAMEROW, M.D. v. PEDIATRICARE ASSOCIATES, LLC, SCOTT ZUCKER, M.D., JEFFREY M. BIENSTOCK, M.D., AND MELISSA CHISM, M.D. (C-000273-17)

Defendants filed a motion for partial summary judgment to which plaintiff responded with a cross-motion for partial summary judgment. On January 1, 2000, the parties entered into an Operating Agreement in order to form the limited liability company, PediatriCare. Subsequently, on March 12, 2001, the parties executed an amended and restated Operating Agreement, which was the operative document governing the relationship. In January 2016, plaintiff announced his intention to retire, which triggered Section 10 of the Operating Agreement. Section 10 provided the process for calculating the retirement purchase price, which required a net worth valuation methodology, in order to determine a value for a negotiated buyout price of plaintiff. However, various calculations of fair market valuation were done in order to effectuate a settlement as to a voluntary buy-out number, which the parties agree was never reached

Defendants then sought to invoke the net worth valuation of Section 10 of the Operating Agreement. Plaintiff argued that over a sixteen-year period, the Operating Agreement was modified to use the fair market value as opposed to a net worth valuation, based on the parties' conduct over this time period. Defendants argue that the Operating Agreement is clear in its express provision concerning how to calculate the buyout price. Moreover, defendants note that the Operating Agreement also unambiguously states that it may be modified only through a vote of 80% of the membership interests in the company, and not through the course of conduct that plaintiff contends. The court found, upon reviewing the plain language of the Operating Agreement, and upon a lack of evidence that it was changed by the remaining members, that the net worth valuation methodology remained a part of the Operating Agreement and was the correct method for a retirement purchase price.

In addition, plaintiff suffered no oppression since the economic loss doctrine bars recovery when entitlement flows from the Operating Agreement. There was also no breach of fiduciary duty when the members acted in conformity with the provisions of the Operating Agreement. The court ultimately granted in part, and denied in part, defendants' motion for partial summary judgment. As such, the court dismissed Counts I, II, and III of plaintiff's second amended complaint.

9-19-19 CLEMENTINE BATA V. GEORGE KONAN (FD-07-00767-19)

This matter comes before the court on plaintiff's application and defendant's counterclaim. In her application, plaintiff seeks, among other things, an initial custody determination concerning the parties' minor child. In his counterclaim, defendant opposes plaintiff's application and contests jurisdiction. Plaintiff, the child's natural mother, resides in New Jersey. Defendant, the child's natural father, resides in New York.

9-19-19 STATE OF NEW JERSEY V. TYRELL JOHNSON (L-000797-19)

On March 7, 2018, J.T. (hereinafter "J.T."),1 a senior at LEAP Academy University Charter School in Camden, New Jersey (hereinafter "LEAP Academy"), received an Instagram message from defendant, a middle school guidance counselor at the same school. That message asked J.T. to "[s]how me them huge rockets of your [sic] . . . ." Defendant was subsequently charged and indicted with third-degree endangering the welfare of a child under N.J.S.A. 2C:24-4(a)(1).

9-11-19 IN THE MATTER OF THE EXPUNGEMENT OF J.S. (12-06-00713)

This case presents an issue of first impression: whether an out of state conviction for an offense classified as a crime in a foreign jurisdiction acts as a bar to the expungement petition of a successful graduate from the drug court program, when that same offense is classified as a motor vehicle offense in New Jersey? During his term on special probation, the petitioner was arrested in Philadelphia, Pennsylvania and charged with driving under the influence. J.S. was convicted of this charge on January 3, 2017. Under Pennsylvania law, this DUI charge is graded as a misdemeanor level crime. The Prosecutor opposed this petition for expungement on the basis that petitioner had been charged and convicted of a crime in the Commonwealth of Pennsylvania while a participant in the drug court program.

The court found that the Pennsylvania DUI conviction is not a statutory bar to this drug court graduate's expungement because: (1) there exists a strong presumption towards expungement; (2) petitioner completed the drug court's rigorous monitoring program, and; (3) such an offense, under the laws of the State of New Jersey, does not constitute a crime, disorderly persons or petty disorderly persons offense.