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

8-18-22 KRATOVIL V. ANGELSON AND RUTGERS (L-1254-18)

Based on a close analysis of the statutory language and legislative history, the trial court held that the New Jersey First Act, N.J.S.A. 52:14-7, did not apply to unpaid volunteers serving on government boards. Specifically, the court found that four volunteer members of the Rutgers University Board of Governors who lived outside the State of New Jersey were not subject to the Act and thus would not be removed from the Board based on their out-of-state residence as sought by plaintiff.

In the alternative, the court found that if the New Jersey First Act were applied to volunteer members of the Rutgers Board of Governors residing outside of New Jersey, such an application of the Act would violate the Contract Clauses of the United States and New Jersey Constitutions as being inconsistent with the Rutgers Charter, which requires University consent before legislative changes to the governance of the University are enacted.

8-17-22 IMO THE ESTATE OF F.W.K., JR., ET AL. V. M.A.-V. (L-2625-21)

Plaintiff Estate brought a preemptive action seeking to enjoin defendant, M.A.-V., from filing a sexual abuse complaint using decedent's actual name rather than initials. Defendant had provided to the Estate's executors a copy of a proposed complaint that contained specific allegations of sexual abuse alleged to have been committed by decedent against defendant in 1988, when defendant was thirteen years old. Plaintiff argued the statute governing Actions for Sexual Abuse, N.J.S.A. 2A:61B-1, section (f)(1), was intended to protect confidentiality of alleged perpetrators as well as victims. To obtain the injunction plaintiff would have to satisfy the four-part test of Crowe v. De Gioia , 90 N.J. 126 (1992). The court held plaintiff could not satisfy the second prong, that "the legal rights underlying plaintiff's claim are well-settled." The court ruled the issue of whether the Sexual Abuse statute afforded a sexual abuse defendant the right to demand confidentiality had been decided in T.S.R. v. J.C., 288 N.J. Super. 48, 53 (App. Div. 1996) ("[T]he statute grants only the plaintiff-victim the option of refusing to disclose identifying information.").

8-5-22 IN THE MATTER OF THE CIVIL COMMITMENT OF G.C. (MECC-0368-21)

A psychiatric hospital can involuntarily hold a patient for up to twenty-four hours for screening and up to an additional seventy-two hours to make an emergent application to the court to continue involuntary psychiatric commitment. The issue raised here is when the law starts counting the time. To decide the issue the court had to address the role of the County Adjuster and the Public Defender. These are new issues.

This opinion addresses the legal framework as to how to work through the issues and decide whether to issue an order for involuntary commitment. In this case, the court decided that admission to a hospital was not the same as being held involuntarily and that the procedures followed by the hospital were proper. So, the involuntary commitment was granted.

7-19-22 STATE OF NEW JERSEY V. HINDRAJ L. BALANI (MA-13-2019)

The municipal court found the defendant guilty of violating N.J.A.C. 5:23-2.32(a), a regulation enacted under the Uniform Construction Code Act that prohibits unsafe structures. The municipal court then ordered his building demolished. The defendant appealed to the Law Division, which on de novo review found that the municipal court lacked the authority to order the building's demolition. The Law Division then dismissed the complaint after finding that the municipality failed to follow the procedures that would have allowed the municipal court to impose a fine.

7-11-22 RAVENSCROFT HOMEOWNERS ASSOCIATION, INC., V. GALINA DERROISNE, ET AL. (DC-002519-20)

Plaintiff moved to accept service by mail as good service in a Special Civil Part case based on electronic tracking information. The markings on the mail piece did not indicate good service. The court found that the law requires reference to the mail piece over the electronic tracking information and denied the motion.

7-11-22 YONY LIRIANO, JR. V. LIBERTY MUTUAL INSURANCE COMPANY (L-5379-20)

In Liriano v. Liberty Mutual insurance Company, (Docket Essex L-5379-20), the court found that the plaintiff was barred by the entire controversy doctrine from asserting a claim for underinsured motorist coverage. Plaintiff had previously brought a lawsuit in another county naming the same defendant and based on the same accident and the same policy of insurance. In the earlier suit, which resulted in entry of a final judgment, plaintiff had made a claim for uninsured motorist coverage. Plaintiff had become aware during the pendency of the earlier suit that the tortfeasor was underinsured, not uninsured.

The court found in the circumstances of this case, that there were no genuine issues of material fact, and that defendant was entitled to judgment as a matter of law, dismissing plaintiff's complaint.

6-29-22 M.K. v. T.K. (FM-13-0477-16)

This matter concerns the right of a foreign country to modify a child support order entered in New York and subsequently registered in New Jersey. The parties, who had three children together, were divorced in New York in 2011. At the time, they entered into a marital settlement agreement which required Plaintiff to pay Defendant child support in the amount of $1,700 per month. Defendant and the children moved to New Jersey in 2012 and the parties later consented to the registration of the foreign divorce in New Jersey. Defendant and the children have lived in New Jersey continuously since that time. Plaintiff was deported to Ireland in 2014. While there, the Probation Division commenced proceedings for the international enforcement of Plaintiff's child support obligation. In response to this enforcement action, Ireland entered an order reducing Plaintiff's child support obligation. Plaintiff eventually returned to the United States. Defendant sought to enforce the original child support obligation and argued that Plaintiff owed her the balance between what he was required to pay under the original support order and what he actually paid pursuant to the Ireland order. Conversely, Plaintiff argued that the Ireland order was binding, his future support obligation should be the amount established by the Ireland court and he did not owe Defendant any arrears.

The court first determined which treaty governing the international enforcement of child support orders applied: The United Nations Convention on the Recovery Abroad of Maintenance, New York, 1956 (1956 UN Convention) or The Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Hague Convention). The court concluded that the Ireland court inappropriately applied the 1956 UN Convention, because the United States was never a signatory to this treaty. The court then determined that it was the Hague Convention that was binding on the two nations, since both Ireland and the United States were signatories to that treaty at the time the Ireland order was entered. The Court next analyzed the provisions of the Hague Convention and its implementing legislation, the Uniform Interstate Family Support Act (UIFSA), to ascertain those circumstances where a receiving country may modify a support order. It concluded that Ireland did not have the authority to modify the support order in this case, where Defendant and the children have lived in New Jersey since 2012. The court further concluded that, under UIFSA, the original child support order is the "controlling order" since Defendant and the children continuously resided in New Jersey,

making New Jersey the children's "home state" and because both parties consented to jurisdiction in New Jersey, even when Plaintiff was residing in Ireland. Accordingly, the court held that Ireland did not have the authority to modify the original child support order and that Plaintiff owed the amounts that had accrued since the Ireland order was entered.

6-23-22 K.A. v. F.A (FM-13-0901-13)

This post-judgment dissolution case concerns a question of first impression: may a child support obligation be modified retroactively prior to the date of application where the substantial, permanent change in circumstances is an adult adoption that terminated the obligor's parental rights.

The parties are divorced and share three children. For the relevant time period, the child support obligation was allocated for the oldest child, but unallocated for the two other children. In 2018 – after their respective eighteenth birthdays – the two oldest children were adopted by their stepfather. Although the parties agree that the adoptions qualify as a change in circumstances warranting a modification to child support for the third child, they dispute whether the modification can be retroactive to the date of the adoption, as opposed to the date of application.

N.J.S.A. 2A:17-56.23a generally prohibits retroactive modifications of child support prior to the date of application. Caselaw, however, established limited exceptions to the statute's general prohibition, including emancipation. The limited emancipation exception is based on the underlying premise that on emancipation, any duty of support is extinguished.

Based on the similarities between emancipation and adult adoption, most noteworthy being that by requesting an adult adoption the child has removed him- or herself from the parental sphere of influence thereby extinguishing any duty of support, the court holds that N.J.S.A. 2A:17-56.23a does not bar termination or modification of child support retroactive to the date of the supported child's adult adoption.

2-25-22 IN THE MATTER OF THE ADOPTION OF W.S. (FA-01-0058-16)

In this adoption matter, the court examined whether a minor child, W.S., who was born in Mexico, is considered a "habitual resident" of the United States at the time of her adoption in order to comply with the Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption (Hague Adoption Convention). Petitioner, S.S., sought to amend a Final Judgment of Adoption that was entered on December 21, 2016, to reflect that the adoption of W.S. was in compliance with the Hague Adoption Convention which will resolve W.S.'s immigration status and allow W.S. to return to the United States.

The court's opinion highlighted the Supreme Court of the United States decision in Monasky v. Taglieri, 140 S. Ct. 719 (2020), which directly addressed the definition of "habitual residence" under the Hague Adoption Convention. In accordance with the new guidance set forth in the Monasky decision, the court concluded that W.S. was a "habitual resident" of the United States, not Mexico, at the time of her adoption on December 21, 2016, and held that the adoption complied with the requirements of the Hague Adoption Convention.

2-18-22 IN THE MATTER OF THE ADOPTION OF A CHILD BY G.A.S. (FA-01-0020-21)

In this opinion, the court examined the newly enacted legislative changes in the Legal Parentage Act, N.J.S.A. 9:17-69 to -71, which created a streamlined process for same-sex couples to obtain a co-parent adoption. Petitioners G.A.S. and M.A.S., a same-sex couple, sought a Judgment of Adoption pursuant to the streamlined procedures under the Legal Parentage Act and for the Atlantic County Surrogate's Court to process the family's adoption complaint without requiring background checks and a home study. The court's opinion highlighted the New Jersey Supreme Court's Order issued on May 26, 2020, and the Notice to the Bar issued on June 4, 2020, by the Administrative Office of the Courts, which outlined the streamlined process of establishing the legal parentage of a non-biological parent under the new statute. The Court concluded that Petitioners satisfied all three requirements under N.J.S.A. 9:17-71(b), and the court entered a Judgment of Adoption.

2-15-22 J.R. V. A.R. (FD-13-0728-20)

This non-dissolution case concerns a question of first impression in New Jersey regarding a threshold inquiry to the application of the Hague Convention on the Civil Aspects of International Child Abduction ("Convention"). Specifically, this case addresses whether accession by the child's country of habitual residence mandates application of the Convention where the United States has not yet accepted that accession.

In early 2020, A.R. and the child left the Philippines—the child's country of habitual residence—for the United States. J.R. filed an application seeking the child's return pursuant to the Convention. Although the United States' status as a Contracting State to the Convention was patent, the Philippines did not accede to the Convention until March 2016. The United States has not accepted that accession.

Articles 35 and 38 of the Convention collectively provide that for a non-Contracting State that accedes to the Convention, such "accession will have effect only" where the other country has "declared their acceptance of the accession."

Based on the clear, express, and unambiguous language of Articles 35 and 38, analogous federal and state precedent, and scholarly consensus, the court holds that where the United States has not accepted another country's accession to the Convention in accordance with Articles 35 and 38, the court lacks jurisdiction to enforce the Convention's prompt return protocols.

On January 24, 2020, defendant ordered a floral arrangement that was to be delivered to his former girlfriend on February 13, 2020. One week after the order was placed, a temporary restraining order (TRO) was entered against defendant, prohibiting him from having contact with his former girlfriend. Defendant made no effort to cancel the delivery, which did not occur until after the entry and service of the TRO on defendant. Defendant was charged with contempt for violation of a TRO entered pursuant to the Prevention of Domestic Violence Act.

Following trial, it was determined that the State was not able to satisfy its burden of proving beyond a reasonable doubt that defendant "purposely or knowingly" violated the TRO, and the complaint was dismissed. Since the TRO had not yet been entered at the time the defendant ordered the flowers, he could not have possessed the requisite mental state for a finding of contempt.

Similarly, the argument that defendant had an affirmative obligation to recall the communication initiated prior to his having been served with the TRO was rejected, because the TRO provided no notice of any such requirement.

Defendant filed a Motion for Release Due to Illness or Infirmity under Rule 3:21-10(b)(2) and a Motion for a Judicial Furlough under State v. Boone, 262 N.J. Super. 220 (Law Div. 1992). Defendant had asserted that, as an insulin dependent diabetic requiring two injections daily, his continued incarceration had placed him at a very high risk of contracting COVID-19 and suffering extremely serious health consequences, including death. After rejecting the State's contention that defendant was required to exhaust his administrative remedies prior to filing such motions, the court addressed both motions on the merits.

With respect to the Motion for Release Due to Illness or Infirmity under Rule 3:21-10(b)(2), the court weighed the factors set forth by the New Jersey Supreme Court in State v. Priester, 99 N.J. 123, 135 (1985), for determining whether an inmate should be released. In so doing, the court held that while defendant had proven that he was suffering from an illness, defendant had not presented any evidence that the pandemic was having a "deleterious effect" on his medical condition and did not show that medical services unavailable at the prison would be essential to prevent further deterioration of his health. Similarly, while the pandemic constituted a change in circumstances, the Department of Corrections had taken efforts to mitigate and protect against the spread of the disease and defendant failed to present any evidence that COVID-19 was causing a "serious deterioration" to his health. Lastly, due to defendant's extensive prior record and the serious nature of the charge for which defendant was incarcerated, defendant's release would not be in the best interests of public safety and welfare. Thus, the motion under Rule 3:21-10(b)(2) was denied.

With regard to the Motion for a Judicial Furlough under Boone, the court noted that the defendant in Boone required lifesaving treatment out-of-state and there was no statutory or rule-based authority for granting such relief. As such, the trial court in Boone exercised its inherent authority to grant a judicial furlough to save the defendant's life. Here, the court found that there was explicit statutory authority, vested in the Commissioner of the Department of Corrections and his agents, through which defendant could seek a furlough. See N.J.S.A. 30:4-91.3. Since

defendant had statutory authority by which to seek a furlough, the court found it had no authority to grant a judicial furlough and denied the motion.

11-17-21 IN THE MATTER OF THE ADOPTION OF A MINOR CHILD BY J.B. (FA-000010-20)

In re Adoption of a Minor Child by J.B. analyzes whether the precedents of Garden State Equality v. Dow and Obergefell v. Hodges have impacted the scope of the second parent exception to New Jersey's Judgment of Adoption statute, N.J.S.A. 9:3-50—particularly, whether its requirement that all parental rights, except for those rights of a legal parent who is the "spouse" of the petitioner, must be terminated upon the entry of a Judgment of Adoption. A strict reading of the statute contrasts with numerous court rulings issued prior to Garden State Equality v. Dow, yet the ability for same-sex couples to now marry removes a barrier to recognition that would allow for satisfaction of the statute's restrictive requirements.

Before same-sex couples had a legal pathway to marriage, N.J.S.A. 9:3-50 was interpreted to allow unmarried couples to adopt without terminating a biological parent's rights in cases such as In re Adoption of a Child by A.R., 152 N.J. Super. 541 (Probate Div. 1977), In re Adoption of a Child by J.M.G., 267 N.J. Super. 622, 623 (Ch. Div. 1993), and In re Adoption of Two Children by H.N.R., 285 N.J. Super. 1 (1995). Yet, those cases carefully articulated that the petitioning couples had no legal ability to wed and were thus unable to satisfy the statute's "spousal" requirements. Now that same-sex marriage has been legalized by Dow and Obergefell, the question of whether the exception still applies—after it was based upon couples for whom marriage was prohibited—must be answered, as well as to clarify that the statute's strictly read requirements remain unnecessary. Despite the conflict between statutory language and relevant case law, the second parent exception should be affirmed to avoid terminating the rights of worthy, unmarried parents and petitioners seeking to form a family unit.

10-6-21 STATE OF NEW JERSEY V. KYLE POWELL (19-10-02086)

The court denied defendant's motion to dismiss the indictment, in which he was charged with bias intimidation, among other crimes, pursuant to N.J.S.A. 2C:16-1(a)(2). Defendant admitted to sending messages via MeetMe.com to the victim threatening to harm her biracial daughter, in which he referred to the child as a "mutt" and "mongrel" and referred to the victim as a "spic loving whore." Defendant asserted that the grand jury was not presented with any evidence demonstrating that defendant directed the threats at the victim and her daughter based on racial motivation. The messages were in reference to the daughter's race and not the victim's who was the recipient of the threats. The State argued that the grand jury was presented with testimony that defendant stated he disliked interracial relationships and children of those relationships.

The court denied defendant's motion, holding that, by defendant's own admission, the threats were motivated by the victim's identity as a white female who engaged in a biracial relationship with a Hispanic male and bore a biracial daughter. Additionally, the court reasoned that the victim's biracial daughter was also a foreseeable third-party victim of the threats even though she was not the recipient. As the standard for upholding an indictment weighs heavily in favor of the State, here defendant's admissions satisfied the requisite evidence needed to demonstrate racial motivation for N.J.S.A. 2C:16-1(a)(2).