
SHARON JOINER,
Plaintiff,

v.

ROSCOE ORMAN,
Defendant.

:
: **SUPERIOR COURT OF NEW JERSEY**
: **CHANCERY DIVISION-FAMILY PART**
: **ESSEX COUNTY**
: **DOCKET NO.: FD-07-001086-13**
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: **OPINION**
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This matter comes before the Court on defendant Roscoe Orman’s motion to dismiss plaintiff Sharon Joiner’s palimony complaint. Defendant argues that Plaintiff’s action is barred by the 2010 amendment to the Statute of Frauds, N.J.S.A. 25:1-5(h) (Amendment), which requires a writing memorializing palimony agreements and independent advice of counsel for each party in advance of executing any such agreement. Plaintiff contends that the Amendment does not bar her complaint, because: (1) the partial- or full-performance exception and various equitable defenses remove the Amendment’s bar, or alternatively: (2) the Amendment, as applied, violates her Equal Protection and Due Process rights. The issue before the Court is whether plaintiff’s claim for palimony, filed after the effective date of the Amendment, is enforceable, even though the alleged agreement was never reduced to writing and neither party sought independent advice of counsel.

I.

The facts in this case are largely undisputed. The parties began dating in or around 1972 and started living together shortly thereafter. During their relationship of approximately 39 years, wherein they celebrated June 11, 1973 as their anniversary, the parties maintained a marital-type

relationship, held each other out as husband and wife, raised four children, and resided as a family. They filed joint tax returns, maintained bank accounts, and obtained real estate together. During the entire relationship, Defendant worked as a television personality, actor, and author while Plaintiff, who went by Sharon Joiner-Orman, provided companionship and social support, took care of the household and raised the parties' four children.¹ Due in large part to Defendant's financial success, and Plaintiff's reliance thereon, Plaintiff never attended college or pursued a career of her own. Plaintiff asserts that it was always her intention to continue residing with the Defendant as husband and wife for the rest of her life as it was their "life plan" to do so.

In or around March 2010, the relationship ended. Plaintiff submits the relationship ended suddenly, while Defendant contends the end was the result of prolonged disputes and irreconcilable differences. In 2010, the Defendant moved out of the parties' shared residence, while Plaintiff continued residing in the four bedroom two and a half bath townhouse in Montclair, NJ. Although Defendant urged Plaintiff to find a smaller, less expensive residence, he continued to provide Plaintiff with financial support and paid for Plaintiff's household expenses, which totaled approximately \$3,600 per month.

Plaintiff filed her complaint on August 28, 2012, alleging Defendant breached a promise made by both deeds and words to provide lifetime support. During the pendency of this action Defendant would periodically provide some support, including payment of approximately \$5000 for Plaintiff's legal fees in October. However, at the end of 2012, Defendant married another

¹ Plaintiff's name appears as Sharon Joiner-Orman on several exhibits submitted to the Court, which include the deeds to property they previously owned together and the acknowledgment written in the defendant's book. The Defendant dedicated his memoir, Roscoe Orman Sesame Street Dad-Evolution of an Actor, "To my wife, Sharon Joiner-Orman, thanks for providing this story and my life with true meaning." A personal copy of the book also bears an inscription, dated June 21, 2006, which states, "To Sharon, thank you for being my wife, my partner, the love of my life. Always and Forever, Roscoe."

woman and ceased providing Plaintiff with support. Defendant asserted that he did not financially abandon Plaintiff nor did he intend to do so. However, after learning about the concept of palimony and the state of the law from his attorney, Defendant came to believe that his obligation to support Plaintiff was a “moral one, not a legal one.”

Facing eviction and mounting health concerns, on December 18, 2012, Plaintiff filed an Order to Show Cause seeking pendente lite palimony support and child support. On January 14, 2013, Plaintiff filed a Complaint for Declaratory Judgment. On February 14, 2013, the Court held a hearing, and heard testimony regarding the nature of the parties’ relationship. Plaintiff then filed a brief dated March 18, 2013, in support of Plaintiff’s various claims. On April 25, 2013 Defendant filed a responsive brief asserting that the Amendment bars Plaintiff’s claims. By letter dated April 29, 2013, Plaintiff submitted a reply. On May 30, 2013, this Court held oral argument, at the conclusion of which it allowed the parties to submit supplemental briefs on the issues of partial- and full-performance.²

In short, Plaintiff argues that Defendant’s oral promise for support is enforceable based upon partial- or full-performance. Plaintiff’s various filings also assert claims based on equitable estoppel as well as Constitutional claims, asserting that the Amendment, as applied, violates rights protected under Due Process Clause and Equal Protection Clause of the New Jersey Constitution.

II.

² This case is not exactly the model of procedural clarity. The various claims, facts and substantive arguments were presented through multiple filings and appearances. However, neither party has objected to the procedures applied nor their ability to present claims and defenses.

The facts and circumstances in this case present certain challenging issues with no easy answers to be found in the statutory language or existing case law. The Court finds, and the parties agree, that but for the Amendment and its effective date Plaintiff filed an enforceable palimony claim. That is, if this case were to be decided solely on pre-Amendment palimony law, the Court would not hesitate to find that Plaintiff is entitled to an award.

Prior to the Amendment, New Jersey law “recognized that unmarried adult partners, even those who may be married to others, have the right to choose to cohabit together in a martial-like relationship, and that if one of those partners is induced to do so by a promise of support given her by the other, that promise will be enforced by the court. [T]hat right to support in that situation does not derive from the relationship itself but rather is a right created by contract.” In re Estate of Raccamonte, 174 N.J. 381, 389 (2002); Kozlowski v. Kozlowski, 80 N.J. 378 (1979).

The operative principle of a palimony claim is that "the formation of a marital-type relationship between unmarried persons may, legitimately and enforceably, rest upon a promise by one to support the other." Id. at 392. "[T]he entry into [a marital-type] relationship and then conducting oneself in accordance with its unique character is consideration" warranting enforcement of a promise of support. Id. at 393. Such a promise, whether "express or implied," if "coupled with a marital-type relationship . . . support[s] a valid claim for palimony." Devaney, supra, 195 N.J. at 258; Botis v. Estate of Kudrick, 421 N.J. Super. 107, 115 (App. Div. 2011).

The issue here is not whether an agreement may be found. The uncontroverted evidence in this case supports the finding that the parties had an express agreement, and that Plaintiff rendered her services as a companion, homemaker, and mother to their children, in exchange for Defendant’s promise of support. This is evidenced by a 39 year long relationship as well as Defendant’s acknowledgement and willingness to continue providing support after the

relationship ended. The issue is not whether there was an agreement, but whether that agreement is enforceable.

Effective January 18, 2010, the same day the Amendment was enacted, palimony agreements became subject to the Statute of Frauds. N.J.S.A. 25:1-5 provides in relevant part:

No action shall be brought upon any of the following agreements or promises, unless the agreement or promise, upon which such action shall be brought or some memorandum or note thereof, shall be in writing, and signed by the party to be charged therewith, or by some other person thereunto by him lawfully authorized:

....

(h) A promise by one party to a non-marital personal relationship to provide support or other consideration for the other party, either during the course of such relationship or after its termination. For the purposes of this subsection, no such written promise is binding unless it was made with the independent advice of counsel for both parties.

[N.J.S.A. § 25:1-5(h).]

Since its enactment, there have been only three reported opinions addressing the Amendment. From reviewing these cases, it is apparent that Plaintiff's claim falls under the purview of the Amendment. The Amendment, as enforcement legislation, "addresses the circumstances under which a palimony agreement will be enforced irrespective of when the parties entered the purported agreement." Maeker v. Ross, 430 N.J. Super. 79, 82-83 (App. Div. 2013). The Amendment will therefore apply to claims filed after the Amendment's effective date, even if the alleged promise or agreement was made prior to the effective date. Ibid.; Cavalli v. Arena, 425 N.J. Super. 595 (Law Div. 2012); Compare Botis v. Estate of Kudrick, 421 N.J. Super. 107, 111-12 (App. Div. 2011) (Holding that the Amendment applies prospectively and does not bar claims filed and pending prior to the Amendment's effective date). Here, the relationship ended approximately two months after the effective date of the Amendment, and the claim was not filed until August 2012.

Although it is clear that the case falls under the ambit of the Amendment, the precise issues raised here – the applicability of the “partial or full performance” exception, the as-applied constitutional challenges, and viability of equitable estoppel as a claim or defense – remain open and have received little attention from our courts. The Court now turns to those issues.

A. Partial and Full Performance Claims

Whether the doctrine of partial performance applies in the palimony context is not expressly addressed by the Amendment nor has the issue been decided in the three reported cases addressing the Amendment. In Botis, the court merely commented that it found no “error in the trial court’s observation that plaintiff may have a ‘partial performance ... defense under the statute of frauds’ as the comment had no relevance on the issues presented in the case. Botis, 421 N.J. Super. at 120.

To date, Maeker is the only reported case to address the partial-performance exception in the context of a post-Amendment palimony claim. In Maeker, the plaintiff brought an action against defendant, which included, among other claims, a claim for palimony. Maeker, 430 N.J. Super. at 83. Plaintiff alleged that “the parties had entered into an oral contract and there had been partial performance, which removed her claim from the requirements of the Amendment.” Ibid. The couple had lived together for approximately 13 years during which time Plaintiff did not work outside of the home and was primarily supported by defendant. Ibid. During the relationship Defendant paid all of Plaintiff’s living expenses, the expenses associated with a property she maintained in Brooklyn, and most of her son’s college education expenses. Ibid. The defendant also bought four horses for her. Ibid. Plaintiff alleged that performance of the promise removed the palimony claim from the Statute of Frauds. Ibid.

The Maeker court did not decide whether the partial-performance claim was an exception to the requirements of the Amendment. Instead the court found that, assuming the exception did apply, plaintiff's pleadings failed to provide a basis for relief. Id. at 94. Specifically, Plaintiff's pleading alleged that defendant's performance, not Plaintiff's, barred defendant from asserting a statute of frauds defense. Id. at 20. Furthermore, the court found that the case was distinguishable from the case relied on by the trial court, Klockner v. Green, 54 N.J. 230 (1969), finding that, unlike Klockner, "there was nothing exceptional or peculiar about the services performed by defendant, and plaintiff, as well as her son, already received the full benefit of those services." Id. at 22.

Because Maeker was decided on the facts, it does not truly answer whether the exception applies as a matter of law. Moreover, the facts here are different. And it is indeed the facts of this particular case that compel this Court to take a closer look at the issue.

In other contexts, partial or full performance is a well-established exception to the Statute of Frauds. See Lahue v. Pio Costa, 263 N.J. Super. 575 (App. Div. 1993) cert. denied 134 N.J. 477 (1993) (Plaintiff's part performance and reliance on parties' settlement agreement – forbearance of litigation - removed agreement from statute of frauds.); Crowe v. De Gioia, 203 N.J. Super. 22 (App. Div. 1985), affirmed by 102 N.J. 50 (1986) (Where evidence established the existence of a palimony agreement between parties, the statute of frauds did not bar an agreement regarding conveyance of the parties' residence to Plaintiff because Plaintiff's performance of the contract, her provision of services as a companion and housekeeper, could not be assigned a monetary value and was of such an exceptional character as to order specific performance.); Klockner v. Green, 54 N.J. 230 (1969) (Statute of frauds did not bar specific performance of decedent's contract to make a will because decedent received the full benefit of

the bargain – stepson and stepdaughter’s weekly services). Where it is found that an oral agreement was made, and one party has performed, the contract will be enforced “if to do otherwise would work an inequity on the party who has performed.” Crowe, 203 N.J. Super. at 34, citing Klockner, 54 N.J. at 237.

The policy reason for the rule is equally well settled and simple. The “statute of frauds should not be used to work a fraud....” Klockner, 54 N.J. at 236. The statute presumes that agreements falling within its scope are “susceptible to fraudulent and unreliable methods of proof....” Lahue, 263 N.J. Super. at 599. However, the statute is not designed to protect a party who actually made an oral contract, but rather its purpose is to aid the party who did not. Cohn v. Fisher, 118 N.J. Super. 286, 296 (Ch. Div. 1972). Therefore, courts will enforce agreements where the terms of the contract and performance thereof can be established by clear, definite, and unequivocal evidence, and the acts performed are exclusively referable – not merely ancillary - to that contract. Delnero v. Serra, 2 N.J. Super. 350, 352 (Ch.Div. 1949); Lahue v. Pio Costa, 263 N.J. Super. 575, 599-600 (App. Div. 1993).

With these principles in mind, the Court finds there is no good reason why a partial or - at the very least - full performance exception should not apply in the context of palimony agreements. This case demonstrates the inequities that would result from a denial of the claim. Here, the parties had an oral agreement to reside and work together in marital type relationship. In fact, as far as they were concerned, they were husband and wife. Plaintiff relied on the Defendant’s promises and support for 39 years, gave birth to and raised four children, and generally provided companionship and homemaking. The children are now adults and the parties no longer share the same home. The Court finds the Plaintiff has fully performed her end of the bargain (to put it tersely). In addition, there is no way to quantify the value of the services

Plaintiff provided over the course of 39 years, much less the value of foregone educational and work related opportunities. What is more, Defendant does not deny the agreement and even acknowledged the obligation by deeds and words. Where then is the risk of fraud? The Court believes the risk lies in barring Plaintiff's claim. Therefore, the Court holds that the partial or full performance exception can remove oral palimony agreements from the statute of frauds and further finds the facts satisfy the Plaintiff's claim.

Defendant argues that applying the partial performance exception in the context of palimony agreements eviscerates the Amendment. The Court does not agree. The statutory purpose of the Amendment was to overturn the recent New Jersey palimony decisions. However, neither the Amendment's plain language nor the legislative intent modifies the basic definition of palimony, the purpose of the statute of frauds, or the common law exceptions thereto. Instead, by adding palimony agreements to the Statute of Frauds, the Defendant can plead the statute of frauds as an affirmative defense, and shift the burden on the Plaintiff to prove that the facts by clear and unequivocal evidence.

Other courts may also demand that the acts performed be of a certain exceptional character as was intimated in Maeker. See Id. at 22. The Court will note that this is typically a requirement reserved for cases where a party requests specific performance, such as the conveyance of real property. See Crowe, supra; Klockner, supra; Davison v. Davison, 13 N.J. Eq. 246 (Ch. 1861). That issue has not been raised by the parties nor does the Court express an opinion as to whether or not it should be a requirement. It suffices to say that, if so required, the Court finds Plaintiff's performance or acts were of such an exceptional or peculiar character that is satisfies that standard.

The Court is thus confident that by applying these well-settled standards this Court's opinion does not undermine the purpose of the Amendment. Instead, the Court is hopeful that its decision promotes the common mantra of the Chancery Division that "equity regards and treats as done what in good conscience ought to be done." Gallicchio v. Jarzla, 18 N.J. Super. 206, 214-15 (Ch. Div. 1952).

B. Promissory Estoppel

The Plaintiff also raised the doctrine of promissory estoppel. Similar to part performance, promissory estoppel is applied in cases where the statute of frauds would otherwise preclude a plaintiff's claim and result in a "hardship or injustice if such a promise were not enforced." Pop's Cones, Inc. v. Resorts Int'l Hotel, Inc., 307 N.J. Super. 461, 469 (App. Div. 1998). To justify a promissory estoppel claim, Plaintiff must satisfy its burden of demonstrating the existence of, or for purposes of summary judgment, a dispute as to a material fact with regard to, the following four elements: (1) a clear and definite promise by the promisor; (2) the promise must be made with the expectation that the promisee will rely thereon; (3) the promisee must in fact reasonably rely on the promise, and (4) detriment of a definite and substantial nature must be incurred in reliance on the promise." Id. at 468-69.

In light of the above findings, the Court need not decide whether promissory estoppel would be applicable in this case. It will simply note that whether the doctrine and similar equitable theories apply in the context of palimony agreements (pre- or post-Amendment) is dubious, Maeker, 430 N.J. Super. at 95-96 (although equitable relief such as unjust enrichment, quantum meruit, and equitable estoppel are "widely recognized in other contexts, New Jersey

courts have refrained from awarding future support based on equitable theories”), but need not be addressed here.

C. New Jersey Constitution Due Process Rights and Equal Protection Claims

Courts will avoid reaching a constitutional question unless it is required to do so or it is imperative to the disposition of the litigation. “[I]f a case may be decided on either statutory or constitutional grounds, [courts], for sound jurisprudential reasons, will inquire first into the statutory question.” Comm. to Recall Robert Menendez From the Office of U.S. Senator v. Wells, 204 N.J. 79, 95-96 (2010). Plaintiff in this case raises two constitutional arguments. First, Plaintiff argues that the Amendment, as applied, imposes an arbitrary and onerous burden on unmarried couples seeking palimony, thereby depriving them of equal protection under the law. Second, Plaintiff argues that the statutory amendment barring Plaintiff’s palimony claim, a cause of action that is of a fundamental nature and has been recognized by the courts of this State for three decades, deprives her of her due process. The Court expressed doubt as to the merits of these claims at oral argument but will not decide those issues here as the Court’s decision affords Plaintiff relief under the Amendment.

D. Conclusion

For the foregoing reasons, Plaintiff’s Motion for Declaratory Judgment is GRANTED. Defendant’s Motion to Dismiss is DENIED. This matter shall be set down for a hearing to address how the palimony award should be calculated.