

TRENDS IN DOMESTIC VIOLENCE: THE NEW JERSEY JUDICIARY IS EXPANDING ITS VIEW ON WHO IS A “VICTIM OF DOMESTIC VIOLENCE” AS DEFINED BY THE DOMESTIC VIOLENCE ACT

**By: Jeralyn L. Lawrence, Esq.
Joseph M. Freda, III, Esq.**

INTRODUCTION

There will come a time in every matrimonial attorney’s career when a potential client will walk through the door and inform you that he or she is the victim of domestic violence and is seeking the protection of the domestic violence statute. Sometimes the potential client will request protection from an old boyfriend or girlfriend they have not dated for many years. Sometimes the potential client will request protection from a family member that they lived with long ago or, quite possibly, a mother-in-law who brandishes a frying pan in anger while temporarily residing with your prospective client. What do you do in these situations? What guidance can you give? Does the Domestic Violence Act possibly afford protection for these individuals?

Regardless of the situation that you face, and whether you have handled one (1) or one hundred (100) domestic violence trials, it is imperative to understand current trends in the domestic violence case law, as same can have a direct bearing on whether your prospective client will be deemed a “victim of domestic violence” as defined by the Domestic Violence Act and interpreted by the New Jersey Judiciary. This article will discuss the current trends in domestic violence case law, and how the New Jersey Judiciary is expanding its view on who constitutes a “victim of domestic violence”.

More specifically, this article will discuss how the New Jersey Judiciary is expanding its view on what constitutes a “present or former household member” and “dating relationship” pursuant to the Domestic Violence Act.

DEFINITION OF “VICTIM OF DOMESTIC VIOLENCE” - “PRESENT OR FORMER HOUSEHOLD MEMBER”

The applicable portion of N.J.S.A. 2C:25-19 defines a victim of domestic violence as:

“any person who is 18 years of age or older or who is an emancipated minor and who has been subjected to domestic violence by a spouse, former spouse, or any other person who is a present or former household member.”

Additionally, a “victim of domestic violence” also includes:

“any person, regardless of age, who has been subjected to domestic violence by a person with whom the victim has a child in common, or with whom the victim anticipates having a child in common, if one of the parties is pregnant ... [or] any person who has been subject to domestic violence by a person with whom the victim has had a dating relationship.” N.J.S.A. 2C:25-19d.

Therefore, when analyzing the facts of a given case, it is imperative to understand current trends in domestic violence case law, and whether the New Jersey Judiciary is taking an expansive view on what constitutes “household members” for purposes of affording protection to “victims of domestic violence”.

The New Jersey legal landscape abounds with multiple reported decisions in which the trends in this matter can be seen, and through these trends, confirmation that the judiciary is taking a more expansive view of what constitutes “household members” for purposes of jurisdiction over the domestic violence proceedings. To begin, in Jutchenko v. Jutchenko, 283 N.J. Super. 17 (App. Div. 1995) the Court was

faced with a domestic violence matter between brothers who had not lived in the same household for approximately twenty (20) years prior to the alleged acts of domestic violence. In reversing the Trial Court, the Appellate Division concluded that an alleged act of domestic violence, between two brothers who had not resided together since adulthood could not be viewed as domestic violence.

Fast forward two (2) years to the case of South v. North, 304 N.J. Super. 104 (Ch. Div. 1997), in which the Defendant **never** lived with Plaintiff. Looking at the holding of Jutchenko, it would appear that certainly these individuals were not “household members” for purposes of the Domestic Violence Act. However, this is exactly where this trend begins to emerge. When analyzing this case, and despite never living together, the Court noted that the Domestic Violence Act was vague in its definition of “household member” and that when the plain language of a statute is unclear or ambiguous, the court must look to the legislative intent.

When looking at the legislative intent, the Court noted that the Domestic Violence Act of 1991 was amended by removing the word “cohabitant” and utilizing the phrase “household member”. Id. at 109. In doing so, the Court noted that the intent of this amendment was to “expand coverage of the Act” and to encourage the “broad application of the remedies available under this Act in the civil and criminal courts of this State.” Id. at 110, citing to, N.J.S.A. 2C:25-18.

Upon review of the legislative intent behind this amendment to the statute and the overall thrust of the Domestic Violence Act, the Court in South held that a determination that the Defendant was not a household member would deny the

plaintiff protection which would be inconsistent with the legislatures intent to expand coverage.

The absolute importance of the legislative intent when analyzing these jurisdictional issues was also confirmed in the case of Bryant v. Burnett, 264 N.J. Super. 222 (App. Div. 1993). Specifically, in Bryant the Appellate Division noted that the Legislature “encourages the broad application of the remedies available under this act in the civil and criminal courts of this State.” When analyzing the factors in Bryant in light of the legislative intent, the Appellate Division held that the Plaintiff and Defendant were household members for purposes of the statute despite their short relationship.

Specifically, the Appellate Division noted that:

“No precise period of residence is specified by the statute to make one a household member. This case certainly involved more than assaultive conduct between casual friends or relative strangers and qualifies as “domestic violence.”” Id. at 226.

The ultimate reliance upon the legislative intent when analyzing these jurisdictional issues with regard to household members was evident in the case of Storch v. Sauerhoff, 334 N.J. Super. 226 (Ch. Div. 2000). In Storch, the holding again supported the fact that the Domestic Violence Act was drafted to “assure victims of domestic violence the maximum protection from abuse the law can provide.” Id. at 228. Specifically, Judge Alcazar deftly noted that a restrictive definition of “household”, as defined by Black’s Law Dictionary, was rejected by the Supreme

Court in Gibson v. Callaghan, 158 N.J. 662 (1999), and that such a restrictive definition should not be given credence by the Court.

In evaluating the definition of “household member”, Judge Alcazar noted that if the Legislature intended to limit the Court’s interpretation of the term, they could have provided for a definition. And since a definition was not provided, the jurisdictional ground for protecting household members cannot be read literally and must be viewed in light of the purposes of the Act.

When evaluating the purposes of the Act, Judge Alcazar confirmed that “the Act recognizes that victims who have familiar, emotional or financial ties with the person who abused them need special protection.” Storch, supra. at 233. Based upon this premise, the Court rejected the Defendant’s argument that the Court did not possess jurisdiction to adjudicate the domestic violence action. Specifically, the Court rejected this argument despite the Defendant certifying that she rarely visited the Plaintiff’s home, that they only attended dinners and family functions at Plaintiff’s home, and the Defendant would help care for the Plaintiff’s children.

The trend in the expansion of the definition of “household members” was further evident in the case of Hamilton v. Ali, 350 N.J. Super. 479 (Ch. Div. 2001), in which the Court found that college student suitemates were considered “household members” for purposes of the domestic violence act. This case involved freshman undergraduate students who were living together and sharing a common area, common bathroom and four (4) bedrooms. As these students shared the common area and bathroom, the Court deemed them to be “household members” as their living

arrangement constituted a “family like setting” within the meaning of the domestic violence act.

The further expansion of the definition of “household members” was seen in the case of Coleman v. Romano, 388 N.J. Super. 342 (Ch. Div. 2006). In Coleman, the Court was asked to determine if the Plaintiff and the Defendant were “former household members” under the domestic violence statute. In Coleman, neither the Plaintiff nor the Defendant lived together for thirty (30) years. However, based upon their “continuing, entangled relationship”, the Court held that they were “former household members” for jurisdiction purposes.

In making this determination, the Court was extremely cognizant of the legislative intent in the drafting of the domestic violence statute. Specifically, when drafting N.J.S.A. 2C:25-18, the legislature noted that “the Legislature...encourages the broad application of the remedies available under this act.” This has routinely been involved to support the liberal construction of the jurisdictional provision of the Act. See, e.g., Bryant v. Burnett, 264 N.J. Super. 222 (App. Div. 1993), South v. North, 304 N.J. Super. 104 (Ch. Div. 1997), and Storch v. Sauerhoff, 334 N.J. Super. 226 (Ch. Div. 2000).

In summary, the Court in Coleman ultimately held that jurisdiction lies, and stated that:

“Coleman and Romano continue to be entangled in the kind of emotional and family relationship that the Act was intended to cover.”

As these cases illustrate, the legislative intent behind the domestic violence act was an integral and indispensable element in determining whether an individual will

be deemed a “household member” pursuant to the Act. As is readily apparent from trends evident from these reported decisions, the New Jersey judiciary has taken an expansive view of what constitutes a “household member” and therefore a “victim of domestic violence.”

DEFINITION OF “VICTIM OF DOMESTIC VIOLENCE” - “DATING RELATIONSHIP”

As with the case of “household members”, trends in domestic violence have shown that the New Jersey judiciary has also begun to take an expanded view of what constitutes a “dating relationship” for purposes of the Domestic Violence Act. To begin, in Sperling v. Teplitsky, 294 N.J. Super. 312 (Ch. Div. 1996) the Court was faced with whether two individuals were involved in a dating relationship. In this matter, the Plaintiff requested that the Court issue a Final Restraining Order against her former boyfriend who had kicked her current boyfriend’s car. When considering the legislative intent behind the Act, the Court concluded that the legislature was concerned with regular and serious abuse and FRO should not issue if a domestic relationship did not continue to exist. As there was a gap of four (4) to five (5) years from the finality of their dating relationship, the Court denied the Plaintiff’s request for an FRO.

However, seven (7) years later the Appellate Division was faced with the issue of whether a gap of three (3) years in a dating relationship would still afford the Plaintiff the protection of the Domestic Violence Act as a protected “victim of domestic violence”. Looking at the holding of Sperling, it would appear that this certainly would not constitute a “dating relationship” for purposes of the Domestic Violence

Act. However, this is exactly where this trend begins to emerge. In Tribuzio v. Roder, 356 N.J. Super. 590 (App. Div. 2003), the Court held that:

“The ultimate issue is whether, in light of these facts, the victim was, at the time of the precipitating event, subjected to potential abusive and controlling behavior related to and arising out of the past domestic relationship. If so, the victim is in need of and entitled to the special protection provided by the act.” Id. at 597.

After analyzing the facts in Tribuzio, the Appellate Division confirmed that despite a dating hiatus of three (3) years, the facts did confer protected person status upon the victim. However, the ultimate confirmation of the New Jersey Judiciary’s trend of looking at the definition of “dating relationship” expansively was seen in the case J.S. v. J.F., 410 N.J. Super. 611 (App. Div. 2009). In this matter, the definition of “dating relationship” was directly addressed by the Appellate Division. In this matter, the Defendant argued against the Court conferring protected party status to the victim, as there was no “dating relationship” as the Defendant purported paid the Plaintiff, who was a dancer and escort, for the time Plaintiff spent with the Defendant.

In rejecting the Defendant’s defense, the Appellate Division held that that “the fact that a person receives a monetary benefit from engaging in a relationship does not automatically disqualify that person from the Act’s benefits.” Id. The Appellate Division further confirmed that:

“...the facts should be liberally construed in favor of finding a dating relationship, because the Act itself is to be liberally construed in favor of the legislative intent to eradicate domestic violence. Stated another way, the Act embodies a strong public policy against domestic violence. . . . These principles would not be served by a cramped interpretation of what constitutes a dating relationship.” Id.

There is no question that the Appellate Division in J.S. liberally interpreted what constituted a “dating relationship”, which further illustrates the trend of the New Jersey Judiciary in taking an expansive view of what constitutes a “dating relationship” for purposes of the Domestic Violence Act.

The New Jersey Judiciary’s expanded view of what constitutes a “dating relationship” was further seen in the unreported decision of Jensen v. Baratta, 2009 WL 2160988 (N.J. Super. A.D., July 21, 2009). In this matter, the Appellate Division substantially stretched the definition of “dating relationship” to afford the victim of domestic violence the protections of the Domestic Violence Act.

In Jensen, the parties met at a five (5) day real estate course approximately five (5) years prior to the precipitating acts of domestic violence. During this real estate course, the parties “were allegedly attracted to each other and had several lunches together.” Id. According to the Defendant, there was no sexual relationship between the parties, and most of their interactions were in the presence of others. Following the end of the course, they had dinner together on one (1) other occasion, but thereafter the parties had no interaction.

In early 2008, following this hiatus, the Defendant was found in his car approximately 500 feet of the plaintiff’s home. Within the Defendant’s automobile, the police observed a holster, police scanner, a notebook with plaintiff’s name and address listed on it, and a locked briefcase with a loaded handgun and \$10,000 in cash. Upon further investigation, a police K-9 unit later tracked the Defendant’s scent from the Defendant’s automobile into the Plaintiff’s backyard.

Based upon these circumstances, the trial court entered restraints against the defendant. Upon review, the Appellate Division agreed with the Trial Court's reasoning and confirmed that:

"although brief and chaste . . . [their relationship] was of sufficient intensity in defendant's mind to compel him to behave in a bizarre and menacing manner nearly six years after its inception."

As these cases illustrate, and as was the case when defining "household member", the legislative intent behind the Domestic Violence Act has played an extremely important part in whether the New Jersey Judiciary will deem there to be a "dating relationship" pursuant to the Domestic Violence Act. As is readily apparent from trends evident from these reported decisions, the New Jersey judiciary has taken an expansive view of what constitutes a "dating relationship" and, therefore, who will be afforded protection as a "victim of domestic violence."

CONCLUSION

Based upon the foregoing, and what can be adduced from the New Jersey Judiciary's trends in domestic violence decisions, it is submitted that the New Jersey Judiciary has expanded its view on who constitutes a "victim of domestic violence" by expanding its view on what constitutes a "present or former household member" and "dating relationship" pursuant to the Domestic Violence Act.