

Matrimonial Alert



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Palimony Revived: New Jersey Appellate Division Denies Retroactive Effect to Statute Requiring a Writing to Evidence an Agreement of Support between Unmarried Couples

In January 2010, the New Jersey State Legislature amended New Jersey's "Statute of Frauds" and for the first time, requires that all agreements for support between nonmarried partners be in writing. The amendment further requires that both partners to the agreement be represented by independent legal counsel. This amendment effectively abolished thirty years of New Jersey common law. Prior to the new law, New Jersey courts had consistently upheld palimony claims, a claim for support between unmarried persons, regardless of whether the agreement was verbal or in writing. Practically speaking, though, most agreements of this nature are oral as it is not often that two romantically involved partners decide to draft a contract outlining each party's rights and obligations in the event the relationship fizzles.

In the first reported challenge to the statute, the Appellate Division was faced with the question of whether the amendment could be applied retroactively to bar claims initiated before the amendment took effect. In *Botis v. Estate of Kudrick*, the plaintiff filed an action for palimony against the estate of her deceased paramour. Plaintiff alleged that the parties became romantically involved in 1974, lived together as if they were married, and held themselves out to family and friends as if they were in a permanent relationship. Plaintiff asserted that she became dependent upon her partner for support due to his superior financial situation and based upon his assurances that he would always care for her and in the event of his death, ensure that she was cared for consistent with the lifestyle they shared. After being together for thirty-two years, Plaintiff's paramour became ill with cancer and Plaintiff cared for him until his death.

When Plaintiff sought palimony from her deceased partner's Estate, the Estate initially denied her claims and once the amendment was enacted, filed a motion to dismiss her complaint. The Appellate Division affirmed the trial court's ruling denying the

Estate's motion. While noting that the statute did not provide any clear legislative intent to apply the amendment to claims pending on the date it was enacted, the Appellate Division relied upon the well-established rule of statutory construction that favors prospective application of statutes.

The Court rejected the Estate's argument that the statute could be applied retroactively as the statute is "curative." The Court explained that the "curative" exception is applied when the statute amends a prior law which is unclear or which does not effectuate the Legislature's intent in enacting the original law. The Court stated that the "curative" exception only applies to amendments to previous laws and not to judicial decisions. The Court noted that before the amendment, no statute in New Jersey addressed palimony. Palimony claims were previously recognized by courts as contract claims. Thus, the Legislature was not "curing" one of its prior enactments.

The Court also dismissed the Estate's claim that the reasonable expectations of the parties warranted retroactive application of the law. The Court recognized that Plaintiff's partner died over a year before the statute's enactment and Plaintiff filed her suit shortly after his death. Since the case law at the time of the parties' agreement supported "a mutual expectation that their agreement was enforceable" regardless of whether it was reduced to a writing, the parties could have neither reasonably expected nor complied with the conditions of the law.

Thus, while some may have considered palimony dead in New Jersey, the Appellate Division's holding clears the pathway for the assertion of claims arising before the enactment requiring written evidence of an agreement for support.

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