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Palimony Claim's Date Determines If Statute of Frauds Is Applicable

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A 2010 law requiring that palimony agreements be in writing applies to all claims filed after it took effect, no matter when the alleged promise of support was made, an appeals court says.

The Appellate Division held on Monday that because a palimony claim arises when a promise of support by one unmarried paramour to another is breached, it is the date of filing that determines whether the statute controls.

The decision, in *Maeker v. Ross*, A-3034-11, is the first precedential appellate ruling on the issue since the Legislature amended the statute of frauds, effective Jan. 18, 2010, to include palimony agreements among contracts that must be in writing to be enforceable.

A lower court judge reached the same conclusion in *Cavalli v. Arena*, 425 N.J. Super. 595 (Law Div. 2012).

Beverly Maeker filed her complaint in Somerset County on July 8, 2011, a week after William Ross ended their 13-year relationship.

She claimed they began dating in Brooklyn in 1998, then moved in together and moved to Bedminster.

During their cohabitation, Maeker did not work outside the home. Ross supported her, paid expenses on a property she had in Brooklyn and for her son's college education, and even bought her four horses, she claims.

Ross, a wealthy real estate investor and now director of development marketing for Halstead Property in New York, also allegedly made repeated promises to take care of her and promised her lifetime support.

Maeker further claims that in December 2010, Ross signed a power of attorney authorizing her to manage his affairs and executed a will that left her his residuary estate and named her as executrix and trustee.

Ross moved to dismiss the case based on the new law.

Superior Court Judge Thomas Miller denied the motion on Jan. 13, 2012, and granted Maeker's cross-motion for pendente lite support, ordering Ross to pay her $6,000 a month.

Miller found that the Legislature did not clearly indicate that it meant to extinguish palimony causes of action that potentially existed at the time the law took effect, pointing out it took effect the day it was signed, without a grace period for asserting a palimony claim.

He called it "unreasonable to assume that the intent of the Legislature was to eliminate legitimate palimony claims that may have accrued over the last thirty years by creating a legal mechanism that did not provide affected parties any opportunity to file an action to protect their interest."

In Miller's view, a palimony cause of action arose when the agreement was made, not when it was breached, and any other interpretation would release someone who promised support from the obligation based on when they chose to breach that agreement.

In ordering support for Maeker, he

noted that she was 54 years old and had not been employed for 10 years.

Appellate Division Judges Paulette Sapp-Peterson, Francine Axelrad and Michael Haas granted Ross's request for an interlocutory appeal and a stay of Miller's decision.

They disagreed with Miller on when a palimony claim accrues, saying that, as with other contracts, the claim arises only when the agreement is breached.

The judges cited a statement in a 2011 case, *Botis v. Estate of Kudrick*, 421 N.J. Super. 107, that the "critical factor in the 'prospective/retroactive application' inquiry is whether the parties could have expected and therefore, complied with the conditions."

In Botis, an appeals court ruled that the statute did not bar a woman's suit — filed before the law took effect — against her deceased lover's estate over his failure to take care of her in his will as allegedly promised.

In that case, there was no chance to comply with the law, in contrast to the almost 18-month period in Maeker between the enactment and Ross's departure, Sapp-Peterson said.

Nor did the power of attorney and will executed by Ross satisfy the writing requirement because they did not promise Maeker lifetime support.

The judges declined to address a constitutional challenge to the law based on its requirement to consult counsel, because Maeker had not raised the issue below. And they rejected Maeker's argument that an oral promise of lifetime support could be enforced based on partial performance by Ross, calling it "questionable in view of the Legislature's statement that passage of the amendment was 'intended to overturn recent palimony decisions.'"

The judges declined to award Maeker equitable relief based on unjust enrichment, quantum meruit, quasi-contract or equitable estoppel.

Maeker's lawyer, Angelo Sarno of Snyder & Sarno in Roseland, says he is preparing a petition for certification, adding the appeals court "tnullified the entire concept of palimony," doing away with 30 years of law.

"This statute takes away people's rights. One day you have it, one day you don't," says Sarno.

There is "no statute in the country or anything that I've been able to find that a party needs to have a lawyer to enter a contract," not even a prenuptial agreement, he says.

Eric Solotoff of Fox Rothschild in Roseland, who represents Ross, says "the Appellate Division properly captured the legislative intent here."