Allison M. Roberts, Esq.
NJ Attorney #005532001
AMR LAW, LLC
361 Route 31
Building E, Suite 1402
Flemington, New Jersey 08822
908-237-3098
Attorney for Defendant-Respondent

SUPREME COURT OF NEW JERSEY
Docket No. 085157

KATHLEEN MOYNIHAN,

Plaintiff-Petitioner

PETITION FOR CERTIFICATION
TO THE SUPREME COURT

APPELLATE DIVISION
DOCKET NUMBER: A-4883-18T3

V.

EDWARD J. LYNCH,

Defendant-Respondent

SAT BELOW:
HON. JOSEPH L. YANNOTTI, P.J.A.D.
HON. MICHAEL J. HAAS, J.A.D
HON. ARNOLD L. NATALI, Jr, J.A.D.

REPLY BRIEF AND APPENDIX TO AMICUS CURIAE BRIEF OF AMERICAN ACADEMY OF MATRIMONIAL LAWYERS

Allison M. Roberts, Esquire
AMR LAW, LLC
361 Route 31
Building E, Suite 1402
Flemington, New Jersey 08822
Telephone #: (908) 237-3098
Attorney ID#: 005532001
aroberts@amrlawyers.com
Attorney for Defendant

TABLE OF CONTENTS

TABLE OF JUDGMENTS, ORDERS AND RULINGS

TABLE OF AUTHORITIES

STATUTES

STATEMENT OF FACTS/PROCEDURES

In addition to the Brief and Appendix submitted herewith, Respondent relies upon the submission below, specifically:

1. Brief and Appendix on behalf of Defendant, Edward J. Lynch;

2. Reply/Opposition Brief and Appendix on behalf of Defendant, Edward J. Lynch;

3. Opposition to Petition for Certification on behalf of Defendant-Respondent.

I. THE EQUITABLE POWER TO UTILIZE PROMISSORY ESTOPPEL AND PARTIAL PERFORMANCE TO REMOVE A CASE FROM THE STATUTE OF FRAUDS TO AVOID AN INJUSTICE IS NOT WARRANTED IN THIS CASE BECAUSE THERE IS NO INDUCED ACTION AND THERE IS NO DETRIMENT TO THE PARTY SEEKING RELEIEF. THERE IS NO ORAL PROMISE. THE REMEDY OF PARTITION HAS BEEN ORDERED.[1]

Section 139 of the Restatement (Second) of Contracts relied upon in the submission of the New Jersey State Bar as *amicus curiae* states:

> 1) A promise which the promisor should reasonably expect to induce action [emphasis added] or forbearance on the part of the promisee or a third person and which does induce the action or forbearance is enforceable notwithstanding the Statute of Frauds if injustice can be avoided only by enforcement of the promise [emphasis added]. The remedy granted for breach is to be limited as justice requires.

[1] The text here in Section I is the same text as it is in the response filed to the Brief of *amicus curiae* New Jersey State Bar Association.

The equitable claim of promissory estoppel should not be applied to avoid application of an otherwise valid statute, the Statute of Frauds in this case; however, if the Court is inclined to conduct such an analysis, neither of the prongs from the Restatement of Contracts definition of equitable estoppel has been met. Nothing offered by *amicus curiae* can or should alter the factual findings and the record in this case.

First, the Plaintiff, to avail herself of this equitable relief, must show she was induced to act because of the written agreement, which was drafted in 2014. (Ra52). The claiming party must show that, "the alleged conduct was done, or representation was made, intentionally or under such circumstances that it was both natural and probable that it would induce action [emphasis added]. Further, the conduct must be relied on, and the relying party must act so as to change his or her position to his or her detriment." Miller v. Miller, 97 N.J. 154, 163.

In this case, there is no action taken by the Plaintiff based on the terms of the written agreement she seeks to enforce. While the agreement seeking to be enforced is not dated, the Trial Court found that the agreement, "it was more likely, in my view, that 2014 is the date" based on the evidence and testimony presented at

trial. (Ra52, line 1-12). There is no conduct or action by the Plaintiff after 2014 that she took to her detriment. Plaintiff remained employed with access to her own income while Defendant faced mandatory retirement from his job as a pilot at age 65 in April of 2014. (Ra51, line 13-15). Plaintiff did not forego any financial benefit in reliance on the 2014 written agreement[2].

Second, the Plaintiff must show that injustice can only be avoided by enforcement of the promise. No such injustice was presented. As stated, Plaintiff worked throughout the entire relationship. (Ra 39, line 17-20). She made no changes in 2014, nothing to her detriment was undertaken by Plaintiff based on the written agreement.

As held by the Appellate Division, the parties in this case have a remedy in Partition. Plaintiff has a property interest in the house. She was added to the Deed in 2013. (Ra53, line 10-13). As held by the Appellate Division:

> At trial, defendant established a colorable partition claim…. For her part, plaintiff contributed an $8000 loan from her father to be used as a down payment… A remand is therefore necessary for the court to consider the trial proofs and address the partition claim." (Ra28)

---

[2]Three years earlier, in a September 23, 2011 Consent Order, Plaintiff consented to the termination of her alimony from her prior divorce (May 29, 2019 transcript, page 30, line 1-4). Past consideration is not valid, legal consideration as fully addressed in Defendant's briefs below.

Allowing Plaintiff's claim for equitable remedies to enforce the otherwise deficient written agreement is not warranted. In addition, allowing equitable claims to proliferate in palimony cases when there is a statute with clear, unambiguous language in the applicable Statute of Frauds requiring advice of counsel will render the express terms of the Statute of Frauds meaningless. Such a holding will also be contrary to the findings in Maeker v. Ross, 219 N.J. 565 (2014) and contrary to the legislative intent.

This Court held in Maeker that the "Amendment [to the Statute of Frauds] represents a sea change in the law" and found it "clear that the purpose of the Amendment is to overturn recent 'palimony' decisions in New Jersey courts." Maeker 291 N.J. at 576. As the Appellate Division in Moynihan v. Lynch correctly restates, it was the express intention of the Legislature to overturn recent palimony decisions in New Jersey courts. (Ra24). It was the legitimate and stated purpose of the Legislature to eliminate and clarify when a promise of support between two unmarried individuals can be enforced, acknowledging that certain agreements, including palimony agreements, may be 'susceptible to fraudulent and unreliable methods of proof.' Maeker at 578. To allow the application of common

law equitable remedies when the plain language of the Statute of Frauds is not adhered to is to return to the state of the law prior to the addition of palimony to the Statute of Frauds with the recent 2010 amendment at N.J.S.A. 25:1-5.

Justice, in the context of palimony when the case law developed most significantly in the 1950's through the 1970s, required the creation of an equitable claim to prevent an economically dependent party, in almost all cases a woman, from being left destitute or dependent on the State. (Ra48, line 7-22. *See also*, Connell v. Diehl, 397 N.J. Super 477). It is not to be used to punish an actor who may be perceived as dishonest or unlikable. It is to provide a necessary remedy to an otherwise vulnerable supported party. As society has changed since the origination and evolution of this equitable concept, the law needed to change. The law has been changed accordingly by amendment to the Statute of Frauds in 2010.

The argument submitted and case law relied upon by the New Jersey State Bar focuses on oral agreements being removed from the Statute of Frauds when equity requires. This analysis is misplaced. The holding of the Trial Court was clear: there was no oral promise prior to the amendment to the Statute of Frauds in 2010. (Ra45-48).

II. THE EQUITABLE DEFENSE OF PARTIAL PERFORMANCE TO TAKE AN AGREEMENT OUT OF THE STATUTE OF FRAUDS IS NOT APPLICABLE HERE BECAUSE THAT DEFENSE AS A MATTER OF LAW IS AVAILABLE ONLY TO THE PARTY THAT PARTIALLY PERFORMS.

It is well established and essential to the fair and efficient administration of our Courts that on appeal, "there is deference to factual findings made by a trial court when such findings are supported by adequate, substantial and credible evidence." Gnall v. Gnall, 222 NJ 414, 428 (2015). Furthermore, as stated by the Appellate Division in this case, "we typically afford substantial deference to the Family Part factual findings … and we find no reason to deviate from that standard of review and disrupt that portion of the trial court's credibility-based finding that defendant never made an 'implied or express promise that he would support the plaintiff either for her life or for any other period of time.' The [trial] court's conclusion was supported by substantial credible evidence in the record." (Ra31)

In her Conclusion of Trial, the Trial Court placed five pages of detailed findings about the evidence presented regarding any oral promise that may have occurred prior to the amendment to the Statute of Frauds in 2010 by the Defendant to support the Plaintiff for the rest for her life. The Court found that no oral promise was made prior

to the change to the law. (Ra45-47). Nothing offered by *amicus curiae* does or should disrupt that holding, therefore the request that the Court consider if the courts retain the ability to use the equitable defense of partial performance to take an oral argument prior to 2010 out of the Statute of Frauds is not ripe or appropriate in this case.

The Appellate Division also correctly held that partial performance is a defense to a contract available to the one who has performed. The Plaintiff in this case alleges partial performance in part when the Defendant paid the mortgage pursuant to the terms of the agreement after the relationship ended as an exception to the Statue of Frauds. This is not a correct application of the law to the facts in this case. Plaintiff must base her claim on her own performance, not that of the Defendant[3]. (Ra24 *citing* Klochner v. Green, 54 N.J. 230, 236 - 237 (1969)). It is only the partial performance on the part of the party seeking performance that in any case can be considered as invoking consideration. Alexander v. Alexander,96 N.J. Eq.10 (1924). This was comprehensively briefed on behalf

[3] It should be noted that in this case, the Defendant alone was obligated to maintain payment on the mortgage by virtue of his name alone being on the mortgage. (Ra40)

of the Defendant. The Appellate Division decision in this case is consistent with the factual findings of the Trial Court and the application of the law thereto.

The American Academy of Matrimonial Lawyers presents argument based on several factual scenarios and hypotheticals that do not apply in this matter. At page seven (7) of their Brief, the AAML references the following scenarios:

a. A voluntary termination of support by the supported party (in this case, the Plaintiff) from her former spouse due to the promise of the new partner. That is not the evidence in this case. The Consent Order entered in 2011, years prior to the written agreement in 2014, was entered as a resolution to a Motion filed by Plaintiff's first Husband. (Ra50).

b. The financially supported party, (in this case, the Plaintiff) moving from her home. The AAML's brief points to nothing in the record to support that being the case here, because it is not the case here, therefore it is not relevant to any analysis of this case.

c. The financial provider predeceases the supported partner. Again, the AAML's brief points to nothing in the record to support that being the case here, because it is

not the case here, therefore it is not relevant to any analysis of this case.

The issue to be decided in this case is to be based on the facts as established at trial and the application of the law, specifically, the Statute of Frauds as amended in 2010. Any larger policy considerations (as more fully addressed below) are more properly addressed through the legislative process.

III. STATUTES ARE PRESUMED TO BE CONSTITUTIONAL. THERE IS NO EVIDENCE THAT THIS PLAINTIFF OR ANY OTHER PARTY HAS HAD LIMITED ACCESS TO JUSTICE.

Statutes are presumed constitutional and the party asserting the claim that the statute is unconstitutional bears a heavy burden to rebut that presumption. Berg, supra 225 N.J. at 278; In re C.V.C. Pharmacy Wayne, 116 N.J. 490, 497 (1989) cert denied, 493 U.S. 1045, 110 S.Ct. 841 (1990); State v. Bianco, 103 N.J. 383 (1986); Borough of Seaside Park v. Comm. Of N.J. Dept. of Educ., 432 N.J. Super 167, 217 (App. Div.), cert. denied, 216 N.J. 367 (2013). As the New Jersey Supreme Court held in State Farm Mut. Auto. Ins. Co. v, State, 124 N.J. 32, 45-46 (1991), "[i]n considering the constitutionality of legislation, courts do not weigh its efficacy or wisdom. Moreover,

legislative enactments 'are presumed to be valid and the burden on the proponent of invalidity is a heavy one.'"

The legal standard is strict to establish a violation of the Federal or State Contract Clause. Validly enacted legislation is deemed to be an unconstitutional impairment on the right to contract only if all of the following three inquiries are made and established:

> … [the legislation] (1)'substantially impair[s] a contractual relationship,' (2) 'lack[s] a significant and legitimate public purpose,' and (3) is 'based upon unreasonable conditions and unrelated to appropriate governmental objectives.'" Burgos, supra, 222 N.J. at 193-94 (quoting Farmers Mut. Fire Ins. Co., of Salem v. N.J. Prop.-Liab. Ins. Guar. Ass'n, 215 N.J. 522, 546-47 (2013) (alterations in original). See State Farm Mut. Auto. Ins. Co., supra, 124 N.J. at 57.

The legitimate public purpose is to provide clarity to both parties to a palimony agreement. The amendment to the Statute of Frauds was an intentional "sea change in the law" overturning the prior palimony decisions Maeker v. Ross, 219 N.J. 565, 576-77 (2014). It was the intention of the legislature to change the law and reverse prior decisions. Allowing equitable claims to prevail when doing so means ignoring the clear requirements of the law renders the Statute meaningless.

When a Statute's plain language applies, the Courts are to apply and enforce the Statute. The application of

equitable remedies and defenses in this case and in palimony cases will render the plain language of the Statue of Frauds meaningless and *de facto* unconstitutional.

Contrary to the position taken by the AAML in their brief, palimony is distinguishable from other family agreements or contracts. For example, a custody or parenting time agreement is always subject to review and to change based on the best interest of the child. There are no 'final orders' when the best interest of a child is at issue because there is always a need to evaluate any change in circumstance that impacts the child. The Court always maintains the well-established role of *parens patriae* and in loco parentis . Miller v. Miller, 97 N.J. 154 (1984); Klipstein v. Zalewski, 230 N.J. Super. 567 (1988).

As another example, when parties are divorced, if there is a written agreement, before the Court accepts that Agreement, there is a colloquy to assure the parties are aware of their rights. There is a standardized Judiciary form[4] in which the party to a divorce must affirm, acknowledge and certify, in part as follows:

> I have reached an agreement with the other party and I certify to the following:

[4] A complete copy of New Jersey Courts Family Division Form 12620, promulgated by AG Memo dated 7/19/2021 is provided in the appendix.

1. I understand that if a Property or Marital Settlement Agreement (Agreement) was provided, I have the right to an independent review of the Agreement.
2. The Agreement was the result of negotiations between the plaintiff and defendant.
3. I request the incorporation of the Agreement into the Final Judgment of Divorce.
4. I have read and understand the Agreement fully and it is fair and reasonable.
5. I understand that the court is not going to decide on the merits of the Agreement, only that it finds the parties understand the Agreement to be fair and reasonable.
6. I was not coerced or forced into the Agreement.
7. I agree to be bound by the terms of the Agreement and I am asking the judge to make the Agreement part of the Final Judgment of Divorce.
8. I understand that if the Agreement id made a part of the Final Judgment of Divorce, it will be as enforceable as any other court order.
9. I am not under the influence of any drugs or alcohol today that would impair my ability to understand the nature of terms of the Agreement, and I was not under the influence of any drugs or alcohol when I negotiated, read and/or signed the Agreement.

But when palimony is at issue, there is no uncontested hearing, there is no point in the non-marital relationship, or the dissolution therefore, where this can occur. It is only before a promise or a contract governing financial terms in made between unmarried parties when the parties can be properly advised and protected akin to the inquiry made before the terms of a negotiated divorce agreement will be incorporated and therefore enforced by the court.

The brief submitted by the American Academy of Matrimonial Lawyers advocates that a waiver or notary may suffice and that requiring attorney involvement may limit a litigant's access to justice. No such evidence exists in this case. This Plaintiff had a matrimonial attorney as recently as 2011 when she entered into a Consent Order terminating her prior alimony. (Ra 50, line 16 through Ra 51, line 3). If such evidence exists as to other litigants not a party to this case, it is not a part of this matter or this record before the Court.

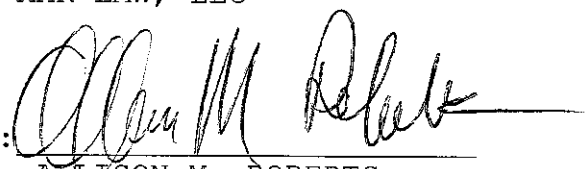
But in offering alternatives such as a notary or a waiver, there is an acknowledgement that there is an interest to be served. There is a rational basis to involve counsel or a notary or to require a waiver. If not, why suggest an alternative? Why not simply advocate to remove any additional terms to the right to contract before you can avail yourself of the protection and enforcement by the Court? It may be that an adequate way to serve this legitimate public interest of assuring parties in a family-like relationship are not subject to duress or otherwise vulnerable while protecting an individuals' right to contract is served by replacing the requirement for an attorney with a notary or an express waiver, but that is for the legislature to decide. That is

a change to be made legislatively to the otherwise Constitutional requirement in place to address a legitimate public interest. The efforts of *amicus curiae* should be directed at changing the statute if there has been a pattern of injustice emerging due to the 2010 amendment to the Statute of Frauds. There is not such issue of injustice in this case.

CONCLUSION

The American Academy of Matrimonial Lawyers (AAML) is advocating for positions not supported by an application of the law to the facts in this case. They are advocating that this court find the 2010 amendment to the Statute of Frauds unconstitutional or render the plain language of the Statute meaningless by allowing a return to equitable remedies when the parties failed to comply with the Statute of Frauds in this palimony case. We request that the holding by the Appellate Division be affirmed and suggest the AAML seek any changes based on policy concerns they may have through the legislative process.

AMR LAW, LLC

By: 

ALLISON M. ROBERTS

Dated: November 1, 2021

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-4883-18T3

KATHLEEN M. MOYNIHAN,

Plaintiff-Respondent/
Cross-Appellant,

v.

EDWARD J. LYNCH,

Defendant-Appellant/ Cross-Respondent.

Argued September 15, 2020 – Decided November 12, 2020

Before Judges Yannotti, Haas and Natali.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part Burlington County, Docket No. FM-03-0189-17.

Allison M. Roberts argued the cause for appellant/cross-respondent (The Deni Law Group, LLC, attorneys; Allison M. Roberts, of counsel; Aleida Rivera, on the briefs).

Angelo Sarno argued the cause for respondent/crossappellant (Snyder Sarno D'Aniello Maceri & Da Costa LLC, attorneys; Angelo Sarno, of counsel and on the briefs; Scott D. Danaher, on the briefs).

PER CURIAM

In this palimony action, defendant Edward J. Lynch appeals from a May 29, 2019 order that enforced a February 2014 written agreement (the Agreement) he entered with plaintiff Kathleen Moynihan. The court ordered defendant to: 1) satisfy the mortgage on a home in which the parties were joint tenants; 2) execute a general warranty deed to plaintiff upon satisfaction of the mortgage; 3) pay the property taxes on the property, and 4) make a $100,000 payment to plaintiff. The court also dismissed defendant's counterclaim seeking partition of the parties' former residence and enjoined plaintiff from dissipating assets from one of his bank accounts. Plaintiff cross-appeals from paragraph one of that same order in which the court dismissed her claim for palimony and concluded after a six-day trial that the oral and written promises made by defendant did not establish an entitlement to such relief.

After carefully reviewing the record and the applicable legal principles, we affirm in part, reverse and vacate in part, and remand for further proceedings. In sum, we conclude that as the Agreement was 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," it was necessary that it not only be memorialized in a written document but "made with the independent advice of counsel for both parties," as unambiguously required by the 2010 amendment to the Statute of Frauds,

N.J.S.A. 25:1-5(h) (Amendment). Neither party sought attorney review and the Agreement is therefore unenforceable consistent with the clear and unambiguous requirement of that statutory provision.

We also disagree with the court's conclusion that the parties' agreement was nevertheless an enforceable contract akin to an agreement for orderly removal under Rule 6:6-6(b), or on any other basis. Finally, we vacate that portion of the order dismissing defendant's counterclaim sounding in partition as the court failed to issue appropriate Rule 1:7-4 findings necessary for appropriate appellate review and dissolve the court's restraint on defendant's ability to spend the funds in one of his bank accounts.

I.

The trial record establishes that plaintiff and defendant began dating in 1997. At the beginning of the relationship, plaintiff testified she had been in the process of an eight-year divorce proceeding with her then-husband and was living with her three children, all of whom were under twelve years old.

Defendant was divorced and lived in New Hampshire with his twelve-year-old daughter.

In July 2000, plaintiff finalized her divorce. After plaintiff's ex-husband failed to pay the mortgage on their former marital home, plaintiff lost the home in the ensuing foreclosure proceedings. While plaintiff was initially awarded $4255 in monthly alimony, it was reduced in 2003 to approximately $1000 per month, and in 2011 plaintiff entered a consent order with her ex-husband to terminate the alimony payments.

Shortly after plaintiff's divorce, defendant purchased residential property in Bordentown at plaintiff's father's request where plaintiff subsequently lived with her children. At the time of the purchase, defendant's name was the only name on the deed. He subsequently acquired two mortgages on the property and paid certain carrying charges for the property, including homeowner's insurance. In connection with the purchase, plaintiff obtained a loan from her father to provide an $8000 down payment and also paid the mortgage and property taxes. While defendant maintained his primary residence in New Hampshire, plaintiff claimed that beginning in approximately 2000 or 2001, he stayed at the Bordentown property more than he stayed at his New Hampshire residence.

Although defendant would travel to New Hampshire once or twice a month and plaintiff would sometimes accompany him, plaintiff stated that "he was primarily living with [her]" and that outside of his time in New Hampshire, he would spend the remainder of his time "[w]ith [her] in New Jersey."

On January 26, 2007, defendant created a trust (the Trust) in which he designated himself the trustee and plaintiff the successor trustee. The same day, defendant conveyed ownership of the Bordentown property by deed from himself to the Trust. Defendant also transferred his basic and optional life insurance policies into the Trust and designated the Trust as the primary beneficiary of his accidental death and dismemberment policy as well as his 401(k) account.

Defendant also designated plaintiff as the beneficiary of his bond account in 2013, and she remained the beneficiary for the duration of the parties' relationship. Finally, on April 10, 2013, defendant conveyed title of the Bordentown property from the Trust to plaintiff and defendant as joint tenants with rights of survivorship.

Plaintiff testified that throughout the relationship, she and defendant had a number of conversations about their future together in which defendant promised to support her financially. For example, plaintiff stated that defendant repeatedly promised that he was "going to take care of [plaintiff] for the rest of [her] life," that he loved her, that they were "a family," and that they would have "a great retirement," although

she noted she was frustrated by defendant's equivocations regarding shopping for an engagement ring. She also stated that defendant paid for her attorney during her divorce and influenced her to enter into the consent order terminating alimony because "he said he would take care of [her] for the rest of [her] life" and that the parties "would be together" because they "were a family and . . . didn't need" the alimony.

Plaintiff testified that when defendant placed the Bordentown property in the Trust, defendant promised that he would "take care of [plaintiff]" so she would never "have to worry if something happens to [him]." Plaintiff stated that defendant promised to support her for the rest of her life "a lot," including when she moved into the Bordentown property and when he named her a beneficiary on his life insurance policy and retirement account. On March 27, 2014, defendant sent plaintiff a text message stating: "I do love you and all I do is plan[] for your future[,] but you don't seem to realize that."

Plaintiff's daughters likewise testified that defendant, who each considered their stepfather, stated he would support plaintiff for the rest of her life. Plaintiff's older daughter Megan stated that when plaintiff would express concern about not having retirement savings, defendant "would say things like, well, I don't know what you're worried about. I told you I would take care of you." Megan also

described a conversation with defendant in which defendant did not understand "why [plaintiff was] so concerned about money because he has enough to take care of both of them" and that defendant "told her that he will take care of both of them." Plaintiff's younger daughter, Caitlyn, similarly testified that defendant told her that "he's a millionaire a couple of times over . . . [a]nd he said that [plaintiff] was already taken care of, that she should know that, that his retirement is her retirement," and that plaintiff "could retire today and she wouldn't have to worry."

In February 2014 plaintiff and defendant entered into the Agreement, handwritten by defendant, which was signed by both parties, and notarized. The Agreement provided that "[i]n the event that [plaintiff] and [defendant] terminate their relationship [defendant] agree[s]" that:

1. The home . . . in Bordentown[,] NJ will be paid off within five years after [defendant] vacates the property.

2. After paying off the mortgage note [defendant] will sign the Deed over to [plaintiff] thereby giving her sole ownership of said property.

3. Until the mortgage is satisfied [defendant] will pay the monthly mortgage payment.

4. [Defendant] will pay the property tax at . . . [the] Bordentown[, NJ property] for two years after his departure.

> 5. [Defendant] will pay [plaintiff] a sum of $100,000 dollars by the end of a five[-]year[] period starting when [defendant] vacate[s] the [Bordentown] property.
>
> This agreement finalizes all obligations of [defendant] to [plaintiff].

Although the Agreement was not dated, the court accepted defendant's testimony that it was executed in February 2014.

Plaintiff testified that she did not request that defendant draft the Agreement and "didn't even know he was doing it." When plaintiff requested that an attorney review the Agreement, defendant purportedly replied that "he didn't want to pay a lawyer" because "if I tell you I'm going to do something, I'm going to do it. I'm a man of my word." Defendant also informed plaintiff that "getting it notarized is as good as going to an attorney. It makes it legal."

Defendant, on the other hand, testified that he did not intend to be bound by the Agreement at the time he signed it. He acknowledged that his actions were "dishonest" because he never informed plaintiff that he did not intend to be bound, and that he didn't "know what she was thinking" regarding the enforceability of the Agreement. Plaintiff and defendant ultimately signed the Agreement before a notary without either engaging an attorney to conduct an independent review.

The parties' relationship deteriorated throughout 2013 and 2014 and ended in April 2015 when defendant vacated the Bordentown residence. Initially, defendant

continued to pay the mortgage and property taxes. On July 6, 2015, however, in response to a text message in which plaintiff sent defendant a tax bill due on August 1, 2015, defendant stated "I'm not paying it[.] [A]s far as I'm concerned[,] we don't have an agreement anymore[.] I'll pay the mortgage you live there you pay the taxes."

On August 11, 2015, plaintiff filed a complaint seeking enforcement of the Agreement and attorneys' fees. On November 18, 2016, the trial court granted plaintiff's requests to file an amended complaint and to restrain defendant from dissipating certain of the parties' joint assets. It denied, however, defendant's requests to dismiss the complaint and to force a sale of the Bordentown property because such relief lacked "a sufficient factual or legal basis."

In her eleven-count amended complaint, plaintiff sought relief based on the following causes of action: 1) palimony, 2) enforcement of a written contract, 3) enforcement of an oral contract, 4) partial performance as a bar to the Statute of Frauds, N.J.S.A. 25:1-5, 5) unjust enrichment, 6) quantum meruit, 7) quasi-contract, 8) equitable estoppel, 9) specific performance of an implied contract, 10) fraud or misrepresentation, and 11) joint venture. Defendant filed an amended answer and a counterclaim for partition of the Bordentown property. A trial took place over six nonconsecutive days. Plaintiff and her daughters Megan and Caitlyn testified on her

behalf, and she also called defendant in her direct case. Contrary to plaintiff's testimony and that of her daughters, defendant testified that the relationship was "exclusive" but that it was "not marriage-like." He similarly stated that he did not consider his relationship with plaintiff as "family" or a "family unit."

Defendant contended that the Agreement was unenforceable "[b]ecause there were other agreements. This was a work in progress." He admitted, however, that no other such agreements were provided in discovery. He also stated that "[n]o promise of anyone has ever passed my lips, not my daughter, not my parents, that I'd take care of them for the rest of their lives," though he testified that he drafted the Agreement and added plaintiff as a life insurance beneficiary to "shut her up."

During trial, plaintiff moved for temporary restraints freezing a bank account defendant owned. The court granted plaintiff's request and entered a corresponding order concluding that plaintiff satisfied each factor of the Crowe v. De Gioia, 90 N.J. 126 (1982), test. The court specifically determined that plaintiff would suffer irreparable harm if the account was not frozen because defendant might have been "trying to hide [h]is assets and dodge his obligation." The court further reasoned that plaintiff presented an issue on which she was likely to succeed in that she presented "a prima facie case of merit." Finally, it concluded that no hardship

would result to defendant and that there was potential hardship to plaintiff because any potential judgment may be rendered uncollectible without those assets.

At the conclusion of plaintiff's case, defendant moved for judgment under Rule 4:40-1 on the palimony and written contract counts. Defendant argued that pursuant to the Amendment, a written contract for palimony is not "binding unless it was made with the independent advice of counsel . . . to both parties," and that neither party in this case consulted an attorney prior to signing the Agreement. In response, plaintiff argued that the Amendment was unconstitutional because it impaired the "right of his client and people situated similarly to his client to enter into contracts." Plaintiff further maintained that there was no reason "for people who are in a . . . marital type relationship who want to enter into a contract to resolve their relationship should have to have an attorney when nobody else has to have an attorney."

The court concluded that there was no factual dispute as both parties were "very clear[] that they did not talk to an attorney with regard to [signing the Agreement]." The court declined to conclude that the Amendment was unconstitutional because: 1) there was "no notice to the Attorney General of the attack on the validity of the statute" as required by Rule 4:28-4(a)(1); 2) the

Supreme Court declined to address the constitutionality of the Amendment in Maeker v. Ross, 219 N.J. 565 (2014); and 3) there was "no evidence . . . of any kind of undue burden . . . [or] evidence that it impairs [plaintiff's] right to contract . . . [or to] afford an attorney." While the trial court found the policy discussions around palimony "smacks a . . . bit of paternalism and patriarchy," the court noted it was bound by the plain language of the statute and granted defendant's motion with regard to count one for palimony and dismissed that claim with prejudice.

Turning to defendant's request for judgment on the enforceability of the Agreement, the court found that it is "simply a contract between the[] parties" requiring only an offer, acceptance, and consideration. The court noted that the parties negotiated at length the provisions of the Agreement and that there was a "meeting of the minds." The court found consideration existed based on "the love and affection between the parties, the years that they were together" and denied defendant's motion. After the court dismissed count one, the trial proceeded on counts two through eleven and defendant's counterclaim for

partition.

At the conclusion of trial, the court issued a May 29, 2019 order dismissing all the remaining counts in the amended complaint except for count two, enforcement of the Agreement. It ordered defendant to "completely satisfy" the mortgage at the

Bordentown property, issue a general warranty deed to plaintiff upon satisfaction, pay plaintiff $100,000, and pay all property taxes on the property between May 1, 2015, and April 30, 2017. The court denied plaintiff's requests for "an equitable legal share of the assets accumulated by the [d]efendant during the relationship" and "that the [d]efendant provide proper support for her." Further, it continued the previously entered restraint on defendant's bank account and ordered the parties to pay their own attorneys' fees and costs. Finally, the court dismissed defendant's counterclaim.

In its corresponding May 29, 2019 oral opinion, the court found that "between 1997 and 2000, [the parties] were engaged in . . . a dating relationship. And it wasn't until the property in Bordentown was purchased that it became more frequent, more formalized, and could more accurately be called cohabit[at]ing, or at least living together." It also found that the parties did not commingle funds in the form of a joint bank account or joint credit cards, which was undisputed.

The court noted the discrepancies between the parties' view of the relationship. The court concluded that defendant's testimony was not "particularly credible" and that plaintiff's testimony was "much more credible than the [defendant's] . . . in all respects." The court noted that his testimony in which he stated he "never intended

to be bound by" the Agreement and that "[h]e did it to keep the peace" was detrimental to his credibility, as well as his evasive responses to questioning about "the use of the money from the sale of the bonds." The court found that the relationship "[c]learly . . . was a cohabitation and certainly had all of the earmarks of a marital style relationship and a family style relationship."

The court then described the promises that plaintiff alleged were made to her by defendant "to support her for the rest of her life." It concluded that despite its finding that plaintiff was "generally more credible than the defendant," the court found the defendant did not tell plaintiff that he would "take care of [her] for the rest of [her] life" in 2000. The court also found that when defendant agreed to pay the mortgage and taxes on the Bordentown property, "it [wa]s not a situation in which he was agreeing to support or take care of her for any period of time. He was simply acting as a means for her to live in a townhouse instead of an apartment."

After considering the parties' discussions of marriage, the Trust, and defendant's bill payments, the court was "unable to conclude" that those discussions "amount[ed] to an express agreement of support for life" and that "[i]t was simply the various financial machinations that went on between [defendant] and [plaintiff] during the course of their relationship." As such, the court denied plaintiff's request for palimony based on any purported oral agreement. The court

also reaffirmed its earlier decision denying palimony based on the Agreement as contrary to the Statute of Frauds.

The court next addressed plaintiff's claims in count two of the amended complaint for enforcement of the Agreement. Specifically, the court determined that "it is more likely" that the Agreement was signed in 2014 as defendant testified. It concluded that the Agreement's terms were "clear and understandable, and they were understood by the parties." It further found that the Agreement was in defendant's handwriting and was "the culmination of various discussions that the parties had about their relationship, what they were doing, where they were going, [and] what they wanted in the future." The court found not credible defendant's "testimony that there were other agreements in writing" because he produced no other prior agreements, and it accordingly determined that the Agreement was "the only written agreement that exist[ed] between the plaintiff and the defendant."

The court further concluded that "[w]hile the proofs do not support a finding of a promise by the defendant to support the plaintiff for life, . . . [they] do support the conclusion that . . . the defendant wanted the plaintiff to have the house." Further, it determined that "[t]he conclusion is inescapable that [the Agreement] is a contract between the plaintiff and the defendant" which was legally enforceable. Noting that consideration was the only element of contract formation in dispute, the court found

that "plaintiff gave up her alimony in 2011, upon the representation by the defendant that [he] would take care of her" and also induced her "to remain in the relationship." The court concluded that despite defendant's motive "to shut [plaintiff] up" and "to make her feel secure," he clearly acknowledged that "he knew there was an agreement" because of his text message stating "[w]e don't have an agreement anymore."

The court reasoned that the Agreement "clear[ly]" was not a palimony agreement because "there is no promise in it of support for the rest of [plaintiff]'s life." Rather, the court found the Agreement was "very akin to an order for orderly removal that we see in landlord/tenant court all of the time." Because it was unaware "of any prohibition in the law on the rights of parties who are cohabiting to enter into these types of agreements," it granted plaintiff's request for relief in count two, enforcement of the written agreement. Finally, it dismissed all remaining counts of the complaint "as they are actually alternative theories of liability in the event the oral and/or written agreements [were] not enforced" as well as defendant's counterclaim for partition.[1] This appeal followed.

On appeal, defendant argues that the trial court should have dismissed count two, as the parties did not consult attorneys pursuant to the Amendment.

---

[1] As noted, plaintiff's amended complaint also included claims for: unjust enrichment (count five), quantum meruit (count six), quasi-contract (count seven), equitable estoppel (count eight), specific performance of an implied contract (count nine), fraud or misrepresentation (count ten), and joint venture (count eleven). Significantly, plaintiff's notice of cross-appeal clearly states she seeks review of only paragraph one of the order, which dismissed count one of the amended complaint. It is well settled that a party's appeal is limited to those judgments or orders, or parts thereof, designated in the notice of appeal. Pressler & Verniero, Current N.J. Court Rules, cmt. 6.1 on R. 2:5-1 (2020). Further, plaintiff failed to brief the propriety of the trial court's dismissal of these claims. The failure to brief an issue constitutes waiver of that issue. See Gormley v. Wood-El, 218 N.J. 72, 95 n.8 (2014); Pressler & Verniero, Current N.J. Court Rules, cmt. 5 on R. 2:6-2 (2020). We therefore decline to consider any challenge to the portion of the court's May 29, 2019 order that dismisses counts five through eleven.

Further, he contends that the court erred by concluding that the Agreement was legally enforceable as similar to an agreement for orderly removal. Moreover, defendant claims the court erred by dismissing his counterclaim for partition and in continuing the freeze on his bank account.

In her cross-appeal, plaintiff argues that the trial court committed error when it concluded that defendant did not make oral promises of palimony. Alternatively, she contends the court erred by failing to conclude that partial performance nullified the Amendment's attorney review requirement. Finally, plaintiff argues the court erred when it determined the Amendment was not an unconstitutional infringement on her contractual rights.

II.

Our scope of review of Family Part orders is limited. Cesare v. Cesare, 154 N.J. 394, 411 (1998). We generally defer to factual findings made by a trial court when such findings are supported by adequate, substantial, and credible evidence. Gnall v. Gnall, 222 N.J. 414, 428 (2015). "We review the Family Part judge's findings in accordance with a deferential standard of review, recognizing the court's 'special jurisdiction and expertise in family matters.'" Thieme v. Aucoin-Thieme, 227 N.J. 269, 282-83 (2016) (quoting Cesare, 154 N.J. at 413). "A more exacting standard governs our review of the trial court's legal conclusions[,] . . . [which] we review . . . de novo." Ibid. (citing D.W. v. R.W., 212 N.J. 232, 245-46 (2012)).

III.

Defendant initially argues that the court committed error when it concluded that because the Agreement had "no promise in it of support for the rest of [plaintiff's] life," it was "beyond the reach of the Amendment." We agree.

Palimony is "a claim for support between unmarried persons." Devaney v. L'Esperance, 195 N.J. 247, 253 (2008). "A valid cause of action for palimony requires an agreement to pay future support made during a marital-type relationship between unmarried persons." Bayne v. Johnson, 403 N.J. Super. 125, 139 (App. Div. 2008). The common law elements of a palimony cause of action are that: 1)

the parties cohabited; 2) in a marriage-type relationship; 3) during which defendant promised plaintiff support for life; and 4) there was valid consideration for the promise. Levine v. Konvitz, 383 N.J. Super. 1, 3 (App. Div. 2006).

Prior to the enactment of the Amendment, palimony agreements could be express or implied. Kozlowski v. Kozlowski, 80 N.J. 378, 384 (1979). Further, in In re Estate of Roccamonte, 174 N.J. 381, 393 (2002), our Supreme Court concluded that "the entry into [a marital-type] relationship and then conducting oneself in accordance with its unique character is consideration" to enforce a promise for support.

The existence and terms of the contract in a palimony action are not determined by the parties' words, but "by the parties' 'acts and conduct in the light of . . . [their] subject matter and the surrounding circumstances.'" McDonald v. Estate of Mayety, 383 N.J. Super. 347, 359 (App. Div. 2006) (quoting Kozlowski, 80 N.J. at 384). A general promise of support for life in exchange for some consideration is sufficient to form a contract. Ibid. When the court determines that such a promise was made and later broken, it will award the promisee a lump sum payment representing the present value of reasonable future support over the expected life of the promisee. Id. at 360.

The Statute of Frauds requires that certain "agreements or promises . . . be in writing and signed by the party to be charged therewith." N.J.S.A. 25:15. On January 18, 2010, the Statute of Frauds was amended to include the Amendment, which as noted, required that palimony agreements be in writing and entered with the advice of counsel. L. 2009, c. 311, § 1, eff. Jan. 18, 2020. Specifically, the Amendment provides that an agreement must be in writing where there is 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) (emphasis added).]

The legislative history of the Amendment makes clear that the Legislature "intended to overturn recent 'palimony' decisions by New Jersey courts," specifically referencing Devaney, 195 N.J. at 248 (holding "cohabitation is not an essential requirement for a cause of action for palimony, but a marital-type relationship is required"); Roccamonte, 174 N.J. at 381 (holding that a promise of support between unmarried persons may be enforced against a decedent's estate); and Kozlowski, 80 N.J. at 378 (recognizing that a promise between unmarried persons for support, whether express or implied, may be enforceable).

Senate Judiciary Committee, Statement to S.2091 (Feb. 9, 2009).[2]

[2] Then Governor Jon S. Corzine issued the following statement when he signed the legislation.

> I approve Senate Bill No. 2091 . . . in light of the representation by legislative leadership and the bill sponsors that this law will be improved to recognize agreements or promises in a non-marital relationship as binding when they are mutual, in writing, and notarized as opposed to mandating the involvement or services of an attorney. Legislative leadership and the sponsors Here, the trial judge incorrectly concluded that because the Agreement lacked an essential element of a palimony agreement, a promise of support for life, it fell outside of the Statute of Frauds. The Amendment, however, requires only that such an agreement contain 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." N.J.S.A. 25:1-5(h). The Amendment does not limit the attorney review requirement to promises of support for the promisee's life or any other duration of time. As such, the trial court erred when it concluded that because the Agreement lacked a promise of support for life, it stood outside the clear requirements of the Amendment.

> share my goal of providing greater clarity in the enforcement of palimony agreements but ensuring that this law does not have an adverse impact on parties who may not be able to afford the services of an attorney. I take this action in light of the time constraints that result at the end of a legislative session, which do not afford time

> for a [c]onditional [v]eto to recommend removal of this provision.

Despite Governor Corzine's intention that the law be amended to require only a notarized agreement, no such modifying amendment was ever enacted by the Legislature.

By way of the Agreement, defendant clearly promised "to provide support or other consideration" to plaintiff. In this regard, defendant stated, despite any unexpressed intentions he may have had, that he would agree to the terms of Agreement in the event the relationship terminated. And, he agreed that should such an event occur, he would pay the entirety of the mortgage at the Bordentown property within five years, sign the deed over to plaintiff, pay the monthly mortgage, pay the property taxes for two years, and pay plaintiff a lump sum of $100,000 within five years after he vacated the property. The Agreement is precisely the type of written contract encompassed by the Amendment and for which attorney review is required. Absent compliance with the Amendment, the

Agreement is not an enforceable contract.

IV.

We also agree with defendant that the court erred when it enforced the Agreement as a non-palimony contract. The court equated the Agreement to a landlord/tenant order for orderly removal specifically stating that the Agreement was "very akin to an order for orderly removal" and that "that's exactly what this

is."

Under Rule 6:6-6(b),

> [a]n application for orderly removal requesting more time to move out, if there is a showing of good reason and applied for on notice to a landlord . . . need not have a return date if the sole relief is a stay of execution of a warrant of removal for seven calendar days or less, but it shall provide that the landlord may move for the dissolution or modification of the stay on two days' notice to the tenant or such other notice as the court sets in the order.

It is clear from a plain reading of Rule 6:6-6(b) that the Agreement bears no similarity to an order for orderly removal. Rule 6:6-6(b) orders do not distribute funds, compel payments based on alleged offers of support, or transfer contested interests in real property. Furthermore, as we have already concluded that the Agreement was clearly encompassed by the Amendment, it was error for the court to enforce the Agreement under another name. Finally, there is no evidence to support a finding that the parties entered into a landlord/tenant relationship. In light of our decision, we need not address defendant's related argument that the Agreement was unenforceable for a lack of consideration. V.

Plaintiff further argues that her partial performance in accordance with the purported oral promises warrants enforcement of the Agreement. We disagree for the following reasons.

First, we find that plaintiff did not plead a proper cause of action for partial performance. Indeed, count four of plaintiff's amended complaint states that it was defendant, not plaintiff, who partially performed. As the Supreme Court noted in Klockner v. Green, a plaintiff alleging partial performance as an exception to the Statute of Frauds must base their claim on their own performance, not the defendant's. 54 N.J. 230, 236-37 (1969). We therefore find that plaintiff's pleading does not support a basis for relief as it is based on the performance of defendant and not on her own. Even if we considered the amended complaint to conform to the proofs as permitted by Rule 4:9-2, we also reject plaintiff's argument because her claim for partial performance is in direct contradiction to the Amendment and the services performed are not exceptional in character.

In Maeker, we questioned whether an oral palimony agreement can be enforced based on a claim for partial performance. 430 N.J. Super. at 93. After reviewing the legislative history to the bill enacting the Amendment, we noted the Legislature expressed its intent that the bill was "intended to overturn recent 'palimony' decisions by New Jersey courts." Ibid. (quoting Senate Judiciary Committee, Statement to S.2091 (Feb. 9, 2009)); see also Devaney, 54 N.J. at

248; Roccamonte, 174 N.J. at 381; Kozlowski, 80 N.J. at 378.[1]

Plaintiff's claim of partial performance is contrary to the clear terms of the Amendment. Indeed, plaintiff's theory of relief is of the type that was specifically intended to be barred by the Amendment. As noted, the Amendment was enacted by the Legislature in direct response to recent decisions that found implied in fact agreements. Roccamonte, 174 N.J. at 395; Kozlowski, 80 N.J. at 384. A contract implied in fact is created by the conduct of the parties. Weichert Co. Realtors v. Ryan, 128 N.J. 427, 436 (1992). Plaintiff's assertion that the Agreement should be enforced based on her alleged partial performance of an oral agreement between the parties, would essentially permit enforcement of contract the Legislature has expressly prohibited.

Finally, in Maeker we noted that to grant the equitable remedy of specific performance of an oral promise the "performance must be in some respects of an exceptional character, and it must be obvious that . . . the services are of such peculiar character that it is impossible to estimate their value by any standard." 430 N.J.

[1] In Roccamonte, the Supreme Court upheld an oral promise for palimony for a twenty-five-year relationship. 174 N.J. at 385. The Court held that although it

Super. at 94 (quoting Klockner, 54 N.J. at 237). We rejected the requested equitable relief in that case because "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." Ibid. These services included paying for joint property expenses, plaintiff's living expenses, and plaintiff's son's living expenses. Id. at 93. Here, without minimizing plaintiff's contributions to the parties' relationship, like in Maeker, the services were not "exceptional or peculiar in character" and did not support enforcement of the Agreement.

---

believed an oral promise existed, the agreement would also have been enforceable by implication. Id. 395. In Kozlowski, the Supreme Court upheld an oral promise for palimony for a fifteen-year relationship. 80 N.J. at 384-87. Moreover, similar to Roccamonte, the Court found that it was "of no legal consequence" whether the promise was express or implied. Id. at 384.

VI.

In addition, defendant asserts that the court erred by dismissing his counterclaim for partition without placing its reasons for dismissal on the record. He further contends that his partition claim was meritorious as his rights as a joint tenant of the property would be violated without a partition because it is the deed that governs, not the Agreement. We agree with defendant that he asserted a viable partition claim. As the court dismissed that cause of action without providing a

statement of reasons as required by Rule 1:7-4, we vacate that portion of the May 29, 2019 order and remand for further proceedings.

Partition is an equitable remedy by which property, held by at least two people or entities as tenants in common or joint tenants, may be divided. See N.J.S.A. 2A:56-1 to -44; R. 4:63-1. When property is subject to partition, a physical division of the property is one possible remedy. N.J.S.A. 2A:56-2 provides that a court "may, in an action for the partition of real estate, direct the sale thereof if it appears that a partition thereof cannot be made without great prejudice to the owners, or persons interested therein." The manner in which property is partitioned is "within the discretion of the court." Greco v. Greco,
160 N.J. Super. 98, 102 (App. Div. 1978) (citing Newman v. Chase, 70 N.J. 254, 263 (1976)).

Rule 1:7-4(a) provides that the court "shall . . . find the facts and state its conclusions of law thereon . . . on every motion decided by a written order that is appealable as of right." "Meaningful appellate review is inhibited unless the judge sets forth the reasons for his or her opinion. In the absence of reasons, we are left to conjecture as to what the judge may have had in mind." Salch v. Salch, 240 N.J. Super. 441, 443 (App. Div. 1990); see also Estate of Doerfler v. Fed. Ins. Co., 454 N.J. Super. 298, 301 (App. Div. 2018).

At trial, defendant established a colorable partition claim. For example, on April 10, 2013, title of the Bordentown home was conveyed from the Trust by deed to defendant and plaintiff as joint tenants with rights of survivorship. Defendant was responsible for certain of the property's carrying costs. For her part, plaintiff contributed an $8000 loan from her father to be used as a down payment.

Here, the court summarily stated that as a result of granting count two and enforcing the Agreement, "the counterclaim is dismissed." We cannot discern from this statement the court's reasoning to support the dismissal of defendant's counterclaim. A remand is therefore necessary for the court to consider the trial proofs and address the partition claim with appropriate Rule 1:7-4 factual findings and legal conclusions.

VII.

Defendant also contends that the trial court erred by continuing the freeze on his bank account until "all of the obligations under [the trial court's order] are satisfied," and again stressed that the court failed to make necessary factual findings and legal conclusions supporting the need for continuing restraints. As we have reversed that portion of the May 29, 2019 order that enforced the Agreement and remanded for further proceedings limited to the partition action, we discern no further need for the restraints on defendant's bank account under Crowe, 90 N.J. at

132-34. Accordingly, the portion of the trial court's order freezing defendant's bank account is vacated.

VIII.

On her cross-appeal, plaintiff contends that the trial court committed error in dismissing her claim for palimony stated in count one because it "failed to adequately consider [d]efendant's conduct when deciding whether any oral promises existed." We disagree.

In Maeker v. Ross, we held that because palimony actions are based upon principles of contract law, a palimony cause of action accrues at the time the defendant is alleged to have breached the agreement, not at the time the promise of lifetime support was purportedly made. 430 N.J. Super. 79, 97 (App. Div. 2013). In 2014, however, the Supreme Court reversed our ruling and held that the Amendment did not apply retroactively to void oral palimony agreements that predated its enactment. Maeker, 219 N.J. at 580-82. The Supreme Court explained that the date the oral contract was formed, rather than the date the cause of action accrued, was the controlling date "for retroactivity purposes." Id. at 582. Under the Supreme Court's holding, count one of plaintiff's amended complaint, predicated on alleged oral

promises made during their eighteen-year relationship, pre-dated the Amendment and was therefore enforceable so long as oral promises of palimony existed.

As noted, the common law elements of a palimony cause of action are that: 1) the parties cohabited; 2) in a marriage-type relationship; 3) during which defendant promised plaintiff support for life; and 4) there was valid consideration for the promise. Levine, 383 N.J. Super. at 3. Plaintiff contends that the only element at issue is whether defendant made oral or written promises for support. In this regard, plaintiff relies on In re Estate of Quarg for the proposition that a "promise will be enforced by the court whether it is oral or written, implied or express, or inferable from the parties' acts and conduct rather than by what they said." 397 N.J. Super. 559, 564 (App. Div. 2008) (citing Roccamonte, 174 N.J. at 389).

In Quarg, this court remanded the matter "to the Chancery Division for a plenary hearing, if necessary, to determine whether [the plaintiff] can establish an enforceable implied promise as detailed in Roccamonte" regarding her request for a constructive trust. Id. at 566. In reaching its decision, the court concluded that an implied promise may have existed because "one of the components of [plaintiff]'s complaint alleged that she would be unjustly impoverished if she did not share in [defendant]'s estate" and because "after more than forty years of living with [defendant] as married, [plaintiff] asserts that the relationship was 'founded on

mutual trust, dependency[,] and raised expectations.'" Ibid. In this regard, the court found that the plaintiff's "allegations bespeak an implied promise by [defendant] not to leave [plaintiff] impoverished, but rather, to see to it, as best he could, that she survived with adequate provisions during the remainder of her life." Ibid.

Here, as noted, we typically afford substantial deference to Family Part factual findings because of its "special jurisdiction and expertise," see Thieme, 227 N.J. at 283 (quoting Cesare, 154 N.J. at 413), and we find no reason to deviate from that standard of review and disrupt that portion of the trial court's credibility-based finding that defendant never made an "implied or express oral promise that he would support the plaintiff either for her life or for any other period of time." The court's conclusion was supported by substantial credible evidence in the record.

Further, unlike the parties in Quarg, plaintiff and defendant did not share a last name and had no joint bank account. And, as the trial court noted, "[w]hen the defendant set up the revocable trust, he told [plaintiff] what it meant. She understood that it was revocable, that he could change it at any time." Moreover, unlike Quarg, the court noted that "during all of this time, up to and including the present, the plaintiff is not totally dependent on the defendant," and that the case law indicates that "complete financial dependence . . . is one thing that we can look at." Subsequently, the court found that "[plaintiff] [had] work[ed] and receiv[ed] for a

period of time, child support, and receiv[ed] . . . alimony." Here, there is no indication that plaintiff would be "impoverished" absent the enforcement of an oral promise of palimony. See Quarg, 397 N.J. Super. at 566. In sum, the trial court did not err when it dismissed count one and concluded that defendant's conduct did not evince an implied oral promise to support plaintiff for life or other period of time.

IX.

Finally, plaintiff argues that the Amendment violates the Contract Clause of the New Jersey and United States Constitutions. She contends that "there can be no doubt that there is a contractual relationship between [p]laintiff and [d]efendant, and between individuals similarly situated," which has been impaired because it leaves plaintiff "without adequate recourse after dedicating a large part of her life to [d]efendant." She further maintains that the independent legal counsel requirement "lacks a significant and legitimate public purpose" because it "prohibits parties who cannot afford to retain counsel from entering into an enforceable agreement" and no other statute "requir[es] parties to consult with independent legal counsel, as opposed to affording parties the opportunity to consult with" same. Finally, she claims that "the requirement of independent legal counsel is based upon unreasonable conditions and is unrelated to appropriate governmental objectives." We disagree with all of these arguments.

The Contract Clause of the United States Constitution states: "No State shall . . . pass any . . . Law impairing the Obligation of Contracts." U.S. Const. art. 1, § 10, cl. 1. Similarly, New Jersey's Constitution guarantees: "The Legislature shall not pass any . . . law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made." N.J. Const. art. IV, § 7, para. 3; see, e.g., Berg v. Christie, 225 N.J. 245, 258-59 (2016); Burgos v. State, 222 N.J. 175, 193 (2015).

"Contract impairment claims brought under either constitutional provision entail an analysis that first examines whether a change in state law results in the substantial impairment of a contractual relationship and, if so, then reviews whether the impairment nevertheless is 'reasonable and necessary to serve an important public purpose.'" Berg, 225 N.J. at 259 (quoting U.S. Tr. Co. of N.Y. v. New Jersey, 431 U.S. 1, 25 (1977)). Our Supreme Court has advised this analysis requires "three inquiries." Ibid. "Legislation unconstitutionally impairs a contract when it (1) 'substantially impair[s] a contractual relationship,' (2) 'lack[s] a significant and legitimate public purpose,' and (3) is 'based upon unreasonable conditions and . . . unrelated to appropriate governmental objectives.'" Burgos, 222 N.J. at 193-94 (quoting Farmers Mut. Fire Ins. Co. of Salem v. N.J. Prop.-Liab. Ins. Guar. Ass'n, 215 N.J. 522, 546-47 (2013)

(alterations in original)).

Here, requiring a lawyer to review palimony agreements is not a substantial impairment. The Legislature routinely imposes additional costs on parties who seek to enter contractual relationships. For example, it has required independent legal counsel if a lottery winner seeks to assign their winnings. See N.J.S.A. 5:9-13(d)(15). Further, in the rare situations in which courts have found a substantial impairment, the law in question has completely altered terms of an existing, enforceable contract. See, e.g., Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 247 (1978) (finding a substantial impairment because the "statute in question . . . nullifie[d] express terms of [a party's] contractual obligations and impose[d] a completely unexpected liability in potentially disabling amounts"). Plaintiff and others similarly situated are free to enter enforceable palimony agreements so long as they satisfy the Statute of Frauds. Here, plaintiff conceded that she chose not to see a lawyer about the Agreement and the trial court found there was "no evidence she c[ould not] afford an attorney."

Moreover, the Amendment's conditions reasonably relate to a significant and legitimate public purpose. The Statute of Frauds exists because the Legislature has found agreements within its scope "susceptible to fraudulent and unreliable methods of proof." Lahue v. Pio Costa, 263 N.J. Super. 575, 599 (App. Div. 1993). With

regard to the Amendment specifically, we noted that the Legislature was concerned with the burden of proof difficulties in establishing valid palimony agreements. While independent attorney review is not required in other provisions of the Statute of Frauds or other family law agreements, the Legislature has required so for palimony agreements with the very purpose of protecting the rights of contracting parties. The Amendment is one legitimate way of addressing this significant issue and is reasonably related to appropriate legislative objectives. After considering the aforementioned three-part inquiry, we conclude plaintiff has failed to establish that the

Amendment violates the Contract Clauses of the State or Federal Constitutions.

To the extent we have not addressed any of the parties' arguments it is because we find them without sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed in part, reversed and vacated in part, and remanded. We do not retain jurisdiction.

CHANCERY DIVISION, FAMILY PART
BURLINGTON COUNTY
DOCKET NO.: FM-03-189-17
APP. DIV. NO.: A-004883-18-T3

KATHLEEN MOYNIHAN,

Plaintiff,

vs.

EDWARD J. LYNCH,

Defendant.

TRANSCRIPT

OF

CONCLUSION OF TRIAL

Place: Burlington County
Courts Facility
49 Rancocas Road
Mt. Holly, N.J. 08060

Date: May 29, 2019

BEFORE:

THE HONORABLE M. PATRICIA RICHMOND, J.S.C.

TRANSCRIPT ORDERED BY:

ALLISON MATTIA ROBERTS, ESQUIRE
The Deni Law Group, LLC

APPEARANCES:

SCOTT D. DANAHER, ESQUIRE
Attorney for Kathleen Moynihan, Plaintiff

ALLISON MATTIA ROBERTS, ESQUIRE
Attorney for Edward J. Lynch, Defendant

Transcriber: Karen D. Keebler
DIANA DOMAN TRANSCRIBING, LLC
P.O. Box 129
Gibbsboro, NJ 08026
PHONE: (856)435-7172
FAX: (856)435-7124
Email: dianadoman@comcast.net

Audio Operator: I. Vasquez Gross

I N D E X

(Proceeding begins at 3:16 p.m.)

THE COURT: Hello. Ms. Roberts, this is Judge Richmond.

MS. ROBERTS: Hi, Judge.

THE COURT: I'm sorry for the delay.

MS. ROBERTS: How are you?

THE COURT: Okay. We had to get someone to come and fix the phone. Apparently, over the weekend when we had a power surge, the phones got knocked out.

MS. ROBERTS: Yeah. We had an issue up here, too.

THE COURT: Okay.

MS. ROBERTS: Understood.

THE COURT: Okay. All right.

MS. ROBERTS: I said I'm glad it's not just me who has technical difficulties.

THE COURT: All right. You're here. All right. Good afternoon.

Under Docket No. FM-03-189-17, this is the matter of Kathleen Moynihan vs. Edward Lynch. Counsel, your appearance, starting with Mr. Danaher, who is present in the courtroom.

MR. DANAHER: Good afternoon, Your Honor. Scott Danaher, the firm of Snyder & Sarno, on behalf of the plaintiff, Kathleen Moynihan, who is seated to my

right.

MS. ROBERTS: Good afternoon. Allison Roberts on behalf of the defendant, Edward Lynch.

THE COURT: Ms. Roberts, was your client planning on coming to the courthouse?

MS. ROBERTS: No, Judge.

THE COURT: Okay. Because we called outside, and only Mr. Danaher and Ms. Moynihan answered. But if he were here, we would bring him in. Is he there with you?

MS. ROBERTS: No, Judge.

THE COURT: Okay. Before I begin, because I'm just simply going to read my decision on the record, I would like to offer you, Ms. Roberts, and you, Mr. Danaher, one last opportunity to talk and see if you can resolve this matter amicably. Any purpose of doing that?

MR. DANAHER: I mean, I never say no to that opportunity. It would be foolish to say no to such an opportunity. I just think -- I'm not sure without speaking to my client. I know she's been through a lot, been through a trial. So, I mean, I would like to have that opportunity to speak with her and see if she'd be interested in doing that.

THE COURT: All right. And are you able --

what about your position, Ms. Roberts?

MS. ROBERTS: And, Judge, I apologize. If I had known there was going to be an appearance or anything like that, I certainly would have come.

THE COURT: Oh, no. No apology is necessary. I had made the offer that anybody that wanted to appear by phone could appear by phone.

MS. ROBERTS: Okay. So, Judge, I just don't know at this point if that would be productive. I know we've been down this road several times, both Scott and -- or Mr. Danaher and Mr. Sarno and myself.

THE COURT: All right. Then we'll just move forward.

All right. The reason that we're getting together today is because I am going to read on the record my decision with regard to the trial that was held in this case.

This matter started almost four years ago, when a complaint on behalf of the plaintiff was filed in the Law Division under Docket No. L-1898-15. And basically it asked for enforcement of a written agreement between the parties that has since, during the course of this trial, been marked as P-64. And it asks also for some other ancillary relief.

An answer was filed in February of 2016. And

then by consent order on July 21st, 2016, the matter was transferred to the Chancery Division, Family Part, under Docket No. FM-03-189-17. An amended complaint was filed on November 22nd, 2016, sounding in 11 counts, including one for palimony, one for enforcement of a contract, and then various other forms of relief.

It asked in Count 1 for enforcement of both oral and written promises for palimony. Paragraph -- or Count 2 is a written contract. Three was an oral contract. Four was for enforcement based on partial performance as a bar to the statute of frauds. Five was unjust enrichment. Six was quantum meruit. Seven was quasi contract. Eight is equitable estoppel. Nine is specific performance of an implied contract. Ten was fraud and misrepresentation. And eleven was a joint venture.

After the amended complaint was filed, an answer and -- an amended -- was titled amended answer, and counterclaim for partition was filed on January 25th, 2017. And then an answer to that counterclaim was filed on February 8th, 2017.

The matter came before the Court for trial on several days, October 10th and 23rd, November 29th and 30th of 2018, January 15th of 2019, and now it's back before the Court today for me to put my decision on the

record.

The evidence in this case consists of the testimony of the witnesses and the exhibits that were marked into evidence. The witnesses who testified are the plaintiff, Kathleen Moynihan; her two daughters, Megan Moynihan and Caitlin Moynihan; and the defendant, Edward Lynch.

These are the facts as I find them to be based on my review of the evidence, which consists of my review of the notes of the testimony, my review of the documents that have been marked into evidence, and my review of various selected portions of the -- not the transcript but the oral transcript. I listened to parts of it on CourtSmart when I needed either clarification or I couldn't read my writing.

Based on all of the information submitted, I find that the parties met in 1997, when both were employed by U.S. Airways. Mr. Lynch was a pilot, and the plaintiff was and still is a flight attendant, and her sister knew Mr. Lynch. Mr. Lynch was a pilot. He is now retired.

In 1997, the plaintiff was married but in the process of getting divorced. The defendant was not married, as he was divorced.

Between 1997 and 2000, while the parties were

engaged in a dating relationship, the defendant would often stay at the plaintiff's house, but not in the same bedroom. She had young children living with her, and she felt that it was not appropriate to share a bedroom in the house in the presence of the children. She was living out in Columbus, and she made arrangements for him to stay in separate facilities on the third floor.

By way of some background, the defendant was a pilot for U.S. Airways, with a home base in Philadelphia. According to the testimony of both parties, the defendant had what they called a crash pad near the Philadelphia airport to accommodate his flying schedule. He also had a home in New Hampshire, and when he was flying he would need a place to stay either immediately before or immediately after a flight leaving from Philadelphia, which was his flying base.

When his daughter turned 12, he obtained custody of her. So he was more frequently in New Hampshire than in the Philadelphia area or New Jersey.

The plaintiff was divorced in 2000, after which the defendant began to stay in New Jersey more frequently. He moved out of the third floor and into the plaintiff's bedroom.

Between 1997 and 2000, the plaintiff and her

children lived in Columbus, New Jersey in the formal marital residence with the defendant having sleeping quarters on the third floor. The plaintiff lost the Columbus home to foreclosure. There was a sheriff's sale in 2000. She testified that she expected to move into an apartment with her three children.

She and her father spoke, and then her father spoke with the defendant, and the defendant indicated that he would be willing to purchase a townhouse for the plaintiff and her children, and her father provided an $8,000 loan for the down-payment on this property.

During the time the parties resided together, which was from 2000 to 2015, they did not co-mingle their funds. Now, I say they resided together from 2000 to 2015. In my view, and I'll talk about it a little bit later, a fair reading of the evidence is that between 1997 and 2000, they were engaged in more or less a dating relationship. And it wasn't until the property in Bordentown was purchased that it became more frequent, more formalized, and could more accurately be called cohabiting, or at least living together.

But in any event, they did not co-mingle their funds. They did not have any joint bank accounts, they did not have any joint checking

accounts, they did not have any joint credit cards; however, the defendant did give the plaintiff money every month to assist in the payment of the household and other bills. The testimony of the parties on this subject did not vary greatly.

Getting back to the purchase of the home, the defendant, according to his testimony, he entered into this agreement with the plaintiff and her father concerning the purchase of the townhouse so that the plaintiff and her children would have a place to live. And in general, these are the terms of the agreement as he saw them: That the defendant would purchase the townhouse. And he said later on in his testimony that he viewed it as an investment or a rental property. That the plaintiff would pay the mortgage and the taxes, and that the plaintiff's father would give him $8,000 towards the down-payment. In his view, this wasn't going to cost him anything, because the plaintiff would be primarily responsible for the big expenses, which was the mortgage and the taxes.

As I indicated before, the defendant was giving the plaintiff money on a monthly basis to help with the monthly expenses.

Between 1997 and 2000, during the times when the defendant lived at the Columbus home, the plaintiff

asked him to contribute to some of the bills, because he was living there, she was cooking for him, things of that nature, and she was struggling financially. And so he was giving her money, generally in the amount of about $2,000 a month.

The testimony with regard to the money that Mr. Lynch was providing to Ms. Moynihan once they moved to Bordentown varied slightly. Apparently, it started around 250 a month, 350 a month -- or biweekly. I'm sorry. Went up to 350 biweekly. And finally it increased to $500 biweekly or about $1,000 a month. According to both the plaintiff and the defendant, after 2004 is when it became a monthly amount of about $1,000 per month.

The informal arrangement between the parties was that the plaintiff would be responsible for paying the household bills, regardless from where the money came. And the defendant, on the other hand, fixed things around the house, took care of the outside, shoveling snow, things of that nature. He planned vacations and trips.

The plaintiff viewed the relationship and the arrangement with the defendant, once they were living in Bordentown, as a marital-type relationship and a family style living. According to her testimony, the

defendant ate his meals with her and the children, they went on vacations together, they went on day trips together, they attended family events together. If you look at P-62 and P-63, there are many pictures of Ms. Moynihan and her family and the defendant participating in these family activities.

Now, he indicated that in reality -- he indicated that his view was that it was not a family style living and that it was not a marital style relationship, and that most of the pictures in P-62 and P-63 were of one event.

I find that testimony not to be particularly credible. I found a lot of Mr. Lynch's testimony not to be particularly credible. I found Ms. Moynihan to be generally a much more credible witness than him. But it's obvious that no matter how many activities there were, that he participated in family activities.

And the daughters, Caitlin and Megan, came, and they testified that he ate dinner with them, he went to their school events, he went to their social -- their soccer events, athletic events, things of that nature. And they looked to him really as their stepfather more than anything else.

The defendant took the plaintiff's son on vacations. As I indicated, he attended school events,

athletic events, graduations. There is a picture of him at the graduation event when Ms. Moynihan's son graduated from the New York Police Department Academy. When you look at the picture, you can see a definite closeness between Mr. Moynihan -- Mr. Lynch and the child, much more than simply some stranger who happened to stop by and have his picture taken.

Caitlin and Megan testified that he was like a stepfather to them. They did not have a particularly close relationship with their father.

The plaintiff testified that her family looked at them as a married couple and accepted him into the family.

In his testimony, as I indicated, the defendant disputed the plaintiff's characterization of the relationship. He said it was not a marriage-like relationship, and he did not consider himself to be in a family style living arrangement with the plaintiff and her three children.

Even if the defendant actually believes this, which is a question in my mind, why would he agree to walk the plaintiff's daughter down the aisle at her wedding if he was nothing more than a house mate or a roommate or a family friend?

This relationship lasted for 18 years, a

substantial period of time, and it was an exclusive relationship. They cohabited, despite defendant and defendant counsel argument to the contrary. The defendant stayed in the same bedroom as the plaintiff from 2000 to 2015, when he moved out. Actually, they started a couple of months before the April 2015 separation, they had started sleeping in separate bedrooms, but other than that, they were sharing a bedroom together. They attended family events, went on vacations. He sold his house in New Hampshire in 2013, and owned no other home.

Clearly, you know, no matter how you look at it, this was a cohabitation and certainly had all of the earmarks of a marital style relationship and a family style relationship. And as I said, I find the plaintiff's testimony to be much more credible than the defendant's testimony in all respects.

For example -- and there was many inconsistencies in the defendant's testimony that impacted adversely his credibility. For example, P-47 -- the Exhibit P-47, the defendant wrote to the Court, and I quote, "Investors Bank has proceeded with the rapid foreclosure." And he admitted in court that that wasn't true, that he simply wrote to the Court to tell them that, because he wanted some relief from the

pendente lite orders.

When you look at P-64, according to -- which is the agreement that I'll talk about later -- Mr. Lynch testified that he did not believe that this was an agreement, that it was a work in progress, and that there were several other written agreements that led up to this one, and he assumed that there would be others beyond this. But none of these other written agreements were produced in court. He said that he thought perhaps they were in the house in Bordentown. And, certainly, if he thought that, he could have asked for them in discovery. The discovery in this case went on and on and on. And if he did ask for them, he certainly didn't say that in court, that he wasn't able to get them, but he certainly didn't produce them.

In addition to which he clearly indicated that even though he wrote up and drafted P-64, he never intended to be bound by it. This is what he said at his dep. He did it to keep the peace. He wanted to stop Ms. Moynihan from complaining, and he wanted her to feel more secure.

There was further detrimental impacts on his credibility when he was discussing the use of the money from the sale of the bonds. Mr. Moynihan -- Mr. Lynch sold his house in New Hampshire at the end of 2013, and

invested the money in municipal bonds. And when he was asked questions about it and about the use of the funds from the bonds, he was evasive and there were several misrepresentations. For example, he indicated that from those funds, he paid approximately a $135,000 loan back to a Mr. Cahill. He produced no paperwork for it. It never showed up on any CIS as a loan that he owed to him or to anyone else. Certainly, when one is filling out a CIS and attesting to the fact that the information is full and complete, you'd think that he'd put a $135,000 loan on there.

He also indicated that he used $105,000 for his legal fees, but, again, that wasn't indicated on his CIS. So we have conflicting stories here about the money.

I am satisfied from the testimony that has been presented and from the other evidence that has been presented that the plaintiff has established and proven facts which demonstrate a stable family-type relationship, including cohabitation over a long period of time. Not that that is -- even if there were no cohabitation, there's other things as a matter of law going on.

The plaintiff contends as part of this litigation that at various times during the course of

their relationship the defendant promised to support or take care of her. These promises were mostly oral, although one agreement was reduced to writing. And that's what I've been referring to as P-64.

During the course of the trial, the defense made an application to the Court to dismiss the claims that were made based on a written palimony agreement, which is P-64. And during a course of the trial, all claims with regard to P-64 being a written palimony agreement were dismissed.

At the end of the trial, Mr. Sarno asked me to reconsider my ruling. His position is that the part of the statute that says that each party has to have the advice of independent counsel is not constitutional. It has a detrimental impact on the ability of people to contract. I refused -- I declined at the time during -- in the beginning to -- I declined to accept his challenge that I find the statute unconstitutional. And at the end of the case, when he asked me to reconsider it, there were no changes in the facts or the law that would incline me to reconsider it. So I did not, and I do not reconsider it now.

So Count 1, to the extent that it asks the Court to enforce P-64 as a written palimony agreement, those claims are dismissed.

The plaintiff then asks this Court to enforce under Count 1 the oral promises or agreements that the defendant made with her prior to the 2010 amendment to N.J.S.A. 25:1-5. And I'm going to read on the record the provision that was included in 25:1-5 at subparagraph 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." And the part before I read says, "No action shall be brought upon any of the following agreement 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."

So under 25:1-5, not only does the agreement have to be in writing, but it has to be signed by the parties, and it has to be made with the independent advice of counsel for both parties.

Under the Maeker case, however, we know that this provision does not apply to oral agreements that

were made prior to the 2010 amendment. It was not given retroactive effect; it was given prospective effect. And so the plaintiff asks this Court to enforce those oral promises or agreements that the defendant made with her prior to 2010. She contends that these were promises by the defendant to support her for the rest of her life.

According to the plaintiff, the first promise occurred in the year 2000, at the time of the purchase of the townhouse. She told the defendant at the time of the closing how much it meant to her that he was buying the house for her and her children. And he, according to the plaintiff, responded, "I will take care of you for the rest of your life." The defendant testified that he never promised to support her for her life, either at the time of the purchase of the Bordentown property in 2000, or at any time thereafter.

This certainly is an area of conflict in the testimony. And although I find the plaintiff to be generally more credible than the defendant, I do not believe that the defendant said this to her in 2000. I'm not suggesting that she's not telling the truth, I'm just saying that I don't know what he said, but I don't find it credible that he would say that to her for several reasons.

First, in 2000, the relationship was simply a dating relationship. The plaintiff and defendant were seeing one another once a week or so. The defendant was sleeping on the third floor, and they hadn't actually established the long term relationship that was going on.

The agreement and expectations of the parties at the time of the purchase of the house was that the plaintiff would pay the mortgage and taxes, and the defendant would pay the insurance. She had borrowed $8,000 from her father for a down-payment.

The defendant testified that he did not think the townhouse was going to cost him anything, because the plaintiff was going to pay the mortgage and the taxes, and the down-payment had come from her father.

Now, this does not appear to be, and I find that it is not a situation, in which he was agreeing to support or take care of her for any period of time. He was simply acting as a means for her to live in a townhouse instead of an apartment.

He further indicates that from 2000 forward, the distribution of responsibility in the household was along what we would call traditional lines. That the plaintiff paid the bills. No matter where the money came from, she was responsible for the payment of the

household bills, she took care of cooking the meals, cleaning, making sure that the household ran smoothly, while the defendant was responsible for upkeep, maintenance, and repairs. Apparently, he was pretty handy and was able to do repairs and renovations in the house. He also gave the plaintiff money for the payment of the bills.

According to the plaintiff, the bills were paid from the following funds: from her salary, for child support and her alimony, and what monies the defendant gave her on a monthly basis. And she testified that she counted on this money from the defendant. As I said before, it started out at about 250 biweekly, increased to 350 biweekly, then went up to $500 biweekly.

While the plaintiff may have expected that these contributions to the household expenses would continue beyond the relationship, this is not an expectation of support for life.

She further points to the fact that the title to the house in 2000 was simply in the defendant, and that about seven years later, the title to the house was put in that of the revocable trust, the Edward Lynch revocable trust. The defendant transferred it to the Edward Lynch trust. And at that time, the

defendant named the plaintiff as the beneficiary of the trust.

If you look at P-52, which are the trust documents, you can see that it's in the section entitled successor beneficiary.

According to the plaintiff, he said to her, "Pay attention. This is important for your future." And certainly it was important for her future. And she testified that it made her feel more secure, because she would at least have a home if he died. And Mr. Lynch understood that, and that was part of why he did it, he said that.

There was also an indication that at or about the same time, and the plaintiff asks the Court -- you know, points this to the Court as further proof that Mr. Lynch intended to support her -- that in April of 2007, Mr. Lynch had life insurance available at work in the amount of $150,000, and that he changed the beneficiary to be that of the Edward Lynch trust, and she was the beneficiary of the trust, so the money was for her.

And she points to the same situation with regard to optional or additional life insurance that Mr. Lynch was able to obtain. And P-54 is the statements benefit for 2009. There was an additional

$500,000 in life insurance, again with the trust being the beneficiary, and the plaintiff was the beneficiary of that trust. And she believed in that if Mr. Lynch had died at that time, she would have gotten the money.

According to the plaintiff, between 2007 and 2011, they discussed marriage. She wanted to be married. She wanted to live as -- they wanted -- she wanted to actually be a family rather than just live as a family. And she was looking to be married for both emotional security and financial security.

Based on the situation she found in her first marriage, you'd think that she would have known a little bit better than to think that you got emotional security and financial security through a marriage. But it didn't really matter, because the defendant was not so inclined.

While the plaintiff talked -- discussed marriage, the defendant simply never did anything to move any of that forward, including but not limited to buying a ring, although that was also part of the discussion that they had.

Viewing all of this information and all of this evidence in a light most favorable to the plaintiff, I am unable to conclude that any of that amounts to an express agreement of support for life. I

am unable to conclude that any of that points to an implied oral argument of support for life. It was simply the various financial machinations that went on between Mr. Lynch and Ms. Moynihan during the course of their relationship.

And in order to find that she is entitled to palimony under Count 1, the question is whether there was an implied agreement through -- out of this course of conduct. And as I said, none of it can reasonably be construed to be either an implied or express oral promise by the defendant that he would support the plaintiff either for her life or for any other period of time.

When the defendant set up the revocable trust, he told her what it meant. She understood that it was revocable, that he could change it at any time. And as a matter of law, the revocable trust, even the insurance policies, cannot stand alone to prove a palimony promise. See Maeker vs. Ross, 219 N.J. 565, which actually applied that principle to a will, but it applies as well to any of these other documents that are changeable at whim.

He did give her money to pay household bills, which money supplemented the funds the plaintiff provided. There's no evidence in the case that he gave

her cash or gifts. The arrangement appears to be that of two adults cohabiting, deciding how to share the financial obligations and the practical responsibilities of operating a household.

It is worth noting that during all of this time, up to and including the present, the plaintiff is not totally dependent on the defendant. When you look at the cases, and especially the cases cited by Ms. Roberts in her closing, they all were women who were completely financially dependent on the men. Now, as the case law says, complete financial dependence is not decisive of anything, but it certainly is one thing that we can look at.

During all of this time, Ms. Moynihan was working and receiving, for a period of time, child support, and receiving for a period of time alimony. I find that during the relevant period of time which we're talking about, which is 2000 to 2010, or even 1997 to 2010, that the defendant made no express or implied promises to support the plaintiff for life, and that the plaintiff has not met her burden of proof with regard to Count 1 of the complaint.

So to the extent that Count 1 of the complaint seeks palimony based on oral agreements, either express or implied, that application for relief

is denied.

The plaintiff also seeks relief in Count 2 enforcing the written agreement, P-64, and granting her a share of the defendant's assets accumulated during the relationship and compelling the defendant to support her.

P-64 is not and cannot be a written promise or agreement for palimony for the reasons that I stated before. It does not comply with N.J.S.A. 25:1-5, in that the parties do not have independent advice of counsel. It provides for what would be equitable distribution if the parties were married, and perhaps what would be alimony if the parties were married. However, equitable distribution and alimony may be awarded only in a divorce action. See Kozlowski vs. Kozlowski, 80 N.J. 378 at 383.

According to the testimony of the plaintiff and the documentary evidence, and specifically I refer you to P-87 and P-89, the plaintiff was divorced in July of 2000, after 7 or 8 long years of litigation. As part of the final judgment of divorce, she received permanent alimony in the amount of $4,255 per month. This amount was subsequently reduced in 2003, on remand from the Appellate Division to the trial court, but the record is not clear as to what the reduced amount

became after the remand, but there was continuing alimony.

Plaintiff used this alimony to support herself and her children, also using the child support she received and her salary. She paid the mortgage, taxes, household expenses and personal expenses for herself and her children. The defendant paid the insurance on the property and gave her money each month towards these household expenses.

Between 2007 and 2011, according to the plaintiff, the relationship was doing fairly well, and the parties were discussing marriage, even the prospect of purchasing a ring, but nothing ever came of it.

According to the defendant, the relationship started to deteriorate around this time, and there were arguments and discussions about the plaintiff's financial future and security. The plaintiff, according to the defendant, told him several times she was worried, "What will I do if you die?"

The plaintiff wanted to be married, as I said before, for emotional and financial security. The defendant was satisfied for things to continue the way they were, but he was aware of her concerns about her financial security. And although he did nothing about getting married, he did make some arrangements for her

financial security during these and subsequent years.

For example, I've talked about this before, he made her the beneficiary of the revocable trust and the life insurance policies at his employment. The title to the house was put in the trust, and she was the beneficiary of the trust.

Later, in 2007, the title to the house was changed from the trust to both the plaintiff and the defendant. In the year -- and the defendant explained this, that he wanted to make sure that if he died that she got the house.

In 2011, the plaintiff's ex-husband filed a motion to terminate the alimony. The motion was not made part of the record in evidence, but the inference is clear that it, in all likelihood, was based on his allegation that the plaintiff was cohabiting with the defendant. By this time, they had lived together in the Bordentown residence for some 10 or 11 years, and it may -- the party -- the plaintiff and the defendant may have thought that the ex-husband would be able to produce evidence of co-habitation.

According to the plaintiff, she and the defendant discussed this issue and discussed what they should do about this motion. And part of the reason that they were discussing it is that during the years

that they were living together, as I said, Ms. Moynihan believed that this was a family style marital-type relationship, and that for this period of time, whenever she had to make a major decision, she talked it over with Mr. Lynch. And that certainly makes sense in the context of how she described the relationship and even how Mr. Lynch described the relationship.

According to the plaintiff, the defendant told her that he would take care of her and that they should just get rid of the alimony. He testified that while she was receiving alimony, nothing could be put in her name, and that it was somewhat problematic. I'm not sure exactly what he meant by that, but there must have been some discussions that -- with regard to termination of her right to alimony.

But in any event, the plaintiff agreed that -- she had an attorney, and they agreed that they would sign a consent order terminating her right to alimony. But she also said very clearly that if the defendant hadn't said that he would take care of her, she would have opposed the motion and done what she could to keep her alimony. I don't know how much it was, but to Ms. Moynihan it was a significant enough amount that she wanted it to continue. And she had permanent alimony. So if she never got married, she could continue it.

So she signed a consent order which was filed with the Court on September 23rd, 2011, which is P-89 of the record, and this terminated her alimony. And I don't know whether it is coincidental or not, but it was about this time that the defendant took over payment of the mortgage and the taxes for the property, and Ms. Moynihan didn't have that responsibility anymore.

In the year 2000 -- in the year 2013, I'm sorry, the defendant sold his house in New Hampshire and used the money to buy municipal bonds. The plaintiff believed that the money -- the interest generated from the municipal bond income would be put towards their retirement funds and would be available to them. The plaintiff was made the beneficiary on the account, which was a transfer on death account, but it was later changed to the defendant's daughter unbeknownst to her.

The defendant's view of this relationship, after 2017, and especially after 2011 -- 2007 and especially after 2011, is that it was deteriorating. He said that the plaintiff was constantly worried about her future and what would happen if he died. After 2011, they talked about retirement. He told her then as he had before that he had enough to take care of

them in a retirement. And this is the same conversation that he had with her daughters.

When the daughters testified, they indicated that they knew that there were arguments between their mother and the defendant, and that they were often about money, and that the defendant said to Megan, "I don't know why she's so upset. I have enough for us for our retirement."

Ms. Moynihan understood the plan to be that they would buy a second home in Florida, she would continue working, and they would travel back and forth between Florida and New Jersey.

The defendant had to retire in April of 2014, at the age of 65, as the airline had a mandatory retirement policy. After his retirement, the plaintiff learned that the defendant had a different view of what was happening, that he was going to buy a place in Florida, he was going to move to Florida. He wanted her to stay in New Jersey and commute back and forth to Florida, coming to New Jersey when she had to work. And it was obvious to her about a year later, after the retirement, that she realized that they both had a disagreement about what they wanted. And shortly thereafter, the defendant moved out of the house.

With regard to P-64, there is some conflict

in the testimony about the signing of P-64. The plaintiff testified and believes that it was signed somewhere in the year 2012. The defendant said it was signed in 2014. And it is more likely, in my view, that 2014 is the date, because there's a reference made to the payment of $100,000 over five years. And the defendant testified that he knew that the agreement was from 2014, because he anticipated making the payment of that $100,000 from the interest that would be generated by the municipal bonds. And we know that they were not available until after the house in New Hampshire was sold, which was in 2013.

The terms of P-64 are clear and understandable, and they were understood by the parties. It's handwritten in the defendant's handwriting. It was the culmination of various discussions that the parties had about their relationship, what they were doing, where they were going, what they wanted in the future. Both parties, during the course of their testimony, acknowledged that they read it, they understood it, and they signed it.

Ms. Moynihan said that it was presented to her; that she came home and Mr. Lynch said to her, "Here. I've written all this up. I want you to sign it," and that it was a shock to her. Nonetheless, she

signed it. She suggested that perhaps they should go to see a lawyer. He refused. So they ended up at the bank at a notary, and they both signed it.

Certainly, if the plaintiff didn't agree with any of the terms, she didn't have to sign it, but she signed it anyway.

The defendant claimed he never meant this to be the final agreement, that he looked at it as a "work in progress." He claims that previous written versions exist, that they had different terms; that first they talked about paying the mortgage, then they talked about paying the mortgage and the taxes, and that P-64 is the final version.

But as I said before, none of these other supposed prior agreements exist. Ms. Moynihan didn't testify that any existed. And based on her testimony that when this was presented to her she was devastated by it, I think the inference one can draw from that is that this is the first one that you saw, that no others were ever presented to her.

And as I said before, I find his testimony that there were other agreements in writing that they reviewed and talked about not to be credible, and that this is the only written agreement that exists between the plaintiff and the defendant.

To a large extent, P-64 can be read and understood and construed as the final expression of the discussions that the parties had over the years concerning their financial futures. While the proofs do not support a finding of a promise by the defendant to support the plaintiff for life, the proofs do support the conclusion that he wanted the plaintiff -- that the defendant wanted the plaintiff to have the house.

He testified to this to explain why in April of 2013, he added her name to the deed as joint tenants with rights of survivorship. And the deed was marked into evidence as Defense Exhibit D.

He established -- prior to doing that, he established a revocable trust with plaintiff as the beneficiary. And according to the plaintiff, which was not refuted by the defendant, he wanted it out of his name, and he wanted her to have it if he died. He said that if he died she would have nothing, and he didn't want that to happen. So, clearly, he understood the importance of this house and that she had made contributions to it. And so eventually both names were put on the deed so that if, indeed, he did die, there was more protection for her than if it was simply given to her when she was the beneficiary of the trust.

The conclusion is inescapable, that P-64 is a contract between the plaintiff and the defendant. And as we know, a contract is a legally enforceable agreement between the parties.

The plaintiff claims that she and the defendant entered into P-64 to set forth the manner in which they would settle their affairs if their relationship terminated. And it clearly expresses the intention of the parties at that time that it was signed. And in order for the plaintiff to succeed in her claim that this was a contract between the parties, there has to be a meeting of the minds, offer and acceptance, consideration and certainty.

The only one of those that has any dispute to it, as raised by the defendant's counsel in her closing, is that of consideration. Both parties testified that this was the agreement. They understood what the terms were. They were clear that the issue was one of consideration.

The defendant argues inter alia that there was no consideration for this agreement, and, therefore, it's not enforceable. Nobody can find that it's actually a contract; however, the evidence in this case proves otherwise.

As we know, consideration is something of

value. For there to be a sufficient exchange of consideration, something of value must be bargained for. Consideration can be a benefit to one party or a loss of a benefit to another.

In this case, the plaintiff gave up her alimony in 2011, upon the representation by the defendant that it would take care of her -- that he would take care of her, whatever he meant by that. Additionally, the consideration was the inducement for her to remain in the relationship, which she did until the defendant moved out in April of 2015. Also, there was 17 years of payments to the home, making a home, taking care of things, and the love and affection that goes on with that.

Despite what the defendant said, it is clear that he understands -- that he understood at the time of the making of this that this was an agreement between himself and the plaintiff. When he moved out, he abided by its terms for several months. And when he no longer wanted to abide by the terms, he wrote to the plaintiff, "We don't have an agreement anymore," which clearly indicates he knew there was an agreement. And this appears in the exhibit which is the text messages, P-66.

The defendant doesn't want this agreement to

exist, and he doesn't want it to be enforceable, because it requires him to do those things that he said he would do. And in court he testified that one of the reasons that he did not want to abide by the terms and conditions of it was that because he didn't realize how hard it would be how hard it would be for him to make the payments once he retired. And he clearly indicated that he never really intended to abide by its terms, that he did it for two reasons. One was, in his words, to shut Ms. Moynihan up, and the other was to make her feel secure. But nonetheless, by his own words and by his conduct, he understood that this was an agreement that eventually could be enforced.

It is clear to me that of all the things that P-64 is or is not, it is not a palimony agreement. It is -- there is no promise in it of support for the rest of Ms. Moynihan's life, as is required and we see in Sopko at 174 N.J. 381, and Kozlowski at 80 N.J. 378. It's not clear that it includes support at all. It is the distribution of property, which is not available to parties in a non-marital relationship. And the only people that can get palimony are those in a non-marital relationship.

It is very akin to an order for orderly removal that we see in landlord/tenant court all of the

time. Now, I don't expect that the attorneys that are doing this matrimonial work do landlord/tenant, so they don't understand what it is. But in order for orderly removal provides an orderly method for tenants who are evicted from rental properties to leave, to gather their belongings and leave. And that's exactly what this is.

This is an agreement for the orderly breakup of the relationship, distribution of monies, and the responsibilities that are going to be there. It provides for what is going to happen if the relationship terminates, which it did one year later. Each party knew their rights and obligations under the agreement.

I am not aware of any prohibition in the law on the rights of parties who are cohabiting to enter into these kinds of agreements, not palimony agreements, but how to distribute the property, how to take care of other business between them.

I am satisfied from the proofs that have been presented, and I find that the plaintiff has proven all of the elements of a contract that is enforceable. There is no reason for it not to be enforced. And, therefore, the plaintiff's application to the Court for enforcement of the written agreement under Count 2 is

granted.

The remaining -- she has asked, in addition, for a distribution of the assets. In Count 2, she has also asked for a distribution of the assets that the defendant accumulated during the relationship, which application is denied. And the application that the defendant provide proper support for her is denied as well.

The remaining counts of the complaint are dismissed, as they are actually alternative theories of liability in the event the oral and/or written agreements are not enforced. And based on the important -- on the enforcement of P-64, those counts are dismissed, and the counterclaim is dismissed.

I am going to return to Mr. Danaher all of the exhibits that were marked as plaintiff's exhibit so we can take them away with him. Ms. Roberts, we will hold on to the exhibits that were yours. And I would ask that you make some kind of arrangement to come and pick them up, not at any --

MS. ROBERTS: Yes, Judge.

THE COURT: -- not at any particular time. I don't -- you know, I mean, you don't have to come and get them tomorrow or anything like that, but we'll hold onto them for a short period of time. And I'm going to

ask the court clerk to mark, in fact, that they will be located in the evidence locker behind courtroom 6D. And if she can't do it, ask somebody else to do it for her.

And, counsel, if you and Ms. Moynihan wait outside, we'll bring you a copy of the order. It will be up -- I guess we can mail it to you, Ms. Roberts.

MS. ROBERTS: Thank you, Judge.

THE COURT: And before we finish, I'd like to say thank you. I know Mr. Sarno is not here, but I'd like to say thank you to Mr. Sarno. And, Mr. Danaher, I hope you will tell him.

MR. DANAHER: Certainly, Your Honor.

THE COURT: And to you, Ms. Roberts, for all of the courtesies that you showed to the Court during the course of this litigation.

I know that there were many factual disagreements between the parties. I know that there were many legal disagreements between the parties, but each of you showed to the other the courtesy and respect that the Court has come to expect from attorneys of your caliber. And I hope that the litigants understand that when you show courtesy and respect to one another that it enhanced their ability to be effective in their representation.

And I wish Ms. Moynihan good luck. And, Ms. Roberts, if you would tell your client I wish him good luck as well. I know he's had some health issues, and I hope all goes well for him.

MS. ROBERTS: Thank you.

THE COURT: Thank you very much.

MR. DANAHER: Thank you, Your Honor. May I ask one question?

THE COURT: Certainly.

MR. DANAHER: Not relating to the decision in any way, but there was a request from both sides for counsel fees that related in this matter.

THE COURT: Well, you know what? That reminds me. Let me read my order on the record.

MR. DANAHER: Sure.

THE COURT: Okay. It is on this 29th day of May, 2019, hereby ordered and adjudged that Count 1 of the plaintiff's amended complaint shall be and thereby is dismissed. Counts 3 through and including 11 shall be and hereby are dismissed. The counterclaim filed by the defendant shall be and hereby is dismissed.

The plaintiff's request for relief is set forth in Count 2 of the amended complaint is granted in part and denied in part as follows. A, the written agreement, P-64, shall be and is enforced.

B, the defendant shall completely satisfy the mortgage on the premises at 2 Andover Court, Bordentown, New Jersey, on or before April 30, 2020, and shall provide the plaintiff with the appropriate documentation of satisfaction on or before May 31, 2020. Upon satisfaction of the mortgage or May 31, 2010, whichever comes first, the defendant shall execute a general warranty deed, conveying the property to the plaintiff.

D. Until the mortgage is satisfied, the defendant shall be responsible for the payment of all mortgage payments. The defendant shall pay to the plaintiff the sum of $100,000, which shall be paid on or before April 30, 2020.

F. The defendant shall be responsible for the payment of all real estate taxes on the property from May 1, 2015 through and including April 30, 2017. And any sums unpaid by him at this sum at this time shall be paid by him on or before June 30, 2019.

G. The plaintiff's request for an equitable and legal share of the assets accumulated by the defendant during the relationship is denied.

H. The plaintiff's request that the defendant provide proper support for her is denied.

I. Until all of the obligations under this

order are satisfied, the previously entered restraint on the Allied Bank account shall remain in full force and effect. Each party shall be responsible for his and her counsel fees and costs.

And do you have a copy for Mr. Danaher and Ms. Moynihan? You can give them to them, please.

THE CLERK: Okay.

THE COURT: And we'll get it in the mail to you, Ms. Roberts. I don't know; do we have eCourts? Were we uploaded onto eCourts and they can just download it?

THE CLERK: No, Your Honor.

THE COURT: Okay. They have that in Civil Division.

MR. DANAHER: Not in Family Court.

THE COURT: Okay. They have it in Civil Division.

MR. DANAHER: We're not that advanced.

THE COURT: We're getting there.

THE CLERK: Your Honor.

THE COURT: All right.

MR. DANAHER: Thank you very much.

(Off the record discussion)

THE COURT: All right. Anything further, Ms. Roberts?

MS. ROBERTS: Judge, I'm sorry. I just did not hear the last sentence you read addressing specifically counsel fees.

THE COURT: Okay. Each party shall be responsible for his and her counsel fees and costs.

MS. ROBERTS: Thank you.

THE COURT: All right. Thank you very much. Good luck.

MR. DANAHER: Thank you very much, Your Honor.

THE COURT: I'm going to hang up now. Okay. Thank you very much.

MR. DANAHER: Thank you, Judge.

(Matter concluded at 4:09 p.m.)

* * * * *

C E R T I F I C A T I O N

I, Karen Keebler, the assigned transcriber, do hereby certify the foregoing transcript of proceedings in the matter of Kathleen Moynihan v. Edward J. Lynch, on 5/29/19, Court Smart Index No. 3:16:09 to 4:09:41, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.

Karen D Keebler Digitally signed by Karen D Keebler DN: cn=Karen D Keebler, o, ou, email=dianadoman@comcast.net, c=US Date: 2019.07.15 11:27:52 -04'00'

KAREN D. KEEBLER AOC# 384

6/16/19
Date

DIANA DOMAN TRANSCRIBING

Attorney or Pro Se Litigant Information

Name of Attorney or Litigant: _____

NJ Attorney ID Number: _____

Address: _____

_____

Daytime Phone: _____

Cell Phone: _____

Email Address: _____

_____
Plaintiff

v.

_____
Defendant

Superior Court of New Jersey
Chancery Division – Family Part
County _____
Docket Number FM- _____

Civil Action

Certification in Support of Judgment of Divorce

I, _____, of full age, hereby certify:

I. Cause of Action

☐ 1. I am the (check one) ☐ Plaintiff / ☐ Defendant in this matter and I am filing this Certification in support of my request for a Judgment of Divorce.

☐ 2. I have read the divorce complaint/counterclaim and there is no prospect of reconciliation at this time.

☐ 3. I certify to the truth of the complaint.

☐ 4. I am filing for divorce based on the following grounds outlined in N.J.S.A. 2A:34-2:

_____.

☐ 5. I am aware that I have a right to a trial, and I am waiving my right to a trial.

☐ 6. I am aware that if I proceed to trial, there may be a different outcome.

☐ 7. Prior or pending court cases. (Check box a. or box b. below.)

☐ a. I have no other prior or pending court cases with the other party in this, or any other, jurisdiction.

☐ b. I have the following prior and/or pending court cases with the other party in this, or any other, jurisdiction. (Provide the case caption, docket number and a brief description of the status of the prior or pending court case(s).)

_____
_____
_____
_____.

☐ 8. If there is **no written agreement** between the parties that addresses the equitable distribution of property, you **must** check box a. below.

☐ a. No property was acquired during the marriage that is subject to equitable distribution.

☐ 9. If there is **no written agreement** between the parties that addresses child support, custody, or any other relief, you **must** check box a. below.

☐ a. I am not seeking child support, custody, or any other form of relief.

☐ 10. If applicable, the statutory grounds for annulment have been met in my complaint.

☐ 11. If applicable, I am requesting the continuation of prior final orders. (You must include copies of the orders you want to continue.)

☐ 12. I further certify to the following. (Check all boxes that apply below.)

☐ a. There are no other outstanding property or debt to be distributed.

☐ b. There are no other outstanding issues between the plaintiff and defendant.

☐ c. I understand that all prior orders not specifically referenced in the Final Judgment of Divorce or dissolution will be vacated upon the entering of the Final Judgment, but no restraining order entered under the Prevention of Domestic Violence Act shall be vacated by the entry of the Judgment of Divorce.

☐ d. I wish to continue a restraining order previously entered under the Prevention of Domestic Violence Act.

II. Marital Settlement Agreement
(Complete this section **only** if the parties have an agreement.)

I have reached an agreement with the other party and I certify to the following:

☐ 1. I understand that if a Property or Marital Settlement Agreement (Agreement) was provided, I have the right to an independent review of the Agreement.

☐ 2. The Agreement was the result of negotiations between the plaintiff and defendant.

☐ 3. I request the incorporation of the Agreement into the Final Judgment of Divorce.

☐ 4. I have read and understand the Agreement fully and it is fair and reasonable.

☐ 5. I understand that the court is not going to decide on the merits of the Agreement, only that it finds the parties understand the Agreement to be fair and reasonable.

☐ 6. I was not coerced or forced into the Agreement.

☐ 7. I agree to be bound by the terms of the Agreement and I am asking the judge to make the Agreement part of the Final Judgment of Divorce.

☐ 8. I understand that if the Agreement is made a part of the Final Judgment of Divorce, it will be as enforceable as any other court order.

☐ 9. I am not under the influence of any drugs or alcohol today that would impair my ability to understand the nature or terms of the Agreement, and I was not under the influence of any drugs or alcohol when I negotiated, read and/or signed the Agreement.

☐ 10. Alimony (Check box a. or box b. below.)

☐ a. Alimony is not being paid as part of the Agreement. (If you check box a., you must also check **one** of the boxes below.)

☐ 1) I acknowledge that my lifestyle can be maintained as it was during the marriage without alimony; **OR**

☐ 2) I understand that my lifestyle cannot be maintained. I want to enter into the Agreement knowing that my lifestyle cannot be maintained. Despite this, I believe the agreement is fair and reasonable based on the totality of the circumstances. I acknowledge that I must maintain my financial records and Case Information Statement.

☐ b. Alimony is being paid as part of the Agreement. (If you check box b., you must also check **one** of the boxes below.)

☐ 1) I acknowledge that my lifestyle can be maintained as it was during the marriage; **OR**

☐ 2) I understand that my lifestyle will not be maintained. I want to enter into the Agreement knowing that my lifestyle cannot be maintained. Despite this, I believe the agreement is fair and reasonable based on the totality of the circumstances. I acknowledge that I must maintain my financial records and Case Information Statement.

☐ 11. This Agreement incorporates all the terms of the Agreement. There are no remaining issues, oral agreements or side agreements that are not contained in this Agreement.

III. Name Change

I request to have my name changed and certify to the following:
(All boxes **must** be checked.)

☐ 1. I have not been convicted of a crime under the name I used during the marriage; and

☐ 2. I am not the subject of any criminal investigation or prosecution; and

☐ 3. I am not considering filing for bankruptcy; and

☐ 4. I am not changing my name to avoid creditors; and

☐ 5. I am including the last 4 digits of my social security number and full date of birth in the proposed Judgment of Divorce.

I certify that the statements made above are true. I am aware that if any of the statements made by me are willfully false, I am subject to punishment by the Court.

Date

s/
Signature
(check one) ☐ Plaintiff ☐ Defendant