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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 NEW JERSEY STATE BAR ASSOCIATION**

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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 RELIEF. 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.

¹The text here in Section I is the same text as it is in the response filed to the Brief of *amicus curiae* American Academy of Matrimonial Lawyers.

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 agreement².

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)

²Three 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.

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 ORAL AGREEMENT OUT OF THE STATUTE OF FRAUDS IS NOT APPLICABLE HERE BECAUSE THERE WAS NO ORAL AGREEMENT.

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 their request to take an oral agreement out of the Statute of Frauds in this case, the New Jersey State Bar as *amicus curiae* is asking this court to disregard the holding of the Trial Court when the trial court made a finding based on the credibility of the testimony at trial and to find that there was in fact an oral agreement to revive

that defense. This is contrary to the foundation of our judicial system and is an extraordinary request by the State Bar. To disregard the factual findings of the Trial Court is a grave deviation from the cornerstone of our judicial system.

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. (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 by the Defendant when he paid the mortgage pursuant to the terms of the agreement after the relationship ended as an exception to the Statute of Frauds. This is not a correct application of the law. Plaintiff must base her claim on her own performance, not

that of the Defendant³. (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 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.

III. STATUTES ARE PRESUMED TO BE CONSTITUTIONAL

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,

³It 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)

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.

Likewise, this is not a case of resolving the legislative intent. The language in the Statute of Frauds at N.J.S.A. 25:1-5 is clear:

... No action shall be brought upon any of the following agreements or promises, unless the agreement or promise... shall be in writing and signed by the party to be charged therewith...

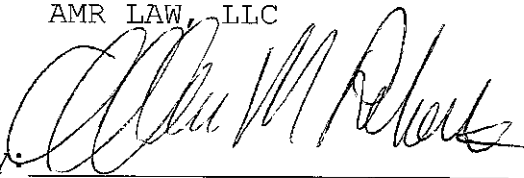
... (h) A promise by one party to a non-marital personal relationship to provide support or other consideration for the other party, either during the course of the such relationship or after its termination. For the purpose of this subsection, no such written promise is binding unless it is made with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

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 will render the plain language of the Statute of Frauds meaningless and *de facto* unconstitutional.

CONCLUSION

The New Jersey State Bar 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 fail 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 New Jersey State Bar to 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

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**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

believed an oral promise existed, the agreement would also have been enforceable by implication. Id. 395. In Kozłowski, 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. 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.

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.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION

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

KATHLEEN MOYNIHAN,)
)
Plaintiff,) TRANSCRIPT
)
vs.) OF
)
EDWARD J. LYNCH,) CONCLUSION OF TRIAL
)
Defendant.)

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:

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Attorney for Kathleen Moynihan, Plaintiff

ALLISON MATTIA ROBERTS, ESQUIRE
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I N D E X

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(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

1 right.
2 MS. ROBERTS: Good afternoon. Allison
3 Roberts on behalf of the defendant, Edward Lynch.
4 THE COURT: Ms. Roberts, was your client
5 planning on coming to the courthouse?
6 MS. ROBERTS: No, Judge.
7 THE COURT: Okay. Because we called outside,
8 and only Mr. Danaher and Ms. Moynihan answered. But if
9 he were here, we would bring him in. Is he there with
10 you?
11 MS. ROBERTS: No, Judge.
12 THE COURT: Okay. Before I begin, because
13 I'm just simply going to read my decision on the
14 record, I would like to offer you, Ms. Roberts, and
15 you, Mr. Danaher, one last opportunity to talk and see
16 if you can resolve this matter amicably. Any purpose
17 of doing that?
18 MR. DANAHER: I mean, I never say no to that
19 opportunity. It would be foolish to say no to such an
20 opportunity. I just think -- I'm not sure without
21 speaking to my client. I know she's been through a
22 lot, been through a trial. So, I mean, I would like to
23 have that opportunity to speak with her and see if
24 she'd be interested in doing that.
25 THE COURT: All right. And are you able --

5
1 what about your position, Ms. Roberts?
2 MS. ROBERTS: And, Judge, I apologize. If I
3 had known there was going to be an appearance or
4 anything like that, I certainly would have come.
5 THE COURT: Oh, no. No apology is necessary.
6 I had made the offer that anybody that wanted to appear
7 by phone could appear by phone.
8 MS. ROBERTS: Okay. So, Judge, I just don't
9 know at this point if that would be productive. I know
10 we've been down this road several times, both Scott and
11 -- or Mr. Danaher and Mr. Sarno and myself.
12 THE COURT: All right. Then we'll just move
13 forward.
14 All right. The reason that we're getting
15 together today is because I am going to read on the
16 record my decision with regard to the trial that was
17 held in this case.
18 This matter started almost four years ago,
19 when a complaint on behalf of the plaintiff was filed
20 in the Law Division under Docket No. L-1898-15. And
21 basically it asked for enforcement of a written
22 agreement between the parties that has since, during
23 the course of this trial, been marked as P-64. And it
24 asks also for some other ancillary relief.
25 An answer was filed in February of 2016. And

1 then by consent order on July 21st, 2016, the matter
2 was transferred to the Chancery Division, Family Part,
3 under Docket No. FM-03-189-17. An amended complaint
4 was filed on November 22nd, 2016, sounding in 11
5 counts, including one for palimony, one for enforcement
6 of a contract, and then various other forms of relief.
7 It asked in Count 1 for enforcement of both
8 oral and written promises for palimony. Paragraph --
9 or Count 2 is a written contract. Three was an oral
10 contract. Four was for enforcement based on partial
11 performance as a bar to the statute of frauds. Five
12 was unjust enrichment. Six was quantum meruit. Seven
13 was quasi contract. Eight is equitable estoppel. Nine
14 is specific performance of an implied contract. Ten
15 was fraud and misrepresentation. And eleven was a
16 joint venture.
17 After the amended complaint was filed, an
18 answer and -- an amended -- was titled amended answer,
19 and counterclaim for partition was filed on January
20 25th, 2017. And then an answer to that counterclaim
21 was filed on February 8th, 2017.
22 The matter came before the Court for trial on
23 several days, October 10th and 23rd, November 29th and
24 30th of 2018, January 15th of 2019, and now it's back
25 before the Court today for me to put my decision on the

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1 record.
2
3 The evidence in this case consists of the
4 testimony of the witnesses and the exhibits that were
5 marked into evidence. The witnesses who testified are
6 the plaintiff, Kathleen Moynihan; her two daughters,
7 Megan Moynihan and Caitlin Moynihan; and the defendant,
8 Edward Lynch.
9 These are the facts as I find them to be
10 based on my review of the evidence, which consists of
11 my review of the notes of the testimony, my review of
12 the documents that have been marked into evidence, and
13 my review of various selected portions of the -- not
14 the transcript but the oral transcript. I listened to
15 parts of it on CourtSmart when I needed either
16 clarification or I couldn't read my writing.
17 Based on all of the information submitted, I
18 find that the parties met in 1997, when both were
19 employed by U.S. Airways. Mr. Lynch was a pilot, and
20 the plaintiff was and still is a flight attendant, and
21 her sister knew Mr. Lynch. Mr. Lynch was a pilot. He
22 is now retired.
23 In 1997, the plaintiff was married but in the
24 process of getting divorced. The defendant was not
25 married, as he was divorced.
Between 1997 and 2000, while the parties were

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

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

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

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

25 Between 1997 and 2000, the plaintiff and her

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

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

12 During the time the parties resided together,
13 which was from 2000 to 2015, they did not co-mingle
14 their funds. Now, I say they resided together from
15 2000 to 2015. In my view, and I'll talk about it a
16 little bit later, a fair reading of the evidence is
17 that between 1997 and 2000, they were engaged in more
18 or less a dating relationship. And it wasn't until the
19 property in Bordentown was purchased that it became
20 more frequent, more formalized, and could more
21 accurately be called cohabiting, or at least living
22 together.

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

1 accounts, they did not have any joint credit cards;
2 however, the defendant did give the plaintiff money
3 every month to assist in the payment of the household
4 and other bills. The testimony of the parties on this
5 subject did not vary greatly.
6 Getting back to the purchase of the home, the
7 defendant, according to his testimony, he entered into
8 this agreement with the plaintiff and her father
9 concerning the purchase of the townhouse so that the
10 plaintiff and her children would have a place to live.
11 And in general, these are the terms of the agreement as
12 he saw them: That the defendant would purchase the
13 townhouse. And he said later on in his testimony that
14 he viewed it as an investment or a rental property.
15 That the plaintiff would pay the mortgage and the
16 taxes, and that the plaintiff's father would give him
17 \$8,000 towards the down-payment. In his view, this
18 wasn't going to cost him anything, because the
19 plaintiff would be primarily responsible for the big
20 expenses, which was the mortgage and the taxes.
21 As I indicated before, the defendant was
22 giving the plaintiff money on a monthly basis to help
23 with the monthly expenses.
24 Between 1997 and 2000, during the times when
25 the defendant lived at the Columbus home, the plaintiff

1 asked him to contribute to some of the bills, because
2 he was living there, she was cooking for him, things of
3 that nature, and she was struggling financially. And
4 so he was giving her money, generally in the amount of
5 about \$2,000 a month.
6 The testimony with regard to the money that
7 Mr. Lynch was providing to Ms. Moynihan once they moved
8 to Bordentown varied slightly. Apparently, it started
9 around 250 a month, 350 a month -- or biweekly. I'm
10 sorry. Went up to 350 biweekly. And finally it
11 increased to \$500 biweekly or about \$1,000 a month.
12 According to both the plaintiff and the defendant,
13 after 2004 is when it became a monthly amount of about
14 \$1,000 per month.
15 The informal arrangement between the parties
16 was that the plaintiff would be responsible for paying
17 the household bills, regardless from where the money
18 came. And the defendant, on the other hand, fixed
19 things around the house, took care of the outside,
20 shoveling snow, things of that nature. He planned
21 vacations and trips.
22 The plaintiff viewed the relationship and the
23 arrangement with the defendant, once they were living
24 in Bordentown, as a marital-type relationship and a
25 family style living. According to her testimony, the

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

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

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

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

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

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

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

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

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

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

25 This relationship lasted for 18 years, a

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

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

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

1 pendente lite orders.

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

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

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

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

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

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

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

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

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

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

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

1 The plaintiff then asks this Court to enforce
2 under Count 1 the oral promises or agreements that the
3 defendant made with her prior to the 2010 amendment to
4 N.J.S.A. 25:1-5. And I'm going to read on the record
5 the provision that was included in 25:1-5 at
6 subparagraph H.

7 "A promise by one party to a non-marital
8 personal relationship to provide support or other
9 consideration for the other party, either during the
10 course of such relationship or after its termination.
11 For the purposes of this subsection, no such written
12 promise is binding, unless it was made with the
13 independent advice of counsel for both parties." And
14 the part before I read says, "No action shall be
15 brought upon any of the following agreement or promises
16 unless the agreement or promise, upon which such action
17 shall be brought or some memorandum or note thereof
18 shall be in writing and signed by the party to be
19 charged therewith."

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

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

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

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

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

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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

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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

1 defendant named the plaintiff as the beneficiary of the
2 trust.
3 If you look at P-52, which are the trust
4 documents, you can see that it's in the section
5 entitled successor beneficiary.
6 According to the plaintiff, he said to her,
7 "Pay attention. This is important for your future."
8 And certainly it was important for her future. And she
9 testified that it made her feel more secure, because
10 she would at least have a home if he died. And Mr.
11 Lynch understood that, and that was part of why he did
12 it, he said that.
13 There was also an indication that at or about
14 the same time, and the plaintiff asks the Court -- you
15 know, points this to the Court as further proof that
16 Mr. Lynch intended to support her -- that in April of
17 2007, Mr. Lynch had life insurance available at work in
18 the amount of \$150,000, and that he changed the
19 beneficiary to be that of the Edward Lynch trust, and
20 she was the beneficiary of the trust, so the money was
21 for her.
22 And she points to the same situation with
23 regard to optional or additional life insurance that
24 Mr. Lynch was able to obtain. And P-54 is the
25 statements benefit for 2009. There was an additional

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1 \$500,000 in life insurance, again with the trust being
2 the beneficiary, and the plaintiff was the beneficiary
3 of that trust. And she believed in that if Mr. Lynch
4 had died at that time, she would have gotten the money.
5 According to the plaintiff, between 2007 and
6 2011, they discussed marriage. She wanted to be
7 married. She wanted to live as -- they wanted -- she
8 wanted to actually be a family rather than just live as
9 a family. And she was looking to be married for both
10 emotional security and financial security.
11 Based on the situation she found in her first
12 marriage, you'd think that she would have known a
13 little bit better than to think that you got emotional
14 security and financial security through a marriage.
15 But it didn't really matter, because the defendant was
16 not so inclined.
17 While the plaintiff talked -- discussed
18 marriage, the defendant simply never did anything to
19 move any of that forward, including but not limited to
20 buying a ring, although that was also part of the
21 discussion that they had.
22 Viewing all of this information and all of
23 this evidence in a light most favorable to the
24 plaintiff, I am unable to conclude that any of that
25 amounts to an express agreement of support for life. I

1 am unable to conclude that any of that points to an
2 implied oral argument of support for life. It was
3 simply the various financial machinations that went on
4 between Mr. Lynch and Ms. Moynihan during the course of
5 their relationship.
6 And in order to find that she is entitled to
7 palimony under Count 1, the question is whether there
8 was an implied agreement through -- out of this course
9 of conduct. And as I said, none of it can reasonably
10 be construed to be either an implied or express oral
11 promise by the defendant that he would support the
12 plaintiff either for her life or for any other period
13 of time.
14 When the defendant set up the revocable
15 trust, he told her what it meant. She understood that
16 it was revocable, that he could change it at any time.
17 And as a matter of law, the revocable trust, even the
18 insurance policies, cannot stand alone to prove a
19 palimony promise. See Maeker vs. Ross, 219 N.J. 565,
20 which actually applied that principle to a will, but it
21 applies as well to any of these other documents that
22 are changeable at whim.
23 He did give her money to pay household bills,
24 which money supplemented the funds the plaintiff
25 provided. There's no evidence in the case that he gave

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1 her cash or gifts. The arrangement appears to be that
2 of two adults cohabiting, deciding how to share the
3 financial obligations and the practical responsibilities
4 of operating a household.
5 It is worth noting that during all of this
6 time, up to and including the present, the plaintiff is
7 not totally dependent on the defendant. When you look
8 at the cases, and especially the cases cited by Ms.
9 Roberts in her closing, they all were women who were
10 completely financially dependent on the men. Now, as
11 the case law says, complete financial dependence is not
12 decisive of anything, but it certainly is one thing
13 that we can look at.
14 During all of this time, Ms. Moynihan was
15 working and receiving, for a period of time, child
16 support, and receiving for a period of time alimony. I
17 find that during the relevant period of time which
18 we're talking about, which is 2000 to 2010, or even
19 1997 to 2010, that the defendant made no express or
20 implied promises to support the plaintiff for life, and
21 that the plaintiff has not met her burden of proof with
22 regard to Count 1 of the complaint.
23 So to the extent that Count 1 of the
24 complaint seeks palimony based on oral agreements,
25 either express or implied, that application for relief

1 is denied.
2 The plaintiff also seeks relief in Count 2
3 enforcing the written agreement, P-64, and granting her
4 a share of the defendant's assets accumulated during
5 the relationship and compelling the defendant to
6 support her.
7 P-64 is not and cannot be a written promise
8 or agreement for palimony for the reasons that I stated
9 before. It does not comply with N.J.S.A. 25:1-5, in
10 that the parties do not have independent advice of
11 counsel. It provides for what would be equitable
12 distribution if the parties were married, and perhaps
13 what would be alimony if the parties were married.
14 However, equitable distribution and alimony may be
15 awarded only in a divorce action. See Kozlowski vs.
16 Kozlowski, 80 N.J. 378 at 383.
17 According to the testimony of the plaintiff
18 and the documentary evidence, and specifically I refer
19 you to P-87 and P-89, the plaintiff was divorced in
20 July of 2000, after 7 or 8 long years of litigation.
21 As part of the final judgment of divorce, she received
22 permanent alimony in the amount of \$4,255 per month.
23 This amount was subsequently reduced in 2003, on remand
24 from the Appellate Division to the trial court, but the
25 record is not clear as to what the reduced amount

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1 became after the remand, but there was continuing
2 alimony.
3 Plaintiff used this alimony to support
4 herself and her children, also using the child support
5 she received and her salary. She paid the mortgage,
6 taxes, household expenses and personal expenses for
7 herself and her children. The defendant paid the
8 insurance on the property and gave her money each month
9 towards these household expenses.
10 Between 2007 and 2011, according to the
11 plaintiff, the relationship was doing fairly well, and
12 the parties were discussing marriage, even the prospect
13 of purchasing a ring, but nothing ever came of it.
14 According to the defendant, the relationship
15 started to deteriorate around this time, and there were
16 arguments and discussions about the plaintiff's
17 financial future and security. The plaintiff,
18 according to the defendant, told him several times she
19 was worried, "What will I do if you die?"
20 The plaintiff wanted to be married, as I said
21 before, for emotional and financial security. The
22 defendant was satisfied for things to continue the way
23 they were, but he was aware of her concerns about her
24 financial security. And although he did nothing about
25 getting married, he did make some arrangements for her

1 financial security during these and subsequent years.
2 For example, I've talked about this before,
3 he made her the beneficiary of the revocable trust and
4 the life insurance policies at his employment. The
5 title to the house was put in the trust, and she was
6 the beneficiary of the trust.
7 Later, in 2007, the title to the house was
8 changed from the trust to both the plaintiff and the
9 defendant. In the year -- and the defendant explained
10 this, that he wanted to make sure that if he died that
11 she got the house.
12 In 2011, the plaintiff's ex-husband filed a
13 motion to terminate the alimony. The motion was not
14 made part of the record in evidence, but the inference
15 is clear that it, in all likelihood, was based on his
16 allegation that the plaintiff was cohabiting with the
17 defendant. By this time, they had lived together in
18 the Bordentown residence for some 10 or 11 years, and
19 it may -- the party -- the plaintiff and the defendant
20 may have thought that the ex-husband would be able to
21 produce evidence of co-habitation.
22 According to the plaintiff, she and the
23 defendant discussed this issue and discussed what they
24 should do about this motion. And part of the reason
25 that they were discussing it is that during the years

1 that they were living together, as I said, Ms. Moynihan
2 believed that this was a family style marital-type
3 relationship, and that for this period of time,
4 whenever she had to make a major decision, she talked
5 it over with Mr. Lynch. And that certainly makes sense
6 in the context of how she described the relationship
7 and even how Mr. Lynch described the relationship.
8 According to the plaintiff, the defendant
9 told her that he would take care of her and that they
10 should just get rid of the alimony. He testified that
11 while she was receiving alimony, nothing could be put
12 in her name, and that it was somewhat problematic. I'm
13 not sure exactly what he meant by that, but there must
14 have been some discussions that -- with regard to
15 termination of her right to alimony.
16 But in any event, the plaintiff agreed that
17 -- she had an attorney, and they agreed that they would
18 sign a consent order terminating her right to alimony.
19 But she also said very clearly that if the defendant
20 hadn't said that he would take care of her, she would
21 have opposed the motion and done what she could to keep
22 her alimony. I don't know how much it was, but to Ms.
23 Moynihan it was a significant enough amount that she
24 wanted it to continue. And she had permanent alimony.
25 So if she never got married, she could continue it.

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

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

19 The defendant's view of this relationship,
20 after 2017, and especially after 2011 -- 2007 and
21 especially after 2011, is that it was deteriorating.
22 He said that the plaintiff was constantly worried about
23 her future and what would happen if he died. After
24 2011, they talked about retirement. He told her then
25 as he had before that he had enough to take care of

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

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

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

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

25 With regard to P-64, there is some conflict

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 As we know, consideration is something of

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

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

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

25 The defendant doesn't want this agreement to

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

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

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

1 time. Now, I don't expect that the attorneys that are
2 doing this matrimonial work do landlord/tenant, so they
3 don't understand what it is. But in order for orderly
4 removal provides an orderly method for tenants who are
5 evicted from rental properties to leave, to gather
6 their belongings and leave. And that's exactly what
7 this is.
8 This is an agreement for the orderly breakup
9 of the relationship, distribution of monies, and the
10 responsibilities that are going to be there. It
11 provides for what is going to happen if the
12 relationship terminates, which it did one year later.
13 Each party knew their rights and obligations under the
14 agreement.
15 I am not aware of any prohibition in the law
16 on the rights of parties who are cohabiting to enter
17 into these kinds of agreements, not palimony
18 agreements, but how to distribute the property, how to
19 take care of other business between them.
20 I am satisfied from the proofs that have been
21 presented, and I find that the plaintiff has proven all
22 of the elements of a contract that is enforceable.
23 There is no reason for it not to be enforced. And,
24 therefore, the plaintiff's application to the Court for
25 enforcement of the written agreement under Count 2 is

1 granted.
2 The remaining -- she has asked, in addition,
3 for a distribution of the assets. In Count 2, she has
4 also asked for a distribution of the assets that the
5 defendant accumulated during the relationship, which
6 application is denied. And the application that the
7 defendant provide proper support for her is denied as
8 well.
9 The remaining counts of the complaint are
10 dismissed, as they are actually alternative theories of
11 liability in the event the oral and/or written
12 agreements are not enforced. And based on the
13 important -- on the enforcement of P-64, those counts
14 are dismissed, and the counterclaim is dismissed.
15 I am going to return to Mr. Danaher all of
16 the exhibits that were marked as plaintiff's exhibit so
17 we can take them away with him. Ms. Roberts, we will
18 hold on to the exhibits that were yours. And I would
19 ask that you make some kind of arrangement to come and
20 pick them up, not at any --
21 MS. ROBERTS: Yes, Judge.
22 THE COURT: -- not at any particular time. I
23 don't -- you know, I mean, you don't have to come and
24 get them tomorrow or anything like that, but we'll hold
25 onto them for a short period of time. And I'm going to

1 ask the court clerk to mark, in fact, that they will be
2 located in the evidence locker behind courtroom 6D.
3 And if she can't do it, ask somebody else to do it for
4 her.
5 And, counsel, if you and Ms. Moynihan wait
6 outside, we'll bring you a copy of the order. It will
7 be up -- I guess we can mail it to you, Ms. Roberts.
8 MS. ROBERTS: Thank you, Judge.
9 THE COURT: And before we finish, I'd like to
10 say thank you. I know Mr. Sarno is not here, but I'd
11 like to say thank you to Mr. Sarno. And, Mr. Danaher,
12 I hope you will tell him.
13 MR. DANAHER: Certainly, Your Honor.
14 THE COURT: And to you, Ms. Roberts, for all
15 of the courtesies that you showed to the Court during
16 the course of this litigation.
17 I know that there were many factual
18 disagreements between the parties. I know that there
19 were many legal disagreements between the parties, but
20 each of you showed to the other the courtesy and
21 respect that the Court has come to expect from
22 attorneys of your caliber. And I hope that the
23 litigants understand that when you show courtesy and
24 respect to one another that it enhanced their ability
25 to be effective in their representation.

1 And I wish Ms. Moynihan good luck. And, Ms.
2 Roberts, if you would tell your client I wish him good
3 luck as well. I know he's had some health issues, and
4 I hope all goes well for him.
5 MS. ROBERTS: Thank you.
6 THE COURT: Thank you very much.
7 MR. DANAHER: Thank you, Your Honor. May I
8 ask one question?
9 THE COURT: Certainly.
10 MR. DANAHER: Not relating to the decision in
11 any way, but there was a request from both sides for
12 counsel fees that related in this matter.
13 THE COURT: Well, you know what? That
14 reminds me. Let me read my order on the record.
15 MR. DANAHER: Sure.
16 THE COURT: Okay. It is on this 29th day of
17 May, 2019, hereby ordered and adjudged that Count 1 of
18 the plaintiff's amended complaint shall be and thereby
19 is dismissed. Counts 3 through and including 11 shall
20 be and hereby are dismissed. The counterclaim filed by
21 the defendant shall be and hereby is dismissed.
22 The plaintiff's request for relief is set
23 forth in Count 2 of the amended complaint is granted in
24 part and denied in part as follows. A, the written
25 agreement, P-64, shall be and is enforced.

1 B, the defendant shall completely satisfy the
2 mortgage on the premises at 2 Andover Court,
3 Bordentown, New Jersey, on or before April 30, 2020,
4 and shall provide the plaintiff with the appropriate
5 documentation of satisfaction on or before May 31,
6 2020. Upon satisfaction of the mortgage on May 31,
7 2010, whichever comes first, the defendant shall
8 execute a general warranty deed, conveying the property
9 to the plaintiff.
10 D. Until the mortgage is satisfied, the
11 defendant shall be responsible for the payment of all
12 mortgage payments. The defendant shall pay to the
13 plaintiff the sum of \$100,000, which shall be paid on
14 or before April 30, 2020.
15 F. The defendant shall be responsible for
16 the payment of all real estate taxes on the property
17 from May 1, 2015 through and including April 30, 2017.
18 And any sums unpaid by him at this sum at this time
19 shall be paid by him on or before June 30, 2019.
20 G. The plaintiff's request for an equitable
21 and legal share of the assets accumulated by the
22 defendant during the relationship is denied.
23 H. The plaintiff's request that the
24 defendant provide proper support for her is denied.
25 I. Until all of the obligations under this

1 order are satisfied, the previously entered restraint
2 on the Allied Bank account shall remain in full force
3 and effect. Each party shall be responsible for his
4 and her counsel fees and costs.
5 And do you have a copy for Mr. Danaher and
6 Ms. Moynihan? You can give them to them, please.
7 THE CLERK: Okay.
8 THE COURT: And we'll get it in the mail to
9 you, Ms. Roberts. I don't know; do we have eCourts?
10 Were we uploaded onto eCourts and they can just
11 download it?
12 THE CLERK: No, Your Honor.
13 THE COURT: Okay. They have that in Civil
14 Division.
15 MR. DANAHER: Not in Family Court.
16 THE COURT: Okay. They have it in Civil
17 Division.
18 MR. DANAHER: We're not that advanced.
19 THE COURT: We're getting there.
20 THE CLERK: Your Honor.
21 THE COURT: All right.
22 MR. DANAHER: Thank you very much.
23 (Off the record discussion)
24 THE COURT: All right. Anything further, Ms.
25 Roberts?

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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.)

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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: 2019.07.16 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