NEW YORK DOMESTIC RELATIONS LAW SECTION 253

Removal of barriers to remarriage

Domestic Relations (DOM) CHAPTER 14, ARTICLE 13

§ 253. Removal of barriers to remarriage. 1. This section applies only to a marriage solemnized in this state or in any other jurisdiction by a person specified in subdivision one of section eleven of this chapter.

2. Any party to a marriage defined in subdivision one of this section who commences a proceeding to annul the marriage or for a divorce must allege, in his or her verified complaint: (i) that, to the best of his or her knowledge, that he or she has taken or that he or she will take, prior to the entry of final judgment, all steps solely within his or her power to remove any barrier to the defendant's remarriage following the annulment or divorce; or (ii) that the defendant has waived in writing the requirements of this subdivision.

3. No final judgment of annulment or divorce shall thereafter be entered unless the plaintiff shall have filed and served a sworn statement: (i) that, to the best of his or her knowledge, he or she has, prior to the entry of such final judgment, taken all steps solely within his or her power to remove all barriers to the defendant's remarriage following the annulment or divorce; or (ii) that the defendant has waived in writing the requirements of this subdivision.

4. In any action for divorce based on subdivisions five and six of section one hundred seventy of this chapter in which the defendant enters a general appearance and does not contest the requested relief, no final judgment of annulment or divorce shall be entered unless both parties shall have filed and served sworn statements: (i) that he or she has, to the best of his or her knowledge, taken all steps solely within his or her power to remove all barriers to the other party's remarriage following the annulment or divorce; or (ii) that the other party has waived in writing the requirements of this subdivision.

5. The writing attesting to any waiver of the requirements of subdivision two, three or four of this section shall be filed with the court prior to the entry of a final judgment of annulment or divorce.

6. As used in the sworn statements prescribed by this section "barrier to remarriage" includes, without limitation, any religious or conscientious restraint or inhibition, of which the party required to make the verified statement is aware, that is imposed on a party to a marriage, under the principles held by the clergyman or minister who has solemnized the marriage, by reason of the other party's commission or withholding of any voluntary act. Nothing in this section shall be construed to require any party to consult with any clergyman or minister to determine whether there exists any such religious or conscientious restraint or inhibition. It shall not be deemed a "barrier to remarriage" within the meaning of this section if the restraint or inhibition cannot be removed by the party's voluntary act. Nor shall it be deemed a "barrier to remarriage" if the party must incur expenses in connection with removal of the restraint or inhibition and the other party refuses to provide reasonable reimbursement for such expenses. "All steps solely within his or her power" shall not be construed to include application to a marriage tribunal or other similar organization or agency of a religious denomination which has authority to annul or dissolve a marriage under the rules of such denomination.

7. No final judgment of annulment or divorce shall be entered, notwithstanding the filing of the plaintiff's sworn statement prescribed by this section, if the clergyman or minister who has solemnized the marriage certifies, in a sworn statement, that he or she has solemnized the marriage and that, to his or her knowledge, the plaintiff has failed to take all steps solely within his or her power to remove all barriers to the defendant's remarriage following the annulment or divorce, provided that the said clergyman or minister is alive and available and competent to testify at the time when final judgment would be entered.

8. Any person who knowingly submits a false sworn statement under this section shall be guilty of making an apparently sworn false statement in the first degree and shall be punished in accordance with section 210.40

of the penal law.

9. Nothing in this section shall be construed to authorize any court to inquire into or determine any ecclesiastical or religious issue. The truth of any statement submitted pursuant to this section shall not be the subject of any judicial inquiry, except as provided in subdivision eight of this section.

NEW YORK DOMESTIC RELATIONS LAW SECTION 236

§ 236. Special controlling provisions; prior actions or proceedings; new actions or proceedings. Except as otherwise expressly provided in this section, the provisions of part A shall be controlling with respect to any action or proceeding commenced prior to the date on which the provisions of this section as amended become effective and the provisions of part B shall be controlling with respect to any action or proceeding commenced on or after such effective date. Any reference to this section or the provisions hereof in any action, proceeding, judgment, order, rule or agreement shall be deemed and construed to refer to either the provisions of part A or part B respectively and exclusively, determined as provided in this paragraph any inconsistent provision of law notwithstanding.

PART A

PRIOR ACTIONS OR PROCEEDINGS

Alimony, temporary and permanent. 1. Alimony. In any action or proceeding brought (1) during the lifetime of both parties to the marriage to annul a marriage or declare the nullity of a void marriage, or (2) for a separation, or (3) for a divorce, the court may direct either spouse to provide suitably for the support of the other as, in the court's discretion, justice requires, having regard to the length of time of the marriage, the ability of each spouse to be self supporting, the circumstances of the case and of the respective parties. Such direction may require the payment of a sum or sums of money either directly to either spouse or to third persons for real and personal property and services furnished to either spouse, or for the rental of or mortgage amortization or interest payments, insurance, taxes, repairs

or other carrying charges on premises occupied by either spouse, or for both payments to either spouse and to such third persons. Such direction
shall be effective as of the date of the application therefor, and any retroactive amount of alimony due shall be paid in one sum or periodic sums, as the court shall direct, taking into account any amount of temporary alimony which has been paid. Such direction may be made in the
final judgment in such action or proceeding, or by one or more orders from time to time before or subsequent to final judgment, or by both such order or orders and the final judgment. Such direction may be made
notwithstanding that the parties continue to reside in the same abode and notwithstanding that the court refuses to grant the relief requested by either spouse (1) by reason of a finding by the court that a divorce, annulment or judgment declaring the marriage a nullity had previously been granted to either spouse in an action in which jurisdiction over the person of the other spouse was not obtained, or (2) by reason of the misconduct of the other spouse, unless such misconduct would itself constitute grounds for separation or divorce, or (3) by reason of a failure of proof of the grounds of either spouse's action or counterclaim. Any order or judgment made as in this section provided may
combine in one lump sum any amount payable to either spouse under this
section with any amount payable to either spouse under section two hundred forty of this chapter. Upon the application of either spouse, upon such notice to the other party and given in such manner as the court shall direct, the court may annul or modify any such direction, whether made by order or by final judgment, or in case no such direction shall have been made in the final judgment may, with respect to any judgment of annulment or declaring the nullity of a void marriage

rendered on or after September first, nineteen hundred forty or any judgment of separation or divorce whenever rendered, amend the judgment
by inserting such direction. Subject to the provisions of section two hundred forty-four of this chapter, no such modification or annulment shall reduce or annul arrears accrued prior to the making of such application unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing such payment prior to the accrual of such arrears. Such modification may increase such support nunc pro tunc based on newly discovered evidence.

2. Compulsory financial disclosure. In all matrimonial actions and proceedings commenced on or after September first, nineteen hundred seventy-five in supreme court in which alimony, maintenance or support is in issue and all support proceedings in family court, there shall be compulsory disclosure by both parties of their respective financial states. No showing of special circumstances shall be required before such disclosure is ordered. A sworn statement of net worth shall be provided upon receipt of a notice in writing demanding the same, within twenty days after the receipt thereof. In the event said statement is not demanded, it shall be filed by each party, within ten days after joinder of issue, in the court in which the procedure is pending. As used in this section, the term net worth shall mean the amount by which total assets including income exceed total liabilities including fixed financial obligations. It shall include all income and assets of whatsoever kind and nature and wherever situated and shall include a list of all assets transferred in any manner during the preceding three years, or the length of the marriage, whichever is shorter; provided, however that transfers in the routine course of business which resulted in an exchange of assets of substantially equivalent value need not be specifically disclosed where such assets are otherwise identified in the

statement of net worth. Noncompliance shall be punishable by any or all of the penalties prescribed in section thirty-one hundred twenty-six of the civil practice law and rules, in examination before or during trial.

PART B

NEW ACTIONS OR PROCEEDINGS

Maintenance and distributive award. 1. Definitions. Whenever used in this part, the following terms shall have the respective meanings hereinafter set forth or indicated:

a. The term "maintenance" shall mean payments provided for in a valid agreement between the parties or awarded by the court in accordance with
the provisions of subdivisions five-a and six of this part, to be paid at fixed intervals for a definite or indefinite period of time, but an award of maintenance shall terminate upon the death of either party or upon the payee's valid or invalid marriage, or upon modification pursuant to paragraph b of subdivision nine of this part or section two hundred forty-eight of this chapter.

b. The term "distributive award" shall mean payments provided for in a valid agreement between the parties or awarded by the court, in lieu of or to supplement, facilitate or effectuate the division or distribution of property where authorized in a matrimonial action, and payable either in a lump sum or over a period of time in fixed amounts. Distributive awards shall not include payments which are treated as ordinary income to the recipient under the provisions of the United States Internal Revenue Code.

c. The term "marital property" shall mean all property acquired by

either or both spouses during the marriage and before the execution of a separation agreement or the commencement of a matrimonial action, regardless of the form in which title is held, except as otherwise provided in agreement pursuant to subdivision three of this part. Marital property shall not include separate property as hereinafter defined.

d. The term separate property shall mean:

(1) property acquired before marriage or property acquired by bequest, devise, or descent, or gift from a party other than the spouse;

(2) compensation for personal injuries;

(3) property acquired in exchange for or the increase in value of separate property, except to the extent that such appreciation is due in part to the contributions or efforts of the other spouse;

(4) property described as separate property by written agreement of the parties pursuant to subdivision three of this part.

e. The term "custodial parent" shall mean a parent to whom custody of a child or children is granted by a valid agreement between the parties or by an order or decree of a court.

f. The term "child support" shall mean a sum paid pursuant to court order or decree by either or both parents or pursuant to a valid agreement between the parties for care, maintenance and education of any
unemancipated child under the age of twenty-one years.

2. Matrimonial actions. a. Except as provided in subdivision five of

this part, the provisions of this part shall be applicable to actions for an annulment or dissolution of a marriage, for a divorce, for a separation, for a declaration of the nullity of a void marriage, for a declaration of the validity or nullity of a foreign judgment of divorce, for a declaration of the validity or nullity of a marriage, and to proceedings to obtain maintenance or a distribution of marital property following a foreign judgment of divorce, commenced on and after the effective date of this part. Any application which seeks a modification of a judgment, order or decree made in an action commenced prior to the
effective date of this part shall be heard and determined in accordance with the provisions of part A of this section.

b. With respect to matrimonial actions which commence on or after the effective date of this paragraph, the plaintiff shall cause to be served upon the defendant, simultaneous with the service of the summons, a copy
of the automatic orders set forth in this paragraph. The automatic orders shall be binding upon the plaintiff in a matrimonial action immediately upon the filing of the summons, or summons and complaint,
and upon the defendant immediately upon the service of the automatic orders with the summons. The automatic orders shall remain in full force
and effect during the pendency of the action, unless terminated, modified or amended by further order of the court upon motion of either of the parties or upon written agreement between the parties duly executed and acknowledged. The automatic orders are as follows:

(1) Neither party shall sell, transfer, encumber, conceal, assign, remove or in any way dispose of, without the consent of the other party in writing, or by order of the court, any property (including, but not

limited to, real estate, personal property, cash accounts, stocks, mutual funds, bank accounts, cars and boats) individually or jointly held by the parties, except in the usual course of business, for customary and usual household expenses or for reasonable attorney's fees
in connection with this action.

(2) Neither party shall transfer, encumber, assign, remove, withdraw or in any way dispose of any tax deferred funds, stocks or other assets held in any individual retirement accounts, 401K accounts, profit sharing plans, Keogh accounts, or any other pension or retirement account, and the parties shall further refrain from applying for or requesting the payment of retirement benefits or annuity payments of any
kind, without the consent of the other party in writing, or upon further order of the court; except that any party who is already in pay status may continue to receive such payments thereunder.

(3) Neither party shall incur unreasonable debts hereafter, including, but not limited to further borrowing against any credit line secured by the family residence, further encumbrancing any assets, or unreasonably
using credit cards or cash advances against credit cards, except in the usual course of business or for customary or usual household expenses, or for reasonable attorney's fees in connection with this action.

(4) Neither party shall cause the other party or the children of the marriage to be removed from any existing medical, hospital and dental insurance coverage, and each party shall maintain the existing medical, hospital and dental insurance coverage in full force and effect.

(5) Neither party shall change the beneficiaries of any existing life

insurance policies, and each party shall maintain the existing life insurance, automobile insurance, homeowners and renters insurance policies in full force and effect.

3. Agreement of the parties. An agreement by the parties, made before or during the marriage, shall be valid and enforceable in a matrimonial action if such agreement is in writing, subscribed by the parties, and acknowledged or proven in the manner required to entitle a deed to be recorded. Notwithstanding any other provision of law, an acknowledgment
of an agreement made before marriage may be executed before any person
authorized to solemnize a marriage pursuant to subdivisions one, two and
three of section eleven of this chapter. Such an agreement may include (1) a contract to make a testamentary provision of any kind, or a waiver of any right to elect against the provisions of a will; (2) provision
for the ownership, division or distribution of separate and marital property; (3) provision for the amount and duration of maintenance or other terms and conditions of the marriage relationship, subject to the provisions of section 5-311 of the general obligations law, and provided that such terms were fair and reasonable at the time of the making of the agreement and are not unconscionable at the time of entry of final judgment; and (4) provision for the custody, care, education and maintenance of any child of the parties, subject to the provisions of section two hundred forty of this article. Nothing in this subdivision shall be deemed to affect the validity of any agreement made prior to the effective date of this subdivision.

4. Compulsory financial disclosure. a. In all matrimonial actions and proceedings in which alimony, maintenance or support is in issue, there shall be compulsory disclosure by both parties of their respective

financial states. No showing of special circumstances shall be required before such disclosure is ordered. A sworn statement of net worth shall be provided upon receipt of a notice in writing demanding the same, within twenty days after the receipt thereof. In the event said statement is not demanded, it shall be filed with the clerk of the court by each party, within ten days after joinder of issue, in the court in which the proceeding is pending. As used in this part, the term "net worth" shall mean the amount by which total assets including income exceed total liabilities including fixed financial obligations. It shall include all income and assets of whatsoever kind and nature and wherever
situated and shall include a list of all assets transferred in any manner during the preceding three years, or the length of the marriage, whichever is shorter; provided, however that transfers in the routine course of business which resulted in an exchange of assets of substantially equivalent value need not be specifically disclosed where such assets are otherwise identified in the statement of net worth. All such sworn statements of net worth shall be accompanied by a current and
representative paycheck stub and the most recently filed state and federal income tax returns including a copy of the W-2(s) wage and tax statement(s) submitted with the returns. In addition, both parties shall provide information relating to any and all group health plans available to them for the provision of care or other medical benefits by insurance or otherwise for the benefit of the child or children for whom support is sought, including all such information as may be required to be included in a qualified medical child support order as defined in section six hundred nine of the employee retirement income security act of 1974 (29 USC 1169) including, but not limited to: (i) the name and last known mailing address of each party and of each dependent to be covered by the order; (ii) the identification and a description of each group health plan available for the benefit or coverage of the

disclosing party and the child or children for whom support is sought; (iii) a detailed description of the type of coverage available from each group health plan for the potential benefit of each such dependent; (iv) the identification of the plan administrator for each such group health plan and the address of such administrator; (v) the identification numbers for each such group health plan; and (vi) such other information
as may be required by the court. Noncompliance shall be punishable by any or all of the penalties prescribed in section thirty-one hundred twenty-six of the civil practice law and rules, in examination before or during trial.

b. As soon as practicable after a matrimonial action has been commenced, the court shall set the date or dates the parties shall use for the valuation of each asset. The valuation date or dates may be anytime from the date of commencement of the action to the date of trial.

5. Disposition of property in certain matrimonial actions. a. Except where the parties have provided in an agreement for the disposition of their property pursuant to subdivision three of this part, the court, in an action wherein all or part of the relief granted is divorce, or the dissolution, annulment or declaration of the nullity of a marriage, and in proceedings to obtain a distribution of marital property following a foreign judgment of divorce, shall determine the respective rights of the parties in their separate or marital property, and shall provide for the disposition thereof in the final judgment.

b. Separate property shall remain such.

c. Marital property shall be distributed equitably between the parties, considering the circumstances of the case and of the respective

parties.

d. In determining an equitable disposition of property under paragraph c, the court shall consider:

(1) the income and property of each party at the time of marriage, and at the time of the commencement of the action;

(2) the duration of the marriage and the age and health of both parties;

(3) the need of a custodial parent to occupy or own the marital residence and to use or own its household effects;

(4) the loss of inheritance and pension rights upon dissolution of the marriage as of the date of dissolution;

(5) the loss of health insurance benefits upon dissolution of the marriage;

(6) any award of maintenance under subdivision six of this part;

(7) any equitable claim to, interest in, or direct or indirect contribution made to the acquisition of such marital property by the party not having title, including joint efforts or expenditures and contributions and services as a spouse, parent, wage earner and homemaker, and to the career or career potential of the other party. The court shall not consider as marital property subject to distribution the value of a spouse's enhanced earning capacity arising from a license, degree, celebrity goodwill, or career enhancement. However, in arriving at an equitable division of marital property, the court shall consider the direct or indirect contributions to the development during the

marriage of the enhanced earning capacity of the other spouse;

(8) the liquid or non-liquid character of all marital property;

(9) the probable future financial circumstances of each party;

(10) the impossibility or difficulty of evaluating any component asset or any interest in a business, corporation or profession, and the economic desirability of retaining such asset or interest intact and free from any claim or interference by the other party;

(11) the tax consequences to each party;

(12) the wasteful dissipation of assets by either spouse;

(13) any transfer or encumbrance made in contemplation of a matrimonial action without fair consideration;

(14) whether either party has committed an act or acts of domestic violence, as described in subdivision one of section four hundred fifty-nine-a of the social services law, against the other party and the nature, extent, duration and impact of such act or acts;

(15) in awarding the possession of a companion animal, the court shall consider the best interest of such animal. "Companion animal", as used in this subparagraph, shall have the same meaning as in subdivision five of section three hundred fifty of the agriculture and markets law; and

(16) any other factor which the court shall expressly find to be just and proper.

e. In any action in which the court shall determine that an equitable

distribution is appropriate but would be impractical or burdensome or where the distribution of an interest in a business, corporation or profession would be contrary to law, the court in lieu of such equitable distribution shall make a distributive award in order to achieve equity between the parties. The court in its discretion, also may make a distributive award to supplement, facilitate or effectuate a distribution of marital property.

f. In addition to the disposition of property as set forth above, the court may make such order regarding the use and occupancy of the marital
home and its household effects as provided in section two hundred thirty-four of this chapter, without regard to the form of ownership of such property.

g. In any decision made pursuant to this subdivision, the court shall set forth the factors it considered and the reasons for its decision and such may not be waived by either party or counsel.

h. In any decision made pursuant to this subdivision the court shall, where appropriate, consider the effect of a barrier to remarriage, as defined in subdivision six of section two hundred fifty-three of this article, on the factors enumerated in paragraph d of this subdivision.

5-a. Temporary maintenance awards. a. Except where the parties have entered into an agreement providing for maintenance pursuant to subdivision three of this part, in any matrimonial action the court, upon application by a party, shall make its award for temporary maintenance pursuant to the provisions of this subdivision.

b. For purposes of this subdivision, the following definitions shall be used:

(1) "Payor" shall mean the spouse with the higher income.

(2) "Payee" shall mean the spouse with the lower income.

(3) "Length of marriage" shall mean the period from the date of marriage until the date of commencement of action.

(4) "Income" shall mean income as defined in the child support standards act and codified in section two hundred forty of this article and section four hundred thirteen of the family court act without subtracting alimony or maintenance actually paid or to be paid to a spouse that is a party to the instant action pursuant to subclause (C) of clause (vii) of subparagraph five of paragraph (b) of subdivision one-b of section two hundred forty of this article and subclause (C) of clause (vii) of subparagraph five of paragraph (b) of subdivision one of section four hundred thirteen of the family court act and without subtracting spousal support paid pursuant to section four hundred twelve
of such act.

(5) "Income cap" shall mean up to and including one hundred eighty-four thousand dollars of the payor's annual income; provided, however, beginning March first, two thousand twenty and every two years
thereafter, the income cap amount shall increase by the sum of the average annual percentage changes in the consumer price index for all urban consumers (CPI-U) as published by the United States department of
labor bureau of labor statistics for the prior two years multiplied by the then income cap and then rounded to the nearest one thousand dollars. The office of court administration shall determine and publish

the income cap.

(6) "Guideline amount of temporary maintenance" shall mean the dollar amount derived by the application of paragraph c or d of this subdivision.

(7) "Self-support reserve" shall mean the self-support reserve as defined in the child support standards act and codified in section two hundred forty of this article and section four hundred thirteen of the family court act.

(8) "Agreement" shall have the same meaning as provided in subdivision three of this part.

c. Where the payor's income is lower than or equal to the income cap, the court shall determine the guideline amount of temporary maintenance
as follows:

(1) Where child support will be paid for children of the marriage and where the payor as defined in this subdivision is also the non-custodial parent pursuant to the child support standards act:

(a) the court shall subtract twenty-five percent of the payee's income from twenty percent of the payor's income.

(b) the court shall then multiply the sum of the payor's income and the payee's income by forty percent.

(c) the court shall subtract the payee's income from the amount derived from clause (b) of this subparagraph.

(d) the court shall determine the lower of the two amounts derived by clauses (a) and (c) of this subparagraph.

(e) the guideline amount of temporary maintenance shall be the amount determined by clause (d) of this subparagraph except that, if the amount determined by clause (d) of this subparagraph is less than or equal to zero, the guideline amount of temporary maintenance shall be zero dollars.

(f) temporary maintenance shall be calculated prior to child support because the amount of temporary maintenance shall be subtracted from the
payor's income and added to the payee's income as part of the calculation of the child support obligation.

(2) Where child support will not be paid for children of the marriage, or where child support will be paid for children of the marriage but the payor as defined in this subdivision is the custodial parent pursuant to the child support standards act:

(a) the court shall subtract twenty percent of the payee's income from thirty percent of the payor's income.

(b) the court shall then multiply the sum of the payor's income and the payee's income by forty percent.

(c) the court shall subtract the payee's income from the amount derived from clause (b) of this subparagraph.

(d) the court shall determine the lower of the two amounts derived by clauses (a) and (c) of this subparagraph.

(e) the guideline amount of temporary maintenance shall be the amount determined by clause (d) of this subparagraph except that, if the amount determined by clause (d) of this subparagraph is less than or equal to zero, the guideline amount of temporary maintenance shall be zero dollars.

(f) if child support will be paid for children of the marriage but the payor as defined in this subdivision is the custodial parent pursuant to the child support standards act, temporary maintenance shall be calculated prior to child support because the amount of temporary maintenance shall be subtracted from the payor's income pursuant to this
subdivision and added to the payee's income pursuant to this subdivision
as part of the calculation of the child support obligation.

d. Where the payor's income exceeds the income cap, the court shall determine the guideline amount of temporary maintenance as follows:

(1) the court shall perform the calculations set forth in paragraph c of this subdivision for the income of the payor up to and including the income cap; and

(2) for income exceeding the cap, the amount of additional maintenance awarded, if any, shall be within the discretion of the court which shall take into consideration any one or more of the factors set forth in subparagraph one of paragraph h of this subdivision; and

(3) the court shall set forth the factors it considered and the reasons for its decision in writing or on the record. Such decision, whether in writing or on the record, may not be waived by either party or counsel.

e. Notwithstanding the provisions of this subdivision, where the guideline amount of temporary maintenance would reduce the payor's income below the self-support reserve for a single person, the guideline amount of temporary maintenance shall be the difference between the payor's income and the self-support reserve. If the payor's income is below the self-support reserve, there shall be a rebuttable presumption that no temporary maintenance is awarded.

f. The court shall determine the duration of temporary maintenance by considering the length of the marriage.

g. Temporary maintenance shall terminate no later than the issuance of the judgment of divorce or the death of either party, whichever occurs first.

h. (1) The court shall order the guideline amount of temporary maintenance up to the income cap in accordance with paragraph c of this
subdivision, unless the court finds that the guideline amount of temporary maintenance is unjust or inappropriate, which finding shall be based upon consideration of any one or more of the following factors, and adjusts the guideline amount of temporary maintenance accordingly
based upon such consideration:

(a) the age and health of the parties;

(b) the present or future earning capacity of the parties, including a history of limited participation in the workforce;

(c) the need of one party to incur education or training expenses;

(d) the termination of a child support award during the pendency of the temporary maintenance award when the calculation of temporary maintenance was based upon child support being awarded and which resulted in a maintenance award lower than it would have been had child
support not been awarded;

(e) the wasteful dissipation of marital property, including transfers or encumbrances made in contemplation of a matrimonial action without
fair consideration;

(f) the existence and duration of a pre-marital joint household or a pre-divorce separate household;

(g) acts by one party against another that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment. Such acts include but are not limited to acts of domestic violence as provided in section four hundred fifty-nine-a of the social services law;

(h) the availability and cost of medical insurance for the parties;

(i) the care of children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws provided during the marriage that inhibits a party's earning capacity;

(j) the tax consequences to each party;

(k) the standard of living of the parties established during the marriage;

(l) the reduced or lost earning capacity of the payee as a result of having forgone or delayed education, training, employment or career opportunities during the marriage; and

(m) any other factor which the court shall expressly find to be just and proper.

(2) Where the court finds that the guideline amount of temporary maintenance is unjust or inappropriate and the court adjusts the guideline amount of temporary maintenance pursuant to this paragraph, the court shall set forth, in a written decision or on the record, the guideline amount of temporary maintenance, the factors it considered, and the reasons that the court adjusted the guideline amount of temporary maintenance. Such decision, whether in writing or on the record, shall not be waived by either party or counsel.

(3) Where either or both parties are unrepresented, the court shall not enter a temporary maintenance order unless the court informs the unrepresented party or parties of the guideline amount of temporary maintenance.

i. Nothing contained in this subdivision shall be construed to alter the rights of the parties to voluntarily enter into agreements or stipulations as defined in subdivision three of this part which deviate from the presumptive award of temporary maintenance.

j. When a payor has defaulted and/or the court is otherwise presented with insufficient evidence to determine income, the court shall order the temporary maintenance award based upon the needs of the payee or the
standard of living of the parties prior to commencement of the divorce

action, whichever is greater. Such order may be retroactively modified upward without a showing of change in circumstances upon a showing of
newly discovered evidence.

k. In any action or proceeding for modification of an order of maintenance or alimony existing prior to the effective date of this subdivision, brought pursuant to this article, the temporary maintenance guidelines set forth in this subdivision shall not constitute a change of circumstances warranting modification of such support order.

l. In any action or proceeding for modification where the parties have entered into an agreement providing for maintenance pursuant to subdivision three of this part entered into prior to the effective date of this subdivision, brought pursuant to this article, the temporary maintenance guidelines set forth in this subdivision shall not constitute a change of circumstances warranting modification of such support order.

m. In determining temporary maintenance, the court shall consider and allocate, where appropriate, the responsibilities of the respective spouses for the family's expenses during the pendency of the proceeding.

n. The temporary maintenance order shall not prejudice the rights of either party regarding a post-divorce maintenance award.

6. Post-divorce maintenance awards. a. Except where the parties have entered into an agreement pursuant to subdivision three of this part providing for maintenance, in any matrimonial action, the court, upon application by a party, shall make its award for post-divorce maintenance pursuant to the provisions of this subdivision.

b. For purposes of this subdivision, the following definitions shall be used:

(1) "Payor" shall mean the spouse with the higher income.

(2) "Payee" shall mean the spouse with the lower income.

(3) "Income" shall mean:

(a) income as defined in the child support standards act and codified in section two hundred forty of this article and section four hundred thirteen of the family court act, without subtracting alimony or maintenance actually paid or to be paid to a spouse that is a party to the instant action pursuant to subclause (C) of clause (vii) of subparagraph five of paragraph (b) of subdivision one-b of section two hundred forty of this article and subclause (C) of clause (vii) of subparagraph five of paragraph (b) of subdivision one of section four hundred thirteen of the family court act and without subtracting spousal support paid pursuant to section four hundred twelve of such act; and

(b) income from income-producing property distributed or to be distributed pursuant to subdivision five of this part.

(4) "Income cap" shall mean up to and including one hundred eighty-four thousand dollars of the payor's annual income; provided, however, beginning March first, two thousand twenty and every two years
thereafter, the income cap amount shall increase by the sum of the average annual percentage changes in the consumer price index for all urban consumers (CPI-U) as published by the United States department of

labor bureau of labor statistics for the prior two years multiplied by the then income cap and then rounded to the nearest one thousand dollars. The office of court administration shall determine and publish the income cap.

(5) "Guideline amount of post-divorce maintenance" shall mean the dollar amount derived by the application of paragraph c or d of this subdivision.

(6) "Guideline duration of post-divorce maintenance" shall mean the durational period determined by the application of paragraph f of this subdivision.

(7) "Post-divorce maintenance guideline obligation" shall mean the guideline amount of post-divorce maintenance and the guideline duration
of post-divorce maintenance.

(8) "Length of marriage" shall mean the period from the date of marriage until the date of commencement of the action.

(9) "Self-support reserve" shall mean the self-support reserve as defined in the child support standards act and codified in section two hundred forty of this article and section four hundred thirteen of the family court act.

(10) "Agreement" shall have the same meaning as provided in subdivision three of this part.

c. Where the payor's income is lower than or equal to the income cap, the court shall determine the guideline amount of post-divorce maintenance as follows:

(1) Where child support will be paid for children of the marriage and where the payor as defined in this subdivision is also the non-custodial parent pursuant to the child support standards act:

(a) the court shall subtract twenty-five percent of the payee's income from twenty percent of the payor's income.

(b) the court shall then multiply the sum of the payor's income and the payee's income by forty percent.

(c) the court shall subtract the payee's income from the amount derived from clause (b) of this subparagraph.

(d) the court shall determine the lower of the two amounts derived by clauses (a) and (c) of this subparagraph.

(e) the guideline amount of post-divorce maintenance shall be the amount determined by clause (d) of this subparagraph except that, if the amount determined by clause (d) of this subparagraph is less than or equal to zero, the guideline amount of post-divorce maintenance shall be
zero dollars.

(f) notwithstanding the provisions of this subdivision, where the guideline amount of post-divorce maintenance would reduce the payor's income below the self-support reserve for a single person, the guideline amount of post-divorce maintenance shall be the difference between the
payor's income and the self-support reserve. If the payor's income is below the self-support reserve, there shall be a rebuttable presumption that no post-divorce maintenance is awarded.

(g) maintenance shall be calculated prior to child support because the amount of maintenance shall be subtracted from the payor's income and
added to the payee's income as part of the calculation of the child support obligation.

(2) Where child support will not be paid for children of the marriage, or where child support will be paid for children of the marriage but the payor as defined in this subdivision is the custodial parent pursuant to the child support standards act:

(a) the court shall subtract twenty percent of the payee's income from thirty percent of the payor's income.

(b) the court shall then multiply the sum of the payor's income and the payee's income by forty percent.

(c) the court shall subtract the payee's income from the amount derived from clause (b) of this subparagraph.

(d) the court shall determine the lower of the two amounts derived by clauses (a) and (c) of this subparagraph.

(e) the guideline amount of post-divorce maintenance shall be the amount determined by clause (d) of this subparagraph except that, if the amount determined by clause (d) of this subparagraph is less than or equal to zero, the guideline amount of post-divorce maintenance shall be
zero dollars.

(f) if child support will be paid for children of the marriage but the

payor as defined in this subdivision is the custodial parent pursuant to the child support standards act, post-divorce maintenance shall be calculated prior to child support because the amount of post-divorce maintenance shall be subtracted from the payor's income pursuant to this
subdivision and added to the payee's income pursuant to this subdivision
as part of the calculation of the child support obligation.

(g) notwithstanding the provisions of this subdivision, where the guideline amount of post-divorce maintenance would reduce the payor's income below the self-support reserve for a single person, the guideline amount of post-divorce maintenance shall be the difference between the
payor's income and the self-support reserve. If the payor's income is below the self-support reserve, there shall be a rebuttable presumption that no post-divorce maintenance is awarded.

d. Where the payor's income exceeds the income cap, the court shall determine the guideline amount of post-divorce maintenance as follows:

(1) the court shall perform the calculations set forth in paragraph c of this subdivision for the income of payor up to and including the income cap; and

(2) for income exceeding the cap, the amount of additional maintenance awarded, if any, shall be within the discretion of the court which shall take into consideration any one or more of the factors set forth in subparagraph one of paragraph e of this subdivision; and

(3) the court shall set forth the factors it considered and the

reasons for its decision in writing or on the record. Such decision, whether in writing or on the record, may not be waived by either party or counsel.

e. (1) The court shall order the post-divorce maintenance guideline obligation up to the income cap in accordance with paragraph c of this subdivision, unless the court finds that the post-divorce maintenance guideline obligation is unjust or inappropriate, which finding shall be based upon consideration of any one or more of the following factors, and adjusts the post-divorce maintenance guideline obligation accordingly based upon such consideration:

(a) the age and health of the parties;

(b) the present or future earning capacity of the parties, including a history of limited participation in the workforce;

(c) the need of one party to incur education or training expenses;

(d) the termination of a child support award before the termination of the maintenance award when the calculation of maintenance was based upon
child support being awarded which resulted in a maintenance award lower
than it would have been had child support not been awarded;

(e) the wasteful dissipation of marital property, including transfers or encumbrances made in contemplation of a matrimonial action without
fair consideration;

(f) the existence and duration of a pre-marital joint household or a

pre-divorce separate household;

(g) acts by one party against another that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment. Such acts include but are not limited to acts of domestic violence as provided in section four hundred fifty-nine-a of the social services law;

(h) the availability and cost of medical insurance for the parties;

(i) the care of children or stepchildren, disabled adult children or stepchildren, elderly parents or in-laws provided during the marriage that inhibits a party's earning capacity;

(j) the tax consequences to each party;

(k) the standard of living of the parties established during the marriage;

(l) the reduced or lost earning capacity of the payee as a result of having forgone or delayed education, training, employment or career opportunities during the marriage;

(m) the equitable distribution of marital property and the income or imputed income on the assets so distributed;

(n) the contributions and services of the payee as a spouse, parent, wage earner and homemaker and to the career or career potential of the other party; and

(o) any other factor which the court shall expressly find to be just and proper.

(2) Where the court finds that the post-divorce maintenance guideline obligation is unjust or inappropriate and the court adjusts the post-divorce maintenance guideline obligation pursuant to this paragraph, the court shall set forth, in a written decision or on the record, the unadjusted post-divorce maintenance guideline obligation, the factors it considered, and the reasons that the court adjusted the post-divorce maintenance obligation. Such decision shall not be waived by either party or counsel.

f. The duration of post-divorce maintenance may be determined as follows:

(1) The court may determine the duration of post-divorce maintenance in accordance with the following advisory schedule:

Length of the marriage	Percent of the length of the marriage for which maintenance will be payable
0 up to and including 15 years	15% - 30%
More than 15 up to and including 20 years	30% - 40%
More than 20 years	35% - 50%

(2) In determining the duration of post-divorce maintenance, whether or not the court utilizes the advisory schedule, it shall consider the factors listed in subparagraph one of paragraph e of this subdivision and shall set forth, in a written decision or on the record, the factors it considered. Such decision shall not be waived by either party or counsel. Nothing herein shall prevent the court from awarding non-durational maintenance in an appropriate case.

(3) Notwithstanding the provisions of subparagraph one of this paragraph, post-divorce maintenance shall terminate upon the death of either party or upon the payee's valid or invalid marriage, or upon modification pursuant to paragraph b of subdivision nine of this part or section two hundred forty-eight of this article.

(4) Notwithstanding the provisions of subparagraph one of this paragraph, when determining duration of post-divorce maintenance, the court shall take into consideration anticipated retirement assets, benefits, and retirement eligibility age of both parties if ascertainable at the time of decision. If not ascertainable at the time of decision, the actual full or partial retirement of the payor with substantial diminution of income shall be a basis for a modification of the award.

g. Where either or both parties are unrepresented, the court shall not enter a maintenance order or judgment unless the court informs the unrepresented party or parties of the post-divorce maintenance guideline
obligation.

h. Nothing contained in this subdivision shall be construed to alter the rights of the parties to voluntarily enter into validly executed agreements or stipulations which deviate from the post-divorce maintenance guideline obligation.

i. When a payor has defaulted and/or the court makes a finding at the time of trial that it was presented with insufficient evidence to determine income, the court shall order the post-divorce maintenance based upon the needs of the payee or the standard of living of the parties prior to commencement of the divorce action, whichever is

greater. Such order may be retroactively modified upward without a showing of change in circumstances upon a showing of substantial newly
discovered evidence.

j. Post-divorce maintenance may be modified pursuant to paragraph b of subdivision nine of this part.

k. In any action or proceeding for modification of an order of maintenance or alimony existing prior to the effective date of the chapter of the laws of two thousand fifteen which amended this subdivision, brought pursuant to this article, the guidelines for post-divorce maintenance set forth in this subdivision shall not constitute a change of circumstances warranting modification of such support order.

l. In any action or proceeding for modification where the parties have entered into an agreement providing for maintenance pursuant to subdivision three of this part entered into prior to the effective date of the chapter of the laws of two thousand fifteen which amended this subdivision, brought pursuant to this article, the guidelines for post-divorce maintenance set forth in this subdivision shall not constitute a change of circumstances warranting modification of such agreement.

m. In any action or proceeding for modification of an order of maintenance or alimony existing prior to the effective date of the chapter of the laws of two thousand fifteen which amended this subdivision, brought pursuant to this article, the guidelines for post-divorce maintenance set forth in paragraphs c, d and e of this subdivision shall not apply.

n. In any action or proceeding for modification where the parties have entered into an agreement providing for maintenance pursuant to subdivision three of this part entered into prior to the effective date of the chapter of the laws of two thousand fifteen which amended this subdivision, brought pursuant to this article, the guidelines for post-divorce maintenance set forth in paragraphs c, d and e of this subdivision shall not apply.

o. In any decision made pursuant to this subdivision the court shall, where appropriate, consider the effect of a barrier to remarriage, as defined in subdivision six of section two hundred fifty-three of this article, on the factors enumerated in paragraph e of this subdivision.

6-a. Law revision commission study. a. The legislature hereby finds and declares it to be the policy of the state that it is necessary to achieve equitable outcomes when families divorce and it is important to ensure that the economic consequences of a divorce are fairly shared by divorcing couples. Serious concerns have been raised that the implementation of New York state's maintenance laws have not resulted in
equitable results. Maintenance is often not granted and where it is granted, the results are inconsistent and unpredictable. This raises serious concerns about the ability of our current maintenance laws to achieve equitable and fair outcomes.

The legislature further finds a comprehensive review of the provisions of our state's maintenance laws should be undertaken. It has been thirty years since the legislature significantly reformed our state's divorce laws by enacting equitable distribution of marital property and introduced the concept of maintenance to replace alimony. Concerns that
the implementation of our maintenance laws have not resulted in

equitable results compel the need for a review of these laws.

b. The law revision commission is hereby directed to:

(1) review and assess the economic consequences of divorce on the parties;

(2) review the maintenance laws of the state, including the way in which they are administered to determine the impact of these laws on post marital economic disparities, and the effectiveness of such laws and their administration in achieving the state's policy goals and objectives of ensuring that the economic consequences of a divorce are fairly and equitably shared by the divorcing couple; and

(3) make recommendations to the legislature, including such proposed revisions of such laws as it determines necessary to achieve these goals and objectives.

c. The law revision commission shall make a preliminary report to the legislature and the governor of its findings, conclusions, and any recommendations not later than nine months from the effective date of this subdivision, and a final report of its findings, conclusions and recommendations not later than December thirty-first, two thousand eleven.

7. Child support. a. In any matrimonial action, or in an independent action for child support, the court as provided in section two hundred forty of this chapter shall order either or both parents to pay temporary child support or child support without requiring a showing of immediate or emergency need. The court shall make an order for temporary
child support notwithstanding that information with respect to income

and assets of either or both parents may be unavailable. Where such information is available, the court may make an order for temporary child support pursuant to section two hundred forty of this article. Such order shall, except as provided for herein, be effective as of the date of the application therefor, and any retroactive amount of child support due shall be support arrears/past due support and shall be paid in one sum or periodic sums, as the court shall direct, taking into account any amount of temporary child support which has been paid. In addition, such retroactive child support shall be enforceable in any manner provided by law including, but not limited to, an execution for support enforcement pursuant to subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules. When a child receiving support is a public assistance recipient, or the order of support is being enforced or is to be enforced pursuant to section one hundred eleven-g of the social services law, the court shall establish the amount of retroactive child support and notify the parties that such amount shall be enforced by the support collection unit pursuant to an execution for support enforcement as provided for in subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules, or in such periodic payments as would have been authorized had such an
execution been issued. In such case, the court shall not direct the schedule of repayment of retroactive support. The court shall not consider the misconduct of either party but shall make its award for child support pursuant to section two hundred forty of this article.

b. Notwithstanding any other provision of law, any written application or motion to the court for the establishment of a child support obligation for persons not in receipt of family assistance must contain either a request for child support enforcement services which would authorize the collection of the support obligation by the immediate issuance of an income execution for support enforcement as provided

for
by this chapter, completed in the manner specified in section one hundred eleven-g of the social services law; or a statement that the applicant has applied for or is in receipt of such services; or a statement that the applicant knows of the availability of such services, has declined them at this time and where support enforcement services pursuant to section one hundred eleven-g of the social services law have been declined that the applicant understands that an income deduction order may be issued pursuant to subdivision (c) of section five thousand two hundred forty-two of the civil practice law and rules without other child support enforcement services and that payment of an administrative
fee may be required. The court shall provide a copy of any such request for child support enforcement services to the support collection unit of the appropriate social services district any time it directs payments to be made to such support collection unit. Additionally, the copy of any such request shall be accompanied by the name, address and social security number of the parties; the date and place of the parties' marriage; the name and date of birth of the child or children; and the name and address of the employers and income payors of the party from whom child support is sought. Unless the party receiving child support has applied for or is receiving such services, the court shall not direct such payments to be made to the support collection unit, as established in section one hundred eleven-h of the social services law.

c. The court shall direct that a copy of any child support or combined child and spousal support order issued by the court on or after the first day of October, nineteen hundred ninety-eight, in any proceeding under this section be provided promptly to the state case registry established pursuant to subdivision four-a of section one hundred eleven-b of the social services law.

d. Any child support order made by the court in any proceeding under the provisions of this section shall include, on its face, a notice printed or typewritten in a size equal to at least eight point bold type informing the parties of their right to seek a modification of the child support order upon a showing of:

(i) a substantial change in circumstances; or

(ii) that three years have passed since the order was entered, last modified or adjusted; or

(iii) there has been a change in either party's gross income by fifteen percent or more since the order was entered, last modified, or adjusted;
however, if the parties have specifically opted out of subparagraph (ii) or (iii) of this paragraph in a validly executed agreement or stipulation, then that basis to seek modification does not apply.

8. Special relief in matrimonial actions. a. In any matrimonial action the court may order a party to purchase, maintain or assign a policy of insurance providing benefits for health and hospital care and related services for either spouse or children of the marriage not to exceed such period of time as such party shall be obligated to provide maintenance, child support or make payments of a distributive award. The
court may also order a party to purchase, maintain or assign a policy of accident insurance or insurance on the life of either spouse, and to designate in the case of life insurance, either spouse or children of the marriage, or in the case of accident insurance, the insured spouse as irrevocable beneficiaries during a period of time fixed by the court. The obligation to provide such insurance shall cease upon the termination of the spouse's duty to provide maintenance, child support

or a distributive award. A copy of such order shall be served, by registered mail, on the home office of the insurer specifying the name and mailing address of the spouse or children, provided that failure to so serve the insurer shall not affect the validity of the order.

b. In any action where the court has ordered temporary maintenance, maintenance, distributive award or child support, the court may direct that a payment be made directly to the other spouse or a third person for real and personal property and services furnished to the other spouse, or for the rental or mortgage amortization or interest payments, insurances, taxes, repairs or other carrying charges on premises occupied by the other spouse, or for both payments to the other spouse and to such third persons. Such direction may be made notwithstanding that the parties continue to reside in the same abode and notwithstanding that the court refuses to grant the relief requested by the other spouse.

c. Any order or judgment made as in this section provided may combine any amount payable to either spouse under this section with any amount payable to such spouse as child support or under section two hundred forty of this chapter.

9. Enforcement and modification of orders and judgments in matrimonial
actions. a. All orders or judgments entered in matrimonial actions shall be enforceable pursuant to section fifty-two hundred forty-one or fifty-two hundred forty-two of the civil practice law and rules, or in any other manner provided by law. Orders or judgments for child support,
alimony and maintenance shall also be enforceable pursuant to article fifty-two of the civil practice law and rules upon a debtor's default as such term is defined in paragraph seven of subdivision (a) of section

fifty-two hundred forty-one of the civil practice law and rules. The establishment of a default shall be subject to the procedures established for the determination of a mistake of fact for income executions pursuant to subdivision (e) of section fifty-two hundred forty-one of the civil practice law and rules. For the purposes of enforcement of child support orders or combined spousal and child support orders pursuant to section five thousand two hundred forty-one of the civil practice law and rules, a "default" shall be deemed to include amounts arising from retroactive support. The court may, and if a party shall fail or refuse to pay maintenance, distributive award or child support the court shall, upon notice and an opportunity to the defaulting party to be heard, require the party to furnish a surety, or the sequestering and sale of assets for the purpose of enforcing any award for maintenance, distributive award or child support and for the payment of reasonable and necessary attorney's fees and disbursements.

b. (1) Upon application by either party, the court may annul or modify any prior order or judgment made after trial as to maintenance, upon a showing of the payee's inability to be self-supporting or upon a showing of a substantial change in circumstance, including financial hardship or upon actual full or partial retirement of the payor if the retirement results in a substantial change in financial circumstances. Where, after the effective date of this part, an agreement remains in force, no modification of an order or judgment incorporating the terms of said agreement shall be made as to maintenance without a showing of extreme
hardship on either party, in which event the judgment or order as modified shall supersede the terms of the prior agreement and judgment for such period of time and under such circumstances as the court determines. The court shall not reduce or annul any arrears of maintenance which have been reduced to final judgment pursuant to

section two hundred forty-four of this article. No other arrears of maintenance which have accrued prior to the making of such application
shall be subject to modification or annulment unless the defaulting party shows good cause for failure to make application for relief from the judgment or order directing such payment prior to the accrual of such arrears and the facts and circumstances constituting good cause are
set forth in a written memorandum of decision. Such modification may increase maintenance nunc pro tunc as of the date of application based on newly discovered evidence. Any retroactive amount of maintenance due
shall, except as provided for herein, be paid in one sum or periodic sums, as the court directs, taking into account any temporary or partial payments which have been made. The provisions of this subdivision shall
not apply to a separation agreement made prior to the effective date of this part.

(2) (i) The court may modify an order of child support, including an order incorporating without merging an agreement or stipulation of the parties, upon a showing of a substantial change in circumstances. Incarceration shall not be considered voluntary unemployment and shall not be a bar to finding a substantial change in circumstances provided such incarceration is not the result of non-payment of a child support order, or an offense against the custodial parent or child who is the subject of the order or judgment.

(ii) In addition, unless the parties have specifically opted out of the following provisions in a validly executed agreement or stipulation entered into between the parties, the court may modify an order of child support where:

(A) three years have passed since the order was entered, last modified or adjusted; or

(B) there has been a change in either party's gross income by fifteen percent or more since the order was entered, last modified, or adjusted. A reduction in income shall not be considered as a ground for modification unless it was involuntary and the party has made diligent attempts to secure employment commensurate with his or her education,
ability, and experience.

(iii) No modification or annulment shall reduce or annul any arrears of child support which have accrued prior to the date of application to annul or modify any prior order or judgment as to child support. Such modification may increase child support nunc pro tunc as of the date of application based on newly discovered evidence. Any retroactive amount
of child support due shall, except as provided for in this subparagraph, be paid in one sum or periodic sums, as the court directs, taking into account any temporary or partial payments which have been made. Any retroactive amount of child support due shall be support arrears/past due support. In addition, such retroactive child support shall be enforceable in any manner provided by law including, but not limited to, an execution for support enforcement pursuant to subdivision (b) of section fifty-two hundred forty-one of the civil practice law and rules. When a child receiving support is a public assistance recipient, or the order of support is being enforced or is to be enforced pursuant to section one hundred eleven-g of the social services law, the court shall establish the amount of retroactive child support and notify the parties that such amount shall be enforced by the support collection unit pursuant to an immediate execution for support enforcement as

provided
for by this chapter, or in such periodic payments as would have been authorized had such an execution been issued. In such case, the court shall not direct the schedule of repayment of retroactive support.

c. Notwithstanding any other provision of law, any written application or motion to the court for the modification or enforcement of a child support or combined maintenance and child support order for persons not
in receipt of family assistance must contain either a request for child support enforcement services which would authorize the collection of the
support obligation by the immediate issuance of an income execution for
support enforcement as provided for by this chapter, completed in the manner specified in section one hundred eleven-g of the social services law; or a statement that the applicant has applied for or is in receipt of such services; or a statement that the applicant knows of the availability of such services, has declined them at this time and where support enforcement services pursuant to section one hundred eleven-g of
the social services law have been declined that the applicant understands that an income deduction order may be issued pursuant to subdivision (c) of section five thousand two hundred forty-two of the civil practice law and rules without other child support enforcement services and that payment of an administrative fee may be required. The court shall provide a copy of any such request for child support enforcement services to the support collection unit of the appropriate social services district any time it directs payments to be made to such support collection unit. Additionally, the copy of such request shall be accompanied by the name, address and social security number of the parties; the date and place of the parties' marriage; the name and date

of birth of the child or children; and the name and address of the employers and income payors of the party ordered to pay child support to
the other party. Unless the party receiving child support or combined maintenance and child support has applied for or is receiving such services, the court shall not direct such payments to be made to the support collection unit, as established in section one hundred eleven-h of the social services law.

d. The court shall direct that a copy of any child support or combined child and spousal support order issued by the court on or after the first day of October, nineteen hundred ninety-eight, in any proceeding under this section be provided promptly to the state case registry established pursuant to subdivision four-a of section one hundred eleven-b of the social services law.

November 14, 2023 בס"ד

A Note on Get Legislation

Keshet Starr, Esq.

The Organization for the Resolution of Agunot (ORA) is a non-profit organization that seeks to remove abuse from the Jewish divorce process. We do so by providing direct support to individuals seeking a religious divorce; operating a helpline to educate callers initiating the divorce process on rights and strategy; conducting support groups and other trauma services; advocating for system-wide change; educating communities, rabbinic leaders, and legal providers on Jewish divorce denial and Jewish prenuptial agreements. Our work sits at the intersection of the civil and religious divorce systems, and our expertise is in creating opportunities for the two systems to more effectively work together. We have appeared as expert witnesses in court, educated judges and court personnel, and addressed many legal associations and networks.

Passing legislation related to the *get* (Jewish divorce) is a fraught and complex task. On one hand, there are numerous constitutional issues that arise in this area, including both Establishment and Free Exercise clause concerns. *Get* laws must be crafted carefully and strategically to be able to withstand constitutional scrutiny in these areas. On the other hand, there are also many Jewish legal issues that arise with regards to *get* legislation. Jewish law contains many requirements as to how a Jewish divorce must be delivered, particularly with regards to the freedom of action of the party issuing the divorce. If a *get* is deemed to have been issued with inappropriate coercion, that divorce would be considered invalid and leave an *agunah* (a woman denied a Jewish divorce) without the option to remarry in her community. It is important to realize that coercion does not refer solely to physical threats, but includes certain types of financial pressure, as well.

For these reasons, it is critical that *get* legislation be drafted (a) with the guidance of experts in the field, and (2) in close collaboration with rabbinic leaders. Taking these steps will ensure that any resulting legislation will be applicable to those who need it most. New York's second get law, Domestic Relations Law 236(b) is an example of how a lack of communication can undermine the effectiveness of legislation. Because the law involves financial loss to the *get* refuser and was developed without rabbinic input, many rabbinic leaders consider it invalid and some will not ratify divorces issued as a result of this law. This means that the legislation is often effectively inaccessible to those from religious communities who are most dependent on this relief. In addition, many judges lack training on this law and do not apply it, additionally limiting its usefulness. Furthermore, since all Jewish divorce related legislation must be framed neutrally, it is also advisable to consult interfaith leaders for input on how potential legislation can serve those seeking religious divorce in other faith communities, as well.

Drafting and passing legislation is one daunting task; ensuring that such legislation is both applied in practice and effective is yet another hurdle. By creating a collaborative process, lawmakers can draft stronger legislation to start, and also lay the groundwork for the full use and application of the law in the community, allowing such legislation to be truly change-making.

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As of: March 7, 2024 1:59 PM Z

Aflalo v. Aflalo

Superior Court of New Jersey, Chancery Division, Family Part, Monmouth County

February 29, 1996, Decided ; February 29, 1996, FILED

DOCKET NO. FM-13-453-95A

Reporter
295 N.J. Super. 527 *; 685 A.2d 523 **; 1996 N.J. Super. LEXIS 459 ***

SONDRA FAYE AFLALO, PLAINTIFF, v. HENRY ARIK AFLALO, DEFENDANT.

Subsequent History: [*1]** APPROVED FOR PUBLICATION November 19. 1996.

Core Terms

religious, religion, divorce, civil court, religious belief, ketubah, parties, reconciliation, religious law, questions, creator, married, Church

Case Summary

Procedural Posture
In the divorce proceeding between plaintiff wife and defendant husband, defendant's counsel sought a motion to be relieved from representation because, as an Orthodox Jew, he had a religious problem representing defendant as defendant refused to give plaintiff a "get," a Jewish bill of divorce. Additionally, plaintiff moved to compel defendant to provide her with a "get."

Overview

Defendant husband's attorney asked the court to remove him as counsel because he had a religious problem representing a man who, at the conclusion of a divorce proceeding, refused, without reason, to give his wife a "get," a Jewish bill of divorce. Defendant testified that he would follow the recommendations of the rabbinical tribunal and would give the "get" if that was the end result of those proceedings. The court held that defendant's position clearly eliminated his counsel's concerns. Plaintiff wife asked the court to require that defendant provide her with a "get." The court held that the Establishment Clause and *Free Exercise Clause of U.S. Const. amend. I*, prohibited it from interfering. Therefore, the court held that while it might have seemed "unfair" that defendant could have ultimately refused to provide a "get," unfairness came from plaintiff's own sincerely-held religious beliefs because, when she entered into the "ketubah," she agreed to be obligated to the laws of Moses and Israel. The court held that this choice could not have been remedied by the court.

Outcome
The court denied defendant husband's counsel's motion for removal for religious reasons because the defendant's position regarding his willingness to provide a "get," a Jewish bill of divorce, eliminated counsel's concerns. The court denied plaintiff's wife request that the court require defendant to provide her with a "get" because plaintiff's choice to be bound by the religious tenets of Judaism could not have been remedied by the court.

LexisNexis® Headnotes

Constitutional Law > ... > Fundamental Freedoms > Freedom of Religion > Free Exercise of Religion

Constitutional Law > ... > Fundamental Freedoms > Freedom of Religion > General Overview

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > General Overview

Constitutional Law > Bill of Rights > State Application

Constitutional Law > Privileges & Immunities

HN1[] Freedom of Religion, Free Exercise of Religion

The "Free Exercise Clause" of U.S. Const. amend. I applies to the states through the Due Process Clause of the U.S. Const. amend. XIV. Not only does it bar a state's legislature from making a law which prohibits the free exercise of religion but it likewise inhibits a state's judiciary.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Religion > Establishment of Religion

Constitutional Law > ... > Fundamental Freedoms > Freedom of Religion > Free Exercise of Religion

HN2[] Freedom of Religion, Establishment of Religion

Where resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, U.S. Const. amends. I, XIV mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them, in their application to the religious issues of doctrine or polity before them.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Religion > Free Exercise of Religion

HN3[] Freedom of Religion, Free Exercise of Religion

Civil courts may not override a decision of a religious tribunal or interpret religious law or canons.

Counsel: *Chen Kornreich* for plaintiff (*Kornreich & Harkov,* attorneys).

Neil M. Pomper for defendant.

Judges: FISHER, J.S.C.

Opinion by: FISHER, JR.

Opinion

[*530] FISHER, J.S.C.

[524] I**

INTRODUCTION

This case requires the court to visit an issue that has previously troubled our courts in matrimonial actions involving Orthodox Jews--a husband's refusal to provide a "get". [1]

Here, the parties were married on **[***2]** October 13, 1983 in Ramle, Israel, and have one child, Samantha. Plaintiff Sondra Faye Aflalo ("Sondra") has filed a complaint seeking a dissolution of the marriage. Defendant Henry Arik Aflalo ("Henry") has answered the complaint. The matter is on the court's active trial list and should be reached for trial in the very near future. Henry does not want a divorce and has taken action with The Union of Orthodox Rabbis of the United States and Canada in New York City (the "Beth Din" [2]) to have a hearing on his attempts at reconciliation.

The issues at hand came to critical mass when the parties engaged in a settlement **[**525]** conference on February 14, 1996, while awaiting trial in this court. At that time the court was advised by counsel that the matter was "98% settled" but that Henry had placed what Sondra viewed as an insurmountable obstacle to a complete resolution: he refused to provide a "get." **[***3]** Unlike what the court faced in Segal v. Segal, 278 N.J. Super. 218, 650 A.2d 996 (App.Div.1994) and Burns v. Burns, 223 N.J. Super. 219, 538 A.2d 438 (Ch.Div.1987), Henry was not using his refusal to consent to the "get" as a means of securing a more favorable resolution of the **[*531]** issues before this court. That type of conduct the *Burns* court rightfully labelled "extortion". 223 N.J. Super. at 224, 538 A.2d

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[1] A "get" is a bill of divorce which the husband gives to his wife to free her to marry again. The word "get" apparently signifies the number 12, the "get" being a twelve-lined instrument. The word is a combination of "gimel" (which has a value of three) together with "tet" (which has a value of nine). *See* Rubin v. Rubin, 75 Misc. 2d 776, 348 N.Y.S.2d 61, 65 n.2 (Fam.Ct.1973).

[2] The "Beth Din" is a rabbinical tribunal having authority to advise and pass upon matters of traditional Jewish law.

438. On the contrary, Henry's position (as conveyed during the settlement conference) was that regardless of what occurs in this court he will not consent to a Jewish divorce.

II

COUNSEL'S MOTION TO BE RELIEVED

Henry's position spun off an unexpected problem; it caused his attorney to move to be relieved as counsel. Arguing that since he, too, is a practicing Orthodox Jew, *Pomper Certification* (February 19, 1996), P4, Henry's counsel claims that he would "definitely have a religious problem representing a man who at the conclusion of a divorce proceeding refused, without reason, to give his wife a Get." *Id.,* P7.

This motion was heard on an expedited basis. At oral argument on February 20, 1996, Henry's counsel expanded on his position and indicated, upon questioning from the court, that **[***4]** *his* religious quandary comes not from Henry's use of his consent to a Jewish divorce as leverage in negotiations (which was not occurring), but in the blanket refusal of his client to give a "get" without reason.

Henry opposed his attorney's motion. He stated under oath that he seeks a reconciliation and that Sondra had been summoned to appear before the Beth Din for this purpose. The court was also advised during oral argument that should reconciliation fail the Beth Din could recommend that Henry give Sondra a "get"; Henry stated under oath that while he desires a reconciliation he would follow the recommendations of the Beth Din and give the "get" if that was the end result of those proceedings. The court finds Henry both credible and sincere in this regard; his position clearly eliminates his counsel's stated concerns [3].

[3] Contentions were also made by Henry regarding his counsel's use of a retainer. Counsel argues that the attorney/client relationship is now clouded by the distrust created by these contentions. The court, however, senses that the dispute may be one which is based on a lack of communication and nothing more. In light of the fact that trial in this matter is imminent, this and the other reasons relied upon by counsel in support of his motion to be relieved are rejected and the motion denied. R. 1:11-2.

[*5] [*532] III**

PLAINTIFF'S ATTEMPTS IN THIS COURT TO OBTAIN A "GET"

The problem, however, festers since Sondra appears unwilling to settle this case without a "get". Accordingly, this court must now lay to rest whether any order may be entered which would impact on Sondra's securing of a Jewish divorce.

Sondra claims that this court, as part of the judgment of divorce which may eventually be entered in this matter, may and should order Henry to cooperate with the obtaining of a Jewish divorce upon pain of Henry having limited or supervised visitation of Samantha or by any other coercive means. She claims that Minkin v. Minkin, 180 N.J. Super. 260, 434 A.2d 665 (Ch.Div.1981) authorizes this court to order Henry to consent to the Jewish divorce. That trial court decision certainly supports her view. This court, however, believes that to enter such an order violates Henry's First Amendment rights and refuses to follow the course outlined in *Minkin.*

A. *An Overview Of First Amendment Jurisprudence*

Prior to the adoption of our Nation's constitution, attempts were made in some colonies to legislate on matters of religion, including the governmental establishment of **[**526]** religion and the raising **[***6]** of taxes for the support of certain religions. Punishments were prescribed for the failure to attend religious services and for entertaining heretical opinions. *See* Reynolds v. United States, 98 U.S. 145, 162-163, 25 L. Ed. 244 (1878). In 1784 the Virginia legislature attempted to enact a bill "establishing provision for teachers of the Christian religion." This brought to bear the determined and eloquent opposition of Thomas Jefferson and **[*533]** James Madison. Madison responded in his "Memorial and Remonstrance" that "religion, or the duty we owe the Creator" was not within the cognizance of civil authority. The next session of the Virginia legislature led to the defeat of the aforementioned bill and the passage of a bill drafted by Jefferson which established "religious freedom" and declared that "to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on supposition of their ill tendency, is a dangerous fallacy which at once destroys all religious liberty."

Not long after the adoption of the Constitution and the

Bill of Rights, Jefferson made clear the meaning and intent of the First Amendment in his famous "reply" **[***7]** to the Danbury Baptist Association:

> Believing with you that religion is a matter which lies solely between man and his God; that he owes account to none other for his faith or his worship; that the legislative powers of the Government reach actions only, and not opinions, I contemplate with sovereign reverence that act of the whole American people which declared that their Legislature should "make no law respecting an establishment of religion or prohibiting the free exercise thereof," thus building a wall of separation between Church and State. Adhering to this expression of the supreme will of the Nation in behalf of the rights of conscience, I shall see, with sincere satisfaction, the progress of those sentiments which tend to restore man to all his natural rights, convinced he has no natural right in opposition to his social duties.

Since then the dimensions of this "wall of separation between Church and State" have been robustly debated and described frequently by our Nation's highest court.

HN1[↑] The "Free Exercise Clause" of the First Amendment applies to the states through the Fourteenth Amendment's Due Process Clause. *Cantwell v. Connecticut, 310 U.S. 296, 60 S. Ct. 900 84 L. Ed. 1213*, **[***8]** (1940). Not only does it bar a state's legislature from making a law which prohibits the free exercise of religion but it likewise inhibits a state's judiciary. *In re Adoption of E., 59 N.J. 36, 51, 279 A.2d 785 (1971)*.

In the first instance, the Free Exercise Clause prohibits governmental regulation of religious beliefs but does not absolutely prohibit religious conduct. *Braunfeld v. Brown, 366 U.S. 599, **[*534]** 603 81 S. Ct. 1144, 1145, 6 L. Ed. 2d 563 (1961)*; *Cantwell, supra, 310 U.S. at 303-304, 60 S.Ct. at 903-904*. Second, to pass constitutional muster, a law must have both a secular purpose and a secular effect. That is, a law must not have a sectarian purpose; it must not be based upon a disagreement with a religious tenet or practice and must not be aimed at impeding religion. *Braunfeld, supra, 366 U.S. at 607, 81 S.Ct. at 1148*; *Sherbert v. Verner, 374 U.S. 398, 402-403, 83 S. Ct. 1790, 1793-1794, 10 L. Ed. 2d 965 (1963)*.

Only when state action passes these threshold tests is there a need to balance the competing state and religious interests. The court is to engage in such balancing when the conduct or action sought to be regulated has "invariably posed some substantial threat to public safety, peace or order." *Sherbert, supra, 374 U.S. at 403, 83 S.Ct. at 1793*. Here, the relief **[***9]** Sondra seeks from this court so obviously runs afoul of the threshold tests of the Free Exercise Clause that the court need never reach the delicate balancing normally required in such cases.

The court will first endeavor to describe precisely what it is that Sondra seeks. And, while it seems beyond doubt, the court will then indicate why it cannot and certainly will not provide that relief.

B. *The Jewish Divorce*

"When a man takes a wife and possesses her, if she fails to please him because he **[**527]** finds something obnoxious about her, then he writes her a bill of divorcement, hands it to her, and sends her away from his house." *Deuteronomy* 24:1-4. From this biblical verse, the Jewish law and tradition that the "power of divorce rests exclusively with the husband" has its genesis. Wigoder, *The Encyclopedia of Judaism* (1989) 210.

The "get" is written almost entirely in Aramaic on parchment, *id. at 211*, and is drawn up by a "sofer" (a scribe), upon the husband's instruction to write "for him, for her, and for the purpose of a divorce," 6 *The Encyclopedia Judaica* (1971) 131. The materials used in the creation of the "get" must belong to the **[*535]** husband; the "sorer" presents **[***10]** them as a gift to the husband before the "get" is written. *Id.* The spelling and the form of the document "are enumerated in minute detail in halakhic literature" and acknowledged by two witnesses. Wigoder, *supra* at 211. The rabbi who presides retains the "get"; he cuts it "in criss-cross fashion so that it cannot be used again," *id.,* and to "avoid any later suspicion that it was not absolutely legal", *Encyclopedia Judaica, supra* at 132. The wife is given another document ("petor") which proves that she has been divorced and the "get" is filed away in its torn state. Wigoder, *supra* at 211.

Without such a divorce, the wife remains an "agunah" (a "tied" woman) and may not remarry in the eyes of Jewish law. Wigoder, *supra* at 211. If she remarries without a "get" she is considered to be an adulteress because she is still halakhically married to her first husband; any subsequent children are considered to be "mamzerim" (illegitimate) and may not marry other Jews. Himelstein, *The Jewish Primer* (1990) 161.

C. *The Clash Of The First Amendment And Plaintiff's*

Desire For A Jewish Divorce

The court is not unsympathetic to Sondra's desire to have Henry's cooperation **[***11]** in the obtaining of a "get". She, too, is sincere in her religious beliefs. Her religion, at least in terms of divorce, does not profess gender equality. But does that mean that she can obtain the aid of this court of equity to alter this doctrine of her faith? That the question must be answered negatively seems so patently clear that the only surprising aspect of Sondra's argument is that it finds some support in the few cases on the subject.

In *Minkin,* the trial court requested the testimony of several distinguished rabbis. The court viewed the issue as whether a state court could order specific performance of the "ketubah". The "ketubah" is the marriage contract in which the couple is obligated to comply with the laws of Moses and Israel. *Minkin, supra, 180 N.J. Super. at 262 n. 2, 434 A.2d 665*. It contains the promise of the husband "to honor and support thee and provide **[*536]** for thy needs, even as Jewish husbands are required to do *by our religious law* and tradition." *See, e.g., Avitzur v. Avitzur, 58 N.Y.2d 108, 459 N.Y.S.2d 572, 576, 446 N.E.2d 136 (1983)* (emphasis added), cert. denied *464 U.S. 817, 104 S. Ct. 76, 78 L. Ed. 2d 88*, (1983). The "ketubah" also contains the parties' agreement "to **[***12]** recognize the Beth Din . . . as having authority to counsel us in the light of Jewish tradition . . . and to summon either party at the request of the other. . . ." *459 N.Y.S.2d at 576, 446 N.E.2d at 140*.

In determining that it could specifically enforce the "ketubah", *Minkin* relied on a New York decision which stated:

> Defendant has also contended that a decree of specific performance would interfere with his freedom of religion under the Constitution. Complying with his agreement would not compel the defendant to practice any religion, not even the Jewish faith to which he still admits adherence (paragraph Second of the complaint not denied in the answer). His appearance before the Rabbinate to answer questions and give evidence needed by them to make a decision is not a profession of faith. Specific performance herein would merely require the defendant to do what he voluntarily agreed to do.

[*Koeppel v. Koeppel, 138 N.Y.S.2d 366, 373 (Sup.Ct.1954)*.]Analyzing the case against the test used to determine whether state action violates the Establishment Clause which is set forth in *Committee for Public Education and Religious Liberty v. Nyquist, [**528] 413 U.S. 756, 772-773, 93 S. Ct. 2955, 2965-2966, 37 L. Ed. 2d 948 (1973)*, **[***13]** , the *Minkin* court said:

> Relying upon credible expert testimony that the acquisition of a *get* is not a religious act, the court finds that the entry of an order compelling defendant to secure a *get* would have the clear secular purpose of completing a dissolution of the marriage. Its primary effect neither advances nor inhibits religion since it does not require the husband to participate in a religious ceremony or to do acts contrary to his religious beliefs. Nor would the order be an excessive entanglement with religion.
>
> [*180 N.J. Super. at 266, 434 A.2d 665.]*

Also, in reliance upon the expert testimony found credible, the *Minkin* court concluded that an order compelling a husband to acquire a "get" is "not a religious act." *Id.* The court apparently relied on one of the rabbis who testified "that Jewish law cannot be equated with religious law, but instead is comprised of two **[*537]** components--one regulating a man's relationship with God and the other regulating the relationship between man and man. The *get,* which has no reference to God but which does affect the relationship between two parties, falls into the latter category and is, therefore, civil and **[***14]** not religious in nature." *180 N.J. Super. at 265-266, 434 A.2d 665*.

Minkin's approach that the "ketubah" may be specifically enforced without violating the First Amendment is in accord with the decisional law of New York, *Avitzur, supra*, Illinois, *In re Marriage of Goldman, 196 Ill. App. 3d 785, 143 Ill. Dec. 944, 554 N.E.2d 1016 (1990)* and Delaware, *Scholl v. Scholl, 621 A.2d 808, 810-812 (Del.Fam.Ct.1992)*, and at odds with Arizona, *Victor v. Victor, 177 Ariz. 231, 866 P.2d 899, 901-902 (Ariz.App.1993)* and, now, this court. *Minkin* and its followers (including the New Jersey trial court in *Burns*) [4] are not persuasive for a number of reasons.

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[4] *Burns* is equally unpersuasive, although the wife's position therein is even more sympathetic. There, the parties were divorced years earlier and the husband had remarried. However, he refused to provide his ex-wife with a "get" unless she invested $ 25,000 in an irrevocable trust for the benefit of their daughter. *223 N.J. Super. at 222, 538 A.2d 438*. Relying upon *Minkin* and its broad equity powers, the court in *Burns*

[*15]** First, it examined the problem against the backdrop of the Establishment Clause and not the Free Exercise Clause. The Establishment Clause [5] prohibits government from placing its support behind a particular religious belief. The Free Exercise Clause [6], obviously implicated here, prohibits government from interfering or becoming entangled in the practice of religion by its citizens.

[*538] Second, the conclusion that an order requiring the husband to provide a "get" is not a religious act nor involves the court in the religious beliefs or practices of the parties is not at all convincing. It is interesting that the court was required to choose between the conflicting testimony of the various rabbis [7] to reach this conclusion. The one way in which a court may become entangled in religious affairs, which the court in *Minkin* did not recognize, was in becoming **[***16]** an arbiter of what is "religious". As Justice Brennan observed in *Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696, 709, 96 S. Ct. 2372, 2380, 49 L. Ed. 2d 151 (1976)*:

> ***HN2***[] [W]here resolution of the disputes cannot be made without extensive inquiry by civil courts into religious law and polity, the First and Fourteenth Amendments mandate that civil courts shall not disturb the decisions of the highest ecclesiastical tribunal within a church of hierarchical polity, but must accept such decisions as binding on them, in their application to the religious **[**529]** issues of doctrine or polity before them.

HN3[] Accordingly, civil courts may not override a decision of a religious tribunal or interpret religious law or canons. *See also*, *Watson v. Jones, 80 U.S. (13 Wall.) 679, 728-730, 20 L. Ed. 666 (1871)*; *Presbyterian Church v. Hull Church, 393 U.S. 440, 445, 89 S.Ct. 601, 604, 21 L.Ed.2d 658 (1969)*; *Elmora Hebrew Center, Inc. v. Fishman, 125 N.J. 404, 413-414, 593 A.2d 725 (1991)*. Of course, religious parties and organizations are entitled to the adjudication in our civil courts of "secular legal questions." *Elmore, supra, 125 N.J. at 413, 593 A.2d 725*. But in doing so the civil court cannot decide any disputed questions of religious doctrine. That is exactly what **[***17]** the *Minkin* court did when it sifted among the rabbinical testimony to find the most credible version.

Third, the conclusion that its order concerned purely civil issues is equally unconvincing. In determining to specifically enforce the "ketubah", the court recognized that "[w]ithout compliance [the wife] cannot marry in accordance with her religious beliefs." *180 N.J. Super. at 263, 434 A.2d 665*. As noted earlier the later **[*539]** children of a wife who remarries without a "get" are prohibited from marrying other Jews. No matter how one semantically phrases what was done in *Minkin,* the order directly affected the religious beliefs of the parties. By entering the order, the court empowered the wife to remarry in accordance with her religious beliefs and also similarly empowered any children later born to her. The mere fact that the "get" does not contain the word "God", which the *Minkin* court found significant, is **[***18]** hardly reason to conclude otherwise. Nor is it sound to argue that religion involves only one's relation to the creator and not one's relation to other persons, as may be obligated by religious traditions or teachings. *Minkin* might as well have said that a civil court may order a Christian to comply with the Second Great Commandment [8] but not the First [9]. The concept of "religion" certainly does have reference to one's relation to the creator but it also has relation to one's obedience to the will of the creator. In one's pursuit to comply with the creator's will one is certainly engaged in religious activity. While engaging in such conduct, one may also be subjected to civil authority but that does not remove that conduct from the scope of religious activity. *Minkin* draws too fine a line in its rejection of the latter as an area constituting "religion" to command this court's assent to its holding.

[*19]** Fourth, *Minkin* fails to recognize that coercing

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ordered the husband to "submit to the jurisdiction of the 'Bet Din' to initiate the proceedings for a 'get'." *223 N.J. Super. at 226, 538 A.2d 438*. In the alternative, the court permitted the husband "to execute the prepared document, . . . authorizing the preparation and presentation of the 'get' to the defendant by an agent on his behalf and forego the actual appearance before the 'Bet Din'." *Id.*

[5] "Congress shall make no law respecting an establishment of religion. . . ."

[6] "Congress shall make no law . . . prohibiting the free exercise thereof."

[7] One rabbi testified that the acquisition of a "get" was a religious act. *180 N.J. Super. at 266, 434 A.2d 665*.

[8] "Thou shalt love thy neighbor as thyself."

[9] "Thou shalt love the Lord thy God with thy whole heart, and with thy whole soul, and with thy whole mind, and with thy whole strength."

the husband to provide the "get" would not have the effect sought. The "get" must be phrased and formulated in strict compliance with tradition, according to the wording given in the Talmud. 6 *Encyclopedia Judaica* (1971) 131. [10] The precisely worded "get" states that **[*540]** the husband does "willingly consent, being under no restraint, to release, to set free, and put aside thee, my wife . . . ." *Id.* Accordingly, in giving his **[**530]** wife a "get" a husband must "act without constraint." Wigoder, *supra* at 210. Indeed, during the proceeding the husband is asked "whether he ordered [the "get"] of his own free will." Singer, *The Jewish Encyclopedia* at 647. What value then is a "get" when it is ordered by a civil court and when it places the husband at risk of being held in contempt should he follow his conscience and refuse to comply? Moreover, why should this court order such relief when that is something which the Beth Din will not do? If a "get" is something which can be coerced then it should be the Beth Din which does the coercing. In coercing the husband, the civil court is, in essence, overruling or superseding any judgment **[***20]** which the Beth Din can or will enter, contrary to accepted First Amendment principles. *See* Serbian Eastern, supra, 426 U.S. at 709, 96 S.Ct. at 2380.

[*21]** *Avitzur* suggests a more indirect way of providing relief to the wife. A majority of the New York Court of Appeals found that the wording of the "ketubah" suggested an agreement of the marital partners to appear before the Beth Din and held that such **[*541]** an agreement could be enforced by the civil court without running afoul of First Amendment law. The majority was careful in recognizing that it was not called upon to order the husband to provide a "get", noting that "plaintiff is not attempting to compel defendant to obtain a Get or to enforce a religious practice arising solely out of principles of religious law." 459 N.Y.S. at 574, 446 N.E.2d at 138. An order requiring defendant to appear before the Beth Din was found to be available because the majority viewed the role of the civil court as enforcing "nothing more than an agreement to refer the matter of a religious divorce to a nonjudicial forum." *Id.* The three members of the court which dissented, however, in this court's view correctly ascertained that even the limited relief which the majority of four approved required "inquiry into and resolution of questions of Jewish religious law and tradition" and thus inappropriately entangled **[***22]** the civil court in the wife's attempts to obtain a religious divorce. Id. at 577-578, 446 N.E.2d at 141-142.

Even if the majority opinion in *Avitzur* were followed by this court, the circumstances of this case do not support the relief endorsed in *Avitzur.* The "ketubah" only states the parties' recognition of the Beth Din as "having authority to counsel" them and "to summon either party at the request of the other. . . ." Here, Sondra has never sought relief in the Beth Din and in fact has not appeared in response to the summons forwarded to her by the Beth Din regarding Henry's pursuit of reconciliation. Even *Avitzur,* it is suspected, would not enforce any attempt by Sondra to compel Henry to appear before the Beth Din when she has not honored a similar request. [11]

Minkin ultimately conjures **[***23]** the unsettling vision of future enforcement proceedings. Should a civil court fine a husband for every day he does not comply or imprison him for contempt for **[*542]** following his conscience? Apparently so, according to New York law.

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[10] According to the *Encyclopedia Judaica,* the following is a translation of an Ashkenazi "get":

> On the . . . day of the week, the . . . day of the month of . . ., in the year . . . from the creation of the world according to the calendar reckoning we are accustomed to count here, in the city . . . (which is also known as . . .), which is located on the river . . . (and on the river . . .), and situated near wells of water, I, . . . (also known as . . .), the son of . . . (also known as . . .), who today am present in the city . . . (which is also known as . . .), which is located on the river . . . (and on the river . . .), and situated near wells of water, do willingly consent, being under no restraint, to release, to set free, and put aside thee, my wife, . . . (also known as . . .), daughter of . . . (also known as . . .), who art today in the city of . . . (which is also known as . . .), which is located on the river . . . (and on the river . . .), and situated near wells of water, who has been my wife from before. Thus do I set free, release thee, and put thee aside, in order that thou may have permission and the authority over thyself to go and marry any man thou may desire. No person may hinder thee from this day onward, and thou art permitted to every man. This shall be for thee from me a bill of dismissal, a letter of release, and a document of freedom, in accordance with the laws of Moses and Israel.
>
> . . . the son of . . ., witness.
>
> . . . the son of . . ., witness.
>
> [Id. at 131.]

[11] During a brief hearing via telephone on February 22, 1996, Sondra's counsel indicated that Sondra had responded in writing to the summons from the Beth Din but has never provided a copy of that response to this court.

See, e.g., Megibow v. Megibow, 161 Misc. 2d 69, 612 N.Y.S.2d 758, 760 (Sup.Ct.1994); Kaplinsky v. Kaplinsky, 198 A.D.2d 212, 603 N.Y.S.2d 574, 575 (1993). Or, as suggested by Sondra, should visitation of Samantha be limited pending Henry's cooperation? That argument finds no support anywhere. Unlike *Minkin* (where a judgment of divorce had already been entered), Henry seeks the intervention of the Beth Din in order to effect a reconciliation with his wife. [12] Should this court enjoin Henry--no matter how imperfect he may be pursuing it--from moving for reconciliation in that forum and order other relief which the Beth Din apparently cannot give? This court should not, and will not, compel a course of conduct in the Beth Din no matter how unfair the consequences. The spectre of Henry being imprisoned or surrendering his religious freedoms because of action by a civil court is the very image which gave rise to the First Amendment.

[*24] [**531]** It may seem "unfair" that Henry may ultimately refuse to provide a "get". [13] But the unfairness comes from Sondra's own sincerely-held religious beliefs. When she entered into the "ketubah" she agreed to be obligated to the laws of Moses and Israel. Those laws apparently include the tenet that if Henry does not provide her with a "get" she must remain an "agunah". That was Sondra's choice and one which can hardly be remedied by this court. This court has no authority--were it willing--to choose for these parties which aspects of their religion may be embraced and which must be rejected. Those who founded this Nation knew too well the tyranny of religious persecution and the need for religious freedom. To engage even in a "well-intentioned" resolution of a religious dispute requires the making of a choice which accommodates one view and suppresses another. If that is permitted, it **[*543]** readily follows that less "well-intentioned" choices may be made in the future by those who, as Justice Jackson once observed, believe "that all thought is divinely classified into two kinds--that which is their own and that which is false and dangerous." American Communications Ass'n v. Douds, ***[***25]*** 339 U.S. 382, 438, 70 S. Ct. 674, 704, 94 L. Ed. 925 (1950) (dissenting opinion).

The tenets of Sondra's religion would be debased by this court's crafting of a short-cut or loophole through the religious doctrines she adheres to; [14] and the dignity and integrity of the court and its processes would be irreparably injured by such misuse. The First Amendment was designed to protect both institutions against such unwarranted, unwanted and unlawful steps over the "wall of separation between Church and State." This court will not assist Sondra in her attempts to lower that wall. As Justice Frankfurter said,"[i]f nowhere else, in the relation between Church and State, 'good fences make good neighbors.'" McCollum v. Board of Education, 333 U.S. 203, 232, 68 S. Ct. 461, 475, 92 L. Ed. 649 (1948) (dissenting opinion).

[*26] [*544] IV**

CONCLUSION

For these reasons, the court has denied the motion to be relieved as counsel. Further, any relief sought by either party with respect to any proceedings either currently being maintained or contemplated in the Beth Din is denied. The parties are directed to engage in a four-way conference within seven (7) days of this date

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[12] Apparently, however, Henry has not paid the necessary fee and the matter now sits moribund at the Beth Din level.

[13] That Sondra has not cooperated with the summons of the Beth Din regarding Henry's attempts at reconciliation could also be viewed as "unfair".

[14] New York's legislature has provided such a short-cut. New York Domestic Relations Law § 253 requires that where a marriage has been solemnized by a clergyman, a party who commences a matrimonial action must verify that he or she has acted to remove all "barriers to remarriage." It has been held that this requirement places an obligation on a husband of the Jewish faith to provide his wife with a "get". Megibow v. Megibow, 161 Misc. 2d 69, 612 N.Y.S.2d 758, 760 (Sup.Ct.1994). In fact, that seems to have been the precise purpose of that statute. The then Governor of New York made the following statement upon passage of the statute:

> This bill was overwhelmingly adopted by the State Legislature because it deals with a tragically unfair condition that is almost universally acknowledged.
>
> The requirement of a get is used by unscrupulous spouses who avail themselves of our civil courts and simultaneously use their denial of a get vindictively or as a form of economic coercion.
>
> Concededly this use of our civil courts unfairly imposes upon one spouse, usually the wife, enormous anguish.

[Perl v. Perl, 126 A.D.2d 91, 94-95, 512 N.Y.S.2d 372, 375 (1987).] This statute does not appear to have yet been challenged on First Amendment grounds.

and attempt to amicably resolve the issues that are actually before this court. Thereafter, they will forthwith report any results back to the court.

Henry's consent, or refusal to consent, to the providing of a "get", and Sondra's consent, or refusal to consent, to appear before the Beth Din for proceedings relating to Henry's attempts at reconciliation, are matters which are not to be bargained for or against. *Accord,* *Segal, supra.* The parties are urged, having previously resolved "98%" of the case, to resolve the remaining 2% for **[**532]** their own sake and, most importantly, for Samantha's sake. [15]

[*27]**

End of Document

[15] Sondra's request for the issuance of a bench warrant due to Henry's alleged failure to timely make support payments shall be held in abeyance pending the four-way conference.

No *Shepard's* Signal™
As of: March 7, 2024 2:02 PM Z

Bierig-Kiejdan v. Kiejdan

Superior Court of New Jersey, Appellate Division

January 11, 2023, Argued; February 16, 2023, Decided

DOCKET NO. A-2945-20

Reporter
2023 N.J. Super. Unpub. LEXIS 219 *

SUSAN BIERIG-KIEJDAN, Plaintiff-Respondent, v. RALPH KIEJDAN, Defendant-Appellant.

Notice: NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE APPELLATE DIVISION.

PLEASE CONSULT NEW JERSEY *RULE 1:36-3* FOR CITATION OF UNPUBLISHED OPINIONS.

Prior History: **[*1]** On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Atlantic County, Docket No. FM-01-0395-16.

Core Terms

arbitrator, parties, ketubah, translation, arbitration agreement, Rabbinical, marriage, post-judgment, proceedings, religious, divorce, confirmed

Counsel: Matheu D. Nunn argued the cause for appellant (Einhorn, Barbarito, Frost & Botwinick, PC, attorneys; Matheu D. Nunn, Bonnie C. Frost, and Jessie M. Mills, on the briefs).

James P. Yudes argued the cause for respondent (James P. Yudes, PC, attorneys; James P. Yudes, of counsel; Kevin M. Mazza and Melissa R. Barrella, on the brief).

Judges: Before Judges Accurso, Firko, and Natali.

Opinion

PER CURIAM

Defendant Ralph Kiejdan appeals from a May 12, 2021 post-judgment Family Part order compelling the parties to return to arbitration to resolve the issue of securing plaintiff Susan Bierig-Kiejdan a Jewish divorce known as a "get" from a Bet Din.[1] We reverse, finding the parties did not agree to arbitrate post-judgment issues unless they entered into a new arbitration agreement following the entry of their final judgment of divorce (FJOD), which they did not agree to do.

I.

On November 2, 1992, the parties were married in an Orthodox Jewish ceremony, during which the parties entered into a marriage agreement known as a "ketubah." The ketubah was written in either Hebrew or Aramaic. On November **[*2]** 24, 2015, plaintiff filed a complaint for divorce. The parties agreed to arbitrate any issue arising of the marriage "that could be raised in the Superior Court . . . both pendente lite and final." The parties entered into a consent order/agreement for arbitration (arbitration agreement), which provided that "the arbitrator shall determine whether an issue or dispute is within the scope of his jurisdiction." The arbitration agreement also provided that once the final award was confirmed by the Family Part judge, all post-judgment applications had to be made to the court unless the parties executed another arbitration agreement.

The seven-day arbitration proceedings took place in the Fall of 2018. On December 11, 2018, the arbitrator issued his decision, in which [he/she] explained plaintiff requested defendant be compelled to provide her with a get. Defendant promised to "voluntarily commence that process" through a Bet Din following the entry of the parties' FJOD. The arbitrator addressed Jewish divorce custom in his decision as follows:

> By way of background, when a Jewish couple marries, they sign a marriage contract called a

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[1] A "Bet Din" or "Beth Din" is a Jewish rabbinical court that issues a get. Without a get, a wife cannot remarry under Jewish law. *Minkin v. Minkin, 180 N.J. Super. 260, 261-62, 434 A.2d 665 (Ch. Div. 1981)*.

> ketubah. When a Jewish couple divorces, they need a Jewish **[*3]** divorce decree, known as a get, in order to dissolve the religious marriage contract, the ketubah. "Any man or woman who does not obtain a get cannot remarry, and any subsequent children born to an individual without a get are considered bastards who cannot partake in certain religious practices and rituals." Absent contractual language in the ketubah providing specific provisions and requirements for the granting of a get, a husband in the Jewish religion solely dictates whether the get will be granted.
> [(citations omitted).]

The arbitrator noted that neither party provided a translated copy of the ketubah, and they disagreed as to the interpretation of any get provision. Defendant asserted plaintiff had to pay him to receive a get, but plaintiff testified the ketubah did not contain any provision relevant to a get. The arbitrator therefore found this issue to be "a monetary dispute as opposed to something involving [defendant's] religious beliefs."

Recognizing the lack of a translated ketubah, the arbitrator concluded the Bet Din should adjudicate the get issue. "Based upon [defendant's] assurances that" he would begin seeking a get after entry of the FJOD, the arbitrator refused to **[*4]** compel defendant to give plaintiff a get. However, plaintiff retained "the right to seek judicial intervention in the future if . . . unable to obtain a get through the Bet Din."

On January 21, 2020, the judge confirmed the arbitration award and amended the award two weeks later to adjust interest charged on the equitable distribution of assets. On February 26, 2020, the FJOD was granted and incorporated the arbitration award. The FJOD provided:

> Based on . . . defendant's assurance at trial before the arbitrator that . . . defendant will voluntarily commence the process of obtaining a Jewish get from the Jewish Rabbinical Council, the Bet Din, immediately following the entry of a FJOD so that the rabbinical court could resolve the parties' respective rights and obligations under the ketubah, the arbitrator denied . . . plaintiff's request that . . . defendant be compelled to provide her with a get without prejudice. *Because the arbitrator denied . . . plaintiff's request without prejudice, . . . plaintiff reserves the right to seek post-judgment judicial intervention in the future if she is unable to obtain a get through the Bet Din*.
> [(emphasis added).]

In a May 21, 2020 email exchange, **[*5]** defendant told plaintiff "we are going to a Bet Din and I'll give you Rabbi [Mendel] Gold['s] number tomorrow." Plaintiff had already been in contact with Rabbi Yitzchok Meyer Leizerowski in Pennsylvania, and questioned why the parties had to "drive so far" to use defendant's preferred Rabbi. Plaintiff exchanged emails with Rabbi Gold in May and June of 2020 and refused to use his services, instead preferring to use the Beth Din of America. Plaintiff believed defendant retained Rabbi Gold to try "to extort money" from her, but Rabbi Gold certified he "did not know" either party prior to being contacted regarding the get.

On October 22, 2020, defendant filed a motion requesting the judge certify the matter as final so he could file an appeal from the FJOD. On November 5, 2020, plaintiff filed a notice of cross-motion opposing defendant's motion and seeking "to compel . . . defendant to fully cooperate with the process, including with the Beth Din, to enable . . . plaintiff to obtain a get forthwith, or alternatively to order a hearing with respect thereto." Defendant's moving certification stated he had already "engaged a highly experienced and credentialed Bet Din, Rabbi . . . Gold **[*6]** in New York City." The judge conducted oral argument on the motions on November 20, 2020, and reserved decision.

On December 3, 2020, the judge ordered defendant "to commence the get proceedings within a [forty-five] day period from November 20, 2020 through the Bet Din he has selected." The next day, plaintiff sent a letter to the judge asserting that under the terms of the ketubah, defendant was not entitled to select any Rabbinical Court of his choosing. She attached a certified English translation of the parties' ketubah to the letter. Plaintiff's translation is printed on the letterhead of the Orthodox Beth Din of Philadelphia and signed by Rabbi Leizerowski. In relevant part, plaintiff's translation reads:

> And the [parties] agreed that if one of them were to contemplate or seek the termination of their marriage or if one of them were to terminate it in civil court, then either may summon the other to appear before the Beit Din (Court) of the Rabbinical Assembly and of the Jewish Theological Seminary of America or a designate or successor; and that both of them will abide by the decisions of this Beit Din in order that both may be able to live according to the rule of Torah.

On December **[*7]** 7, 2020, defendant's attorney wrote

a letter to the court stating that plaintiff had "raised a number of issues which [defendant] cannot address until [he has] someone who has engaged in the translation and further legal analysis particularly with the Bet Din whom [defendant] has engaged." Regarding plaintiff's newly-presented translation, the letter stated plaintiff had "sought to interject something which was never presented to the court previously and . . . would require both factual and legal input."

On December 11, 2020, defendant's attorney sent a follow-up letter to the judge pointing out that the translated ketubah was "never presented" at the arbitration or in any other trial court proceedings, and plaintiff's December 4, 2020 letter referenced "issues that were never brought before the court." Defendant's counsel noted he had "no idea" whether plaintiff's ketubah translation was accurate and argued the "designate or successor" language was unclear and could support choosing any Bet Din, even if plaintiff's translation was correct. Counsel stated defendant was "already working with a Bet Din and will continue to" comply with the court's order that was still in effect.

On December **[*8]** 16, 2020, plaintiff filed a notice of motion for reconsideration, seeking to amend the December 3, 2020 order to compel defendant to obtain the get "through a Bet Din of the Rabbinical Assembly . . . of the Jewish Theological Seminary of America or a designate or successor consistent with the parties' ketubah." Defendant filed a notice of cross-motion opposing plaintiff's motion on January 7, 2021. In his cross-moving certification, defendant stated this is a "religious undertaking," which should be addressed by a qualified Bet Din, not a court. "It is certainly, in fairness, not within the auspices of a civil court."

On January 29, 2021, the judge amended the December 3, 2020 order to instruct defendant to commence the get proceedings within forty-five days of January 22, 2021, using "a Bet Din of the Rabbinical Assembly and of the Jewish Theological Seminary of America or a designate or successor" as prescribed in plaintiff's translation of the ketubah. On February 11, 2021, defendant filed a notice of motion to reconsider the January 29, 2021 order, and attached a certification with his own translation of the parties' ketubah. Defendant certified that neither party "knew whether **[*9]** or not [plaintiff's] translation was accurate," and he therefore retained his own expert whose notarized translation contains important differences from plaintiff's translation. Defendant's translation reads in relevant part:

> [The parties] agreed that should it occur to one of them to break off their marriage, or should their marriage be broken off by the state's courts, then either he or she shall be entitled to summon the other to the court of the Rabbinical Assembly and the rabbinical academy of the land that exists, or to one that comes from its authority, and that they shall both obey its judgment, so that they may both live according to the Torah's laws.

Plaintiff opposed the motion.

In a March 16, 2021 reply certification, defendant claimed although he did not have a translation as of January 29, 2021, he was not "playing games." Defendant requested the court "rescind its January 29, 2021 order" so he could proceed with Rabbi Gold, or else "simply rescind this order and take no action further because of the constitutional . . . issues relating to a civil court dealing with these very religious issues."

On May 3, 2021, defendant's attorney sent a letter to the court noting that the **[*10]** get continued "to present a conundrum." He also questioned whether the judge could order the parties to return to arbitration at that late stage of the proceedings. On May 12, 2021, the judge issued an order directing the parties to return to arbitration so the arbitrator could "continue [his] analysis of the relevant issues and provide a written opinion." In his supplemental memorandum of decision (MOD), the judge wrote:

> As noted in a previous MOD . . . , it is clear that the arbitrator did not order defendant to obtain a get based upon defendant's representation that he would do so. However, the court cannot enforce an obligation that was not ordered by the arbitrator despite defendant's statement. Therefore, that MOD confirmed that defendant was ordered to begin the process of obtaining a get.
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> Defendant did, in fact, begin the process of obtaining the get. However, a new problem arose. The parties differ in the translation of the Jewish marriage contract, the ketubah. Plaintiff claims it is written in Hebrew and defendant claims it is written in Aramaic, or a combination of Hebrew and Aramaic. Suffice it to say, regardless of the language in the ketubah, the parties disagree as to **[*11]** its translation and who or what entity is authorized by the ketubah to issue a get.
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> . . . .
>
> However, the court's analysis does not end there. The court is presented with the issue of whether or not the court can compel the parties to go back to

> binding arbitration. The court has reviewed the arbitration agreement.
> The court agrees that without such an agreement, this court may not compel arbitration. However, the court believes that the contractual language allows the court to do so.
> . . . .
>
> Clearly, the parties are outside the twenty-day period. However, the issue was clearly addressed by the arbitrator but simply not decided based on defendant's representation that he would go through with giving plaintiff a get. The court cannot simply find that it does not have the authority to decide an issue without providing a remedy. Therefore, this court finds that it is within its equitable powers to extend the twenty-day period to the date that the original applications were filed. If the court does not do this, it will cause an endless stalemate that could not be overcome by either party. Therefore, the parties are ordered to go back to the arbitrator and submit to binding arbitration . . . **[*12]** .

The judge did not question the finality of the arbitration agreement when ordering the parties to return to arbitration—without their mutual written consent—to address the get. Rather, the judge concluded he had the "equitable power" to extend the twenty-day deadline in the parties' arbitration agreement, which extinguished the jurisdiction of the arbitrator after the arbitrator rendered his decision.

On appeal, defendant contends the judge improperly compelled the parties to return to arbitration to resolve the question of a get and to interpret their ketubah. Defendant further argues the arbitrator's authority terminated upon confirmation of the arbitration award pursuant to the terms of the arbitration agreement and interpretation of the ketubah is a religious issue beyond the scope of the court and arbitrator's authority.

II.

"The general rule is that findings by a trial court are binding on appeal when supported by adequate, substantial, credible evidence," *Gnall v. Gnall, 222 N.J. 414, 428, 119 A.3d 891 (2015)*, and "because of the family courts' special jurisdiction and expertise in family matters, appellate courts should accord deference to family court factfinding." *Cesare v. Cesare, 154 N.J. 394, 413, 713 A.2d 390 (1998)*. We also "accord great deference to discretionary decisions of **[*13]** Family Part judges." *Milne v. Goldenberg, 428 N.J. Super. 184, 197, 51 A.3d 161 (App. Div. 2012)*.

"As to issues of law, however, [appellate] review is de novo," and the "trial court's interpretation of the law and the legal consequences that flow from the established facts are not entitled to any special deference." *Rowe v. Bell & Gossett Co., 239 N.J. 531, 552, 218 A.3d 784 (2019)* (quoting *Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378, 658 A.2d 1230 (1995)*).

"A judgment is final for purposes of appeal if it 'dispos[es] of all issues as to all parties.'" *Wein v. Morris, 194 N.J. 364, 377, 944 A.2d 642 (2008)* (quoting *Hudson v. Hudson, 36 N.J. 549, 552-53, 178 A.2d 202 (1962)*). After a court-appointed arbitrator completes the arbitration proceedings and issues an award, "the dispute [is] subject to final resolution by the court confirming, vacating, or modifying the award." *Ibid.*

An arbitration agreement is a contract. *Waskevich v. Herold Law, P.A., 431 N.J. Super. 293, 298, 69 A.3d 127 (App. Div. 2013)*. Arbitration agreements are therefore "subject, in general, to the legal rules governing the construction of contracts." *Cole v. Jersey City Med. Ctr., 215 N.J. 265, 276, 72 A.3d 224 (2013)* (quoting *McKeeby v. Arthur, 7 N.J. 174, 181, 81 A.2d 1 (1951)*). Arbitration involves a contractual relationship between the parties: "it is a way to resolve those disputes—but only those disputes—that the parties have agreed to submit to arbitration." *First Options of Chi., Inc. v. Kaplan, 514 U.S. 938, 943, 945, 115 S. Ct. 1920, 131 L. Ed. 2d 985 (1995)*.

Here, at no time post-judgment did the parties provide written consent to return to arbitration and they did not enter into a new arbitration agreement to address the get. "Parties are not required 'to arbitrate when they have not agreed to do so.'" *Atalese v. U.S. Legal Servs. Grp., L.P., 219 N.J. 430, 442, 99 A.3d 306 (2014)* (quoting *Volt Info. Scis. v. Bd. of Trs. of Leland Stanford Jr. Univ., 489 U.S. 468, 478, 109 S. Ct. 1248, 103 L. Ed. 2d 488 (1989)*); *see* ***[*14]*** *also In re Arbitration Between Grover & Universal Underwriters Ins. Co., 80 N.J. 221, 228, 403 A.2d 448 (1979)* ("'Only those issues may be arbitrated which the parties have agreed shall be.'").

Having reviewed the record, and considered the arguments of appellate counsel, we conclude the judge abused his discretion by invoking equitable powers to extend the twenty-day period in the parties' arbitration agreement and ordering them to arbitrate the get issue. Paragraph 41 of the parties' arbitration agreement

explicitly states: "There shall be no further jurisdiction of the arbitrator to consider any further applications of either party, absent written consent of the parties to expand the scope of arbitration." That clearly did not occur here. Moreover, the parties did not agree to confer such discretion with the judge. Since the parties did not mutually agree in writing to arbitrate the get issue post-judgment, reversal is warranted.

To the extent we have not specifically addressed any remaining arguments raised by defendant, we conclude they lack sufficient merit to warrant discussion in a written opinion. *R. 2:11-3(e)(1)(E)*.

Reversed.

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Burns v. Burns

Superior Court of New Jersey, Chancery Division, Family Part, Camden County

December 4, 1987, Decided

No. FM-04-08884-81

Reporter
223 N.J. Super. 219 *; 538 A.2d 438 **; 1987 N.J. Super. LEXIS 1447 ***

LAWRENCE A. BURNS, PLAINTIFF, v. MICHELLE M. BURNS, DEFENDANT

Subsequent History: [*1]** Approved for Publication February 24, 1988.

Core Terms

ketubbah, divorce, married, parties, religious belief, marriage, religion, securing

Case Summary

Procedural Posture
The defendant, former wife, filed a post-judgment motion in the Superior Court of New Jersey, Camden County, against the plaintiff, former husband, in an effort to compel the plaintiff to assist her in securing a Jewish bill of divorcement, known as a get.

Overview

The defendant, former wife, filed a post-judgment motion against the plaintiff, former husband, and sought to compel him to assist her in obtaining a Jewish bill of divorcement, known as a get. The plaintiff sought to suppress the portion of the defendant's supporting affidavit, which related to the plaintiff's demand for the defendant to invest $ 25,000, in exchange for his accession to the defendant's request. The court ordered the plaintiff to submit to the jurisdiction of the "Bet Din," the Jewish ecclesiastical court, to initiate proceedings for a get. In the alternative, the court agreed to allow the plaintiff to authorize an agent to appear on his behalf. The court denied the plaintiff's motion to suppress and held that the plaintiff's monetary demand was admissible in evidence to establish that the plaintiff's refusal to secure a get was not on the basis of his religious beliefs, but instead an issue of monetary gain. Moreover, the court held that the Establishment Clause of the First Amendment, U.S. Const. amend. I, was not offended by its order that the plaintiff submit to the jurisdiction of the Bet Din.

Outcome
The court ordered the plaintiff former husband to submit to the jurisdiction of the Bet Din, the Jewish ecclesiastical court, in order to initiate proceedings for a get or Jewish bill of divorcement. In the alternative, the court agreed to allow the plaintiff to appoint an agent to initiate the proceedings on his behalf. The court held that its order did not violate the Establishment Clause of the First Amendment.

LexisNexis® Headnotes

Family Law > Marital Termination & Spousal Support > General Overview

HN1[] Family Law, Marital Termination & Spousal Support

Jewish law requires a husband to actually deliver the "get, " a Jewish bill of divorcement, to his wife. 6 Encyclopedia Judaica 125 (1971). Divorce is carried into effect by the bill of divorcement being written, signed and delivered by the husband to the wife. It is written by a scribe upon the husband's instructions to write for him, for her and for the purpose of a divorce.

Evidence > Admissibility > Statements as Evidence > Compromise & Settlement Negotiations

HN2[] Statements as Evidence, Compromise & Settlement Negotiations

N.J. R. Evid. 52 provides that evidence that a person has, in compromise or from humanitarian motives, furnished or offered or promised to furnish money, or any other thing, act or service to another who has sustained or claimed to have sustained loss or damage, is inadmissible to prove his liability for the loss or damage of any part of it. Rule 52 provides that it shall not affect the admissibility of evidence of partial satisfaction of an asserted claim, or of a debtor's payment or promise to pay all or part of his pre-existing debt as tending to prove the creation of a new duty on his part, or a revival of his pre-existing duty.

Evidence > Admissibility > Statements as Evidence > Compromise & Settlement Negotiations

HN3[] **Statements as Evidence, Compromise & Settlement Negotiations**

Under N.J. R. Evid. 52, courts admit otherwise excludable evidence, if it relates to some other issue of fact.

Family Law > Marital Termination & Spousal Support > General Overview

Family Law > ... > Proof of Marriage > Ceremonial Marriages > Solemnization of Marriage

HN4[] **Family Law, Marital Termination & Spousal Support**

The get procedure, under Jewish law, is a release document devoid of religious connotation and cannot be construed as any more religious than the marriage ceremony itself.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Religion > Establishment of Religion

Family Law > Marital Termination & Spousal Support > General Overview

HN5[] **Freedom of Religion, Establishment of Religion**

The *Establishment Clause of the U.S. Const. amend. I*, which clearly separates state and religion, is not violated when a party is ordered to secure a "get," as mandated by Jewish law. Under the three-prong test, ordering a party to secure a "get," (1) reflects a clear secular legislative purpose, (2) has a primary effect that neither advances nor inhibits religion, and (3) avoids excessive entanglement with religion.

Contracts Law > Types of Contracts > General Overview

Contracts Law > Defenses > Unconscionability > General Overview

HN6[] **Contracts Law, Types of Contracts**

The "ketubbah," a Jewish contract of marriage, is an enforceable agreement entered into by both parties which is not unconscionable or contrary to public policy.

Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > General Overview

HN7[] **Marital Termination & Spousal Support, Dissolution & Divorce**

A husband is compelled to secure a "get," a Jewish bill of divorcement, when (1) he unjustifiably refuses conjugal rights, (2) if the husband shows unworthy conduct toward his wife such that the wife cannot be expected to live with him as his wife, (3) if the husband's unjustified refusal to maintain her when he is in the position to do so, or could be if he was willing to work and earn an income, (4) if the husband is unfaithful to his wife, or (5) if the husband habitually assaults or insults her, or is the cause of unceasing quarrels, so she has no choice but to leave the household.

Civil Procedure > ... > Jurisdiction > Jurisdictional Sources > General Overview

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview

Civil Procedure > ... > Equity > Maxims > Ought to be Done Principle

Family Law > Marital Termination & Spousal Support > General Overview

HN8[] **Jurisdiction, Jurisdictional Sources**

For a court to compel a plaintiff to submit to the jurisdiction of the Jewish ecclesiastical court, the "Bet Din," and initiate the procedure to secure a get, or Jewish bill of divorcement, is within the equity powers of a court to do what ought to be done. In doing equity, the court has power to adapt the equitable remedies to the particular circumstances of each particular case. The ultimate decision of whether a get is to be granted is that of the "Bet Din" and not of the court.

Counsel: *James Greenberg* for Plaintiff (*Greenberg, Shmerelson, Weinroth & Etish, P.C.*).

Saverio R. Principato for Defendant (*Saverio R. Principato, P.C.*).

Judges: Natal, P.J.F.P.

Opinion by: NATAL

Opinion

[*221] **[**439]** This matter came before the court on a post-judgment motion by the defendant, Michelle M. Burns, for an order to compel the plaintiff to assist her in securing a Jewish bill of divorcement known as a "get." [1] The plaintiff filed a cross-motion to suppress that portion of the defendant's supporting affidavit relating to his demand for $ 25,000 to accede to the defendant's request pursuant to Rule 52 of the New Jersey Rules of Evidence.

[*222] Background facts in this case are important, as they are not in dispute and they present the basis for the final disposition.

Both the plaintiff and the **[***2]** defendant had been married prior to their marriage to each other in 1969. Since they were of the Jewish religion they felt compelled to secure "gets" from their prior spouses in order to properly enter into a Jewish contract of marriage known as a "ketubbah." Under Jewish law one cannot marry in an Orthodox or Conservative ceremony without securing a "get" from a prior spouse.

At the time the plaintiff and the defendant married, plaintiff willingly proceeded with securing a "get" from his prior spouse and then married the defendant under civil and Jewish law. The marriage did not succeed and a dual judgment of divorce was granted to the parties in 1982. Since that time the plaintiff has remarried, choosing not to proceed with first securing a "get." The defendant now plans to remarry but she believes she is bound by tenet of Jewish law to obtain a "get" terminating her prior marriage before she may marry again.

Defendant's attorney contacted the plaintiff to communicate her desire to have the plaintiff secure the "get." [2] Plaintiff stated his religious beliefs are such that he no longer believed in the necessity of securing a "get." Yet, plaintiff informed defendant's attorney, **[***3]** if the defendant would invest $ 25,000 in an irrevocable trust for the benefit of their daughter, with the plaintiff and another party of his choosing as joint trustees, he would secure the "get" for the defendant.

I. All of the facts necessary for the court to make its determination were set forth in supporting affidavits. Thus, there were no genuine issues of material fact. The court is not required to take oral testimony and may decide this matter **[*223]** without a plenary hearing. *Skillman v. Skillman, 136 N.J. Super. 348, 350 (App.Div.1975)*.

II. Plaintiff's request to suppress and exclude from **[***4]** the court's consideration that part of the defendant's supporting affidavit referring to his request for $ 25,000 pursuant to Rule 52 is denied. Plaintiff claims the discussion he had with defendant's attorney, wherein he demanded the sum of $ 25,000 to be placed in trust, was an offer to compromise the current dispute **[**440]** and should be barred from evidence in a court hearing.

HN2[] Rule 52 provides:

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[1] Under Hebraic law, evidence of the granting of a divorce. *Black's Law Dictionary Revised* 816 (4th Ed. West Publishing Co. 1968).

[2] HN1[] Jewish law requires the husband to actually deliver the "get" to his wife. See 6 *Encyclopedia Judaica* 125 (MacMillan Co. 1971). "Divorce is carried into effect by the bill of divorcement being written, signed and delivered by the husband to the wife. It is written by a scribe upon the husband's instructions to write 'for him, for her and for the purpose of a divorce'." *Id.* at 131.

> OFFER TO COMPROMISE AND THE LIKE NOT EVIDENCE OF LIABILITY OR CRIMINAL WRONGDOING
> (1) Evidence that a person has, in compromise or from humanitarian motives, furnished or offered or promised to furnish money, or any other thing, act or service to another who has sustained or claimed to have sustained loss or damage, is inadmissable to prove his liability for the loss or damage of any part of it. This rule shall not affect the admissability of evidence (a) of partial satisfaction of an asserted claim, or (b) of a debtor's payment or promise to pay all or part of his pre-existing debt as tending to prove the creation of a new duty on his part, or a revival of his pre-existing duty.

HN3[↑]

Under this Rule the courts have admitted otherwise excludable evidence, if it relates to **[***5]** some other issue of fact. *Rynar v. Lincoln Transit Co., Inc., 129 N.J.L. 525* (E. & A. 1943); *Leslie Blau Co. v. Alfieri, 157 N.J. Super. 173, 200 (App.Div.1978)*, *cert.* den. *77 N.J. 510 (1978)*.

Plaintiff's alleged offer to compromise is admissible to demonstrate that his refusal to secure defendant a "get" is not on the basis of his religious beliefs, but instead is an issue of monetary gain. Plaintiff initially claimed that granting the defendant a "get" was not necessary since it was contrary to his current religious beliefs. Plaintiff further asserted that his First Amendment right to practice his religion without interference from the State would be abridged if he were forced to compromise his religious beliefs.

A true religious belief is not compromised as the amount of money offered or demanded is increased. An offer to secure a "get" for $ 25,000 makes this a question of money not religious **[*224]** belief. This "offer," which is not denied by the plaintiff, takes this issue outside the First Amendment. This so-called "offer" is akin to extortion.

III. This court finds *Minkin v. Minkin, 180 N.J. Super. 260, 266 (1981)*, as the only **[***6]** New Jersey law controlling in this area. Judge Minuskin found that "[HN4[↑] t]he get procedure is a release document devoid of religious connotation and cannot be construed as any more religious than the marriage ceremony itself."

The court analyzed whether there was a First Amendment entanglement. Judge Minuskin found HN5[↑] the Establishment Clause of the First Amendment which clearly separates State and religion, is not violated when a party is ordered to secure a "get." The Court applied the standard set by the United States Supreme Court in *Committee for Public Education and Religious Liberty v. Nyquist, 413 U.S. 756, 772-773, 93 S.Ct. 2955, 2965-66, 37 L.Ed.2d 948 (1973)*. Under the three-prong test established in *Nyquist*, the *Minkin* court held that ordering a party to secure a "get," (1) reflects a clear secular legislative purpose; (2) has a primary effect that neither advances nor inhibits religion, and (3) avoids excessive entanglement with religion. 180 *N.J. Super.* 265-66.

The court in *Minkin* applied the equity powers of the court and enforced the marriage contract or "ketubbah." HN6[↑] The "ketubbah" was held as an enforceable agreement entered into by **[***7]** both parties which was not unconscionable nor contrary to public policy. *Id. at 262*. The "ketubbah" requires both parties to conform to the provisions of the Law of Moses and of Israel. Under such law the husband is required to give his wife a "get" when the wife commits adultery. Thus, in *Minkin* the court ordered defendant to secure the "get" and deliver it to his wife. *Id.*

IV. The parties obtained a dual judgment, on the grounds of eighteen months continuous separation without a prospect of reconciliation, commonly referred to as a "no-fault" divorce. **[*225]** The plaintiff argued that *Minkin* was limited to those cases where the wife was divorced on the grounds of adultery. This court rejects plaintiff's argument and thus expands the *Minkin* decision.

Under Rule 9 of the New Jersey Rules of Evidence, this court takes judicial **[**441]** notice of *The Bible* [3] and of the *Encyclopedia Judaica*. [4] The court finds both to be learned treatises containing the laws of Moses and Israel and were consulted by the court to decipher the significance of the "ketubbah." Reference is necessary to the laws of Moses and Israel because the parties have signed **[***8]** a written contract, their "ketubbah" (exhibit 1 in evidence), committing themselves to be bound by such law.

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[3] See *Deuteronomy*, 24:1, which states, "when a man taketh a wife and marries her, then it comes to pass if she finds no favor in his eyes because he has found some unseemly thing in her that he write her a bill of divorcement and give it in her hand and send her out of the house."

[4] 6 *Encyclopedia Judaica*, (MacMillan Co. 1971).

In studying the laws of Moses and Israel this court finds there are various circumstances which would require the husband to secure a "get" from his wife. The *Minkin* court found the husband compelled to grant his wife a "get" due to her acts of adultery.

In addition, HN7[] a husband is compelled to secure a "get" when (1) he unjustifiably refuses conjugal rights; (2) if the husband shows unworthy conduct toward his wife such that the wife cannot be expected to live with him as his wife; (3) if the husband's unjustified refusal to maintain her when he is in the position **[***9]** to do so, or could be if he was willing to work and earn an income; (4) if the husband is unfaithful to his wife, or (5) if the husband habitually assaults or insults her, or is the cause of unceasing quarrels, so she has no choice but to leave the **[*226]** household. [5]

This list is not intended to be exclusive as there are still other circumstances under which a husband is compelled to give a "get," but merely illustrative of the fact that adultery is not the exclusive ground under the laws of Moses and Israel.

The parties no longer live together. Mr. Burns has remarried. He was the plaintiff and sought the divorce. He has chosen another for his wife and married her under civil law, yet under the Jewish law the plaintiff and the defendant are still married. The plaintiff must release the defendant from the ketubbah and put an end to that relationship. The judgment of divorce provided for the **[***10]** parties to "be divorced from the bond of matrimony . . . and each of them, be freed and discharged from the obligation thereof[.]" HN8[] For the court to compel the plaintiff to submit to the jurisdiction of the Jewish ecclesiastical court, the "Bet Din," and initiate the procedure to secure a "get" is within the equity powers of this court to do what ought to be done. In doing equity, the court has power to adapt the equitable remedies to the particular circumstances of each particular case. *Arabia v. Zisman, 143 N.J. Super. 168 (Ch. 1976)*, aff'd *157 N.J. Super. 335 (App.Div.1978)*. The ultimate decision of whether a "get" is to be granted is that of the "Bet Din" and not of this court.

Therefore, this court orders the plaintiff to submit to the jurisdiction of the "Bet Din" to initiate the proceedings for a "get". In the alternative, the court will permit the plaintiff to execute the prepared document, (exhibit 2 in evidence), authorizing the preparation and presentation of the "get" to the defendant by an agent on his behalf and forego the actual appearance before the "Bet Din".

An order may be entered accordingly.

End of Document

[5] Conduct of the husband as a ground for divorce. See 6 *Encyclopedia Judaica* 128 (MacMillan Co. 1971).

The Battle between Jewish Law and Secular Courts — How to Protect a Client's Fundamental Right to Marry

By Sheryl J. Seiden and Shelby Arenson

In the Jewish religion, though parties may be civilly married, they are not considered married in the eyes of Jewish law without the issuance of a Ketubah, which is a Jewish marriage certificate. Nevertheless, a Jewish marriage has similarities to a civil marriage as a marriage is not just a spiritual union but a contractual union as well. It is important to note that not all people who identify as Jewish adhere to all Jewish laws. This article, however, focuses on parties who do adhere to Jewish laws.

Parties to a religious marriage enter into a binding contractual commitment, which is outlined in a Ketubah. The Ketubah details the fundamental responsibilities of a husband as stated in the Torah[1], which includes, but is not limited to, providing his wife with shelter. The Ketubah, however, does not include the wife's fundamental responsibilities to her husband. Rather, the Ketubah signifies the wife's agreement to enter into marriage with her husband. Therefore, the Ketubah sets forth a woman's rights in marriage.

Just as a civil marriage must be dissolved with a judgment of divorce, a Jewish marriage must be dissolved with a religious divorce, which is known as a Get. Accordingly, for parties who adhere to Jewish laws, a civil divorce is not sufficient to divorce them under Jewish law. Just as Jewish law does not accept a civil marriage ceremony, it does not accept a civil divorce. Therefore, even if parties are civilly divorced, in the eyes of Jewish law, they will still be considered married.[2] To obtain a religious divorce, parties must participate in a divorce proceeding in front of a Beis Din, which is a rabbinical court comprised of three rabbis. During this proceeding, the husband provides the wife with a Get, which is a dated and witnessed document wherein the husband expresses his intention to divorce his wife in the presence of the rabbis from Beis Din, who serve as witnesses. A scribe writes the document. Thereafter, the husband must deliver the Get to the wife by "handing it her" or hiring a shliach, or messenger, to deliver the Get to his wife on his behalf. Ibid. It is important to note that only the husband can deliver or arrange for the delivery of the Get to the wife. Under Jewish law, the wife does not have the authority to deliver the Get. She must merely accept the Get from the husband.

The concept of a Get is outlined in the Torah in Deuteronomy 24:1-2, which when translated states:

> *When a man takes a wife and is intimate with her, and it happens that she does not find favor in his eyes because he discovers in her an unseemly matter, and he writes for her a document of severance, gives it into her hand, and sends her away from his house. She leaves his house and goes and marries another man.*

In the overwhelming majority of cases, Jewish parties are divorced both civilly and religiously without any problems and the husband willingly and many times eagerly, provides the Get to his wife.[3] There are, however, instances where the husband refuses to provide a Get. When a husband refuses to provide his wife with a Get, the woman is referred to as an agunah. The translation for agunah is chained, thereby, signifying how the woman is chained to a dead marriage.[4] Not only is the woman chained to a dead marriage, but she is prevented from remarrying because pursuant to halacha or Jewish law, a woman may not remarry unless there is clear evidence that her husband has died, or she has a Get. Therefore, an agunah cannot get remarried, which essentially prevents her from pursuing any romantic relationships or having children under Jewish law.[5] This causes social, emotional, and psychological trauma and in worst-case scenarios, empowers the husband to engage in coercive controlling behaviors, including but not limited to, complete financial control and physical and/or sexual abuse.

Not only does the husband have to provide the Get,

but the wife must accept the Get. While it is very rare, a woman may refuse to accept the Get while the civil divorce is pending to ensure the husband acts reasonably in the civil divorce proceedings. Though rare, there is a potential remedy for husbands to remarry even if their wife refuses to accept a Get. The prohibition against bigamy was instituted by rabbanim, or a host of prominent rabbis, and not the Torah. Therefore, a man whose wife refuses to accept a Get may petition a Beis Din to issue a heter meah rabbanim, wherein, the Beis Din receives the consent of 100 rabbis, from three countries, to allow the husband to remarry even though his wife has refused to accept a Get.[6] The issuance of a heter meah rabbanim is extremely rare. Nevertheless, this remedy is not available to a woman because, according to the Torah, a woman may not be married to more than one man. Therefore, in extremely rare circumstances, a husband may be able to remarry without his wife accepting a Get, which is a remedy simply not available to women.

In recent years, prominent Jewish organizations, such as the Beth Din of America, have recognized the disproportionate number of women who are agunahs. In an effort to combat the agunah crisis, the Beth Din of America, in consultation with prominent religious leaders, developed a halachic prenuptial agreement, which empowers the Beis Din to determine when a Get should be issued and provides the Beis Din with tools to ensure that its ruling is followed. Like a prenuptial agreement, parties who enter into a halachic prenuptial agreement sign the document prior to entering into marriage. Under the halachic prenuptial agreement, the husband is forced to pay his wife a daily monetary penalty, which usually equates to about $150 per day, for each day that he refuses to provide his wife a Get.[7] Though the halachic prenuptial agreement is a step in the right direction it, unfortunately, has not been adopted by all sects of the Jewish community.

The issue of obtaining a Get in a case where Jewish parties are getting a divorce has plagued the New Jersey court system for years. Unfortunately, many Jewish women remain trapped in their religious marriages even after the civil courts grant a divorce from the bonds of civil marriage. To avoid the situation where a religious woman cannot remarry, it is imperative that the woman's husband agree to provide them with a Get as part of any marital settlement agreement entered by the parties. It is important to note that the court does not have the authority to order a husband to provide a Get to his wife upon resolution of the matter. In the matter of *Minkin v. Minkin*, the plaintiff-wife sought an order that would require the defendant-husband to give her a Get. [8]The *Minkin* Court conducted a plenary hearing, during which time, a rabbi testified that the issuance of a Get is not a religious act, but rather, the severance of the contractual relationship between the parties. Several other rabbis testified during the plenary hearing and further testified that the issuance of a Get is civil and not religious in nature.[9] The *Minkin* Court found the testimony of the rabbis to be credible and the judge held that a Get is not a religious act and therefore, entered an order compelling the defendant-husband to provide the plaintiff-wife with a Get. The Court stated the act of providing the Get would "have the clear secular purpose of completing a dissolution of the marriage."[10] The Court specifically held that compelling the husband to provide the Get was not a violation of his constitutional rights.

The *Minkin* Court set precedent for the matter of *Burns v. Burns*.[11] In that case, the defendant-wife sought to get remarried, but first needed the plaintiff-husband to provide her a Get. The plaintiff-husband, however, refused to provide the defendant-wife a Get unless she invested $25,000 in an irrevocable trust for their daughter.[12] Defendant-wife, believing that the plaintiff-husband was seeking to hold the Get hostage for financial purposes filed an application with the Court. The *Burns* Court held that the plaintiff-husband's refusal to provide the defendant-wife a Get was not based on his religious beliefs, but rather, was purely "an issue of monetary gain."[13] The judge subsequently reviewed the laws of Moses and Israel and determined that "there are various circumstances which would require the husband to secure a get from his wife" and ordered the plaintiff-husband to appear before Beis Din and "release the defendant from the [marriage] and put an end to the relationship."[14]

About 10 years later, in the matter of *Aflalo v. Aflalo*, the precedent set forth in *Minkin* was disrupted.[15] In this matter, plaintiff-wife filed for divorce and defendant-husband asserted that no matter what occurred in the civil divorce action, he would refuse to consent to provide plaintiff-wife with a Get.[16] The *Aflalo* Court held that the *Minkin* Court erred when considering the issue of providing a Get against the backdrop of the Establishment Clause rather than the Free Exercise Clause of the First Amendment.[17] The *Aflalo* Court also held that the *Minkin* Court erred when it stated that requiring a husband to provide a Get is not a religious act.[18] There-

fore, the judge in *Aflalo* found that compelling a party to provide a Get is not solely concerned with civil issues and compelling a party to obtain a Get would not have the desired effect on the wife because pursuant to Jewish law, the husband must provide a Get willingly.[19] The judge then concluded that the court had no authority to determine for the parties "which aspects of their religion may be embraced, and which must be rejected."[20]

Historically, New Jersey trial courts have differed on the issue of whether a civil court has the authority to compel a husband to provide a Get. Therefore, in the matter of *Mayer-Kolker v. Kolker*, wherein, the plaintiff-wife sought that the court order the defendant-husband to cooperate in obtaining a Get, the court had to consider the decisions determined by the *Minkin, Burns* and *Aflalo* courts.[21] The *Kolker* Court entered a dual judgment of divorce and determined that it did not have the authority to compel the defendant-husband to provide plaintiff-wife a Get. The plaintiff-wife subsequently appealed.

On appeal, the Appellate Division acknowledged that the parties entered into a Ketubah. Plaintiff-wife argued that the act of executing a Ketubah made the parties' marriage subject to Jewish law.[22] Defendant-husband, however, asserted that the Ketubah that the parties signed did not automatically convey the parties' adherence to Jewish law, lacked the requisite specificity for enforcement and was silent on the issue of whether a Get would be granted in the event the parties divorced.[23] The *Kolker* Court did not determine the limits of judicial authority with regard to compelling a husband to provide a Get, but rather, focused on whether the Ketubah the parties signed compelled the parties to adhere to Jewish law.

The *Kolker* Court determined that though the parties provided a copy of their Ketubah, there were not sufficient translations, as the Ketubah signed by the parties was in two languages; the parties did not provide evidence regarding the effects of a Ketubah; and the parties failed to present expert testimony about what Jewish law would require.[24] The *Kolker* Court then affirmed the trial court's denial of plaintiff-wife's request that the court compel defendant-husband to provide a Get. The Court reasoned the plaintiff-wife failed to establish the effect of the Ketubah that the parties entered into and failed to establish the Ketubah's mandate of Jewish law with regard to enforcement.[25] While the *Kolker* Court did not address whether New Jersey courts have the power to compel a party to provide a Get, recent decisions by New Jersey courts have interpreted the law to deny any request to compel the issuance of a Get.

New Jersey is not alone in its lack of consistency in decisions regarding whether a Ketubah can and should be enforced. Throughout the United States, "courts have gone both ways on whether the agreements violate the First Amendment and whether such agreement is specific enough to enforce."[26] For example, in the Illinois case of *In re Marriage of Goldman*, the Appellate Court disagreed with petitioner-husband's argument that enforcing the parties' Ketubah and ordering him to provide respondent-wife with a Get would violate his constitutional rights under the Establishment and Free Exercise Clauses.[27] However, in the matter of *Victor v. Victor*, petitioner-wife appealed the trial court's refusal to order respondent-husband to provide her a Get.[28] Petitioner-wife sought specific performance as a remedy to respondent-husband failing to provide her a Get pursuant to the parties' Ketubah. The Appellate Court denied petitioner-wife's appeal.

As set forth above, New Jersey courts, like other states throughout the country, have been hesitant to order parties to provide their spouse a Get due to concerns as to infringement of a husband's First Amendment right. New Jersey courts, however, have failed to address that the right to marriage is recognized as a fundamental right by both the Federal and State Constitutions.[29] Therefore, by New Jersey courts focusing only on First Amendment concerns, they are inadvertently denying their citizens their fundamental right to marry. There is no doubt that the citizens who choose to abide by Jewish laws continue to struggle with this issue in some cases. However, in looking at New York, it is clear that there are secular means of ensuring that all persons, regardless of their religious beliefs, can exercise their fundamental right to marriage.

New York enacted Domestic Relations Law 253 Removal of Barriers to Remarriage in 1983.[30] Pursuant to paragraph 2:

> any party to a marriage ... who commences a proceeding to annul the marriage or for a divorce must allege, in his or her verified complaint: (i) that, to the best of his or her knowledge, that he or she has taken or that he or she will take, prior to the entry of final judgment, all steps solely within his or her power to remove any barrier to the defendant's remarriage following the annulment or divorce; or (ii)

that the defendant has waived in writing the requirements of this subdivision.

The enactment of similar law in New Jersey will not eradicate the issue of some husbands refusing to provide their wives with Gets, especially, when the only repercussion is the lack of a civil divorce. However, it should be the goal of New Jersey courts to ensure that all its citizens are entitled to a divorce pursuant to the laws of the state and no longer sit idle, which may empower some men to gain an unfair advantage throughout divorce proceedings. Enacting a similar law in New Jersey will not only help its citizens but will display how New Jersey is leading the way on the issue, as outside of New York, no such law exists.[31] The time has come to bring awareness to the challenges that agunahs face and to work toward ensuring that all people are able to exercise their fundamental right to life, liberty, and the pursuit of happiness. ■

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Endnotes

1. The Torah is comprised of the Five Books of Moses, the entire Hebrew Bible and the entirety of all written texts of Jewish religious knowledge.
2. Jewish Divorce Basics: What is a 'Get'? *Chabad.org.* Retrieved from: chabad.org/library/article_cdo/aid/557906/jewish/Jewish-Divorce-Basics-What-Is-a-Get.htm.
3. In circumstances wherein divorce is the only option, it is a mitzvah, or good deed, for a husband to provide his wife a Get.
4. Silberberg, Naftali. The Agunah. *Chabad.org.* Retrieved from: chabad.org/library/article_cdo/aid/613084/jewish/The-Agunah.htm.
5. If a Jewish woman has a child with another man while she is still married, that child will be considered a mamzer. Though the child will be considered Jewish, there are certain restrictions placed upon a mamzer, such as who they may marry. See What is a "Mamzer"? *Chabad.org.* Retrieved from: chabad.org/library/article_cdo/aid/4007896/jewish/What-Is-a-Mamzer.htm.
6. Eisen, Yosef. Major Ashkenazi Rishonim. *Chabad.org.* Retrieved from: chabad.org/library/article_cdo/aid/2617025/jewish/Major-Ashkenazi-Rishonim.htm.
7. Weissmann, Rabbi Shlomo. Ending the Agunah Problem as We Know It. *The Orthodox Union.* Retrieved from: ou.org/life/rekationships/ending-agunah-problem-as-we-know-it-shlomo-weissmann/.
8. 180 N.J. Super. 260, 261 (Ch. Div. 1981).
9. *Id.* at 265.
10. *Ibid.*
11. 223 N.J. Super. 219 (Ch. Div. 1987).
12. *Id.* at 222.
13. *Id.* at 223.
14. *Id.* at 226.
15. 295 N.J. Super. 527 (Ch. Div. 1996).
16. *Id.* at 530-31.
17. *Id.* at 537.
18. *Id.* at 538.

19. It is worth noting that according to Jewish law, it is permissible and encouraged to condemn an individual who takes advantage of another, such as a husband refusing to provide his wife a Get, which includes, but is not limited to, publicly denouncing the individual and exposing the individual by protesting outside of their home and/or place of business.
20. 295 N.J. Super. at 542.
21. 359 N.J. Super. 98 (App. Div. 2003).
22. *Id.* at 100-03.
23. *Ibid.*
24. *Ibid.*
25. *Ibid.*
26. *Comment, Enforceability of Agreements to Obtain a Religious Divorce*, Kimberly Scheuerman, Journal of the American Academy of Matrimonial Lawyers, Vol 23, No. 2 (2010).
27. 554 N.E.2d 1016 (Ill. App. 1990).
28. 866 P.2d 899 (Ariz. Ct. App. 1993).
29. *U.S.C.A. Const. Amend. 14; N.J.S.A. Const. Art. 1, par. 1.*
30. Domestic Relations Law 253 was drafted by Nathan Lewin, Esq., who has extensive experience advocating for First Amendment rights and civil liberties.
31. In 2007, Florida tried to pass similar legislation as New York with the proposal of HB 1469, Dissolution of Marriage. This proposal was not successful. Similarly, in 2020, Maryland tried to pass similar legislation with the proposal of HB833, Divorce and Annulment – Removal of Barriers to Remarriage. This proposal was also not successful.

November 14, 2023 בס"ד

Get Laws Survey

District of Columbia

- Bill considered in 2015
- Tort-based, creates civil cause of action for damages.
- Bill language here.

Florida

- Bill considered in 2008
- Modeled after DRL 236 (b) (note Jewish legal issues that arise with this framing
- Bill language here.
- The Legislature raised constitutional concerns; potential issues with viability of resulting Gets under Jewish law also raised.
- Additional resources: here and here.

Maryland

- Late 1990s/ early 200s effort
    - Considered Get law in 2000 session
    - Modeled after DRL 253
    - Oral testimony came with significant pushback, largely around why this was a matter for the state
    - Bill language here.
    - Additional resources: article
- 2007 effort
    - Led by Sen. Cheryl Kagan.
    - Also modeled after DRL 253, with help of Nathan Lewin
    - Oral testimony came with significant pushback, largely around why this was a matter for the state.
    - Bill died in process.
    - Bill language here.
    - Additional Resources: Here,here.

New York

- DRL 253–bill language here.
- DRL 236 (b)--bill language here.

Pennsylvania

- The term “barriers to remarriage” is redefined in an amendment to P.L. 63 No.26

If at First You Don't Succeed, try, try again!

Mediation Tips

Jeffrey Fiorello, Esq. &
Jessica Ragno Sprague, Esq.

Rule 1:40-5 Governs mediation in Family Part Matters, as to procedure and process. However, the success or failure of a mediation doesn't usually depend on the process. What and how we choose to conduct a mediation is much more likely to assist in producing a successful resolution of all or a part of the matter. But, even with best intentions, some cases present difficult issues or personalities which may make impasse seem inevitable. Notwithstanding, there are some tips which may assist to bring a mediation back on course to resolve.

1. Try and get something resolved early on. Even if it is a simple issue, showing the Parties that Mediation works, encourages them to "buy in" to the process, and provide hope that the rest of the matter may be settled as well.

2. You may need more than 1 session. Family matters are often complex and can not be resolved with only one session of mediation. Scheduling a follow up session, can be very useful. However, try to keep the parties engaged between sessions. If there is additional information needed, give the Parties "homework" to return with additional information, needed to resolve the matter.

3. Don't get stuck on a difficult issue. Just because you can't resolve your 1st issue, doesn't mean that you can't resolve other issues in the case. Returning to the difficult issue after having resolved the rest of the matter can provide momentum which may make that difficult issue fall into place. Seeing how the rest of the matter is resolved, can assist to bring that difficult, remaining issue into perspective for the Parties.

4. Don't be afraid to walk away. The treat of impasse can be helpful, but it should be used sparingly. Every time a party is not getting their way shouldn't result in a best and final threat. However, if one party has already compromised significantly more than the other party, on an important issue, making an offer as a "take it or leave it" proposition, can be effective. Such an offer may be more successful if the other party is given a day or so to consider such an offer.

5. Sometimes the desired result is met for both parties, through substantially different conversations with each side. A resolution is what is desired. If both parties are satisfied with the settlement how they arrived at the concluded settlement may not be through the same approach. When a mediation summary is presented, don't be surprised if the summary is vague on why each party agrees with the resolution.

6. You don't have to settle everything. There are other avenues of Alternate Dispute Resolution, which are available to assist:

a. Parent Coordination: if a matter resolves, with the exception of a few minor issues in the parenting plan, the parties can bring that issue to a Parent Coordinator to assist in resolving such an issue.

b. If you resolve certain issues, you may choose to submit the remaining issues to an Arbitrator to try unsettled issues. Buy you are limiting the scope of what is being decided. Stipulate to what is resolved, and leave the remaining issue(s) for adjudication by the Arbitrator.

These are just some of the things which can be done to avoid impasse, and resolve a matter. Mediation and other Alternate Dispute Resolution Programs are designed to allow creativity. The creativity isn't exclusively reserved for the resolved outcome. Creativity can extend to the process as to how you arrive at that outcome. Don't be afraid to think outside of the box and take risks in attempting settlement.

Caution
As of: March 7, 2024 1:58 PM Z

Minkin v. Minkin

Superior Court of New Jersey, Chancery Division, Bergen County

July 22, 1981, Decided

M-11721-78

Reporter
180 N.J. Super. 260 *; 434 A.2d 665 **; 1981 N.J. Super. LEXIS 653 ***

BRENDA MINKIN, PLAINTIFF, v. BARRY MINKIN, DEFENDANT

Core Terms

religious, marriage, religion, ketuba, parties, remarry, public policy, ceremony

Case Summary

Procedural Posture
Plaintiff wife sought an order requiring defendant husband to obtain a Jewish ecclesiastical divorce after defendant filed a claim for a divorce on grounds of adultery.

Overview

Plaintiff wife filed a motion post judgment to require defendant husband to obtain and pay for a Jewish ecclesiastical divorce or "get." Under Jewish law, only the husband could obtain the get and without it the wife could not remarry. The parties were married in a Jewish ceremony, known as a "ketuba" where defendant agreed to give plaintiff a get if he alleged an act of adultery on the part of plaintiff. The court reasoned that in the ketuba, a marriage contract was entered into. The ketuba did not require anything that was against public policy. As a result, the court held the marriage contract was enforceable unless enforcement violated the U.S. Const. amend. I. The court obtained the expertise of various rabbis and concluded that a get did not require any religious ceremony, a rabbi's presence, or belief in any doctrine or creed by defendant. Because obtaining a get was not a religious act, the court found that no violation of U.S. Const. amend I would occur by ordering defendant to specifically enforce the marriage contract and obtain a get.

Outcome
The court determined that plaintiff wife and defendant husband had entered into a marriage contract where defendant agreed to obtain a Jewish ecclesiastical divorce if he alleged that plaintiff committed adultery. The court ordered the specific enforcement of the contract and found no First Amendment violation because it concluded that obtaining the divorce was not a religious act.

LexisNexis® Headnotes

Contracts
Law > Defenses > Unconscionability > General Overview

Family Law > Marital Duties & Rights > General Overview

HN1 **Defenses, Unconscionability**

A court of equity will enforce a contract between husband and wife if it is not unconscionable to do so and if the performance to be compelled is not contrary to public policy.

Contracts Law > Defenses > Public Policy Violations

HN2 **Defenses, Public Policy Violations**

An agreement is against public policy if it is injurious to the interest of the public, contravenes some established interest of society, violates some public statute, is against good morals, tends to interfere with the public welfare or safety, or, as it is sometimes put, if it is at war with the interests of society and is in conflict with public morals.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Religion > Establishment of Religion

HN3[] **Freedom of Religion, Establishment of Religion**

To pass muster under the establishment clause the law in question, first, must reflect a clearly secular legislative purpose, second, must have a primary effect that neither advances nor inhibits religion, and, third, must avoid excessive entanglement with religion.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Religion > Establishment of Religion

Constitutional Law > ... > Fundamental Freedoms > Freedom of Religion > General Overview

Constitutional Law > ... > Fundamental Freedoms > Freedom of Religion > Free Exercise of Religion

HN4[] **Freedom of Religion, Establishment of Religion**

The establishment clause bars a state from placing its official support behind a religious belief, while the free exercise clause bars a state from interfering with the practice of religion by its citizens. This prohibition applies to the judiciary as well as the executive and legislative branches of government.

Counsel: [*1]** *Lucianna, Bierman & Stillman*, for plaintiff (*Steven Stillman* of counsel).

Ferro, Lamb & Kern, for defendant (*Ralph Ferro* of counsel).

Judges: Minuskin, J.S.C.

Opinion by: MINUSKIN

Opinion

[*261] [665]** Plaintiff wife moved post judgment for an order requiring the defendant to obtain and pay for the costs of a Jewish ecclesiastical divorce known as a "*get*." [1]

[*262] The significance of her motion is that only a husband may secure **[***2]** the *get* and without it the wife cannot remarry under Jewish law.

The issues are:

(1) Whether the parties have entered into a contract enforceable by this court, and

(2) Whether the relief sought by plaintiff would unconstitutionally infringe upon defendant's First Amendment right of exercise of religious freedom.

The parties were married in a Jewish ceremony where they entered into a contract, called a "*ketuba*," in which they **[**666]** agreed to conform to the provisions of the laws of Moses and Israel. [2] These laws require the husband to give his wife a *get* when he alleges an act of adultery on his wife's part. In the instant case the husband counterclaimed for divorce on the ground of adultery, giving rise to the wife's claim to require her husband to secure a *get*. The husband has refused and opposes any order to compel him to do so, claiming that such an order would violate the Establishment of Religion Clause of the First Amendment. The wife asserts that without the *get* she would be effectively restrained from remarrying in a manner consistent with her religious beliefs.

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[1] Acquisition of a *get* is unique since it may only be obtained by the husband. See 6 *Encyclopedia Judaica*, 132 (1971).

> Execution of the Divorce. Divorce is carried into effect by the bill of divorcement being written, signed, and delivered by the husband to his wife. It is written by a scribe upon the husband's instruction to write "for him, for her and for the purpose of a divorce." The materials used in the writing must belong to the husband and the scribe formally presents them as an outright gift to the husband before writing the Get.

[2] Every Jewish marriage calls for the execution by the parties of an agreement called the "*ketuba*." The *ketuba* obligates the marital partners to comply with the laws of Moses and Israel. Certain rights and privileges as defined in those laws are granted to the wife by the husband. The consideration in the contract is the giving by the wife of her dowry and the husband obligating himself to support and care for his wife during the marriage and to comply with the laws of Moses and Israel. *See Encyclopedia Judaica, supra*.

[*3]** To compel the husband to secure a *get* would be to enforce the agreement of the marriage contract (*ketuba*). ***HN1***[⬆] A court of equity will enforce a contract between husband and wife if it is not unconscionable to do so and if the performance to be compelled is not contrary to public policy. *See* *Garlinger v. Garlinger, 129 N.J. Super. 37 (Ch. Div. 1974)*; *Schlemm v. **[*263]** Schlemm, 31 N.J. 557 (1960)*; *Equitable Life Assur. Soc. of U.S. v. Huster, 75 N.J. Super. 492 (App.Div. 1962)*.

What constitutes an agreement against public policy was defined in *Garlinger, supra*, where the court said,

> ***HN2***[⬆]
>
> An agreement is against public policy if it is injurious to the interest of the public, contravenes some established interest of society, violates some public statute, is against good morals, tends to interfere with the public welfare or safety, or, as it is sometimes put, if it is at war with the interests of society and is in conflict with public morals. *17 Am.Jur.2d, Contracts, § 179* at 541. [*129 N.J. Super. at 40*].

In the instant case the *ketuba* contract requires the participants to comply with certain reciprocal obligations pertaining **[***4]** to the marriage. For example, the wife is to perform the role of homemaker and to supply a dowry; the husband is to support and care for the wife. The *ketuba* is devoid of any requirement that could be construed to be against public policy. No interest of society is affected or impaired by its provisions, nor does it conflict with public morals. On the contrary, its purpose is obviously to promote a successful marital relationship and its enforcement, therefore, actually advances public policy. The contract simply calls for defendant, in securing a *get*, to do that which he agreed to do. Without compliance plaintiff cannot remarry in accordance with her religious beliefs. For these reasons the contract should be specifically enforced.

The question of whether an order of this court for specific performance of the *ketuba* constitutes violation of defendant's First Amendment rights remains to be determined. Authority to permit the issuance of such an order appears in *Koeppel v. Koeppel, 138 N.Y.S.2d 366 (Sup.Ct. 1954)*, and *Rubin v. Rubin, 75 Misc.2d 776, 348 N.Y.S.2d 61 (Family Ct. 1973)*. In *Koeppel*, where the facts parallel the instant case, **[***5]** the court said:

> Defendant has also contended that a decree of specific performance would interfere with his freedom of religion under the Constitution. Complying with his agreement would not compel the defendant to practice any religion, not even the Jewish faith to which he still admits adherence (paragraph Second of the complaint not denied in the answer). His appearance before the Rabbinate to answer questions and give evidence needed by them to make a decision is not a profession of faith. Specific performance herein would merely require the defendant to do what he voluntarily agreed to do. [at 373]

[*264] **[**667]** The *Koeppel* and *Rubin* opinions are within the standards promulgated by the U.S. Supreme Court in its landmark holding of *Committee for Public Education and Religious Liberty v. Nyquist, 413 U.S. 756, 772-773, 93 S.Ct. 2955, 2965-2966, 37 L.Ed.2d 948, 962-963 (1973)*. *See, also,* *Marsa v. Wernik, 86 N.J. 232, 246 (1980)*. The *Nyquist* court set forth a three-prong test for determining whether an act violates the Establishment Clause of the First Amendment.

> . . . ***HN3***[⬆] [T]o pass muster under the Establishment Clause **[***6]** the law [3] in question, first, must reflect a clearly secular legislative purpose, second, must have a primary effect that neither advances nor inhibits religion, and, third, must avoid excessive entanglement with religion. [*Nyquist, supra 413 U.S. at 773, 93 S.Ct. at 2965*.]

To determine whether enforcing the marriage contract would violate the three-prong test, and because "this issue is one of the most sensitive areas in the law," the court on its own motion requested the testimony of several distinguished rabbis [4] well **[*265]** versed in

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[3] ***HN4***[⬆] The Establishment Clause bars a state from placing its official support behind a religious belief, while the Free Exercise Clause bars a state from interfering with the practice of religion by its citizens. This prohibition applies to the judiciary as well as the executive and legislative branches of government. *See* *In re Adoption of E., 59 N.J. 36, 51 (1971)*.

[4] Rabbis:

> *Rabbi Macy A. Gordon*: Master's degree from Columbia University; Ph. D., Yeshiva University, in Jewish Education; ordained rabbi in 1956; on the Religious Studies faculty at Yeshiva University; chairman of the Rabbinical Council of Bergen County; vice-president of the Rabbinical Council of New Jersey; member of the executive board of commission of the Rabbinical Council of America; member of the Beth Din Commission of the

Jewish law, and one of whom (Rabbi Richard Kurtz) is also a practicing attorney **[***7]** specializing in matrimonial law.

[*8]** Rabbi Macy Gordon defined the *get* as a written document of severance, authorized by the husband and delivered to his wife, which states that all marital bonds between them have been severed. He stated that a Jewish couple upon marriage enters into a *ketuba*, which is essentially a civil contract delineating the obligations of the parties during the marriage. The marriage is severable only by the death of one of the parties or by the acquisition of a *get*. Failure of the husband to secure the *get* places the wife in the position of an "*aguna*" so that she is precluded from remarrying. He said that the *get* does not involve a religious ceremony or require a rabbi's presence, and although the husband is required to take the initiative, he does not have to be a believer, state any doctrine or creed, or even acknowledge his Jewishness. Because of this, he concluded that the acquisition of a *get* is not a religious act, but a severance of a contractual relationship between two parties.

Rabbi Judah Washer agreed that a *get* is a civil document for the same reasons, adding that the document contains no reference to God's name. In addition, in his opinion, **[***9]** a court order requiring the husband to secure the *get* would not be an interference with religion since the *get* does not affect the religious feelings of people, but is only concerned with the right of the wife to remarry.

[668]** Rabbi Menahem Meier testified that Jewish law cannot be equated with religious law, but instead is comprised of two components -- one regulating a man's relationship with God and **[*266]** the other regulating the relationship between man and man. The *get*, which has no reference to God but which does affect the relationship between two parties, falls into the latter category and is, therefore, civil and not religious in nature.

Rabbi Richard Kurtz concurred with Rabbi Meier's opinion that Jewish law is divided into two components and that the *get* is clearly civil. He described the *get* as a general release document where the husband releases the wife and frees her to remarry in compliance with the *ketuba* contract.

Rabbi Dresner, a reform rabbi, was called by defendant and although he concluded that the acquisition of a *get* was a religious act, he said he would marry the plaintiff. However, the weight to be given to **[***10]** his testimony was weakened when he admitted that the other rabbis called to testify were "far better Jewish scholar[s] than myself."

Relying upon credible expert testimony that the acquisition of a *get* is not a religious act, the court finds that the entry of an order compelling defendant to secure a *get* would have the clear secular purpose of completing a dissolution of the marriage. Its primary effect neither advances nor inhibits religion since it does not require the husband to participate in a religious ceremony or to do acts contrary to his religious beliefs. Nor would the order be an excessive entanglement with religion. In addition to testimony to that effect, the court takes judicial notice that the Legislature has seen fit to authorize clergy to perform marriages and, in doing so, permits the use of a religious ceremony. See *N.J.S.A. 37:1-13*. Such conduct, as sanctioned by the Legislature, has never been considered to be an excessive entanglement with religion. The *get* procedure is a release document devoid of religious connotation and cannot be construed as any more religious than the marriage ceremony itself. Thus, the three-prong test protecting **[***11]** defendant pursuant to the First Amendment is satisfied. The court concludes that it may, without infringing on his constitutional rights, order defendant to specifically perform his contract.

Rabbinical Council of America.

Rabbi Judah Washer: Graduate of Yeshiva College; Ph. D. from University of Pittsburg; president of N.Y. Board of Rabbis; rabbi of the Jewish Center of Teaneck, N.J. since 1934.

Rabbi Menahem Meier: B.S. from the City College, New York; *Semikha*, Yeshiva University; Master's degree, Yeshiva University; Ph. D. from Brandeis University in Jewish Philosophy and Mysticism; past instructor at Yeshiva University High School; present founding principal of The Frisch School; chairman, Yeshiva University High School Principals Council of Greater New York; member, Rabbinical Council of America.

Rabbi Richard J. Kurtz: Yeshivah Ohelmoshe Elementary School; Yeshiva University (High School), Yeshiva College (received a teaching certificate); licensed teacher and principal of a Hebrew School; B.A. in Philosophy and Literature; postgraduate studies in comparative religion and semitic languages at Hunter College, Columbia and N.Y.U.; J.D. from Brooklyn Law School; rabbi of congregation 12 years; teacher at Yeshiva University; counsel to the Rabbinical Council of America.

Order may be entered accordingly.

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Cited
As of: March 7, 2024 2:01 PM Z

S.B.B. v. L.B.B.

Superior Court of New Jersey, Appellate Division

April 17, 2023, Argued; September 6, 2023, Decided

DOCKET NO. A-0305-21

Reporter
476 N.J. Super. 575 *; 302 A.3d 574 **; 2023 N.J. Super. LEXIS 95 ***

S.B.B.,[1] PLAINTIFF-RESPONDENT, v. L.B.B., DEFENDANT-APPELLANT.

Subsequent History: [*1]** Approved for Publication September 6, 2023.

Prior History: On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Union County, Docket No. FV-20-1159-21.

Core Terms

video, harassment, violence, incite, privacy, press, broker's, trial court, dissemination, protections, message, communicated, credible, invasive, boycott, divorce, website, courts, alarm, predicate act, proscribed, rabbinical, imminent, restraining order, free speech, true threat, annoyance, deference, informant, religious

Case Summary

Overview

HOLDINGS: [1]-Because there was no credible evidence that a wife's video criticizing her husband's refusal to agree to a traditional religious divorce incited or produced imminent lawless action or was likely to do so, the wife's speech did not fall within the narrow category of incitement exempted from protection under the First Amendment, *U.S. Const. amend. I*, and *N.J. Const. art. I, para. 6* but was instead a permissible means of seeking to put social pressure on the husband within the religious community; [2]-The entry of a final restraining order against the wife, based on harassment under *N.J.S.A. § 2C:33-4* as a predicate offense under *N.J.S.A. § 2C:25-19(a)(13)*, was error because a finding of a privacy violation relied upon an unsupported factual finding that the video was likely to incite acts of violence and the wife's ultimate goal of obtaining a divorce was lawful.

Outcome

Orders reversed.

LexisNexis® Headnotes

Civil Procedure > Appeals > Standards of Review > Questions of Fact & Law

HN1 **Standards of Review, Questions of Fact & Law**

An appellate court generally defers to a trial judge's findings of fact when supported by adequate, substantial, credible evidence. A Family Part judge's findings are reviewed in accordance with a deferential standard of review, recognizing the court's special jurisdiction and expertise in family matters.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Expressive Conduct

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

HN2 **Freedom of Speech, Expressive Conduct**

In cases implicating the First Amendment, *U.S. Const.*

[1] We use initials to protect the parties' privacy and the confidentiality of the proceedings in accordance with Rule 1:38-3(d)(10).

amend. I, an appellate court must conduct an independent examination of the record as a whole, without deference to the trial court. This obligation springs from the reality that the ultimate constitutional decision before the court is inextricably intertwined with the underlying facts, and so the court cannot render a decision on the constitutional question without examining the facts. Thus, it is incumbent upon the appellate court to make an independent examination of the whole record, to ensure that the judgment does not constitute a forbidden intrusion on the field of free expression.

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > Appeals > Standards of Review > Questions of Fact & Law

HN3[] Standards of Review, De Novo Review

While the presence of First Amendment, U.S. Const. amend. I, issues diminishes a reviewing court's deference to a trial court's general fact-finding, the specific deference owed to the trial court's credibility findings remains unchanged. Appellate courts owe deference to the trial court's credibility determinations because it has a better perspective than a reviewing court in evaluating the veracity of a witness. However, a more exacting standard governs review of the trial court's legal conclusions. Indeed, a trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference. Accordingly, the appellate court reviews the trial court's legal conclusions de novo.

Civil Procedure > Remedies > Injunctions > Temporary Restraining Orders

Family Law > Family Protection & Welfare > Cohabitants & Spouses > Abuse, Endangerment & Neglect

Evidence > Burdens of Proof > Preponderance of Evidence

Family Law > Family Protection & Welfare > Cohabitants & Spouses > Services

HN4[] Injunctions, Temporary Restraining Orders

In order to grant a final restraining order under the Prevention of Domestic Violence Act, N.J.S.A. §§ 2C:25-17 to 2C:25-35, a trial court must make certain findings pursuant to a two-step analysis. First, the court must determine whether the plaintiff has proven, by a preponderance of the credible evidence, that one or more of the predicate acts set forth in N.J.S.A. § 2C:25-19(a) has occurred. Harassment, under N.J.S.A. § 2C:33-4, is among the enumerated predicate offenses. § 2C:25-19(a)(13). Second, if the court finds that the defendant has committed a predicate act of domestic violence, the court must then determine whether it should enter a restraining order that provides protection for the victim. In making that determination, the guiding standard is whether a restraining order is necessary, upon an evaluation of the factors set forth in N.J.S.A. § 2C:25-29(a)(1) to (6), to protect the victim from an immediate danger or to prevent further abuse. The statutory factors include the previous history of domestic violence; the existence of immediate danger to person or property; the financial circumstances of the parties; the best interests of the victim and any child; and the existence of an out-of-state restraining order. § 2C:25-29(a).

Criminal Law & Procedure > Criminal Offenses > Crimes Against Persons > Stalking

HN5[] Crimes Against Persons, Stalking

A person commits harassment if, with purpose to harass another, he or she makes, or causes to be made, one or more communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm. N.J.S.A. § 2C:33-4(a). A violation of § 2C:33-4(a) requires the following elements: (1) the defendant made or caused to be made a communication; (2) the defendant's purpose in making or causing the communication to be made was to harass another person; and (3) the communication was in one of the specified manners or any other manner similarly likely to cause annoyance or alarm to its intended recipient.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

Criminal Law & Procedure > Criminal

Offenses > Crimes Against Persons > Stalking

HN6 **Fundamental Freedoms, Freedom of Speech**

N.J.S.A. § 2C:33-4(a) does not proscribe mere speech, use of language, or other forms of expression. No statute could do so, as the First Amendment, U.S. Const. amend. I, permits regulation of conduct, not mere expression. Instead, the substantive criminal offense proscribed by § 2C:33-4(a) is directed at the purpose behind and motivation for making or causing the communication to be made. Thus, purpose to harass is critical to the constitutionality of the harassment offense.

Criminal Law & Procedure > ... > Acts & Mental States > Mens Rea > Purpose

HN7 **Mens Rea, Purpose**

A person acts purposely with respect to the nature of his conduct or a result thereof if it is his conscious object to engage in conduct of that nature or to cause such a result. N.J.S.A. § 2C:2-2(b)(1).

Criminal Law & Procedure > ... > Acts & Mental States > Mens Rea > Purpose

Evidence > Inferences & Presumptions > Inferences

Criminal Law & Procedure > Criminal Offenses > Crimes Against Persons > Stalking

HN8 **Mens Rea, Purpose**

A defendant's mere awareness that someone might be alarmed or annoyed is insufficient to establish a purpose to harass. Likewise, a victim's subjective reaction alone will not suffice; there must be evidence of the improper purpose. Still, a finding of a purpose to harass may be inferred from the evidence presented, and common sense and experience may inform that determination.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

Criminal Law & Procedure > Criminal Offenses > Crimes Against Persons > Stalking

HN9 **Fundamental Freedoms, Freedom of Speech**

N.J.S.A. § 2C:33-4(a) is aimed not at the content of the offending statements but rather at the manner in which they were communicated. Indeed, many forms of speech are intended to annoy. Speech is not criminalized, even if intended to annoy, where the manner of speech is non-intrusive.

Constitutional Law > ... > Fundamental Freedoms > Judicial & Legislative Restraints > Overbreadth & Vagueness of Legislation

Governments > Legislation > Vagueness

Criminal Law & Procedure > Criminal Offenses > Crimes Against Persons > Stalking

HN10 **Judicial & Legislative Restraints, Overbreadth & Vagueness of Legislation**

In order to protect against unconstitutional vagueness and overbreadth in N.J.S.A. § 2C:33-4(a), the phrase "any other manner likely to cause annoyance or alarm" has been interpreted narrowly. The three enumerated modes of prohibited communication proscribed under the harassment statute—anonymous, at extremely inconvenient hours, and in offensively coarse language—each can be classified as being invasive of the recipient's privacy. The Legislature intended the catchall provision of § 2C:33-4(a) to encompass only those types of communications that also are invasive of the recipient's privacy. Thus, in order to satisfy the catchall element, a communication must intolerably interfere with a person's reasonable expectation of privacy.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Assembly

Criminal Law & Procedure > Criminal Offenses > Crimes Against Persons > Stalking

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

HN11 **Fundamental Freedoms, Freedom of Assembly**

Laws may not transgress the boundaries fixed by the Constitution for freedom of expression. Thus, as with any speech-regulating statute, the reach of N.J.S.A. § 2C:33-4 is cabined by the federal and state constitutions. The First Amendment, U.S. Const. amend. I, provides in part that Congress shall make no law abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble. Similarly, N.J. Const. art. I, para. 6 proclaims in part that every person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press. So greatly do those in New Jersey cherish the rights of free speech that the New Jersey Constitution provides even broader protections than the familiar ones found in its federal counterpart. In preserving and advancing those broad constitutional commands, New Jersey's courts have been vigilant, jealously guarding the rights of the people to exercise their right to freely speak, although their message may be one that is offensive to some, or even to many, people.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Advocacy of Illegal Action

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

HN12[] **Freedom of Speech, Advocacy of Illegal Action**

There is no categorical harassment exception to the Free Speech Clause of the First Amendment, U.S. Const. amend. I. Speech cannot be transformed into criminal conduct merely because it annoys, disturbs, or arouses contempt. The First Amendment protects offensive discourse, hateful ideas, and crude language because freedom of expression needs breathing room and in the long run leads to a more enlightened society. To that end, the right to free speech also includes the right to exhort others to take action upon that speech. It extends to more than abstract discussion, unrelated to action. The First Amendment protects the right to coerce action by threats of vilification or social ostracism.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

HN13[] **Fundamental Freedoms, Freedom of Speech**

Even speech designed to prompt others to act through social pressure and the threat of social ostracism does not lose its protected character under the First Amendment, U.S. Const. amend. I, simply because it may embarrass others or coerce them into action.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Advocacy of Illegal Action

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

HN14[] **Freedom of Speech, Advocacy of Illegal Action**

In general, the mere tendency of speech to encourage unlawful acts is not a sufficient reason for banning it. The government may not prohibit speech because it increases the chance an unlawful act will be committed at some indefinite future time. Thus, where a call to others to act neither conveys a plan to act nor is likely to produce imminent danger, it may not be criminalized, despite its unsettling message. Although there is a narrow exception for speech that is directed to inciting or producing imminent lawless action and is likely to incite or produce such action, even urging others to violence is shielded unless the statement is designed and likely to produce immediate action.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Advocacy of Illegal Action

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

HN15[] **Freedom of Speech, Advocacy of Illegal Action**

The constitutional guarantees of free speech and free press do not permit a state to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action. Conviction for mere advocacy, unrelated to its tendency to produce forcible action, is

unconstitutional because it intrudes upon the freedoms guaranteed by the *First* and Fourteenth Amendments, *U.S. Const. amends. I*, *XIV*.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Advocacy of Illegal Action

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Fighting Words

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

HN16[] **Freedom of Speech, Advocacy of Illegal Action**

True threats are not protected by the First Amendment, *U.S. Const. amend. I*. True threats encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals. The prohibition on true threats protects individuals from the fear of violence and from the disruption that fear engenders, in addition to protecting people from the possibility that the threatened violence will occur. However, evidence of an atmosphere of general intimidation is not enough to find a true threat.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

HN17[] **Fundamental Freedoms, Freedom of Speech**

The First Amendment, *U.S. Const. amend. I*, does not prohibit name-calling and protects vehement, caustic, and sometimes unpleasantly sharp attacks, as well as language that is vituperative, abusive, and inexact. Similarly, threats of vilification or social ostracism do not lose their protected status.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Religion > Free Exercise of Religion

HN18[] **Freedom of Religion, Free Exercise of Religion**

Civil courts may not become entangled in religious proceedings if resolution requires the interpretation of religious doctrine.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

HN19[] **Fundamental Freedoms, Freedom of Speech**

First Amendment, *U.S. Const. amend. I*, protections cannot be vitiated on unsubstantiated findings of fact.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Advocacy of Illegal Action

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Fighting Words

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

HN20[] **Freedom of Speech, Advocacy of Illegal Action**

Even an overt invocation of violence is insufficient to strip a statement of First Amendment, *U.S. Const. amend. I*, protection. Instead, to qualify as incitement and lose First Amendment protection, a communication must be both directed to inciting or producing imminent lawless action and likely to incite or produce such action. The difference between lawful and lawless action may be identified easily by reference to its purpose.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

HN21[] **Fundamental Freedoms, Freedom of Speech**

The normal method of deterring unlawful conduct is to impose an appropriate punishment on the person who engages in it. It would be quite remarkable to hold that speech by a law-abiding speaker can be suppressed in order to deter conduct by a non-law-abiding third party.

Criminal Law & Procedure > Criminal Offenses > Crimes Against Persons > Stalking

HN22[] **Crimes Against Persons, Stalking**

N.J.S.A. § 2C:33-4 criminalizes only those private annoyances that are not entitled to constitutional protection.

Counsel: Jane J. Felton argued the cause for appellant (Skoloff & Wolfe, PC, attorneys; Jane J. Felton, of counsel and on the briefs; Michaela L. Cohen, Andrew J. Rhein and Steven B. Gladis, on the briefs).

LisaBeth Klein argued the cause for respondent.

Shira Wisotsky argued the cause for amici curiae The American Civil Liberties Union of New Jersey Foundation, The American Civil Liberties Union Foundation, The Jewish Orthodox Feminist Alliance, Sanctuary for Families, and Unchained at Last (The American Civil Liberties Union of New Jersey Foundation, and Vera Eidelman (The American Civil Liberties Union Foundation) of the New York and California bars, admitted pro hac vice, attorneys; Shira Wisotsky, Jeanne LoCicero, Sandra S. Park, and Vera Eidelman, on the brief).

Karin Duchin Haber argued the cause for amici curiae The Organization for the Resolution of Agunot, and Shalom Task Force (Haber Silver & Simpson, attorneys; Karin Duchin Haber, of counsel and on the brief).

Judges: Before Judges Gooden Brown, DeAlmeida and Mitterhoff.

Opinion by: GOODEN BROWN **[***2]**

Opinion

[579] [*584]** The opinion of the court was delivered by

GOODEN BROWN, J.A.D.

Defendant L.B.B. appeals from the entry of a final restraining order (FRO) entered against her in favor of her estranged husband, plaintiff S.B.B., pursuant to the *Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -35*. The FRO was based on the predicate act of harassment. The communication underlying the trial judge's finding of harassment was defendant's creation and dissemination of a video accusing her estranged husband of improperly withholding a *get*, a Jewish bill of divorce, and asking community members to "press" her husband to deliver the *get*. Because defendant's communication constituted constitutionally protected free speech, we reverse.

I.

We glean these facts from the record. Following a twenty-year marriage that produced four children, the parties, both practicing members of the Orthodox Jewish faith, separated and have been in the process of obtaining a divorce since mid-2019. The process has been contentious **[**580]** and acrimonious [2] and further complicated by a dispute over a get—a religious bill of divorce.

> **[*585]** In the Orthodox Jewish tradition, a married woman cannot obtain a religious divorce until her husband provides her with a contract called a "*get*" (pluralized as "*gittin* ***[***3]***"), which must, in turn, be signed by an "*eid*," or witness. A woman who attempts to leave her husband without obtaining a *get* becomes an "*agunah*" (pluralized as "*agunot*"), which subjects her to severe social ostracism within the Orthodox Jewish community. *Agunot* may seek relief in a "*beth din*," a rabbinical court presided over by a panel of three rabbis. The *beth din* may then issue "*psak kefiah*," or contempt orders authorizing sanctions, which include, but are not limited to, the use of force against a husband to secure a *get*.
>
> [*United States v. Stimler, 864 F.3d 253, 259 (3d Cir. 2017)*, *aff'g United States v. Epstein, 91 F. Supp. 3d 573, 582 (D.N.J. 2015)*, *rev'd in part on other grounds sub nom. United States v. Goldstein, 902 F.3d 411 (3d Cir. 2018)*.]

Sometime in March 2021, defendant made a video addressing the *get* dispute. In the video, defendant asserted plaintiff had refused to give her a get and asked anyone who could to "press" plaintiff to give her a *get*. On March 19, 2021, after the video was made, plaintiff obtained a TRO against defendant based on a domestic violence complaint alleging harassment. To support the complaint, plaintiff testified at an ex parte hearing that beginning around 3:00 p.m. on March 12, 2021, he received numerous phone calls from unknown numbers, a photograph of himself identifying him as a

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[2] In April 2020, defendant obtained a temporary restraining order (TRO) against plaintiff. Following a protracted FRO hearing during the COVID-19 pandemic, the TRO was dismissed on March 11, 2021.

get refuser and calling on others **[***4]** to "tell him to free his wife," and, ultimately, the actual video defendant had composed.

When plaintiff answered one of the incoming calls, the caller identified himself as being "connected" to various protest "networks" and pressured plaintiff to turn over the *get*. During his testimony, plaintiff explained his belief that the Jewish community reacts violently to the withholding of a *get* and that identifying him as a "*get* refuser" subjected him to kidnappings and brutal beatings. Plaintiff denied withholding the *get*, claimed he had given the *get* to the Chief Rabbi of Elizabeth in June 2020, and averred that he was "terrified" of being "harm[ed]" by the "people . . . calling [him]" in response to defendant's accusation and plea in the video. To further support his complaint, plaintiff recounted a history of emotional abuse largely by name-calling throughout the course of the marriage. Subsequently, on March 25, 2021, plaintiff amended the TRO to add cyber harassment as a predicate act.

[*586] Defendant moved to dismiss the TRO, arguing any alleged dissemination by defendant was protected free speech. Relying on *State v. Burkert, 231 N.J. 257, 174 A.3d 987 (2017)*, the trial judge denied the motion. On April 8, 2021, an FRO trial was conducted **[***5]** via Zoom, during which plaintiff and defendant testified. Both parties were represented by counsel.

During his testimony, plaintiff confirmed that he and defendant were separated. He lived with his parents while defendant remained in the marital home with their children. He testified that he received a call on Friday, March 12, 2021, around 3:00 p.m., on the FaceTime videoconferencing app. Plaintiff did not answer, but was able to see that thirty separate phone numbers **[**581]** had joined the call, none of which were familiar to him. The group attempted to call back roughly ten more times before plaintiff put his phone in airplane mode. About half an hour later, when he turned his reception back on, the calls resumed. Initially, the calls seemed "weird," but then plaintiff became "alarmed" by the calls. Plaintiff continued to ignore the calls and blocked the associated numbers.

Two days later, on March 14, 2021, plaintiff received a message from his sister in Israel. The message contained a photo of himself that he had posted as his "status" on the WhatsApp messaging app. Above the photo was written:

> This man has refused to give his wife a get. His name is [S.B.B.]. He is holding his wife chained **[***6]** for over a year and a half. He lives in Elizabeth NJ. If you see him, tell him to free his wife. #FREE[L.B.B.].

In addition to his sister, plaintiff received the photo from one other person he knew.

When plaintiff saw the photo, he was "shock[ed]," "embarrassed," and "scared." Plaintiff explained that the photo would give community members the impression that he was "a *get* refuser" which "[could] be dangerous for [him]." Plaintiff testified that he had witnessed his father "[getting] beat[en] up" because "he was a *get* refuser." Additionally, plaintiff denied the accusation and was adamant that he was not a *get* refuser, having given the *get* to the Chief Rabbi of Elizabeth. His "understanding" was that **[*587]** the *get* would be provided to defendant "within [twenty-four] to [forty-eight] hours after the civil divorce [was] done in court." He also suggested that the Chief Rabbi had the discretion to give the *get* to defendant at any time. He explained his view that only a "*beth din*" could declare someone a *get* refuser.

Between March 14 and 15, 2021, plaintiff received numerous communications, including approximately ten "private or anonymous" calls, none of which he answered. In addition to the anonymous **[***7]** calls, on the afternoon of March 14, 2021, plaintiff received a message on WhatsApp from the Chief Rabbi's son. The message contained a video showing defendant speaking to the camera, saying:

> Hi. My name is [L.B.B.]. I'm a mother of four children and I live in the United States without any family for the last seventeen years. In August 2019, my husband left the house and we're trying to get an agreement. We still did not get any of that. I tried to reach . . . the community Rabbi[ ] for help, and he said he will, and he got the *get* from my husband, but he is holding it for over a year now. The only way [the Chief Rabbi] can give it to me is by my husband permission. I'm seeking for help. I'm asking whoever can, please help me. To press [the Chief Rabbi] to let go of my *get* or to press my husband to give [the Chief Rabbi] the proof to give me the *get*. To release the *get*. Please, I really need this help. I want this *get*. I want this nightmare to be behind me. Whoever gonna help me, *bracha* [3] on his head.

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[3] *Bracha* translates to "blessing." Joyce Eisenberg & Ellen Scolnic, *Dictionary of Jewish Words* 21 (2006).

Several friends also sent the video to plaintiff. Plaintiff believed defendant posted the video "[b]ecause she wanted people to press [him] to give her a ***[***8]*** *get*." When specifically asked what he thought his wife meant by asking people to "press" him for the *get*, plaintiff answered:

> It can be anything. If we go by Jewish rules, old rules . . . . [y]ou take him, get him and beat him up until he says I will **[**582]** give it, the *get*. That's the old Jewish law about it. And people take action. Today it starts with protesting and then it gets to harming people that are *get* refusers.

At 10:21 p.m. on March 15, 2021, plaintiff received another call. This time, thinking the phone number looked "familiar," he answered. Plaintiff testified the caller introduced himself as "Hiam" and said he was "calling about the *get*." He identified himself as **[*588]** someone who "[knew] a lot of people" and was part of "different networks." According to plaintiff, Hiam told him if he did not give his wife a *get*, they would "come and protest next to [his] house." Hiam added "you know what happen[s] otherwise if you don't give a *get*." After Hiam refused to explain how he obtained plaintiff's phone number, plaintiff hung up. Plaintiff testified that, a moment later, Hiam called back, screaming at plaintiff and telling plaintiff he wanted "to meet [him]." Plaintiff hung up again. Plaintiff **[***9]** testified he felt threatened by Hiam's call, which, in conjunction with the FaceTime calls, the photograph, and the video, made plaintiff "very scared." Plaintiff specified that although he was not afraid of defendant in her individual capacity, he was afraid of "others . . . influenced by her."

Plaintiff also testified about a history of verbal abuse throughout the twenty-year marriage. He recounted unspecified instances throughout the marriage when defendant had stated during arguments that he was "nothing," "a zero," or "not good," all of which made him feel "like a worthless person." According to plaintiff, the last such instance occurred "in 2019."

At the end of plaintiff's case in chief but before defendant testified, defendant moved for a directed verdict. *See R. 4:37-2(b)*. The judge denied the motion. Thereafter, defendant testified through an interpreter that it was not her intent to harass plaintiff. She testified that she did not create the "#FREE[L.B.B.]" photo image and had no part in posting either the video or the photo on social media. Additionally, she was not part of any of the calls to plaintiff and did not know who made them. Defendant testified that the first time she saw the **[***10]** "#FREE[L.B.B.]" photo image was when a friend sent it to her, but acknowledged she was not concerned by the photo image. She also admitted creating the video around March 6, 2021, at the request of a rabbinical judge, and claimed she only sent the video to the rabbinical judge. She explained that "under [the Jewish] religion [the rabbinical judges] are to press on the husband to give the *get*."

[*589] On cross-examination, defendant acknowledged that she also sent the video to a therapist "friend" but was reluctant to divulge the friend's name and contact information for fear of "potential retribution." Defendant explained she did not believe that accusing plaintiff of withholding a *get* in the video would put him in danger of being threatened or hurt. When questioned about plaintiff's father's *get* refusal, defendant testified she was not aware of him being attacked. Rather, it was her understanding that he had "sat in jail" as a result of the refusal.

Following the trial, on April 22, 2021, the judge granted plaintiff an FRO. Among other things, the FRO continued the restraints contained in the TRO, which barred defendant from having "*any* oral, written, personal, electronic, or other form of **[***11]** contact or communication with [p]laintiff," and specifically ordered defendant to "remove any and all posts from all social media platforms requesting the '*get*' " and "cease and desist . . . creating and posting on all social media platforms."

In an oral decision supporting the issuance of the FRO, the judge found plaintiff **[**583]** credible and defendant not credible based on "demeanor," "body language," and the content of the testimony. Specifically, the judge remarked that plaintiff's "demeanor was straightforward," "[h]e didn't embellish" his testimony, "[h]e didn't fidget" while testifying, and his "testimony ma[de] sense." Conversely, according to the judge, defendant's "testimony didn't make much sense," particularly since she claimed she made the video for the rabbinical judges but addressed the plea in the video to anyone who could help her. Additionally, the judge pointed out that during questioning, defendant was "looking all over the room" and "there was a blank look in her face." [4]

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[4] At the outset, the judge noted that although she had previously denied defendant's application for an FRO against plaintiff, the judge was not influenced by her prior decision. In any event, there was no request for recusal.

Based on her credibility assessment, the judge found defendant "created the video" and "sent it to the community," rather than **[*590]** "the rabbi," in order "to get the *get*." Applying the elements of *subsection (a)* of the harassment **[***12]** statute, *N.J.S.A. 2C:33-4(a)*, to her factual findings, in accordance with the first prong of *Silver v. Silver, 387 N.J. Super. 112, 903 A.2d 446 (App. Div. 2006)*, the judge concluded plaintiff "met [his] burden by a preponderance of the evidence" of proving that defendant committed harassment. Specifically, the judge found that "while the end result" of making the video and sending it out into the community "might have been to get her *get* . . . , the way in which [defendant] went about getting that *get* was with a purpose to press, harass, annoy, [and] alarm [plaintiff]."

The judge also found that the communication was "invasive" of plaintiff's privacy, as proscribed by *N.J.S.A. 2C:33-4(a)*. *See State v. Hoffman, 149 N.J. 564, 583, 695 A.2d 236 (1997)*. Specifically, the judge found that because the video was sent to "the Jewish community,"

> the purpose of that communication was to infringe upon [plaintiff's] legitimate expectation of privacy not to . . . hav[e] . . . phone calls or . . . people come to the house or picket or call or threaten. But that was the purpose because in that community, that's what happened. You either go to jail, [or] you get beat when you're a *get* refuser.
>
> So putting that video and telling people to press her husband, to press him for that *get*, under the totality of the circumstances is a clear intrusion into [ ]his expectation **[***13]** of privacy and safety.

Critically, the judge rejected defendant's free speech claims, explaining that "one cannot hide behind the *First Amendment* when that communication is invasive of the recipient's privacy. The *First Amendment* cannot protect this kind of communication to incite, which is clearly invasive of [plaintiff's] safety and privacy." In assessing the threat to plaintiff's safety associated with being labeled a *get* refuser, the judge noted:

> Now there was no expert that came into this court to explain what a *get* is or the realities of the *get*. This [c]ourt is not taking judicial notice of . . . what a *get* refuser is. But in listening to the testimony of both parties it's clear that it is something serious in the Jewish community. [Plaintiff] testified that he watched his father be beaten because he was a *get* refuser. And I believe . . . defendant testified . . . that you can go to jail for being a *get* refuser.
>
> **[*591]** So the [c]ourt does glean from the testimony that being a *get* refuser in the Jewish community is a very serious allegation with substantial consequences, **[**584]** which is clear from the testimony under the totality of this case.

Because the judge found that plaintiff had proven the predicate act of harassment **[***14]** based solely on the video, the judge elected not to address the predicate act of cyber harassment.

Next, applying the second *Silver* prong and *N.J.S.A. 2C:25-29(a)*, the judge found that an FRO was "necessary to protect . . . plaintiff from this continued behavior, . . . [and] from having . . . defendant incite the community that her husband is a *get* refuser, which clearly puts him in a very dangerous position." In her analysis, the judge once again relied on her understanding that it "can incite violence when you call someone a *get* refuser." The judge noted that "[t]he existence of immediate danger to person or property" was "clear" because when "[y]ou tell the Jewish community that your husband is a *get* refuser," then "he is subject to danger period or imprisonment."

The judge explained that although plaintiff stated he was "not necessarily in fear of defendant herself," he was "in fear of th[e] continued invasion of his privacy and his safety . . . at the hands of [defendant] by her actions" and "people are entitled to feel safe" and "to be free of this continued abuse." The judge also found that "[t]he best interest" of plaintiff and the parties' children would be served by awarding the FRO because a **[***15]** third party "acting on defendant's request while the children [were] present . . . would put not only . . . plaintiff, but the children in danger." Although the judge did not find that the previous history of domestic violence over the years "shed[ ] much light on the *Silver* decision," under "the totality of the factors," the judge determined a restraining order was warranted.

Defendant moved for reconsideration. In support, defendant submitted a May 11, 2021, certification from Rabbi Daniel Shevitz, "an expert trained in the laws of Jewish divorce." Shevitz opined that defendant is an "*agunah*" or "chained woman." He explained that:

> **[*592]** In the Jewish tradition, once the marital bond has failed and the couple is no longer living together as husband and wife, the husband is obliged to write and deliver a *get*. Until then, the wife is not free of her marital responsibilities. . . . Any delay in granting the *get* causes her to be "chained" to a marriage in form only and is, in my

opinion, a form of abuse.

He further explained that even rabbinical courts lack the power to force a husband to grant a *get* and that as a result of the husband's unchecked authority, some men use *get* withholding as a form **[***16]** of extortion. Referring to a March 5, 2020, text message exchange between the parties, which showed plaintiff telling defendant that he would only issue the *get* if she first signed a divorce settlement agreement, Shevitz suggested that just such extortionist behavior might be occurring in this case.

Shevitz stated that in the quest to obtain a *get* from an intractable husband, "[f]or centuries, the only tool at the wife's disposal was invoking public sympathy and pleading her case to the broader community." He added that in recent years, "*agunot* (the plural of '*agunah*') have turned to social media with messages asking for community support" in a " 'social justice movement' designed to liberate women . . . using one of the only tools they have at their disposal—their voices." He opined that the video created by defendant was "precisely" such an attempt and appended an article to his certification supporting his opinion.

[585]** Defendant also submitted her own certification, in which she explained that plaintiff has not authorized the Chief Rabbi "to deliver the *get* until [she] agrees to his settlement demands" and "she felt [her] only reasonable recourse was to seek public sympathy to obtain a **[***17]** *get*." She added that her understanding, as someone whose first language was not English, was that " 'press' does not mean 'physically harm' " and she "never meant it that way." She acknowledged that "there have been news reports and federal lawsuits" about "those who do physically harm *get*-refusers," but stressed that she had "never been a part of that."

Following oral argument, on August 27, 2021, the judge denied defendant's motion as not meeting the standard for reconsideration. *See R. 4:49-2*. In a written opinion, the judge pointed out that **[*593]** Shevitz's certification could have been presented at the time of the initial hearing. Further, the judge found that whether defendant "is or is not an *agunah* under Jewish law" and whether plaintiff "did or did not satisfy the giving of the [*g]et*" were irrelevant. The judge also awarded plaintiff attorney's fees and costs in the amount of $10,035 as compensatory damages. *See* N.J.S.A. 2C:25-29(b)(4).

In this ensuing appeal of the April 22, 2021 and August 27, 2021 orders, defendant raises the following points for our consideration:

POINT ONE
THIS COURT MUST APPLY A HEIGHTENED STANDARD OF REVIEW. (NOT RAISED BELOW).

POINT TWO

THE *FIRST AMENDMENT* PROTECTED DEFENDANT'S FREEDOM TO MAKE AND DISSEMINATE **[***18]** THE VIDEO.

A. The Video Is Protected Speech Under The *First Amendment*.
B. Nothing Defendant Said Or Did Is Punishable As Incitement.
C. Affirming The Trial Court In This Case Would Render The Harassment Statu[te] Unconstitutionally Overbroad And Vague.
D. The FRO Is An Impermissible Prior Restraint On Defendant's Future Speech.
E. The FRO Violates Defendant's Right To Freely Exercise Her Religion.

POINT THREE
INDEPENDENT OF CONSTITUTIONAL CONCERNS, DEFENDANT'S VIDEO WAS NOT HARASSMENT.

A. The Manner In Which Defendant Communicated Did Not Violate The Harassment Statute.
B. The Video Did Not Intrude Into Plaintiff's Reasonable Expectation Of Privacy, And The Trial Court's Finding To The Contrary Was Based On An Unsubstantiated, False, And Prejudicial Characterization Of The Orthodox Jewish Community.

C. The Trial Court Found That Defendant Had A Legitimate Purpose In Making The Video - *i.e.*, To Get A *Get*.
D. The Trial Court Failed To Consider The Totality Of The Circumstances, As Our Law Requires.
E. The Trial Court Prejudicially Found Defendant Had A "Purpose To Harass" Before Even Hearing Defendant Testify.

F. The Trial Court Erred By Allowing Plaintiff To Pursue A Defamation Claim Artfully

Pleaded As Harassment. **[***19]**

POINT FOUR

[586] [*594]** THE TRIAL COURT MISSTATED AND MISAPPLIED THE *SILVER* TEST, AND THE PREREQUISITES FOR AN FRO WERE NOT MET.

A. The Court Did Not Address The N.J.S.A. 2C:25-29(a) Factors As The Law Required.

B. The Trial Court Misapplied *Silver* By Allowing Plaintiff's Alleged Subjective Fear To Dictate Whether An FRO Was Necessary.

C. The FRO Was Not Necessary To Protect Plaintiff.

POINT FIVE

THE TRIAL COURT'S COUNSEL FEE AWARD VIOLATED THE ENTIRE CONTROVERSY DOCTRINE AND WAS AN ABUSE OF DISCRETION.

We subsequently granted motions by seven organizations to appear as amici curiae and participate in oral argument in support of defendant's position. The organizations are: (1) the American Civil Liberties Union of New Jersey; (2) the American Civil Liberties Union; (3) the Jewish Orthodox Feminist Alliance; (4) Sanctuary for Families; (5) Unchained at Last; (6) the Organization for the Resolution of Agunot; and (7) Shalom Task Force.

II.

Our scope of review in these matters is well-established. ***HN1***[] We generally defer to the trial judge's findings of fact "when supported by adequate, substantial, credible evidence." *Cesare v. Cesare, 154 N.J. 394, 411-12, 713 A.2d 390 (1998)*. In particular, we "review the Family Part judge's findings in accordance with a deferential standard of review, **[***20]** recognizing the court's 'special jurisdiction and expertise in family matters.' " *Thieme v. Aucoin-Thieme, 227 N.J. 269, 282-83, 151 A.3d 545 (2016)* (quoting *Cesare, 154 N.J. at 413, 713 A.2d 390*).

HN2[] However, in cases implicating the *First Amendment*, we must "conduct an independent examination of the record as a whole, without deference to the trial court." *Hurley v. Irish-American Gay, Lesbian & Bisexual Grp. of Boston, Inc., 515 U.S. 557, 567, 115 S. Ct. 2338, 132 L. Ed. 2d 487 (1995)* (citing *Bose Corp. v. Consumers Union of U.S., Inc., 466 U.S. 485, 499, 104 S. Ct. 1949, 80 L. Ed. 2d 502 (1984)*); *see also Ward v. Zelikovsky, 136 N.J. 516, 536-37, 643 A.2d 972 (1994)* (applying the same rule in New **[*595]** Jersey). This obligation springs from the reality that the ultimate constitutional decision before the court is inextricably intertwined with the underlying facts, and so the court cannot render a decision on the constitutional question without examining the facts. *Ibid.* Thus, it is incumbent upon us to " 'make an independent examination of the whole record,' to ensure that 'the judgment does not constitute a forbidden intrusion on the field of free expression.' " *Ward, 136 N.J. at 536-37, 643 A.2d 972* (quoting *Milkovich v. Lorain J. Co., 497 U.S. 1, 17, 110 S. Ct. 2695, 111 L. Ed. 2d 1 (1990)*); *see also State v. Carroll, 456 N.J. Super. 520, 532, 196 A.3d 106 (App. Div. 2018)* (applying the same standard to Facebook posts to determine "whether [the] defendant's speech is protected by the *First Amendment*" in a cyber harassment and witness retaliation prosecution); *Rutgers 1000 Alumni Council v. Rutgers, 353 N.J. Super. 554, 567, 803 A.2d 679 (App. Div. 2002)* ("Independent review of the record below is required because this case involves a *First Amendment* question.").

HN3[] While the presence of *First Amendment* issues diminishes a reviewing court's deference to a trial court's general fact-finding, the specific deference owed to the trial **[***21]** court's credibility findings remains **[**587]** unchanged. *Hurley, 515 U.S. at 567, 115 S. Ct. 2338* (citing *Harte-Hanks Commc'ns, Inc. v. Connaughton, 491 U.S. 657, 688, 109 S. Ct. 2678, 105 L. Ed. 2d 562 (1989)*). "Appellate courts owe deference to the trial court's credibility determinations . . . because it has 'a better perspective than a reviewing court in evaluating the veracity of a witness.' " *C.R. v. M.T., 248 N.J. 428, 440, 259 A.3d 830 (2021)* (quoting *Gnall v. Gnall, 222 N.J. 414, 428, 119 A.3d 891 (2015)*). However, "[a] more exacting standard governs our review of the trial court's legal conclusions." *Thieme, 227 N.J. at 283, 151 A.3d 545*. Indeed, "[a] trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." *Rowe v. Bell & Gossett Co., 239 N.J. 531, 552, 218 A.3d 784 (2019)* (quoting *Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378, 658 A.2d 1230 (1995)*). "Accordingly, we review the trial **[*596]** court's legal conclusions de novo." *Thieme, 227 N.J. at 283, 151 A.3d 545*.

HN4[] In order to grant an FRO under the PDVA, a

trial court must make certain findings pursuant to a two-step analysis delineated in *Silver, 387 N.J. Super. at 125-27, 903 A.2d 446*. First, the court "must determine whether the plaintiff has proven, by a preponderance of the credible evidence, that one or more of the predicate acts set forth in *N.J.S.A. 2C:25-19(a)* has occurred." *Id. 387 N.J. Super. at 125, 903 A.2d 446*. Harassment, *N.J.S.A. 2C:33-4*, is among the enumerated predicate offenses. *N.J.S.A. 2C:25-19(a)(13)*.

Second, if the court finds that the defendant has committed a predicate act of domestic violence, the court must then determine whether it "should enter a restraining order that provides protection for the victim." *Silver, 387 N.J. Super. at 126, 903 A.2d 446*. In making **[***22]** that determination, "the guiding standard is whether a restraining order is necessary, upon an evaluation of the factors set forth in [*N.J.S.A. 2C:25-29(a)(1) to (6)*], to protect the victim from an immediate danger or to prevent further abuse." *Id. 387 N.J. Super. at 127, 903 A.2d 446*. The statutory factors include "[t]he previous history of domestic violence . . . ;" "[t]he existence of immediate danger to person or property;" "[t]he financial circumstances of the [parties];" "[t]he best interests of the victim and any child;" and "[t]he existence of" an out-of-state restraining order. *N.J.S.A. 2C:25-29(a)*.

Here, the judge's finding of the predicate act of harassment in violation of *N.J.S.A. 2C:33-4(a)* was based exclusively on defendant's creation and dissemination of the video. ***HN5***[↑] A person commits harassment if, "with purpose to harass another, he [or she] . . . [m]akes, or causes to be made, one or more communications anonymously or at extremely inconvenient hours, or in offensively coarse language, or any other manner likely to cause annoyance or alarm." *N.J.S.A. 2C:33-4(a)*.

> A violation of *subsection (a)* requires the following elements: (1) defendant made or caused to be made a communication; (2) defendant's purpose in making or causing the communication to be made was to harass another person; and (3) the communication **[*597]** was **[***23]** in one of the specified manners or any other manner similarly likely to cause annoyance or alarm to its intended recipient.
>
> [*Hoffman, 149 N.J. at 576, 695 A.2d 236*.]

HN6[↑] Our courts have decreed that *N.J.S.A. 2C:33-4(a)* "does not proscribe mere speech, use of language, or other forms of expression." *State v. L.C., 283 N.J. Super. 441, 450, 662 A.2d 577 (App. Div. 1995)* (citing *State v. Fin. Am. Corp., 182 N.J. Super. 33, 36-38, 440 A.2d 28 (App. Div. 1981)*). No statute could do so, **[**588]** as "[t]he *First Amendment to the federal Constitution* permits regulation of conduct, not mere expression." *Ibid.* (citing *State v. Vawter, 136 N.J. 56, 65-67, 642 A.2d 349 (1994)*); see, *e.g.*, *Murray v. Murray, 267 N.J. Super. 406, 410-11, 631 A.2d 984 (App. Div. 1993)* (holding that words alone, without "purposeful alarm or serious annoyance," were insufficient to sustain a domestic violence restraining order for harassment).

Instead, "the substantive criminal offense proscribed by *subsection (a)* 'is directed at the purpose behind and motivation for' making or causing the communication to be made." *Hoffman, 149 N.J. at 576, 695 A.2d 236* (quoting *State v. Mortimer, 135 N.J. 517, 528, 641 A.2d 257 (1994)*). Thus, "purpose to harass is critical to the constitutionality of the harassment offense." *R.G. v. R.G., 449 N.J. Super. 208, 226, 156 A.3d 1074 (App. Div. 2017)* (quoting *State v. Castagna, 387 N.J. Super. 598, 606, 905 A.2d 415 (App. Div. 2006)*); *see also D.C. v. T.H., 269 N.J. Super. 458, 461-62, 635 A.2d 1002 (App. Div. 1994)* (reversing an FRO issued against a father who made a threat to beat up the mother's boyfriend because the defendant's purpose "was to dissuade plaintiff's boyfriend from inflicting further corporal punishment upon his child" rather than to harass the plaintiff).

HN7[↑] "A person acts purposely with respect to the nature of his conduct or a result thereof if it is his conscious object to engage **[***24]** in conduct of that nature or to cause such a result." *N.J.S.A. 2C:2-2(b)(1)*. ***HN8***[↑] A defendant's "mere awareness that someone might be alarmed or annoyed is insufficient." *J.D. v. M.D.F., 207 N.J. 458, 487, 25 A.3d 1045 (2011)* (citing *State v. Fuchs, 230 N.J. Super. 420, 428, **[*598]** 553 A.2d 853 (App. Div. 1989)*). Likewise, a "victim's subjective reaction alone will not suffice; there must be evidence of the improper purpose." *Ibid.* (citing *State v. Washington, 319 N.J. Super. 681, 691-92, 726 A.2d 326 (Law Div. 1998)*); *see Franklin v. Sloskey, 385 N.J. Super. 534, 544, 897 A.2d 1113 (App. Div. 2006)* (concluding that the evidence established only a "dispute between a couple in the midst of a breakup, disagreeing over the future of their unborn child" rather than intent to harass). Still, "[a] finding of a purpose to harass may be inferred from the evidence presented," and "[c]ommon sense and experience may inform that determination." *Hoffman, 149 N.J. at 577, 695 A.2d 236*.

The judge found that by creating and disseminating the video, defendant communicated in a manner proscribed by N.J.S.A. 2C:33-4(a) with a purpose to harass plaintiff. Further, according to the judge, defendant's communication was not protected by the First Amendment. The judge's holding was predicated on her determination that being identified as a *get* refuser was inherently dangerous and defendant's purpose in asking members of her community to "press" plaintiff to give her a *get* was to incite violence. Conversely, defendant argues that in creating and disseminating the video, she engaged in **[***25]** constitutionally protected speech. She contends her speech did not rise to the level of incitement and thus retained its constitutional protection under the First Amendment.

HN9[↑] Subsection (a) of the harassment statute "is 'aimed, not at the content of the offending statements but rather at the manner in which they were communicated.' " Id. 149 N.J. at 583, 695 A.2d 236 (quoting Fin. Am. Corp., 182 N.J. Super. at 39-40, 440 A.2d 28). Indeed, "[m]any forms of speech . . . are intended to annoy. Letters to the editor of a newspaper are sometimes intended to annoy their subjects. We do not criminalize such speech, even if intended to **[**589]** annoy, because the manner of speech is non-intrusive." *Ibid.*

[*599] Here, the judge found that the manner of communication fell under the so-called "catchall provision" of subsection (a) in that it was made in "any other manner likely to cause annoyance or alarm." Id. 149 N.J. at 581-83, 695 A.2d 236; N.J.S.A. 2C:33-4(a). **HN10**[↑] In order to protect against unconstitutional vagueness and overbreadth in the statute, the phrase "any other manner likely to cause annoyance or alarm" has been interpreted narrowly. Hoffman, 149 N.J. at 581-83, 695 A.2d 236. In Hoffman, our Supreme Court explained that the three enumerated modes of prohibited communication proscribed under the harassment statute—anonymous, at extremely inconvenient hours, and in offensively coarse language—each "can be classified as being invasive **[***26]** of the recipient's privacy." Id. 149 N.J. at 583, 695 A.2d 236. Likewise, the Court concluded that "the Legislature intended the catchall provision of subsection (a) [to] encompass only those types of communications that also are invasive of the recipient's privacy." *Ibid.* Thus, in order to satisfy the catchall element, a communication must "intolerably interfere with a person's reasonable expectation of privacy." Burkert, 231 N.J. at 283, 174 A.3d 987.

HN11[↑] Critically, "[l]aws may 'not transgress the boundaries fixed by the Constitution for freedom of expression.' " Id. 231 N.J. at 275, 174 A.3d 987 (quoting Winters v. New York, 333 U.S. 507, 515, 68 S. Ct. 665, 92 L. Ed. 840 (1948)). Thus, as with any speech-regulating statute, the reach of N.J.S.A. 2C:33-4 is cabined by the federal and state constitutions. The First Amendment to the United States Constitution provides in part that "Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble." Similarly, Article I, Paragraph 6, of the New Jersey Constitution proclaims in part that "[e]very person may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech or of the press."

> So greatly do we in New Jersey cherish our rights of free speech that our Constitution provides even broader protections than the familiar ones found in its federal counterpart. In preserving **[***27]** and advancing those broad constitutional commands, **[*600]** we have been vigilant, jealously guarding the rights of the people to exercise their right to "freely speak," although their message may be one that is offensive to some, or even to many, of us.
>
> [Borough of Sayreville v. 35 Club L.L.C., 208 N.J. 491, 494, 33 A.3d 1200 (2012) (citation omitted) (quoting *N.J. Const.* art. I, ¶ 6).]

HN12[↑] As such, "[t]here is no categorical 'harassment exception' to the First Amendment's free speech clause." Burkert, 231 N.J. at 281, 174 A.3d 987 (quoting Saxe v. State Coll. Area Sch. Dist., 240 F.3d 200, 204 (3d Cir. 2001)). "Speech . . . cannot be transformed into criminal conduct merely because it annoys, disturbs, or arouses contempt." *Ibid.* "The First Amendment protects offensive discourse, hateful ideas, and crude language because freedom of expression needs breathing room and in the long run leads to a more enlightened society." *Ibid.* To that end, the right to free speech also includes the right to exhort others to take action upon that speech. "It extends to more than abstract discussion, unrelated to action." Thomas v. Collins, 323 U.S. 516, 537, 65 S. Ct. 315, 89 L. Ed. 430 (1945) (" 'Free trade in ideas' means free trade in the opportunity to persuade to action, not merely to describe **[**590]** facts."). In fact, "[t]he First Amendment protects the right to coerce action by 'threats of vilification or social ostracism.' " Carroll, 456 N.J. Super. at 537, 196 A.3d 106 (quoting NAACP v. Claiborne Hardware Co., 458 U.S. 886, 926, 102 S. Ct. 3409, 73 L. Ed. 2d 1215 (1982)).

In Claiborne Hardware Co., Black activists in Claiborne County, Mississippi, organized a boycott of white-owned businesses when local civic and **[***28]** business leaders refused to assent to demands for equality and racial justice. 458 U.S. at 899-900, 102 S. Ct. 3409. "The boycott was supported by speeches and nonviolent picketing." Id. at 907, 102 S. Ct. 3409. Additionally, "store watchers" stood outside the targeted businesses and took down the names of those who violated the boycott. Id. at 903-04, 102 S. Ct. 3409. Those names were then "read at meetings of the Claiborne County NAACP and published in a mimeographed paper entitled the 'Black Times.' . . . [T]hose persons were branded as traitors to the [B]lack cause, called demeaning names, and socially ostracized." **[*601]** *Ibid.* In very public speeches, an organizer stated that violators would be "disciplined," and warned: "If we catch any of you going in any of them racist stores, we're gonna break your damn neck." Id. at 902, 102 S. Ct. 3409. The boycott went on for years, during which several decentralized acts of violence occurred, including shots fired into the homes of boycott violators, beatings, property damage, and threatening phone calls. Id. at 904-06, 102 S. Ct. 3409.

The Supreme Court ruled that the speech, both identifying and castigating boycott violators and promising retribution, was protected by the First Amendment. Id. at 915, 929, 102 S. Ct. 3409. ***HN13***[↑] The Court explained that even speech designed to prompt others to act through "social pressure and the 'threat' of **[***29]** social ostracism . . . . does not lose its protected character . . . simply because it may embarrass others or coerce them into action." Id. at 910, 102 S. Ct. 3409. Even the organizer's speech, which invoked the specter of violence and "might have been understood as inviting an unlawful form of discipline or, at least, as intending to create a fear of violence," was protected because "mere advocacy of the use of force or violence does not remove speech from the protection of the First Amendment." Id. at 927-29, 102 S. Ct. 3409. The Court noted that no actual violence occurred directly following the statements, and there was "no evidence—apart from the speeches themselves—that [the organizer] authorized, ratified, or directly threatened acts of violence." Id. at 929, 102 S. Ct. 3409. The Court cautioned that if such acts of violence did occur, there might be a question of whether the organizer was derivatively liable, but until then, the speech retained its protected status. Id. at 928-29, 102 S. Ct. 3409.

Similarly, in Organization for a Better Austin v. Keefe, 402 U.S. 415, 415-16, 91 S. Ct. 1575, 29 L. Ed. 2d 1 (1971), the Court addressed "a racially-integrated community organization['s]" actions "to 'stabilize' the racial ratio in the . . . area" by influencing a real estate broker who allegedly engaged in "blockbusting" or "panic peddling" tactics to scare white owners out of Chicago's Austin neighborhood. **[***30]** Id. at 415-16, 91 S. Ct. 1575. The broker acted as the **[*602]** fleeing sellers' agent to profit from the transactions. *Ibid.* In an effort to curtail the practice, the organization began a campaign against the broker. Id. at 417, 91 S. Ct. 1575. The organization traveled to the broker's hometown, some seven miles from Austin, and began distributing leaflets that were critical of the broker's practices. Id. at 415-17, 91 S. Ct. 1575. Some leaflets "requested recipients to call [the broker] at his home phone number and urge him" to sign an agreement to stop his real estate practices. Id. at 417, 91 S. Ct. 1575. **[**591]** One leaflet promised to stop the campaign once he signed the agreement. *Ibid.* The organization distributed the leaflets at a shopping center, passed them to parishioners on their way home from the broker's church, and left them at the homes of the broker's neighbors. *Ibid.*

Finding that the organization's activities were an "invasion of privacy," the state courts enjoined the organization from distributing the leaflets or picketing in the broker's hometown. *Ibid.* The appellate court reasoned that the activities were "coercive and intimidating, rather than informative and therefore . . . not entitled to First Amendment protection." Id. at 418, 91 S. Ct. 1575. The Supreme Court reversed, concluding that the organization's activities were **[***31]** protected by the First Amendment. Id. at 419-20, 91 S. Ct. 1575. The Court emphasized that the fact that the organization's intent was "to exercise a coercive impact on [the broker] does not remove" the First Amendment's protections. Id. at 419, 91 S. Ct. 1575. Additionally, since the injunction was "not attempting to stop the flow of information into [the broker's] household, but to the public," the invocation of the broker's right to privacy was unavailing. Id. at 419-20, 91 S. Ct. 1575.

HN14[↑] In general, "[t]he mere tendency of speech to encourage unlawful acts is not a sufficient reason for banning it." Ashcroft v. Free Speech Coal., 535 U.S. 234, 253, 122 S. Ct. 1389, 152 L. Ed. 2d 403 (2002). "The government may not prohibit speech because it increases the chance an unlawful act will be committed 'at some indefinite future time.' " *Ibid.* (quoting Hess v. Indiana, 414 U.S. 105, 108, 94 S. Ct. 326, 38 L. Ed. 2d 303 (1973)). Thus, **[*603]** "[w]here a call to others to act neither conveys a plan to act nor is likely to produce

imminent danger, it may not be criminalized, despite its unsettling message." Carroll, 456 N.J. Super. at 543, 196 A.3d 106. Although there is a narrow exception for speech that is "directed to inciting or producing imminent lawless action and is likely to incite or produce such action," Brandenburg v. Ohio, 395 U.S. 444, 447, 89 S. Ct. 1827, 23 L. Ed. 2d 430 (1969), we have acknowledged that "[e]ven urging others to violence is shielded unless the statement is designed and likely to produce immediate action." Carroll, 456 N.J. Super. at 545, 196 A.3d 106.

In Brandenburg, the Supreme Court reversed the conviction of a Ku Klux **[***32]** Klan leader for statements made at a rally. 395 U.S. at 444-45, 89 S. Ct. 1827. At the rally, a group of hooded Klansmen, several carrying firearms, gathered around a burning cross. Id. at 445-47, 89 S. Ct. 1827. Following a series of anti-Black and antisemitic remarks and slurs from the group, a single individual began to speak. Id. at 446, 89 S. Ct. 1827. Among other things, he said: "[I]f our President, our Congress, our Supreme Court, continues to suppress the white, Caucasian race, it's possible that there might have to be some revengeance [sic] taken." *Ibid.* He promised to march on Congress and elsewhere on July Fourth. *Ibid.*

The speaker was convicted of violating a statute which proscribed "advocat[ing] . . . the duty, necessity, or propriety of crime, sabotage, violence, or unlawful methods of terrorism as a means of accomplishing industrial or political reform." Id. at 445, 89 S. Ct. 1827 (alteration in original). ***HN15***[↑] The Supreme Court summarily invalidated the statute, explaining that the "constitutional guarantees of free speech and free press do not permit a State to forbid or proscribe advocacy of the use of force or of law violation except where such advocacy is directed to inciting or producing imminent lawless action and is likely to incite or produce such action." Id. at 447, 89 S. Ct. 1827. "[C]onviction for **[***33]** mere advocacy, unrelated **[**592]** to its tendency to produce forcible action," is unconstitutional because it "intrudes upon the freedoms guaranteed by the **[*604]** First and Fourteenth Amendments." Id. at 447 n.2, 448, 89 S. Ct. 1827.

In United States v. Carmichael, 326 F. Supp. 2d 1267, 1285 (M.D. Ala. 2004), the court explained that a "general history" of violence was insufficient to vitiate First Amendment protections. In that case, a criminal defendant facing drug distribution charges published a website with the putative goal of spreading awareness of his case and seeking information about individuals involved. Id. at 1271-72. The website displayed names and photographs of individuals labeled as "Agents" and "Informants" beneath a caption reading, "Wanted," in large, red letters. Id. at 1272. The government sought a protective order requiring the defendant to remove the website from the internet on the ground that the website constituted harassment of the government's witnesses or served to intimidate or threaten the witnesses. Id. at 1274. At an evidentiary hearing, a witness called by the government testified that the terms "wanted" and "informant" were "threatening" because the term "informant" had a "bad connotation among criminals and is equivalent to 'snitch.' " Id. at 1275. The witness also suggested that "the website [was] meant to encourage others to inflict harm" on informants **[***34]** and agents. Id. at 1286.

Specifically citing four cases decided by federal circuit courts in the prior two years for context, the court acknowledged "numerous cases involving the murder of informants in drug-conspiracy cases." Id. at 1284. Nevertheless, the court explained that the proper focus of the inquiry was defendant's website itself, "not whether the site calls to mind other cases in which harm has come." Id. at 1285. Thus, while the court acknowledged that the "broad social context ma[de] the case closer," the "background facts" relied upon by the government were too "general" to rob the website of its First Amendment protections, particularly since the court could not find that the website served "no legitimate purpose" or "cross[ed] the line separating insults from 'true threats.' " Id. at 1278, 1282.

[*605] ***HN16***[↑] As to the latter, the court acknowledged that " 'true threats' are not protected by the First Amendment." Id. at 1280 (quoting Virginia v. Black, 538 U.S. 343, 359, 123 S. Ct. 1536, 155 L. Ed. 2d 535 (2003)); *see also* Watts v. United States, 394 U.S. 705, 707, 89 S. Ct. 1399, 22 L. Ed. 2d 664 (1969) (originating the true threats doctrine). " 'True threats' encompass those statements where the speaker means to communicate a serious expression of an intent to commit an act of unlawful violence to a particular individual or group of individuals." Black, 538 U.S. at 359, 123 S. Ct. 1536. "The 'prohibition on true threats protects individuals from the fear of violence and **[***35]** from the disruption that fear engenders, in addition to protecting people from the possibility that the threatened violence will occur.' " Carmichael, 326 F. Supp. 2d at 1280 (quoting Black, 538 U.S. at 360, 123 S. Ct. 1536). However, "evidence of an atmosphere of general intimidation is not enough to find . . . a 'true threat.' " Id. at 1285.

Applying these principles, we are convinced that the video, whether viewed on its own or in the context in which it was disseminated, does not fall outside the First Amendment's protection. The judge concluded that the video was not protected by the First Amendment because members of the Jewish community would respond violently to plaintiff being identified as a *get* refuser. The judge stated that "[t]he First Amendment cannot protect this type of communication to incite, which **[**593]** is clearly invasive of [plaintiff's] safety and privacy." However, such an unspecified general history of violent treatment to which get refusers were subjected was insufficient to render defendant's video a true threat or an imminent danger to satisfy the incitement requirement. On the contrary, in Epstein, the court explained that disseminating the names of *get* refusers "so that the reading public will hold them in disrepute," and otherwise taking steps to "shun and embarrass a recalcitrant husband . . . do[es] **[***36]** not violate the criminal laws of the United States." 91 F. Supp. 3d at 582.

[*606] HN17[↑] Critically, the First Amendment "does not prohibit name[-]calling" and "protects 'vehement, caustic, and sometimes unpleasantly sharp attacks' as well as language that is 'vituperative, abusive, and inexact.' " Carmichael, 326 F. Supp. 2d at 1282 (quoting Watts, 394 U.S. at 708, 89 S. Ct. 1399). Similarly, "threats of vilification or social ostracism" do not lose their protected status. Claiborne Hardware Co., 458 U.S. at 910, 102 S. Ct. 3409. If the literal threat "to break . . . necks" in Claiborne, against a backdrop of actual acts of retaliation and violence committed by boycott supporters against boycott violators, was not outside the First Amendment's protection, it is hard to see how defendant's video, with, at most, only nonspecific threatening connotations, could be unprotected. Id. at 902, 102 S. Ct. 3409.

The judge's suggestion that plaintiff had a right to not be subjected to anonymous phone calls, threats, or picketing at his house—especially absent evidence that defendant made calls herself or distributed plaintiff's contact information—is likewise insufficient to render defendant's speech unlawful. Only the #FREE[L.B.B.] photo image, which the judge did not attribute to defendant, identified plaintiff's hometown, not the video. Moreover, there was no direct evidence of a link between the creation of the video, **[***37]** the dissemination of the video, and plaintiff's receipt of anonymous phone calls. In any event, the acts of identifying an individual, encouraging others to call them and urge them to change their behavior, and picketing in their hometown are protected activities under Keefe, 402 U.S. at 417, 419, 91 S. Ct. 1575.

Although the judge found that *get* refusers, like plaintiff's father, were at risk of imprisonment, there is no such offense in our penal code. Israeli courts—where marriage and divorce are governed exclusively by religious law—retain the power to impose sanctions including fines or jail sentences for get refusal. Jodi M. Solovy, Civil Enforcement of Jewish Marriage and Divorce: Constitutional Accommodation of a Religious Mandate, 45 DePaul L. Rev. 493, 501 n.59 (1996). "Israeli law gives rabbinical courts the authority to issue certain sanctions to pressure a non-consenting **[*607]** spouse to give consent to a *get."* Ben-Haim v. Edri, 453 N.J. Super. 526, 530, 183 A.3d 252 (App. Div. 2018). No such risk exists in state courts, as it is a fundamental principle that HN18[↑] civil courts may not become entangled in religious proceedings "if resolution requires the interpretation of religious doctrine." Ran-Dav's Cnty. Kosher v. State, 129 N.J. 141, 162, 608 A.2d 1353 (1992); *see also* Satz v. Satz, 476 N.J. Super. 536, 552-54, 301 A.3d 847 (App. Div. 2023) (rejecting the ex-husband's argument that the trial court violated his First Amendment rights by enforcing the provisions of a marital settlement agreement, rather than a religious contract, in which the parties agreed to participate in a *beth din* proceeding to obtain **[***38]** a get that the ex-wife sought).

Because calls to exhort social pressure on plaintiff would necessarily fall under the aegis of First Amendment protection **[**594]** and the specter of imprisonment for refusing a *get* is unrealistic, harassment must be found—if at all—in the threat of violence. However, the judge's conclusion that such threats were real and imminent is simply not supported by the record. HN19[↑] First Amendment protections cannot be vitiated on unsubstantiated findings of fact. The video itself, which was not even directed to plaintiff, contained no overt call for or reference to violence. *See* Carroll, 456 N.J. Super. at 539, 196 A.3d 106 (citing United States v. Dinwiddie, 76 F. 3d 913, 925 (8th Cir. 1996)) (listing "whether the threat was communicated directly to its victim" as among the indicia of a "true threat"). HN20[↑] Even an overt invocation of violence, however, would be insufficient to strip the statement of First Amendment protection. *See* Claiborne Hardware Co., 458 U.S. at 902, 102 S. Ct. 3409; Brandenburg, 395 U.S. at 446-47, 89 S. Ct. 1827.

Instead, to qualify as incitement and lose First Amendment protection—as the judge tacitly found—a

communication must be both "directed to inciting or producing imminent lawless action and . . . likely to incite or produce such action." *Brandenburg, 395 U.S. at 447, 89 S. Ct. 1827*. However, such is not the case on this record. The difference between lawful and lawless action **[*608]** "may be identified easily by reference to its purpose." *Claiborne Hardware Co., 458 U.S. at 933, 102 S. Ct. 3409*. Defendant's ultimate **[***39]** objective was unquestionably legitimate—it was to get a get. We are persuaded that under the circumstances of this case, the means employed by defendant to achieve her goal is entitled to *First Amendment* protection.

Of course, should plaintiff ever be subjected to the threat of violence at the hands of a third party, he will not be without recourse. In *Stimler*, a small group of rabbis were convicted of kidnapping-related charges when, ostensibly on behalf of *agunot*, they "worked with 'tough guys' or 'muscle men' in exchange for money to kidnap and torture husbands in order to coerce them to sign . . . *gittin*." *864 F.3d at 259-60*. ***HN21***[⬆] Thus, as evidenced in *Stimler*, the violent, unlawful pursuit of *gittin* can be prosecuted. *864 F.3d at 259*. But "[t]he normal method of deterring unlawful conduct is to impose an appropriate punishment on the person who engages in it." *Bartnicki v. Vopper, 532 U.S. 514, 529, 121 S. Ct. 1753, 149 L. Ed. 2d 787 (2001)*. "[I]t would be quite remarkable to hold that speech by a law-abiding [speaker] . . . can be suppressed in order to deter conduct by a non-law-abiding third party." *Id. at 529-30, 121 S. Ct. 1753*.

In sum, the judge's finding that the Jewish community was prone to violence against *get* refusers—and the implicit holding that defendant was aware of and intentionally availed herself of such violent tendencies—is not supported **[***40]** by the record. The video was intended to get a *get*. The video did not threaten or menace plaintiff, and nothing in the record suggests that plaintiff's safety or security was put at risk by the video. Neither plaintiff's testimony that his father had been beaten for being a *get* refuser at an unspecified time and place nor defendant's vague testimony that plaintiff's father had been imprisoned for being a *get* refuser sufficed.

Without credible evidence that the video incited or produced imminent lawless action or was likely to do so, defendant's speech does not fall within the narrow category of incitement exempted **[*609]** from *First Amendment* protection. Likewise, because the judge's finding of a privacy violation relied upon the same factual finding, the record does not support the finding that the manner of defendant's communication violated *subsection (a)* of the harassment statute. ***HN22***[⬆] As our Supreme Court explained, *N.J.S.A. 2C:33-4* criminalizes only **[**595]** those "private annoyances that are not entitled to constitutional protection." *Hoffman, 149 N.J. at 576, 695 A.2d 236*. Defendant's communication does not meet that criteria.

Therefore, we reverse the April 22, 2021, and August 27, 2021, orders. In so doing, we vacate the FRO and the restraints contained therein as well as the **[***41]** counsel fee award. In light of our disposition, the TRO should not be reinstated and we need not address defendant's or amici curiae's remaining arguments.

Reversed. We do not retain jurisdiction.

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As of: March 7, 2024 2:00 PM Z

Satz v. Satz

Superior Court of New Jersey, Appellate Division

July 18, 2023, Argued; August 18, 2023, Decided

DOCKET NO. A-3535-21

Reporter
476 N.J. Super. 536 *; 301 A.3d 847 **; 2023 N.J. Super. LEXIS 87 ***

AVA SATZ, PLAINTIFF-RESPONDENT, v. ALLEN SATZ, DE FENDANT-APPELLANT.

Subsequent History: [*1]** Approved for Publication August 18, 2023.

Decision reached on appeal by, Costs and fees proceeding at *Satz v. Satz, 2023 N.J. Super. Unpub. LEXIS 1443, 2023 WL 5319798 (App.Div., Aug. 18, 2023)*

Related proceeding at *Satz v. Siragusa, 2023 N.J. Super. Unpub. LEXIS 1448, 2023 WL 5339671 (App.Div., Aug. 21, 2023)*

Related proceeding at *Satz v. Marion B. Solomon & Arons & Solomon, P.A., 2023 N.J. Super. Unpub. LEXIS 2268, 2023 WL 8595773 (App.Div., Dec. 12, 2023)*

Certification denied by *Satz v. Satz, 2024 N.J. LEXIS 141 (N.J., Feb. 2, 2024)*

Prior History: On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Bergen County, Docket No. FM-02-2630-18.

Core Terms

din, parties, trial court, orders, counsel fees, proceedings, religious, divorce, obligations, courts, provisions, summons, rights, arbitration, matrimonial, principles, rabbinical, sanctions, awarding, notice of appeal, settlement

Case Summary

Overview

HOLDINGS: [1]-The plain language of the marital settlement agreement (MSA) was that defendant agreed to submit to the jurisdiction of the beis din and to accept its judgment because the provision specifically stated that both parties would timely participate in the proceeding and the parties agreed their submission to the beis din would constitute an agreement to be bound; [2]-The trial court did not violate defendant's *U.S. Const. amend. I* rights by ordering him to fulfill his contractual duties under the MSA to sign an arbitration agreement implementing the results of independent beis din proceedings, because the orders served the secular purpose of enforcing the parties' contractual obligations under the MSA.

Outcome
Judgment affirmed.

LexisNexis® Headnotes

Civil Procedure > Appeals > Appellate Jurisdiction > Interlocutory Orders

HN1[] **Appellate Jurisdiction, Interlocutory Orders**

Litigants do not have a right to appeal an interlocutory order. *R. 2:2-3*. Rather, leave to appeal an interlocutory order is granted only in the interest of justice. *R. 2:2-4*. As a general rule, interlocutory appellate review runs counter to a judicial policy that favors an uninterrupted proceeding at the trial level with a single and complete review. There is a general policy against piecemeal review of trial-level proceedings.

Civil Procedure > Appeals > Standards of Review > Questions of Fact & Law

HN2[] **Standards of Review, Questions of Fact &**

Law

The scope of the appellate court's review is narrow. Reviewing courts accord particular deference to the Family Part because of its special jurisdiction and expertise in family matters. Generally, findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence. Courts will not disturb the factual findings and legal conclusions that flow from them unless convinced they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

HN3[] **Standards of Review, Abuse of Discretion**

The appellate court accords great deference to discretionary decisions of Family Part judges. Discretionary determinations, supported by the record, are examined to discern whether an abuse of reasoned discretion has occurred. An abuse of discretion occurs when a trial court makes findings inconsistent with or unsupported by competent evidence, utilizes irrelevant or inappropriate factors, or fails to consider controlling legal principles. An abuse of discretion can also be found if the court fails to take into consideration all relevant factors, and when its decision reflects a clear error in judgment.

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > Appeals > Standards of Review > Questions of Fact & Law

HN4[] **Standards of Review, De Novo Review**

Reviewing courts do not accord special deference to the Family Part's interpretation of the law, and review legal determinations de novo.

Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Procedures

HN5[] **Dissolution & Divorce, Procedures**

Settlement of disputes, including matrimonial disputes, is encouraged and highly valued in the legal system. Indeed, there is a strong public policy favoring stability of arrangements in matrimonial matters. The Supreme Court has observed that it is shortsighted and unwise for courts to reject out of hand consensual solutions to vexatious personal matrimonial problems that have been advanced by the parties themselves. Ibid. Therefore, fair and definitive arrangements arrived at by mutual consent should not be unnecessarily or lightly disturbed. The Supreme Court has also instructed that a court should not rewrite a contract or grant a better deal than that for which the parties expressly bargained.

Contracts Law > Types of Contracts > Settlement Agreements
Business & Corporate Compliance > Contracts > Types of Contracts > Settlement Agreements

HN6[] **Types of Contracts, Settlement Agreements**

Matrimonial settlement agreements are governed by basic contract principles and, as such, courts should discern and implement the parties' intentions. It is not the function of the court to rewrite or revise an agreement when the intent of the parties is clear. An agreement that resolves a matrimonial dispute is no less a contract than an agreement to resolve a business dispute. The task of the court, then, is to discern and implement the common intention of the parties, and enforce the mutual agreement as written.

Evidence > Burdens of Proof > Clear & Convincing Proof

Family Law > ... > Marital Agreements > Postnuptial & Separation Agreements > Enforcement

Family Law > ... > Marital Agreements > Postnuptial & Separation Agreements > Requirements

Family Law > ... > Property Distribution > Equitable Distribution > Property Settlements

Family Law > ... > Postnuptial & Separation Agreements > Defenses > Fraud

HN7[] **Burdens of Proof, Clear & Convincing Proof**

Marital agreements are essentially consensual and voluntary, and as a result, they are approached with a predisposition in favor of their validity and enforceability. Accordingly, marital settlement agreements (MSA) should be enforced so long as they are consensual, voluntary, conscionable, and not the result of fraud or overreaching. However, if an MSA was wholly unconscionable when made, the agreement may be set aside. Before any settlement agreement will be vacated, the moving party must demonstrate proof of fraud or other compelling circumstances by clear and convincing evidence.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Religion > Establishment of Religion

Constitutional Law > ... > Fundamental Freedoms > Freedom of Religion > Free Exercise of Religion

HN8 **Freedom of Religion, Establishment of Religion**

The First Amendment's Establishment Clause bars a state from placing its support behind a religious belief, while the Free Exercise Clause bars a state from interfering with the practice of religion. *U.S. Const. amend. I*. It is a fundamental principle that civil courts may not become entangled in religious proceedings.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Religion > Free Exercise of Religion

HN9 **Freedom of Religion, Free Exercise of Religion**

Civil courts may resolve controversies involving religious groups if resolution can be achieved by reference to neutral principles of law, but they may not resolve such controversies if resolution requires the interpretation of religious doctrine. Neutral principles may be particularly suited for adjudications of civil contract actions, so long as the dispute does not involve interpretations of religious doctrine itself.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Religion > Establishment of Religion

HN10 **Freedom of Religion, Establishment of Religion**

The United States Supreme Court has recognized that the Establishment Clause is violated where there is clearly no secular purpose for the state action being challenged and the activity was motivated wholly by religious considerations.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

HN11 **Standards of Review, Abuse of Discretion**

The appellate court will disturb a trial court's determination on counsel fees only on the rarest occasion, and then only because of clear abuse of discretion.

Civil Procedure > Discovery & Disclosure > Discovery > Misconduct During Discovery

Family Law > Marital Termination & Spousal Support > Costs & Attorney Fees

Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Procedures

HN12 **Discovery, Misconduct During Discovery**

An allowance for counsel fees is permitted following the filing of a motion in aid of litigant's rights, *R. 1:10-3*, or to any party in a divorce action, *R. 5:3-5(c)*, subject to the provisions of *Rule 4:42-9*. To determine whether and to what extent such an award is appropriate, the court must consider:(1) the financial circumstances of the parties; (2) the ability of the parties to pay their own fees or to contribute to the fees of the other party; (3) the reasonableness and good faith of the positions advanced by the parties; (4) the extent of the fees incurred by both parties; (5) any fees previously awarded; (6) the amount of fees previously paid to counsel by each party; (7) the results obtained; (8) the degree to which fees were incurred to enforce existing orders or to compel discovery; and (9) any other factor bearing on the fairness of an award. *R. 5:3-5(c)*.All applications or motions seeking an award of attorney

fees must include an affidavit of services at the time of initial filing. R. 5:3-5(c).

Civil Procedure > Judicial Officers > Judges > Discretionary Powers

Family Law > Marital Termination & Spousal Support > Costs & Attorney Fees

HN13 **Judges, Discretionary Powers**

R. 1:10-3 provides a means for securing relief and allows for judicial discretion in fashioning relief to litigants when a party does not comply with a judgment or order. Relief under R. 1:10-3, whether it be the imposition of incarceration or a sanction, is not for the purpose of punishment, but as a coercive measure to facilitate the enforcement of the court order.

Counsel: Allen Satz, appellant, argued the cause Pro se.

Angelo Sarno argued the cause for respondent (Synder Sarno D'Aniello Maceri & da Costa, LLC, attorneys; Angelo Sarno, of counsel and on the brief; Michelle Wortmann, on the brief).

Judges: Before Judges Whipple, Susswein and Gummer. The opinion of the court was delivered by SUSSWEIN, J.A.D.

Opinion by: SUSSWEIN

Opinion

[851]** **[*542]** The opinion of the court was delivered by

[*543] SUSSWEIN, J.A.D.

In this post-judgment matrimonial matter,[1] defendant Allen Satz appeals from various Family Part orders enforcing provisions of the marital settlement agreement (MSA) and awarding counsel fees to plaintiff Ava Satz.[2] After carefully reviewing the record in light of the arguments of the parties and the applicable legal principles, we conclude the trial court did not abuse its discretion in ordering defendant to comply with explicit and detailed provisions of the MSA. Nor did the trial court abuse its discretion in awarding counsel fees to plaintiff based on defendant's failure to comply with the MSA and the court's orders. We therefore affirm **[***2]** all orders defendant challenges in this appeal.

I.

Plaintiff and defendant married in February 2006. They have four children together, born between February 2007 and May 2015. After twelve years of marriage, plaintiff and defendant separated in 2018. Plaintiff filed a complaint for divorce in June 2018.

The parties engaged in two years of contentious litigation prior to the divorce trial, which began in September 2020. They continued attempts to settle their dispute throughout the duration of the trial. A critical area of dispute centered on plaintiff's desire to **[*544]** obtain a *get*—a divorce recognized under Jewish religious law.[3] Before a verdict was reached in the Family Part divorce trial, the parties tentatively reached an agreement on all issues, including each party's obligations with respect to a *beis din* proceeding to obtain the *get* that plaintiff sought.

With the consent of both parties, the trial court took testimony from defendant before the final MSA was drafted to confirm his agreement with respect to the *beis din* provision. Defendant testified that he would respond to any summons received **[**852]** from the *beis din* and would be bound by any decision the rabbinical court made regarding **[***3]** the *get*, which was to be decided by that body in accordance with Jewish law. Defendant

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[1] We heard argument in this appeal back-to-back with argument in another appeal brought by defendant in which he challenges the fees awarded to the court-appointed guardian ad litem. Because the present appeal involves different issues and different parties in interest, we have not consolidated the appeals and instead issue separate opinions.

[2] Defendant, who is self-represented, filed numerous notices of appeal. In this opinion, we address: (1) his appeal from paragraph four of an October 20, 2021 order enforcing Article IX of the MSA and requiring him to sign an arbitration agreement pursuant to paragraph one of the MSA; (2) paragraph six of a December 6, 2021 order directing him to participate in *beis din*—rabbinical court—proceedings pursuant to Article IX of the MSA; and (3) paragraphs four and eleven of a March 25, 2022 order enforcing paragraph six of the December 6, 2021 order and granting plaintiff's application for counsel fees.

[3] Only a husband may secure a *get*, and, without it, the wife cannot remarry under Jewish law.

further testified that he understood he would be subject to sanctions imposed by the Family Part in the event that he did not cooperate with the *beis din* in accordance with his agreement, which would be memorialized in writing and entered in the Family Part.

Thereafter, an MSA was drafted. Article IX of the MSA is titled, "*Beis Din* Proceedings/*Get* Issue." That article provides in its entirety:

> Both parties agree to respond to any summons from a *[b]eis [d]in* regarding the *[g]et* which shall be decided in accordance with Jewish [l]aw. By virtue of this agreement the parties are not waiving any religious beliefs, rights or remedies they each may have under Jewish law in the *[b]eis [d]in* process (except with respect to the process of identifying a choice of *[b]eis [d]in* by the [defendant] now, as provided in the next to last sentence of this paragraph). The parties have freely and voluntarily entered into the custodial and financial terms of their legal settlement. Neither party shall seek to alter any provisions of the custody and financial aspects of their legal settlement before the *[b]eis [d]in*. Nothing herein, however, **[***4]** shall prevent either party from seeking whatever other relief that may be available to either party including damages. By way of example, neither party may seek to change a term of the agreement however, they both have the right to assert any financial claims for relief that they may have before the *[b]eis [d]in*. Both parties shall timely participate in the *[b]eis [d]in* proceeding. Both parties will answer any summons in a prompt manner. [Defendant] represents that he may be opposing the [plaintiff]'s request for a *[g]et*. The parties agree that their submission to the *[b]eis [d]in* shall constitute an agreement to be bound by the *[b]eis [d]in* **[*545]** [d]ecision on any issue the *[b]eis [d]in* addresses, and the *[b]eis [d]in* shall have the authority to order monetary awards relating to the Jewish law matters before it, which awards may be confirmed in a court of law. Both parties shall participate in this process freely and voluntarily. Both parties shall abide by the recommendations of the *[b]eis [d]in*. Any violation of this section will result in sanctions to be ordered by the court, including but not limited to monetary sanctions, arrest and the [parties] shall be permitted to seek any relief **[***5]** available to her/him in the [c]ourt with regard to this issue. The [defendant] agrees that he has freely and voluntarily chosen to select as a *[b]eis [d]in* for this process, which selection he makes shall be at his sole option, which will be either the Rabbinical Court of New City or Mechon Lihoyra'ah. This paragraph was an essential term of this Agreement, without which this term sheet would not have been agreed upon.

The MSA was signed by the parties on October 6, 2020. On that date, the final judgment of divorce was entered. Also on that date, both parties appeared before the trial court and testified as to their understanding of the MSA. They both confirmed their agreement to be bound by its terms.

Defendant specifically testified that he was not coerced into signing the MSA and that he believed it to be fair and reasonable under the circumstances. During that testimony, defendant was again questioned about the *get/beis din* provisions in the MSA. He testified that he agreed to those provisions being included in the MSA, he was not forced or coerced to include them in the MSA, and he agreed to sign the **[**853]** MSA with those provisions in order to resolve the divorce litigation. Defendant **[***6]** further testified that he would timely cooperate with the *beis din* proceedings, comply with and respond to any summons or subpoena issued to him by the *beis din*, and abide by the recommendations of the *beis din*. He also acknowledged that if he did not cooperate or comply, he would be subject to sanctions by the Family Part.

The court was thereafter advised at a case management conference that defendant had not complied with his obligations under the MSA. The trial court entered a case management order dated December 6, 2021. Paragraph six of that order states that "[d]efendant Allen Satz shall participate in the *[b]eis [d]in* proceedings pursuant to Article IX of the [p]arties' MSA." At the December 6, 2021 hearing, the trial court explained:

> **[*546]** When parties agree to do certain things and the [c]ourt makes a determination that the agreement in and of itself should not be void because it was not unjust, then . . . we enforce.
> I don't re-write agreements; I enforce them as long as they're not found to be unjust and unfair and unreasonable. And when I read the MSA there's nothing unreasonable, unfair, or unjust about what the agreement says.
>
> The [*beis din*] issue is still up in the air. It hasn't been resolved. It needs to be **[***7]** resolved because a determination has yet to be made. And I have a party that's seeking enforcement.

> Now you may disagree on how it happened and what was said, okay, but that's separate and distinct from ["]you need to go and participate in the process.["]

On January 25, 2022, plaintiff moved for enforcement. Defendant cross-moved, seeking the denial of plaintiff's application and a stay of any order enforcing Article IX of the MSA. Defendant also opposed the issuance of any sanctions against him, including a fee award to plaintiff.

The trial court heard those motions on March 25, 2022, at which time it denied defendant's application for a stay of the December 6, 2021 order, granted plaintiff's request that defendant be obligated to "participate in the *[b]eis [d]in* proceedings pursuant to Article IX of the parties' MSA," and ordered both parties to actively participate in the *beis din* proceedings by May 31, 2022. Regarding counsel fees, the court noted that a moving party may request an award of counsel fees pursuant to *Rule 4:42-9*, *Rule 5:3-5*, and *Rule of Professional Conduct (RPC) 1.5(a)* and recognized that it had received certifications of services. In determining the amount of the fee award, the court considered the factors set forth in *Rule 5:3-5(c)*, including the parties' financial **[***8]** circumstances and any bad faith. The court found defendant had acted in bad faith in moving for a stay of the court's enforcement order and by not complying with the court's previous orders regarding his participation in the *beis din* proceedings. The trial court granted plaintiff's motion for counsel fees related to the enforcement of the court's prior orders.

On April 5, 2022, defendant filed a notice of motion for leave to appeal certain paragraphs of the March 25, 2022 order. On May 31, 2022, defendant's motion for leave to appeal was denied.

[*547] On May 30, 2022—before learning of the denial of his motion for leave to appeal the March 25, 2022 order—defendant sought to file a notice of appeal from two paragraphs of an order dated June 30, 2021. That notice of appeal was rejected by the Appellate Division Clerk's Office as untimely.

On June 8, 2022, defendant filed a notice of appeal challenging various paragraphs **[**854]** of trial court orders dated October 20, 2021, December 6, 2021, and March 25, 2022.

On June 28, 2022, defendant filed a third notice of appeal from certain paragraphs of orders dated June 25, 2021—which was later amended and replaced by the June 30, 2021 order—and May 27, 2022. **[***9]**

On July 18, 2022, defendant filed a fourth notice of appeal from certain paragraphs of orders dated October 20, 2021, December 6, 2021, March 25, 2022, and May 27, 2022.

We note that a *beis din* hearing occurred on May 11, 2022. On July 6, 2022, the *beis din* issued a fifteen-page ruling finding that defendant had not properly responded to summonses from rabbinical courts, that defendant is "obligated to divorce [plaintiff] forthright and immediately," and that his refusal to provide plaintiff a *get* "is a form of abuse." It noted defendant had been summoned to arbitration before numerous rabbinical courts and had "been deemed like he is refusing to appear." The decision explained that defendant had signed an arbitration agreement in which he agreed to a hearing and to accept the *beis din's* rules and procedures, allowing the rabbinical court to arbitrate in his absence. The decision also sets forth sanctions that can be assessed for his failure to comply with the ruling.

Defendant raises several arguments on appeal in his initial and reply briefs. He first argues that his appeal is timely and not interlocutory as plaintiff contends. Second, he argues that the trial court should not have **[***10]** sanctioned him for filing his stay motion and abused its discretion in awarding counsel fees to plaintiff. Defendant's remaining arguments pertain to the legitimacy of the trial **[*548]** court's enforcement of the MSA. He argues: the trial court had no authority to order him to arbitrate in the *beis din*; the trial court erred by relying on a "religious document" and by requiring defendant's participation in *beis din* proceedings; and the trial court violated the *First Amendment* by ruling on a religious agreement.

II.

We first address plaintiff's contention that defendant's appeal should be dismissed on procedural grounds because it was untimely filed, includes interlocutory orders, and fails to appeal from the final order entered on the issues.

HN1[↑] Plaintiff is correct that litigants do not have a right to appeal an interlocutory order. *See R. 2:2-3*. Rather, leave to appeal an interlocutory order is granted only "in the interest of justice." *R. 2:2-4*. As a general rule, "[i]nterlocutory appellate review runs counter to a judicial policy that favors an 'uninterrupted proceeding at the trial level with a single and complete review.'" *State v. Reldan, 100 N.J. 187, 205, 495 A.2d 76 (1985)*

(quoting *In re Pa. R.R. Co., 20 N.J. 398, 404, 120 A.2d 94 (1956)*). There is a "general policy against piecemeal review of trial-level proceedings." *Brundage v. Est. of Carambio, 195 N.J. 575, 599, 951 A.2d 947 (2008)*.

In **[***11]** this instance, however, we deem it to be in the interests of justice—and judicial economy—to address and definitively resolve defendant's contentions related to the enforcement of Article IX of the MSA. We therefore elect to consider the merits of those contentions in this opinion.

III.

HN2[↑] The scope of our review is narrow. *Cesare v. Cesare, 154 N.J. 394, 412, 713 A.2d 390 (1998)*. Reviewing courts "accord particular deference to the Family Part because of its 'special jurisdiction and expertise' in family matters." *Harte v. **[**855]** Hand, 433 N.J. Super. 457, 461, 81 A.3d 667 (App. Div. 2013)* (quoting *Cesare, **[*549]** 154 N.J. at 412*). Generally, "findings by the trial court are binding on appeal when supported by adequate, substantial, credible evidence." *Cesare, 154 N.J. at 411-12, 713 A.2d 390* (citing *Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484, 323 A.2d 495 (1974)*). Courts will not disturb the factual findings and legal conclusions that flow from them unless convinced they are "so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." *Ricci v. Ricci, 448 N.J. Super. 546, 564, 154 A.3d 215 (App. Div. 2017)* (quoting *Elrom v. Elrom, 439 N.J. Super. 424, 433, 110 A.3d 69 (App. Div. 2015)*).

HN3[↑] We also "accord great deference to discretionary decisions of Family Part judges." *Milne v. Goldenberg, 428 N.J. Super. 184, 197, 51 A.3d 161 (App. Div. 2012)* (citing *Donnelly v. Donnelly, 405 N.J. Super. 117, 127, 963 A.2d 855 (App. Div. 2009)*). "Discretionary determinations, supported by the record, are examined to discern whether an abuse of reasoned discretion has occurred." *Ricci, 448 N.J. Super. at 564, 154 A.3d 215* (citing *Gac v. Gac, 186 N.J. 535, 547, 897 A.2d 1018 (2006)*). An abuse of discretion occurs when a trial court makes "findings inconsistent with or unsupported **[***12]** by competent evidence," utilizes "irrelevant or inappropriate factors," or "fail[s] to consider controlling legal principles." *Elrom, 439 N.J. Super. at 434, 110 A.3d 69* (internal citations omitted). An abuse of discretion can also be found if the court "fails to take into consideration all relevant factors[,] and when its decision reflects a clear error in judgment." *State v. C.W., 449 N.J. Super. 231, 255, 156 A.3d 1088 (App. Div. 2017)* (quoting *State v. Baynes, 148 N.J. 434, 444, 690 A.2d 594 (1997)*).

HN4[↑] Reviewing courts do not accord special deference to the Family Part's interpretation of the law, *D.W. v. R.W., 212 N.J. 232, 245, 52 A.3d 1043 (2012)*, and review legal determinations de novo, *Ricci, 448 N.J. Super. at 565, 154 A.3d 215*.

HN5[↑] Turning to substantive legal principles that guide and inform our analysis, "[s]ettlement of disputes, including matrimonial **[*550]** disputes, is encouraged and highly valued in our system." *Quinn v. Quinn, 225 N.J. 34, 44, 137 A.3d 423 (2016)* (citing *Konzelman v. Konzelman, 158 N.J. 185, 193, 729 A.2d 7 (1999)*). "Indeed, there is a 'strong public policy favoring stability of arrangements in matrimonial matters.'" *Ibid.* (quoting *Konzelman, 158 N.J. at 193, 729 A2d 7*). Our Supreme Court has "observed that it is 'shortsighted and unwise for courts to reject out of hand consensual solutions to vexatious personal matrimonial problems that have been advanced by the parties themselves.'" *Ibid.* (quoting *Konzelman, 158 N.J. at 193, 729 A2d 7*). "Therefore, 'fair and definitive arrangements arrived at by mutual consent should not be unnecessarily or lightly disturbed.'" *Ibid.* (quoting *Konzelman, 158 N.J. at 193-94, 729 A2d 7*). Our Supreme Court has **[***13]** also instructed that "a court should not rewrite a contract or grant a better deal than that for which the parties expressly bargained." *Id. 225 N.J. at 45, 137 A3d 423* (citing *Solondz v. Kornmehl, 317 N.J. Super. 16, 21-22, 721 A.2d 16 (App. Div. 1998)*).

HN6[↑] Matrimonial settlement agreements are governed by basic contract principles and, as such, courts should discern and implement the parties' intentions. *J.B. v. W.B., 215 N.J. 305, 326, 73 A.3d 405 (2013)*. "It is not the function of the court to rewrite or revise an agreement when the intent of the parties is clear." *Quinn, 225 N.J. at 45, 137 A3d 423* (citing *J.B., 215 N.J. at 326, 73 A.3d 405*). "An agreement **[**856]** that resolves a matrimonial dispute is no less a contract than an agreement to resolve a business dispute." *Ibid.* The task of the court, then, is to "discern and implement 'the common intention of the parties[,]' and 'enforce [the mutual agreement] as written.'" *Id. 225 N.J. at 46, 137 A.3d 423* (first quoting *Tessmar v. Grosner, 23 N.J. 193, 201, 128 A.2d 467 (1957)*; and then quoting *Kampf v. Franklin Life Ins. Co., 33 N.J. 36, 43, 161 A.2d 717 (1960)*).

HN7[↑] "Marital agreements are essentially consensual

and voluntary[,] and as a result, they are approached with a predisposition in favor of their validity and enforceability." *Massar v. Massar, 279 N.J. Super. 89, 93, 652 A.2d 219 (App. Div. 1995)* **[*551]** (citing *Petersen v. Petersen, 85 N.J. 638, 642, 428 A.2d 1301 (1981)*). Accordingly, MSAs should be enforced so long as they are consensual, voluntary, conscionable, and not the result of fraud or overreaching. *Weishaus v. Weishaus, 180 N.J. 131, 143-44, 849 A.2d 171 (2004)*. However, if an MSA was wholly unconscionable when made, the agreement may be set aside. *Guglielmo v. Guglielmo, 253 N.J. Super. 531, 541, 602 A.2d 741 (App. Div. 1992)*. Before any settlement agreement will be vacated, **[***14]** the moving party must demonstrate proof of fraud or other compelling circumstances by "clear and convincing evidence." *Nolan v. Lee Ho, 120 N.J. 465, 472, 577 A.2d 143 (1990)*.

IV.

We agree with the trial court that nothing in the MSA is unconscionable or contrary to public policy as to render it unenforceable. As the trial court aptly found, the parties entered into a comprehensive agreement to resolve their contentious marital dispute. Both sides made concessions as consideration for the benefit of resolving the divorce litigation. Both parties were represented by counsel. The MSA, moreover, was carefully drafted after extensive negotiation. Revisions to the initial draft were exchanged. The parties ultimately agreed to and executed the MSA, and both testified they had entered into it voluntarily and free from coercion or duress. On two separate occasions, defendant testified under oath regarding the obligations he agreed to with respect to the *beis din* proceedings. This was done with full awareness that obtaining a *get* was extremely important to plaintiff because, absent a *get*, she would continue to be viewed as married under Jewish law, thereby preventing her from remarrying within her faith.

We are satisfied on this record the MSA is **[***15]** a legally binding contract based on ample consideration from both parties and entered into knowingly and voluntarily. The Family Part judge—who was intimately familiar with this protracted litigation and the **[*552]** litigants—thus had the lawful authority to enforce the agreement as written.

Defendant argues that he agreed in the MSA only to "respond to a summons" issued by the *beis din*, not to participate in its proceedings. He claims that he complied with his contractual obligations under the MSA when he responded to a *beis din* summons by asserting that the *beis din* had no jurisdiction over him. We reject that argument and agree with the trial court that defendant agreed to participate in the *beis din* proceedings. Importantly, the MSA provision specifically states that "[b]oth parties shall timely participate in the *[b]eis [d]in* proceeding" and "[t]he parties agree that their submission to the *[b]eis [d]in* shall constitute an agreement to be bound by the *[b]eis [d]in* [d]ecision on any issue the *[b]eis [d]in* addresses." The clear import of the plain language of the MSA is that defendant agreed to **[**857]** submit to the jurisdiction of the *beis din* and to accept its judgment.

V.

We turn next to defendant's **[***16]** argument that the trial court violated his *First Amendment* rights by ordering him to participate in *beis din* proceedings and to sign an arbitration agreement with the *beis din*. ***HN8***[↑] The *First Amendment's Establishment Clause* bars a state from placing its support behind a religious belief, while the Free Exercise Clause bars a state from interfering with the practice of religion. *U.S. Const. amend. I*. It is a fundamental principle that civil courts may not become entangled in religious proceedings.

Our trial courts have not been in complete accord on the issue of whether a civil court has authority to enforce a *ketubah*—a Jewish marriage contract. *Mayer-Kolker v. Kolker, 359 N.J. Super. 98, 100-03, 819 A.2d 17 (App. Div. 2003)*. *Compare Minkin v. Minkin, 180 N.J. Super. 260, 434 A.2d 665 (Ch. Div. 1981)*, *and Burns v. Burns, 223 N.J. Super. 219, 538 A.2d 438 (Ch. Div. 1987)*, *with Aflalo v. Aflalo, 295 N.J. Super. 527, 685 A.2d 523 (Ch. Div. 1996)*. In this case, however, the trial court was asked to enforce a civil **[*553]** contract, not a religious one. Nor did the trial court substantively review or affirm the *beis din* ruling. For purposes of this appeal, the *beis din* ruling is essentially a report confirming plaintiff's assertion that defendant failed to participate in the *beis din* proceeding in violation of his obligations under the MSA.

HN9[↑] As our Supreme Court has recognized, "civil courts may resolve controversies involving religious groups if resolution can be achieved by reference to neutral principles of law, but that they may not resolve such controversies if **[***17]** resolution requires the interpretation of religious doctrine." *Ran-Dav's Cnty. Kosher v. State, 129 N.J. 141, 162, 608 A.2d 1353 (1992)*. The Court specifically noted that "[n]eutral principles may be particularly suited for adjudications of . . . civil contract actions," so long as the dispute does not "involve interpretations of religious doctrine itself."

Ibid.

Defendant agreed in the MSA to abide by the *beis din* ruling, whatever that might be. In enforcing that agreement, the trial court in no way interpreted religious doctrine. The orders entered in this case scrupulously avoid entanglement with religion because the trial court applied well-established principles of civil contract law, not rabbinical law. The latter body of law remained solely within the province of the *beis din* and was not interpreted or applied by the Family Part judge, nor by us.

HN10[↑] The United States Supreme Court has recognized that the Establishment Clause is violated where there is clearly no secular purpose for the state action being challenged and the "activity was motivated wholly by religious considerations." *Lynch v. Donnelly, 465 U.S. 668, 680, 104 S. Ct. 1355, 79 L. Ed. 2d 604 (1984)*. In this instance, the orders defendant challenges served the secular purpose of enforcing the parties' contractual obligations under the MSA, which in turn serves the secular purpose of encouraging **[***18]** divorce litigants to resolve their disputes by negotiating and entering an MSA. Accordingly, the trial court did not violate defendant's constitutional rights by ordering him to fulfill his contractual obligation under the MSA to sign an arbitration **[*554]** agreement implementing the results of the independent *beis din* proceedings.

VI.

Lastly, we address defendant's contention the trial court abused its discretion by awarding counsel fees to plaintiff. ***HN11***[↑] "We will disturb a trial court's determination **[**858]** on counsel fees only on the 'rarest occasion,' and then only because of clear abuse of discretion." *Barr v. Barr, 418 N.J. Super. 18, 46, 11 A.3d 875 (App. Div. 2011)* (quoting *Strahan v. Strahan, 402 N.J. Super. 298, 317, 953 A.2d 1219 (App. Div. 2008)*).

HN12[↑] An allowance for counsel fees is permitted following the filing of a motion in aid of litigant's rights, *R. 1:10-3*, or to any party in a divorce action, *R. 5:3-5(c)*, subject to the provisions of *Rule 4:42-9*. To determine whether and to what extent such an award is appropriate, the court must consider:

> (1) the financial circumstances of the parties; (2) the ability of the parties to pay their own fees or to contribute to the fees of the other party; (3) the reasonableness and good faith of the positions advanced by the parties . . . ; (4) the extent of the fees incurred by both parties; (5) any fees previously awarded; **[***19]** (6) the amount of fees previously paid to counsel by each party; (7) the results obtained; (8) the degree to which fees were incurred to enforce existing orders or to compel discovery; and (9) any other factor bearing on the fairness of an award.
>
> [*R. 5:3-5(c)*.]

All applications or motions seeking an award of attorney fees must include an affidavit of services at the time of initial filing. *R. 5:3-5(c)*.

HN13[↑] Specifically, "*Rule 1:10-3* provides a 'means for securing relief and allow[s] for judicial discretion in fashioning relief to litigants when a party does not comply with a judgment or order.'" *N. Jersey Media Grp., Inc. v. State, 451 N.J. Super. 282, 296, 166 A.3d 1181 (App. Div. 2017)* (alteration in original) (quoting *In re N.J.A.C. 5:96 & 5:97, 221 N.J. 1, 17-18, 110 A.3d 31 (2015)*). "Relief under *[Rule] 1:10-3*, whether it be the imposition of incarceration or a sanction, is not for the purpose of punishment, but as a coercive measure to facilitate the enforcement of the **[*555]** court order." *Ridley v. Dennison, 298 N.J. Super. 373, 381, 689 A.2d 793 (App. Div. 1997)*.

Importantly, the MSA explains when counsel fees and costs may be imposed upon breach of the agreement. Article VII, paragraph five of the MSA provides:

> In the event that either [party] is required to file an application with the [c]ourt to enforce any provision in this Agreement, the breaching party shall indemnify the non-breaching party for all reasonable counsel fees and costs that the nonbreaching party **[***20]** incurred and the [c]ourt shall enforce this paragraph to enter an award of reasonable counsel fees and costs. In addition, if a default by one party subjects the other party to a lawsuit by a third party, the defaulting party shall likewise be responsible for attorneys' fees and costs. The rights granted in this paragraph shall be in addition to, and without prejudice, to any other rights and remedies to which the aggrieved party may be entitled.

The trial court found that defendant had acted in bad faith in failing to comply with his obligations under the MSA, which was a "compelling factor in awarding the fees." For reasons we explained in the preceding section, we reject defendant's attempt to frame the trial

court's award of counsel fees as a penalty or sanction for not participating in the *beis din* proceeding in violation of his religious rights. The record makes clear the trial court awarded counsel fees based on defendant's noncompliance with the MSA. The record also shows the trial court reviewed the certification of services with respect to all applicable factors, *see* R. 5:3-5(c), and made a determination that defendant had the financial **[**859]** ability to pay plaintiff's fees. We have no basis **[***21]** upon which to overturn or modify the trial court's decision to grant plaintiff's request for counsel fees.

To the extent we have not specifically addressed them, any remaining contentions raised by defendant lack sufficient merit to warrant discussion. *R. 2:11-3(e)(1)(E)*.

Affirmed.

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SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF _____

----------X

Plaintiff,

Index No.:_____

-against-

SWORN STATEMENT OF REMOVAL OF BARRIERS TO REMARRIAGE

Defendant.

----------X

STATE OF _____ }

ss:

COUNTY OF _____ }

I _____ (Print Name), state under penalty of perjury that the parties* marriage was solemnized by a minister, clergyman or leader of the Society for Ethical Culture, and that;

‘ *To the best of my knowledge I have taken all steps solely within my power to remove all barriers to the Defendant’s remarriage following the divorce.*

OR

‘ *The Defendant has waived in writing the requirements of DRL §253.*

_____

Plaintiff’s Signature

Subscribed and Sworn to
before me on

_____

_____

NOTARY PUBLIC

(Form UD-4 - Rev. 5/99)

Affidavit of Service

SUPREME COURT OF THE STATE OF NEW YORK
1 COUNTY OF _____

2 _____ being sworn, says, I am not a party to the action, and am over 18 years of age. I reside at _____.

3 On _____, I served a true copy of the within Removal of Barriers Statement on the Defendant:

‘ *personally at* _____

OR

‘ *by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, to the address designated by the Defendant at* _____

_____

4 _____
Server’s Signature

Subscribed and Sworn to
before me on

_____

_____
NOTARY PUBLIC

OR

5 Service of the within document is hereby acknowledged.

_____
‘ *Defendant’s Signature* **OR**
‘ *Defendant’s Attorney’s Signature*

(Form UD-4a - Rev. 5/99)