

Appellate Watch

Palimony Litigants Dispute Whether Writing Requirement Is Retroactive

By Michael Booth

The New Jersey Supreme Court heard arguments Monday on whether a law requiring palimony agreements to be in writing bars enforcement of oral agreements that preceded the law's adoption.

An appeals court has said that it does, but a lawyer challenging the decision told the justices that the Legislature could not, by passing the 2010 amendments to the Statute of Frauds, interfere with contracts already in effect.

Angelo Sarno said his client, Beverly Maeker, is depending on an oral contract she made with William Ross more than a decade earlier.

"This is a valid, enforceable agreement," said Sarno, of Roseland's Snyder & Sarno. "The Appellate Division retroactively enforced the statute and improperly prevented my client from enforcing an existing contract."

Justice Jaynee LaVecchia suggested the amendment created a new rule and asked if that meant it did not apply to contracts already fully formed.

"That's correct," Sarno replied, pointing out that there could be thousands of palimony agreements that were entered into before the statute went into effect and have not been put into writing.

Justice Faustino Fernandez-Vina asked if Maeker made any attempt to have the agreement put into writing.

Sarno said that his client had not,



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RICHARD IGLAR

and that it would be difficult to expect her to have done so because she was so economically dependent on Ross.

Lawyers for the amici New Jersey State Bar Association and American Academy of Matrimonial Lawyers of Jersey are also seeking a reversal.

The academy's lawyer, Richard Iglar, suggested that a retroactive application of the law is unjust.

"There was a promise of support prior to the statute," said Iglar, of Skoloff & Wolfe in Livingston. "Nothing in the statute says it was meant to apply retroactively. Nothing in the statute says equitable remedies are abolished."

The state bar's attorney, Brian Schwartz of Summit, said the court should look at the performance of each party toward the fulfillment of the

promises made under the contract, even though it was oral. "Even partial performance gets by the statute," he said.

Ross' lawyer said retroactive application squares with legislative intent.

"It's clear the Legislature wanted to get out of the business of determining what vague words were supposed to mean," said Eric Solotoff of Fox Rothschild in Roseland. "Unmarried cohabitants are not a protected class. They chose to be in this relationship."

Justice Barry Albin asked why the Legislature did not simply say the statute was meant to apply retroactively.

"It did say it would apply immediately," Solotoff said.

But when Solotoff tried to assert his client's claim that there never was an oral contract, Albin protested.

"You're arguing a jury issue," he said. "That's not for us to decide."

And when Solotoff suggested Maeker would be in a better position had she put the agreement in writing, Albin said, "It would have been futile," since Ross never would have agreed.

"She never even took the steps," Solotoff said, adding that "possibly she could have had a remedy."

Chief Justice Stuart Rabner asked whether there has to be at least an

attempt to put the agreement into writing for it to be enforceable.

"No attempt, no remedy," Solotoff replied.

Maeker sued on July 8, 2011, a week after Ross ended their 13-year relationship and 18 months after the 2010 amendment went into effect. She claimed they began dating in Brooklyn in 1998, then moved in together and moved to Bedminster.

Ross, a wealthy real estate investor, supported Maeker throughout their cohabitation and allegedly made repeated promises to support her for life.

Superior Court Judge Thomas Miller denied Ross's motion to dismiss the case under the Statute of Frauds and granted Maeker's cross-motion for pendente lite support of \$6,000 a month.

Miller found that the Legislature did not clearly indicate it meant to extinguish existing palimony claims, pointing out that the law took effect the day it was signed, without a grace period.

Appellate Division Judges Paulette Sapp-Peterson, Francine Axelrad and Michael Haas reversed, finding no evidence of legislative intent for exception of preexisting oral contracts. ■

Contact the reporter at mbooth@alm.com.

Court To Decide if Sex Offender Can Represent Self at Detention Hearing

By Michael Booth

The New Jersey Supreme Court is deciding whether sex offenders facing indefinite civil commitment after doing prison time have the right to rep-

resent themselves to self-representation goes back to the 13th century.

Lawrence Bluestone, appearing for the amicus American Civil Liberties Union of New Jersey, agreed with Sengstacke's reasoning