

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5323-15T2

B.C.,

Plaintiff-Appellant,

v.

V.C.,

Defendant-Respondent.

Submitted May 23, 2017 – Decided June 23, 2017

Before Judges Leone and Vernoia.

On appeal from the Superior Court of New Jersey, Chancery Division, Family Part, Burlington County, Docket Nos. FV-03-1788-16 and FV-03-1789-16.

Legal Services of New Jersey, attorneys for appellant (Melville D. Miller, Jr., Monica C. Gural, Mary M. McManus-Smith, and Jeyanthi Rajaraman, on the brief).

Salvatore D. DePinto, attorney for respondent.

PER CURIAM

In these consolidated appeals, plaintiff B.C. appeals family court orders dismissing complaints she filed on behalf of her two minor children seeking final restraining orders against their father, defendant V.C., pursuant to the Sexual Assault Survivor Protection Act of 2015 (SASPA), N.J.S.A. 2C:14-13 to -23. The court found N.J.S.A. 14:14-16 unconstitutional as applied to defendant because it permitted entry of an order barring his contact with his children based upon proof of the underlying allegations by a preponderance of the evidence. We conclude it was unnecessary for the court to decide the constitutional issue because SASPA did not retroactively apply to the allegations in the complaints and, therefore, the complaints should have been dismissed on that basis.

I.

Plaintiff and defendant are the biological parents of daughters, I.C., born in 2010, and O.C., born in 2012. In 2015, the New Jersey Division of Child Protection and Permanency (the Division) filed a Title Nine proceeding against plaintiff and defendant.¹ On January 29, 2016, the court entered orders in the Title Nine proceeding continuing the care and supervision of the children with the Division, legal custody of the children with

¹ The record on appeal does not include the Title Nine complaint.

plaintiff and defendant, and physical custody with plaintiff. The order suspended defendant's parenting time until further court order. In a separate order entered on January 29, 2016, defendant admitted he was part of a family in need of services based on the children's statements to authorities.

On April 26, 2016, following a compliance review, the court entered an order in the Title Nine proceeding continuing the previous custody order, but permitting defendant to have weekly supervised visitation with the children.

Two weeks later, on May 11, 2016, plaintiff filed separate complaints on behalf of each child seeking entry of restraining orders against defendant pursuant to SASPA. The complaints alleged defendant sexually assaulted each child from "2013 through March 2015." Based on the allegations in the complaints, and fourteen months after the end of defendant's alleged conduct, the court entered a May 11, 2016 SASPA temporary restraining order that in pertinent part barred defendant from any contact with his children.

In the proceedings on plaintiff's requests for final restraining orders under N.J.S.A. 2C:14-16, the court dismissed the SASPA complaints, finding the statute was unconstitutional as applied to defendant. N.J.S.A. 2C:14-16 provides that "the standard for proving the allegations made in the application for a protective order shall be a preponderance of the evidence." In

a thoughtful and comprehensive oral opinion, the court reasoned that because a final restraining order against defendant would bar him from having any contact with his children, the preponderance of the evidence standard in N.J.S.A. 2C:14-16 was constitutionally insufficient to protect defendant's due process liberty interest in having a parental relationship with his children. The court concluded that the issuance of a SASPA restraining order barring contact between a parent and child requires proof by clear and convincing evidence and therefore N.J.S.A. 2C:14-16 was unconstitutional as applied to the SASPA claims against defendant.

On June 20, 2016, the court entered an order dismissing the SASPA complaints.² The order also suspended the April 20, 2016 award of supervised parenting time to defendant in the Title Nine proceeding pending further order of the court. Plaintiff appealed the court's June 20, 2016 order dismissing the SASPA complaints.

II.

"In our review of a Family Part judge's motion order, we defer to factual findings 'supported by adequate, substantial, credible evidence' in the record." Landers v. Landers, 444 N.J. Super. 315, 319 (App. Div. 2016) (quoting Gnall v. Gnall, 222 N.J. 414, 428 (2015)). We accord special deference to the expertise of

² The court also issued a June 22, 2016 order correcting a clerical error in the third paragraph of the June 20, 2016 order.

the Family Part in its application of legal principles to family disputes. Cesare v. Cesare, 154 N.J. 394, 412 (1998). "However, when reviewing legal conclusions, our obligation is different; '[t]o the extent that the trial court's decision constitutes a legal determination, we review it de novo.'" Landers, supra, 444 N.J. Super. at 319 (alteration in original) (quoting D'Agostino v. Maldonado, 216 N.J. 168, 182 (2013)).

On appeal, plaintiff does not challenge the court's conclusion that a minor child's allegations supporting a final SASPA restraining order against a parent requires application of a clear and convincing standard. Plaintiff argues the court erred by reasoning that the issuance of a SASPA restraining order is tantamount to a termination of parental rights and thus Title Thirty's clear and convincing standard is required. Plaintiff instead argues that, independent of Title Thirty, the clear and convincing standard is required for the issuance of a SASPA final restraining order because our Supreme Court has held that a denial of parenting time is permitted "where it clearly and convincingly appears that the granting of visitation will cause physical or emotional harm to the children or where it is demonstrated that the parent is unfit." V.C. v. M.J.B., 163 N.J. 200, 229 (2000).

Plaintiff also contends that the court's determination the clear and convincing standard is required should not have resulted

in the dismissal of the complaints. Plaintiff argues the court should have held a hearing and applied the standard, and requests that we vacate the court's order and remand for further proceedings. Defendant asserts that the court correctly decided the standard of proof issue and that dismissal of the complaints was required.

We are mindful that we should not decide issues of constitutional magnitude unless required for the proper disposition of a matter. O'Keefe v. Passaic Valley Water Comm'n, 132 N.J. 234, 240 (1993). Here, we have carefully considered the record and the parties' arguments and find it unnecessary to decide the constitutional issue upon which the trial court based its dismissal order. Instead, we are constrained to affirm the dismissal of the complaints on more basic grounds; plaintiff's children are not entitled to SASPA relief because the statute was not in effect when the alleged conduct took place and SASPA does not apply retroactively.

SASPA permits any person who is the victim of "nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, and who is not eligible for a restraining order as a 'victim of domestic violence'" under the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 to -33, to obtain a restraining order against a perpetrator. N.J.S.A. 2C:14-14. Upon

the filing of a complaint seeking SASPA relief, the court may issue a temporary restraining order against the defendant prohibiting any contact with the alleged victim, N.J.S.A. 2C:14-15(e), and, after a hearing, issue a final restraining order barring any contact, N.J.S.A. 2C:14-16(f). A final restraining order remains in effect until further order of the court, and either party may petition the court to modify or dissolve the final order. N.J.S.A. 2C:14-16(i). Where a law enforcement officer finds probable cause that a SASPA restraining order has been violated, the defendant may be arrested, N.J.S.A. 2C:14-17, and prosecuted pursuant to N.J.S.A. 2C:29-9(d) for either a fourth-degree criminal offense or disorderly persons offense, N.J.S.A. 2C:14-18, depending on the nature of the violations.

SASPA was enacted in 2015, L. 2015 c. 147 § 1, and became effective on May 9, 2016, two days before plaintiff filed the complaints here. The complaints, however, did not allege that defendant engaged in any sexual assault on or after May 9, 2016. In contrast, the complaints alleged defendant last sexually assaulted the children in March 2015, fourteen months prior to SASPA's enactment. We are thus compelled to consider whether SASPA can be used to impose a restraining order on defendant based on alleged conduct by defendant that predates the SASPA's effective

date and indeed the enactment of SASPA. We find that SASPA does not permit such retroactive application.

"Generally, newly enacted laws are applied prospectively." Johnson v. Roselle EZ Quick LLC, 226 N.J. 370, 387 (2016). "A venerable principle of statutory construction posits that 'statutes should not be given retrospective application unless such an intention is manifested by the Legislature in clear terms.'" D.C. v. F.R., 286 N.J. Super. 589, 602-03 (App. Div. 1996) (quoting Skulski v. Nolan, 68 N.J. 179, 202 (1975)); see also Gibbons v. Gibbons, 86 N.J. 515, 521-24 (1981). The approach is founded on "long-held notions of fairness and due process," but "is no more than a rule of statutory interpretation meant to 'aid the court in the search for legislative intent.'" Johnson, supra, 226 N.J. at 387 (citations omitted).

Our Supreme Court has explained the standard for determining whether a statute should be applied retroactively:

"[t]wo questions inhere in the determination whether a court should apply a statute retroactively." "The first question is whether the Legislature intended to give the statute retroactive application." "If so, the second question is whether retroactive application is an unconstitutional interference with 'vested rights' or will result in a 'manifest injustice.'" Both questions must be satisfied for a statute to be applied retroactively.

[Ibid. at 387 (alteration in original) (citations omitted).]

In the analysis of the first question, "legislative intent for retroactivity can be demonstrated: '(1) when the Legislature expresses its intent that the law apply retroactively, either expressly or implicitly; (2) when an amendment is curative; or (3) when the expectations of the parties so warrant.'" Ibid. (citations omitted). Only one of these grounds must be shown in order for a statute to be given retroactive effect. Ibid.

Measured against these principles, we are convinced there is no basis to apply SASPA retroactively. To the contrary, the Legislature provided that SASPA would not take "take effect [until] the 180th day following enactment." L. 2015, c. 147, § 11. We discern no basis to conclude the Legislature expressed an intention to apply the law retroactively. The statute does not expressly direct retroactive application, a fair reading of the statute offers no basis to infer that retroactive application was intended, and there is nothing in the statute suggesting "retroactive application may be necessary to make the statute workable or to give it the most sensible interpretation." Gibbons, supra, 86 N.J. at 522; see Johnson, supra, 226 N.J. at 388; D.C., supra, 286 N.J. Super. at 604.

Nor is SASPA curative. A curative statute "'merely . . . carr[ies] out or explain[s] the intent of the original statute[,]' in that its purpose is 'to remedy a perceived imperfection in or

misapplication of a statute" Johnson, supra, 226 N.J. at 388 (fourth alteration in original) (quoting Nelson v. Bd. of Educ., 148 N.J. 358, 370 (1997)). "A curative statute may clarify, but may not change, the meaning of existing law." Ibid. SASPA is a newly enacted legislative protection for persons not covered by the PDVA that does not carry out or explain an existing law. SASPA provides invaluable substantive rights to victims of various forms of sexual assault, but does not qualify as a curative statute for purposes of discerning a legislative intent to make it retroactive. See D.C., supra, 286 N.J. Super. at 607 (finding statute was not curative where it "create[d] a new category of protected individuals with substantive and procedural rights that did not previously exist").

Because there is no clear expression of legislative intent that SASPA was to be applied retroactively, we consider whether "the expectations of the parties may warrant retroactive application" of the statute. Johnson, supra, 226 N.J. at 388 (quoting Gibbons, supra, 86 N.J. at 523). This factor requires a consideration of the controlling law at the time the statute was enacted and "the parties' reasonable expectations as to the law." Ibid. Any expectation of the parties must be "strongly apparent to the parties in order to override the lack of any explicit or

implicit expression of intent for retroactive application." Ibid.
(citation omitted).

We find no basis to conclude that the controlling law or the parties' reasonable expectations based upon it warrant retroactive application of SASPA. Prior to SASPA's enactment, the law was clear; the criminal laws prohibited acts of sexual assault but the PDVA did not afford unemancipated minors under eighteen who were victims of parental sexual assault a statutory right to obtain a restraining order. SASPA provided the statutory right for the first time. See D.C., supra, 286 N.J. Super. at 607 (finding the expectations of the parties did not warrant retroactive application of an amendment to the PDVA to cover individuals dating relationships because the prohibited conduct under the PDVA also violated the criminal laws).³

³ We note that the SASPA was subsequently amended to provide that such relief should instead be sought through the Division:

When it is alleged that nonconsensual sexual contact, sexual penetration, or lewdness, or any attempt at such conduct, has been committed against an unemancipated minor by a parent, guardian, or other person having care, custody and control of that child as defined in N.J.S. 9:6-2, an applicant seeking a protective order shall not proceed under the provisions of [SASPA], but shall report the incident to the Division of Child Protection and Permanency in the Department of Children and Families for investigation and possible

A statute will not be applied retroactively unless one of the three factors demonstrating retroactivity is present. Johnson, supra, 226 N.J. at 387. Our examination of SASPA finds none here. The statute could not properly be applied retroactively to provide coverage and a remedy for alleged actions taken fourteen months before its enactment. In our view, the complaints should have been dismissed on that basis. There was no need to consider an as applied constitutional challenge to the statute because it did not retroactively apply to defendant's alleged actions in the first instance.

Affirmed as modified.

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



CLERK OF THE APPELLATE DIVISION

legal action by the division pursuant to R.S. 9:6-1 et seq. or other applicable law, including, when appropriate, petitioning the Superior Court pursuant to P.L. 1974, c. 119 (C.9:6-8.21 et seq.) for a protective order and other relief on behalf of the applicant and the unemancipated minor.

[L. 2016, c. 93, § 1, eff. Jan. 9, 2017.]