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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-5126-15T3

SOOK HEE LEE,

Plaintiff-Appellant,

v.

JONATHAN KIM, and
JOHN JAY HOFFMAN,
as ACTING ATTORNEY
GENERAL OF NEW JERSEY,

Defendants-Respondents.

Submitted February 6, 2018 - Decided February 27, 2018

Before Judges Carroll, Leone, and Mawla.

On appeal from Superior Court of New Jersey,
Chancery Division, Family Part, Bergen County,
Docket No. FM-02-1745-16.

Kimm Law Firm, attorneys for appellant
(Michael S. Kimm and Adam Garcia, on the
briefs).

O'Kelly & Ruby, LLP, attorneys for respondent
Jonathan Kim (James D. O'Kelly and Marc R.
Ruby, on the brief).

Gurbir S. Grewal, Attorney General, attorney
for respondent John Jay Hoffman, Acting
Attorney General (Lisa A. Puglisi, Assistant

Attorney General, of counsel; Shana Bellin,
Deputy Attorney General, on the brief).

PER CURIAM

Plaintiff Sook Hee Lee appeals from a July 22, 2016 order dismissing her palimony claim for lack of a writing pursuant to the Statute of Frauds, N.J.S.A. 25:1-5(h). We affirm.

We derive the following facts from the record. Lee and defendant Jonathan Kim were in a romantic relationship from June 2010 to June 2012. Lee claimed Kim induced her to live with him and start a family. She also claimed Kim asserted he would support her for the rest of his life. However, the alleged agreement was never reduced to writing. Lee became pregnant one year into the parties' relationship and gave birth to a child in March 2012.

Lee claimed Kim experienced a "change of heart" beginning in 2012, and by May 2014, had asked her to "get out of his life." According to Lee, Kim informed her he no longer wanted to provide health insurance for their child, and told her to enroll in Medicaid. Lee also claimed Kim attempted to coerce her into accepting a \$100,000 "one-time buyout" of her financial claims against him.

In September 2014, Lee filed a complaint in the Family Part against Kim for child support, an accounting of defendant's income, palimony, alleged fraud upon the court in a prior non-dissolution

proceeding, and damages stemming from the intentional infliction of emotional distress. At that time, a child support order already existed under the non-dissolution docket number.

In October 2014, Lee withdrew her palimony claim, and subsequently withdrew her claims of fraud upon the court and intentional infliction of emotional distress. In January 2015, the remainder of the claims in her complaint, including palimony, were dismissed.

In December 2014, Lee filed a complaint under 42 U.S.C. § 1983 in the United States District Court, naming Kim and the State of New Jersey as defendants. Lee's complaint challenged the constitutionality of N.J.S.A. 25:1-5(h). She argued the statute violated her rights to free speech, equal protection, and privacy under the United States Constitution. Lee sought an injunction barring the enforcement of the statute. Both Kim and the Attorney General of New Jersey filed motions to dismiss. After oral argument, the district court judge granted the motions to dismiss.

Lee appealed from the dismissal to the Third Circuit Court of Appeals. In September 2015, the Third Circuit affirmed the dismissal of Lee's complaint against Kim because he was not acting under color of state law. Lee v. Kim, No. 15-2602, slip. op. (3d Cir. Sep. 10, 2015). On June 20, 2016, the Third Circuit affirmed the district court's determination in a written opinion. Lee v.

Kim, 654 F. App'x 64 (3d Cir. 2016). The court determined there was no free speech violation because N.J.S.A. 25:1-5(h) "neither limits what [Lee] may say nor requires [Lee] to say anything." Id. at 68. The court also found no equal protection violation. Id. at 69. The court noted Lee had neither alleged intentional discrimination nor that she was a part of a protected class. Ibid. Therefore, the court applied a rational basis standard of review and concluded, as did the district court judge, that N.J.S.A. 25:1-5(h) was "'extremely rationally related to the end goal' . . . of 'providing greater clarity in the enforcement of palimony agreements.'" Ibid. The court found no facts supported Lee's claim of a privacy violation and held:

[t]o the contrary, Lee is still free to enter into any palimony arrangement she desires, on whatever terms she and the other party agree. [N.J.S.A. 25:1-5(h)] only requires Lee to memorialize an agreement with the advice of counsel if she wishes to enforce that agreement in a New Jersey court.

Ibid.

The United States Supreme Court denied certiorari. Lee v. Kim, ___ U.S. ___, 137 S. Ct. 1098 (2017).

Meanwhile, in February 2016, Lee filed another complaint in the Family Part and named Kim and the Acting Attorney General as defendants. Both defendants filed motions to dismiss for failure to state a claim pursuant to Rule 4:6-2(e). On July 22, 2016, the

motion judge filed a comprehensive written opinion and dismissed the complaint for failure to state a claim for equal protection, free speech, and privacy violations under the New Jersey Constitution. This appeal followed.

On appeal, Lee argues N.J.S.A. 25:1-5(h) violates her right to privacy under the New Jersey Constitution because it regulates speech regarding family planning. Specifically, she argues the statute impinges on fundamental privacy rights between consenting adults and, by mandating a written palimony agreement, compels speech. Lee also argues she was deprived of equal protection under the New Jersey constitution because other families may enter into oral agreements, but she cannot.

I.

Our standard of review for a motion to dismiss for failure to state a claim is the same as the trial court. Seidenberg v. Summit Bank, 348 N.J. Super. 243, 250 (App. Div. 2002). We will affirm if, giving plaintiff the benefit of the allegations, no cause of action has been made out. R. 4:6-2(e); Burg v. State, 147 N.J. Super. 316, 319-20 (App. Div. 1977). The complaint must be searched "in depth and with liberality . . . to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim[.]" Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 746 (1989). If reasonable

minds could differ, while according the plaintiff all favorable inferences and assuming all plaintiff's factual pleadings are true, the motion must be denied. Dolson v. Anastasia, 55 N.J. 2, 5 (1969). When even a generous reading of the complaint reveals no basis for relief, dismissal is required. Camden Cty. Energy Recovery Assocs., L.P. v. N.J. Dep't of Env'tl. Prot., 320 N.J. Super. 59, 64 (App. Div. 1999).

Lee argues N.J.S.A. 25:1-5(h) violates her right to privacy under the New Jersey Constitution. Specifically, she claims the statute violates her privacy rights because it implicates and infringes on familial matters. Lee asserts the statute is unconstitutional and "was cloaked as a 'statute of frauds' . . . [but] was a means of denying family court protection primarily to single women out of wedlock who were dependent upon the family court for enforcement of support rights"

The New Jersey Constitution protects an individual's right to privacy under Article I, Paragraph 1 of the New Jersey Constitution. Henessey v. Coastal Eagle Point Oil Co., 129 N.J. 81, 94 (1992). Article I, Paragraph 1 states, "[a]ll persons . . . have certain natural and unalienable rights, among which are those of enjoying and defending life and liberty of acquiring, possessing, and protecting property, and of pursuing and obtaining safety and happiness." N.J. Const. art. I, ¶ 1.

Our common law has defined the right to privacy as "the right of an individual to be . . . protected from any wrongful intrusion into his private life which would outrage or cause mental suffering, shame or humiliation to a person of ordinary sensibilities." McGovern v. Van Riper, 137 N.J. Eq. 24, 32 (N.J. Ch. 1945). The court in McGovern held the right to privacy is an inalienable right. Id. at 33. Since McGovern, the New Jersey Supreme Court has recognized the right to privacy includes marriage, family, refusal of medical treatment, consensual adult sexual relations, and procreative rights. Hennessy, 129 N.J. at 96.

N.J.S.A. 25:1-5(h) states:

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

The Supreme Court has stated:

The goal of all statutory interpretation "is to give effect to the intent of the Legislature." We first look to the statutory language, which generally is the "best indicator" of the Legislature's intent. Only if the language of the statute is shrouded in ambiguity or silence, and yields more than one plausible interpretation, do we turn to

extrinsic sources, such as legislative history.

[Maeker v. Ross, 219 N.J. 565, 575 (2014) (citations omitted) (quoting Aronberg v. Tolbert, 207 N.J. 587, 597 (2011); DiProspero v. Penn, 183 N.J. 477, 492-93 (2005)).]

The Supreme Court has explained the purpose of the Statute of Frauds as follows:

The Statute of Frauds recognizes that certain agreements may be "susceptible to fraudulent and unreliable methods of proof" and therefore insists that those agreements be reduced to writing and signed. See Moses v. Moses, 140 N.J. Eq. 575, 584, (E. & A. 1947) ("The primary design of . . . the Statute of Frauds is to avoid the hazards attending the use of uncertain, unreliable and perjured oral testimony").

[Id. at 578 (citation omitted) (alteration in original).]

The legislative statement, which explained the intent of N.J.S.A. 25:1-5(h), stated as follows:

The [Supreme Court of New Jersey] held that the right to [palimony] is found in contract principles and that the contract may be either express or implied. . . . This bill is intended to overturn these "palimony" decisions by requiring that any such contract must be in writing and signed by the person making the promise.

[2008 Legis. Bill Hist. NJ S.B. 2091 (Feb. 9, 2009).]

Further, when Governor Jon S. Corzine signed the bill into law he stated "Legislative leadership . . . share my goal of providing

greater clarity in the enforcement of palimony agreements" Governor's Statement on Signing Senate Bill No., 2091 (L. 2009, c. 311)

Thus, given the safeguards of the Statute of Frauds, the Legislature's inclusion of palimony within the statute is protective of an individual's right to contract, not an infringement on the family unit. Palimony agreements do not derive exclusively from the family relationship, and are primarily contractual in nature. Maeker, 219 N.J. at 568. Therefore, that the Legislature would seek to regulate such contracts in a manner to assure certitude for both parties to the contract does not demonstrate an animus toward women in out-of-wedlock relationships. Id. at 213.

Moreover, inherent in the right to privacy is the protection of personal decisions and the freedom of personal development. State v. Saunders, 75 N.J. 200, 210 (1977). In Saunders, the court held that it was inappropriate for the State to regulate fornication because such conduct was private and personal in nature, and therefore protected by an individual's right to privacy. 75 N.J. at 213. In contrast, a contract for support, which as with other contracts if breached can only be enforced through the judicial process, does not implicate conduct of an intimate and personal nature as in Saunders.

In addition, N.J.S.A. 25:1-5(h) does not prohibit individuals from making personal decisions or having the freedom of personal development. As the motion judge noted, "Lee was not barred from entering into an intimate relationship with . . . Kim" and both "were not barred from planning a family as they saw fit." Neither a plain reading of the statute nor its legislative history lend support to Lee's claim the law targets the privacy rights of women out-of-wedlock.

II.

Lee argues the palimony statute is unconstitutional because it compels speech by requiring palimony agreements to be in writing, and mandating the parties consult a lawyer. Therefore, Lee asserts "[b]oth reasons require invalidation as unconstitutional infringements of plaintiff's constitutional rights of free speech, under the state or federal constitution."

Speech is protected under the New Jersey State Constitution, Article 1, Paragraph 6, which states "[n]o law shall be passed to restrain or abridge the liberty of speech or of the press." To interpret principles of free speech, our courts rely upon federal constitutional principles. Hamilton Amusement Ctr. v. Verniero, 156 N.J. 254, 264 (1998).

In certain situations, the United States Supreme Court has struck down laws that compelled speech. Examples of prohibited

compelled speech include: a state law which required children to salute the flag; laws that require newspapers to provide space to political candidates; and state laws that penalize individuals for blocking portions of their license plates which bear the state motto. See W.V. State Bd. of Educ. v. Barnetts, 319 U.S. 624 (1943); Miami Herald Publ'g Co. v. Tornillo, 418 U.S. 241 (1974); Wooley v. Maynard, 430 U.S. 705 (1977).

Nothing in N.J.S.A. 25:1-5(h) requires individuals to enter into written palimony agreements. Rather, as the motion judge noted, the statute requires "if the parties seek aid of the [c]ourt in enforcing their agreement, then the agreement must be in writing." Similar requirements have been imposed in other contexts where contracts purport to govern personal relationships. See, e.g., N.J.S.A. 37:2-33. A signed writing has been mandated where a party seeks to enforce a settlement reached in mediation. Willingboro Mall, Ltd. v. 240/242 Franklin Ave., LLC, 215 N.J. 242, 263 (2013) (holding a signed, written agreement "will greatly minimize the potential for litigation.")

Lee has not demonstrated how the statute unconstitutionally compels speech. We have been provided no explanation how seeking the advice of counsel is a form of speech as defined by the New Jersey Constitution. Moreover, Lee has not demonstrated why N.J.S.A. 25:1-5(h) is unconstitutional, yet the remainder of the

Statute of Frauds, which imposes a similar writing requirement on other contract types is constitutional.

III.

Finally, we reject Lee's argument N.J.S.A. 25:1-5(h) violates equal protection. Lee's equal protection argument is that other types of oral agreements are enforceable whereas oral palimony agreements are not enforceable in court.

Legislation is presumed to be valid. State v. Profaci, 56 N.J. 346, 349 (1970). The party who challenges the validity of legislation bears the burden of proving it is invalid. Shelton Coll. v. State Bd. of Educ., 48 N.J. 501, 521 (1967).

The New Jersey Constitution provides equal protection of the laws under Article I, Paragraph 1. Lewis v. Harris, 188 N.J. 415, 442 (2006). "When a statute is challenged on the ground that it does not apply evenhandedly to similarly situated people, [the State's] equal protection jurisprudence requires that the legislation, in distinguishing between two classes of people, bear a substantial relationship to a legitimate governmental purpose." Id. at 443. The court considers a three factor analysis to determine if a statute violates equal protection: 1) "the nature of the right at stake"; 2) "the extent to which the challenged statutory scheme restricts that right"; and 3) "the public need for the statutory restriction." Ibid.

Here, the statute does not violate equal protection because it does not restrict the right to contract. Indeed, Lee is still able to contract orally or in writing. Rather, by stating the court will enforce only written palimony agreements, the Legislature addressed the public need for clarity in palimony contracts. Thus, N.J.S.A. 25:1-5(h) bears a substantial relationship to a legitimate government purpose and does not violate equal protection.

Affirmed.

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



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