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OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MONMOUTH COUNTY
DOCKET NO. C-86-24

BARBARA SLANOVEC,

Plaintiff,

v.

ROBERT CARROLL, and
MAIA MODEBADZE,

Defendants.

OPINION

Decided December 23, 2024.

Wilentz, Goldman & Spitzer, P.A. (Willard C. Shih, Esq., and Fiona Ambrosio, Esq., appearing), attorneys for plaintiff.

Davison Eastman Munoz Paone (Christina D. Hardman-O'Neal, Esq., appearing), attorneys for defendants.

FISHER, P.J.A.D. (t/a, retired on recall).

This court, in considering defendant's motion to dismiss for failure to state a claim on which relief may be granted, must consider whether plaintiff may maintain a claim against her brother based on, among other things, his alleged

alienation of their mother's affections for her, and, specifically: (1) whether the parties' mother is an indispensable party; (2) whether the Heart Balm Act, N.J.S.A. 2A:23-1, bars the claim or otherwise counsels against its recognition as a viable claim; and (3) whether equitable relief might eventually be warranted.[1]

Plaintiff Barbara Slanovec and defendant Robert Carroll are siblings and two of Margaret Carroll's three adult children. In assuming the truth of plaintiff's allegations at this stage, as required, see Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 746 (1989), the court observes that Margaret, who is not a named party, is a ninety-two-year-old resident of Wall Township, Barbara and Robert reside in Pennsylvania and Florida, respectively, and defendant Maia Modebadze is Margaret's live-in aide. Barbara alleges in her complaint, with greater specificity than need be repeated or paraphrased at length here, that her efforts to visit with her mother have been precluded or frustrated and that her relationship with her mother has been tarnished or diminished by the false statements and wrongful interference of Robert and Maia. Barbara has pleaded four separate counts for relief. One count has become

[1] The motion was originally argued on November 8, 2024. At that time, the court afforded the parties the opportunity to brief the first two of these three issues. Both parties submitted excellent briefs that have been considered and were the subject of additional oral argument on December 20, 2024.

moot[2]; the other three are labeled: "visitation and access"; "prima facie tort"; and "defamation." No answer has been filed; instead, Robert has moved to dismiss for failure to state a claim on which relief may be granted.

I

In seeking dismissal pursuant to Rule 4:6-2(e), Robert asserts that Barbara's three remaining counts do not constitute valid causes of action. In so arguing, Robert focuses on Barbara's chief allegation that he is using his influence, and providing false information to Margaret, to diminish or eviscerate Barbara's relationship with Margaret. To illustrate the nature of Barbara's asserted claim and the availability of the relief she pursues, the ad damnum clause in her "visitation and access" count seeks, among other things, an order that would restrain Robert and Maia "from attempting to prevent or limit Barbara's ability to visit Margaret by providing false information about her availability to Barbara."

Although Barbara's counsel has skillfully limited the relief sought to that which, at least ostensibly, wouldn't interfere with Margaret's own decisions and choices, and would only prevent defendants from interfering or making false

[2] Barbara included a count that sought to invalidate a power of attorney but, as acknowledged in her initial opposing brief and during the initial oral argument on November 8, 2024, that circumstances have rendered that claim moot and it is no longer being pursued.

statements, it is nevertheless clear to the court that these claims seek to alter the sphere of influence around Margaret. See R.A.C. v. P.J.S., 380 N.J. Super. 94, 118 (App. Div. 2005) (expressing concern about the court becoming "embroil[ed] in a microscopic examination of how [a] relationship has been affected by defendant's conduct and would make the child the focal point of any litigation"), rev. on other grds., 192 N.J. 81 (2007). The relief Barbara seeks – even if directed solely against defendants – could still impact Margaret's wants and desires and she – an autonomous individual who has not been shown to be incapacitated or otherwise unable to make her own decision – ought to have a full say about the entry of, and the terms of, any injunctive relief this court may temporarily or permanently issue that would impact or adjust her circle of friends and relatives. See Markwardt v. New Beginnings, 304 N.J. Super. 522, 536 n.4 (App. Div. 1997); Slater v. Slater, 223 N.J. Super. 511, 519 (App. Div. 1988).

"In every judicial procedure it is essential that the person whose rights are to be effected should be a party." In re Hayden, 101 N.J. Eq. 361, 365 (Ch. 1927). Margaret has a clear and unmistakable right to be heard about what should happen here. She should not have to sit silently on the sidelines while others decide who it is she may or may not meet or speak with. The court requires her inclusion in this case as a party pursuant to Rule 4:28-1.

II

Because Barbara's claims are somewhat novel and uncertain, however, the court will deny the motion to dismiss. To be sure, there are legitimate doubts about the complaint's viability. The supplemental briefs and the oral argument heard on December 20, 2024, focused on whether the Heart Balm Act permits a remedy if it can be shown that Robert has alienated Margaret's relationship with Barbara. The Heart Balm Act abolished "rights of action . . . for the alienation of affections, criminal conversation, seduction or breach of contract to marry"; it has been interpreted by this State's highest court – albeit many years ago – as having application only to claims impacting "the institution or marriage." Blackman v. Iles, 4 N.J. 82, 89 (1950).[3] That circumstance isn't present here; the alleged alienated relationship is between parent and child, so the court concludes that the Heart Balm Act does not expressly bar this action.[4]

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[3] The few binding decisions that have issued since Blackman all recognize that the Heart Balm Act applies only when the claim centers on a marital relationship. See Grobart v. Grobart, 5 N.J. 161 (1950); Segal v. Lynch, 413 N.J. Super. 171, 185 (App. Div. 2010); Magierowski v. Buckley, 39 N.J. Super. 534, 547 (App. Div. 1956). One trial court opinion, C.M. v. J.M., 320 N.J. Super. 119, 126 (Ch. Div. 1999), concluded that the Heart Balm Act does not bar a claim that chiefly alleged a splintering of a relationship between parent and child; that decision, however, was criticized by the Appellate Division. See R.A.C., 380 N.J. Super. at 117.

[4] A phrase in the Act omitted in the quotation above states that the Legislature abolished actions "to recover sums of money as damage." Barbara chiefly seeks injunctive relief – otherwise she would have filed this action in the Law Division

But the fact that the Heart Balm Act did not expressly sweep away all imaginable alienation-of-affection claims does not end the inquiry. To put the question jurisprudentially, and to start at the beginning, the common law acknowledged alienation-of-affection claims until, in 1935, the Legislature found these and other similar common law claims to have been "exercised by unscrupulous persons for their unjust enrichment" and that such actions have been subject "to grave abuses, causing extreme annoyance, embarrassment, humiliation and pecuniary damage to many persons wholly innocent and free of any wrongdoing, who were merely the victims of circumstances." Blackman, 4 N.J. at 91. Not much thought about these types of actions has been given by our courts since. See n.3, above. Barbara now seeks to employ a similar type of action that avoided the specific scope of the Heart Balm Act or was perhaps not envisioned when the Legislature then acted. That this cause of action may have escaped legislative action back in 1935, however, doesn't mean that the common law should now recognize such a claim in this different context; the court must

– so there is a question about whether the Act abolishes claims for equitable remedies. Despite one trial court decision over seventy years ago held that the Act does not bar claims for injunctive relief otherwise barred, see Devine v. Devine, 20 N.J. Super. 522, 527 (Ch. Div. 1952), the court doubts the Act should be limited to permit such an artificial distinction or that the Legislature intended to allow the maintenance of such actions so long as damages aren't sought. Anyway, because the Act has no direct application to the relationship allegedly alienated here, the court need not presently consider whether Devine should be followed in this context.

still consider whether the recognition of a cause of action like this conforms with current public policy and social mores, see, e.g., Hopkins v. Fox & Lazo Realtors, 132 N.J. 426, 435 (1993) (observing that "the legal rules expressive of the common law embody underlying principles of public policy and perceptions of social value"), or, stated another way, whether the public policy the Legislature sought to vindicate by enacting the Heart Balm Act similarly requires rejection of this claim even though the Legislature didn't expressly abolish it. In short, it might be argued that it would be a regression of this State's common law to allow our courts to become so involved in personal familial matters not greatly dissimilar from those the Heart Balm Act brought to an end so long ago.

The rule governing Robert's motion requires that the court not only presently assume the truth of Barbara's allegations but also all reasonable factual inferences; moreover, the court must search her pleading in depth and with liberality to determine whether a cause of action can be gleaned even from an obscure statement. Printing Mart-Morristown, 116 N.J. at 746. "[E]ven greater hesitancy" is required when "the legal basis for the claim emanates from a new or evolving legal doctrine." Seidenberg v. Summit Bank, 348 N.J. Super. 243, 250 (App. Div. 2002).

The legal structure on which Barbara's claims are based are far from rock-solid; her claim may be a "new or evolving legal doctrine"[5] or it may be based on an old and discredited theory that should remain discarded. In any event, in the spirit of Rule 4:6-2, the court holds that Barbara should be allowed at least enough leeway to get beyond the pleading stage. While there appear to be considerable obstacles and difficulties in getting to what it is Barbara is pursuing, those obstacles and difficulties should not bar her further pursuit of what it is she is after. That is, the court's present doubts about the viability of some or all of Barbara's claims should not be finally resolved at this stage. Perhaps greater clarity about the sufficiency of the action's legal underpinnings and its proper course will arise in the fullness of time.[6]

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[5] The common law is never static. Chief Justice Vanderbilt observed that "[o]ne of the great virtues of the common law is its dynamic nature that makes it adaptable to the requirements of society at the time of its application in court." State v. Culver, 23 N.J. 495, 506 (1957). It may be that rather than a regression to the days of "extreme annoyance, embarrassment [and] humiliation," Blackman, 4 N.J. at 91, caused by similar claims before they were abolished by the Heart Balm Act, recognition of a claim such as that pleaded by Barbara may actually be more in tune with societal mores that may now encourage judicial intervention in personal or intimate familial circumstances for the sake of ensuring greater care and autonomy for the aged.

[6] The court is mindful that Barbara has pleaded two other counts – one entitled "prima facie tort" and the other "defamation." The defense argument that these two counts do not state a cause of action need not detain us long. The former is as expansive or as limited as the circumstances and the nature of the wrongful conduct allow. See Taylor v. Metzger, 152 N.J. 490, 522 (1998) (recognizing that a defendant may be liable in tort when intentionally causing injury to

III

There is also a concern inherent in all requests for injunctive relief that may ultimately preclude some or all the relief Barbara seeks. This is a concern not often expressed by courts when considering the propriety of granting injunctive relief, yet the court must be particularly mindful of it here. This concern springs from the maxim that equity will not enter a vain or useless decree. See Silverman v. Berkson, 141 N.J. 412, 430 (1995); Sarokhan v. Fair Lawn Memorial Hosp., Inc., 83 N.J. Super. 127, 133 (App. Div. 1964).

In employing that concept here, the court must be sure about "the practicality of framing or enforcing" an injunction. See Restatement, Torts 2d, § 936(1)(g); Sheppard v. Twp. of Frankford, 261 N.J. Super. 5, 10 (App. Div.

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another "if [the] conduct is generally culpable and not justifiable under the circumstances" even if "the actor's conduct does not come within a traditional category of tort liability"). Barbara has pleaded its elements; whether she can prove it is not the present question. As to the other claim, defamation is a familiar and well-established cause of action, and Barbara has pleaded the three required elements. See G.D. v. Kenny, 205 N.J. 275, 292-93 (2011) (recognizing that defamation requires "a false and defamatory statement," that was "communicated to another (and not privileged)," and was made "negligently or with actual malice"). A pleader, however, must allege more than just a bald claim that the defendant made "a defamatory statement"; the pleader must allege a statement that "subjects an individual to contempt or ridicule," or one that "harms a person's reputation by lowering the community's estimation of him [or her]," or one that "deter[s] others from wanting to associate or deal with him [or her]." Id. at 293. In searching Barbara's complaint in depth, it is clear that she has pleaded the third type of defamatory statement – that defendants' alleged false statements have deterred Margaret from wanting to associate with Barbara – and states a viable cause of action.

1992); see also Paternoster v. Shuster, 296 N.J. Super. 544, 556 (App. Div. 1997). So, even if Barbara can prove some wrongdoing on Robert's part and her entitlement to a remedy, Barbara would still have to demonstrate that an injunction could be crafted in a way that would, first, not inappropriately or unreasonably interfere with Robert's relationship with Margaret, and second, not interfere with Margaret's own chosen sphere of friends and relatives. See Di Cataldo v. Harold Corp., 15 N.J. Super. 471, 478 (Ch. Div. 1951) (recognizing that a decree dependent on "the will or discretion" of others, like Margaret here, is likely a "vain judgment"). The injunction would also have to be designed to both fairly advise of the wrongful conduct not to be repeated or pursued, or that conduct to which the targets are directed to conform, see Pen Carbon Manifold Co. v. Tomney, 90 N.J. Eq. 233, 233 (E. & A. 1919) (holding that the "validity of [a] restraint . . . depends on whether it was no more extensive than was reasonably required to protect the interest of the party in favor of whom it was given"); see also Sunbeam Corp. v. Windsor-Fifth Ave., 14 N.J. 222, 232 (1953); Verna v. Links at Valleybrook Neighborhood Ass'n, 371 N.J. Super. 77, 89 (App. Div. 2004), while still providing for enforcement without necessarily generating extensive post-injunction litigation, see Fleischer v. James Drug Stores, Inc., 1 N.J. 138, 148 (1948) (recognizing that equity may decline to act when compliance "would entail continuing and constant [court] superintendence

over a considerable period of time"); Ridge Chevrolet-Oldsmobile, Inc. v. Scarano, 238 N.J. Super. 149, 157 (App. Div. 1990) (recognizing that relief may be withheld if it would require "the court to maintain supervision over the performance . . . for an indeterminate period of time"); Lester's Home Furnishers, Inc. v. Modern Furniture Co., 1 N.J. Super. 365, 370-71 (Ch. Div. 1948) (observing that relief may be withheld when the required "actual performance and accomplishment" would likely lead to "frequent disputes" and present "difficulty in [the court's] supervision").

Should Barbara ultimately prove her claims, the court would enter relief so long as it accorded with these, and other, well-established equitable principles. Again, it is premature to determine whether equitable relief could be granted here, but it is something the parties and the court will need to consider in the future course of this case.

* * *

The motion to dismiss will be denied but Margaret must be added as an indispensable party. An appropriate order has been entered.