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SUPERIOR COURT OF NEW JERSEY
MONMOUTH COUNTY
CHANCERY DIVISION, FAMILY PART
DOCKET NO. FV-13-1110-19

S.C.,

Plaintiff,

v.

J.D.,

Defendant.

APPROVED FOR PUBLICATION

May 7, 2020

COMMITTEE ON OPINIONS

Decided: March 21, 2019

Jared B. Weiss, for plaintiff (Fruchter, Weiss & Associates, attorneys)

Robert A. Honecker, Jr. and Tara K. Walsh, for defendant (Ansell, Grimm & Aaron, P.C., attorneys)

ACQUAVIVA, J.S.C.

This domestic violence case concerns the breadth of "household member" jurisdiction in the context of a modern, blended family. The parties are adult, half-siblings with the same father, who never resided together. During their youth, however, they shared meaningful, regular time with each

other in the same household. Until college, plaintiff Samantha[1] resided solely with her father and mother at the family home. During his pre-college years, defendant Jake regularly and consistently spent substantial periods of time at the family home, including overnights every other weekend during the school year and more extended times during the summer. Although he did not have a bedroom, he had a fixed sleeping arrangement and drawers containing underwear, gym shorts, and toiletries. During and after college, their in-person contact decreased, but they still gathered informally and at family milestones, holidays, and vacations.

In view of those facts, pursuant to the Prevention of Domestic Violence Act ("PDVA"), N.J.S.A. 2C:25-17 to -35, the court holds that, for purposes of the jurisdictional "household member" requirement, a child whose parents are separated during youth but who spends meaningful, regular periods of time at a parent of alternate residence's home such that he or she is substantially integrated into that "household" may simultaneously have two households creating jurisdiction vis-à-vis a victimized half-sibling who resided solely with the shared parent. "Household member" as used in the PDVA's definition of "victim of domestic violence" must be sufficiently flexible to accommodate the ever-changing dynamics of modern families. See N.J.S.A. 2C:25-19(d). To restrict a

[1] The court shall use pseudonyms to protect the parties' identities and refer to father's and Samantha's childhood residence as the family home. See R. 1:38-3(d)(9) & (10).

child whose parents are separated to only one household despite meaningful, regular time in a second household would untenably alter the statutory construct, discriminate against members of blended families, and unduly restrict the broadly designed, legislatively crafted protections afforded victims of domestic violence.

I.

On February 13, 2019, Samantha – now 32 – obtained a temporary restraining order against Jake – now 35 – pursuant to the PDVA, alleging assault and terroristic threats. The jurisdictional ground was the parties' previous household member status. On March 6, 2019, Jake moved to dismiss, contending that his "sporadic" relationship with Samantha "on the weekends, at holidays, and the occasional family vacation" was insufficient to establish jurisdiction. Trial on the jurisdictional issue was held March 15 and 21, 2019.

Some family history is required. After Jake's birth, his father and mother divorced pursuant to a judgment of divorce that incorporated a written marital settlement agreement ("MSA"). The MSA granted Jake's mother "custody" of Jake but required her to keep his father informed of Jake's health, education, and welfare. The MSA granted his father access to school and medical records. The MSA provided his father "free and liberal visitation . . . as often as possible," and "ready telephone access."

Thereafter, Jake's mother obtained a final restraining order against Jake's father. The final restraining order incorporated a June 1990 agreement that created a supervised parenting time arrangement whereby Samantha's mother would be the supervisor of her father's parenting time and designated driver for Jake.

At all times until her attendance at college, Samantha lived at the family home. Other than the approximate six-month period following her father's "full-blown manic episode" in early 1990 that precipitated the final restraining order, he had regular, consistent parenting time with Jake – especially after resolution of the restraining order. Indeed, the father, Samantha's mother, Samantha, Samantha's brother Derek, and Jake himself all recounted the father consistently exerting bi-monthly parenting time including overnights at the family home during the school year, with expanded parenting time during the summer.

In addition, testimony was adduced from Jessica (an older half-sibling to both Jake and Samantha, who all shared the same father) that although the family home had three bedrooms, Jessica and Jake slept on pull-out sofas in the living room, often after watching their beloved Philadelphia sports teams or SportsCenter. During cross examination, defense counsel used his fingers as quotation marks when referring to this "family" dynamic. Jessica was indignant: "I don't like the air quotes. . . . We, as kids, were a family." Despite residing with

her mother, Jessica recounted significant portions of her childhood at the family home with "so many memories with [Jake]."

Although Jake resided at his mother's home in a different school district, Jake spent substantial, regular, continuous time at the family home during his youth. Samantha and Jake had a meaningful, regular, substantially integrated sibling relationship with an emotional and physical bond not dissimilar from siblings in a singular household. Stories were recounted of a sports-crazed youth, with siblings playing baseball and basketball, remaining outside past sunset to play man hunt, and staying up late to watch sports. Jake's time at the family home also included holidays, such as Father's Day and Jewish holidays. It was the family's tradition to allow the various mothers to enjoy Thanksgiving Day with their children, but Jessica, Jake, Samantha, and Derek would all spend Thanksgiving Friday with their father and Samantha's mother. In short, Jake was family – not a sporadic visitor.

Noteworthy is the credible testimony of Samantha's mother. Following Samantha's birth, Samantha's mother quit her job to stay at home. She testified that Jake was "regularly" at the family home every other weekend, because it was "good for the children." She characterized those bi-monthly visits as "consistent . . . certainly when I was not working." Jake's time at the family home was so frequent that he had drawers at the home with gym shorts, underwear, and

toiletries. He had "free access" to the home, where she and his father provided for his food, shelter, electricity, heat, and all other needs during his time there.

To be sure, Jake admitted spending consistent overnights at the family home, acknowledging that his once to twice a month visits "became normal practice that we kept up." On cross examination, he referred to it as a "regular, twice a month visitation schedule." He attempted to downplay his relationship with Samantha, referring to her as a "friend" – not his sister. That transparent effort to diminish the relationship, must be juxtaposed, however, with his comments that he endeavored to develop a positive relationship with his family, "especially with Samantha." Nevertheless, he recognized that he was closest with Samantha and their relationship continued after departing the family home.

Like so many siblings, in their adult years, Samantha and Jake spent less time in each other's physical presence due to academic endeavors, work, and geographic distance. Nevertheless, they remained in regular – albeit unscheduled and informal – physical contact and continued to attend various holidays and family gatherings together, not to mention a recent family camping trip. Finally, as recently as November 2018, Samantha and Jake were together for a family birthday party.

Lastly, the alleged predicate act occurred on January 24, 2019. On January 23, 2019, Jake spent the night at Samantha's residence – a location he admitted to

having an "open invitation" to. He left the next morning for a work obligation but returned again on January 24, 2019 when the alleged predicate act occurred.

III.

A. Prevention of Domestic Violence Act Overview

The PDVA is a remedial statute designed to eradicate the scourge of domestic violence. J.S. v. J.F., 410 N.J. Super. 611, 614 (App. Div. 2009) (citing Cesare v. Cesare, 154 N.J. 394, 400 (1998)). The PDVA "assure[s] the victims of domestic violence the maximum protection from abuse the law can provide." N.J.S.A. 2C:25-18. Accordingly, the PDVA's language should be construed liberally, to provide statutory terms "the most expansive reading of which they are reasonably susceptible." N.G. v. J.P., 426 N.J. Super. 398, 409 (App. Div. 2012). Accord Cesare, 154 N.J. at 400 (mandating liberal construction); R.G. v. R.G. 449 N.J. Super. 208, 220 (App. Div. 2017) (same).

The PDVA, however, is not boundless. The PDVA specifies jurisdictional relationships that must exist. Relevant here, "victim of domestic violence" is defined as: "any person who is 18 years of age or older . . . who has been subjected to domestic violence by . . . any other person who is a present household member or was at any time a household member." N.J.S.A. 2C:25-19(d).

B. Pre-2015 Amendment Case Law

Prior to the 2015 amendments, "victim of domestic violence" included "any . . . person who is a present or former household member." N.J.S.A. 2C:25-19(d) (subsequently amended).

In Jutchenko v. Jutchenko, the Appellate Division reversed the entry of a final restraining order between middle-aged brothers who had not lived together for approximately two decades. 283 N.J. Super. 17 (App. Div. 1995). The court reasoned "we do not believe that the Legislature could have intended the protections of the Act to extend to conduct related to a dispute between two persons who have not resided together in the same household for twenty years" absent a showing that the "past domestic relationship . . . provide[d] a special opportunity for 'abusive and controlling behavior.'" Id. at 20.

In 2012, the Appellate Division revisited "household member" jurisdiction in N.G., 426 N.J. Super. 398. There, the court noted that "in the nearly two decades since Jutchenko was decided, its rationale has been eroded." Id. at 411. According to the court, the analysis shifted from the amount of time that elapsed since the parties resided together to an evaluation of whether the current conflict arose from a prior domestic relationship. Ibid. In N.G., the sibling parties stopped residing together in 1960. From 1991 to 2010, there was no contact between the estranged siblings. However, despite the lengthy time apart and "sporadic episodes

of intense strife" among them, because the defendant's behavior was "a direct outgrowth of the parties' earlier household relationship," the court affirmed the trial court's finding of jurisdiction. Id. at 411-12.

A third, relevant pre-amendment case is Storch v. Sauerhoff, where the court held that an adult stepdaughter who had not resided under her stepmother's roof for nearly two decades, yet still lived on the same block, was a "former household member." 334 N.J. Super. 226 (Ch. Div. 2000). In holding that "step" relationships may satisfy the "household member" requirement, the court rejected a literal reading of the PDVA, instead applying a common-sense interpretation that recognized familial, emotional, and financial ties. Id. at 233.

In addition to the foregoing trio of cases, prior to the 2015 amendments, "household member" was interpreted liberally, extending beyond familial relationships. Precedent demonstrates an inherent flexibility in "household member," ensuring that the PDVA provides maximum protection to victims of domestic violence of "greater protection than generally given to victims of crimes." S.Z. v. M.C., 417 N.J. Super. 622, 625 (App. Div. 2011). As such, courts exerted "household member" jurisdiction in various circumstances, including over:

(1) a temporary, seven-month, unrelated tenant, ibid.;

(2) a roommate of three months, Bryant v. Burnett, 264 N.J. Super. 222 (App. Div. 1993);

(3) a cohabitant, Desiato v. Abbott, 261 N.J. Super. 30 (Ch. Div. 1992);

(4) a de facto family member, who lived in the same complex, was the father of the plaintiff's grandchild, and had unlimited access to the home, South v. North, 304 N.J. Super. 104 (Ch. Div. 1997);

(5) a boarder in a rooming house, S.P. v. Newark Police Dep't, 428 N.J. Super. 210 (App. Div. 2012) (parties shared bathroom and kitchen, with communal appliances); and

(6) a college suitemate, Hamilton v. Ali, 350 N.J. Super. 479 (Ch. Div. 2001).

C. 2015 Amendment and Post-Amendment Case Law

Omnibus amendments to the PDVA were enacted in 2015, including a "significant change" to the definition of "victim of domestic violence." R.G., 449 N.J. Super. at 219. The amendments "clarified the statutory definition to end debate regarding the scope of coverage of 'present household member' by redefining a '[v]ictim of domestic violence.'" Ibid. Now, the PDVA protects adults and emancipated minors who have been subjected to domestic violence "by any other person who is a present household member or was at any time a household member." N.J.S.A. 2C:25-19(d) (emphasis added).

The only published authority addressing the amended definition is R.G., which noted that in view of the amendment, "prior case law interpretations [are]

inapposite." 449 N.J. Super. at 218-20. To be sure, R.G. specifically referenced Jutchenko, stating that the "amended jurisdictional provisions cast doubt on the viability of [Jutchenko's] holding." Id. at 220 n.2.

R.G. concerned siblings whose relationship was largely positive, until their mother fell ill and the parties disagreed about her care. Id. 213-15. Even though the parties had not lived together for more than thirty years, the trial court concluded that jurisdiction was appropriate. Id. at 217. The Appellate Division agreed, holding that "the statutory amendments express the Legislature's intent to broaden the application of this remedial Act." Id. at 220. In other words, pre-amendment cases finding an exertion of jurisdiction appropriate, serve as a floor – not a ceiling – to post-amendment jurisdictional determinations.

D. Insurance Policy Interpretation

"Household" is not defined in the PDVA and resists precise definition. On this point, precedent interpreting insurance policies is instructive. See South, 304 N.J. Super. at 112. The Supreme Court stated:

> Household is not a word of art. Its meaning is not confined within certain commonly known and universally accepted limits. True, it is frequently used to designate persons related by marriage or blood, who dwell together as a family under a single roof. But it has been said also that members of a family need not in all cases reside under a common roof in order to be deemed part of the household.

> [Gibson v. Callaghan, 158 N.J. 662, 672 (1999) (quoting Mazzilli v. Accident & Cas. Ins. Co. of Winterthur, 35 N.J. 1, 8 (1961)).]

Residence under a single roof is not a touchstone, and the meaning of "household" inherently must vary depending on the circumstances. Gibson, 158 N.J. at 677. As Mazzilli noted, a "substantially integrated family relationship" is a "household," even where the household members are not continually under the same roof. 35 N.J. at 16. Accord Arents v. Gen. Accident Ins. Co., 280 N.J. Super. 423, 428-29 (App. Div. 1995) (insured was member of father's household though maintaining dual residency) (collecting cases); Sjoberg v. Rutgers Cas. Ins. Co., 260 N.J. Super. 159, 163-64 (App. Div. 1992) (insured's daughter deemed household member though living with insured's former spouse in another state).

Most analogous here is Miller v. U.S. Fidelity & Guaranty Co., 127 N.J. Super. 37 (App. Div. 1974). There, the Appellate Division interpreted an insurance policy which extended coverage to "residents of [the] household." Id. at 40. In Miller, an infant caused a fire while at his father's home. Id. at 39. The infant's parents were divorced. Although the child's mother "retained custody," the father had "visitation rights three out of four weekends" per month and, in reality, the child slept every Saturday night at his father's. Ibid. Under those parenting time facts – which are akin to those here – the court held that the infant was an insured under the policy. Id. at 44. In sum, for purposes of insurance

policies, a child of divorced or separated parents may be deemed to have multiple, simultaneous households where "[a] substantially integrated family relationship existed between [the infant] and his mother on the one hand, and [the infant] and his father on the other during the time he lived with each one." Ibid.

This flexible approach to defining "household" should similarly be implemented as a baseline in the PDVA context as "[p]ublic policy concerns demand that the term 'household member' be defined even more expansively in domestic violence cases than in insurance . . . ." South, 304 N.J. Super. at 112.

E. Analysis

This case presents a variant on Jutchenko, N.G., and R.G. – all of which involved siblings. Here, the parties are half siblings who did not reside together, but spent meaningful, regular time together as part of a modern, blended family during their youths.

Again, Jake and Samantha have the same father. Although Jake's mother had "custody," she was required to keep Jake's father informed as to all major issues affecting Jake and provide his father with access to information. The MSA granted Jake's father "free and liberal visitation . . . as often as possible," and

"ready telephone access to" Jake.[2] Thereafter, his regular parenting time was supervised by Samantha's mother.

The facts demonstrate a substantially integrated, modern, blended family, in which Jake resided at his mother's home, but spent meaningful, regular periods of time at the family home. That time included: regular bi-monthly weekend, overnight parenting time; extended and more frequent overnight parenting time during the summer; and extended vacation and regular camping trips. In modern parlance, his father was the parent of alternate residence and exerted meaningful, regular parenting time at his home – with Samantha uniformly present.

In the context of separated parents, as here, the children are part of two families. Where, as here, a child spends a majority of time with the parent of primary residence, that child may fairly be said to reside or be domiciled with the

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[2] In the 1980's, courts typically awarded physical custody of a child to one parent, often referred to as the "custodial parent" or parent with "sole physical custody." See Robert A. Fall & Curtis J. Romanowski, New Jersey Family Law Child Custody, Protection & Support § 21:2-1(b) (2018) (collecting authorities). In such situations, the nonresidential parent – here Jake's father – was still permitted parenting time (then called "access" or "visitation"). Ibid. Although "a nonresidential parent clearly had some authority and responsibility to provide for the child's physical care and supervision during unsupervised periods of access and visitation," the residential parent was often labeled the "custodial parent," as here. Ibid.

In modern parlance, Jake's mother would be properly characterized as the parent of primary residence; his father as the parent of alternate residence.

parent of primary residence. That does not mean, however, that the same child cannot simultaneously be part of two households, as contemplated in the PDVA, where the parent of alternate residence exerts meaningful, regular parenting time and the child is substantially integrated into that family unit. Cf. Miller, 127 N.J. Super. at 44 (discussing multiple, simultaneous households in insurance context). Indeed, an alternative cabined construction of "household" would undermine New Jersey's public policy "to assure minor children of frequent and continuing contact with both parents after the parents have separated or dissolved their marriage and . . . to encourage the parents to share the rights and responsibilities of child rearing in order to effect this policy." N.J.S.A. 9:2-4.

If a child of separated parents were so limited to only one "household," such child, when of appropriate age, could seek relief under the PDVA against step siblings on one branch of a family tree, but not the other, regardless of the parental time-sharing involved – a result contrary to a legion of authorities expressing the rights of children of separated parents. See, e.g., N.J.S.A. § 9:17-40 (Uniform Parentage Act, noting "parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents") (emphasis added); N.J.S.A. § 2A:34-23(a) (enumerating child support factors where parents are separated); Pascale v. Pascale, 140 N.J. 583, 590 (1995) (payment of child support post-separation "is necessary" to ensure child's basic needs are met by

parents "who might otherwise neglect their responsibilities"); Newburgh v. Arrigo, 88 N.J. 529 (1982) (establishing college contribution where parents are separated). Mandating household exclusivity would be a perverse result inconsistent with the Legislature's intent, especially for a remedial statute such as the PDVA. See State v. Ochoa, 314 N.J. Super. 168, 171-72 (App. Div. 1998) (spirit of law controls where literal statutory reading is not in accord with purpose and design of statute).

A flexible approach should be utilized to extend the PDVA's coverage to modern, blended, households. Cf. J.S., 410 N.J. Super. at 614 (noting facts should be liberally construed to find jurisdictionally required dating relationship); South, 304 N.J. Super. at 109 (noting PDVA "household member" should "cover unforeseen and unspecified relationship that might deserve protection"). Here, during the parties' youth, Jake and Samantha developed a meaningful relationship as Jake was regularly and consistently at the family home every other weekend, with overnight visits, from Samantha's birth in 1987, until Jake went to college. During the summer months, the bi-monthly, overnight visits continued, with more extended overnights, as well as extended vacations, including yearly, multi-week camping trips.

Although the family home had only three bedrooms, the sleeping arrangement was regular with Jake and Jessica sleeping on pull out sofas in the living room. Jake had drawers in the home where he kept gym shorts, underwear,

and toiletries – personal effects underscoring the frequency and regularity of his time at the family home. See Desiato, 261 N.J. Super. at 34 (in finding jurisdiction, noting existence of personal effects and toiletries at residence).

In conclusion, Samantha's and Jake's youthful relationship as half-siblings was close, meaningful, and of a long duration, with regular physical presence. Jake was substantially integrated into the fiber of the family home. Today, the parties are young adults whose time away from the family home is not of dispositive magnitude – especially when juxtaposed against R.G. and N.G., where the passage of time between youthful cohabitation to the predicate acts was decades in length. Nevertheless, Samantha and Jake maintained on-going contact: engaging socially; spending time at each other's residences; and sharing family celebrations. This is not a remote, fleeting, nor transient relationship. It is a modern, blended familial relationship with meaningful, regular physical contact between these half siblings. In short, vis-à-vis Samantha, Jake was "at any time a household member."

Accordingly, by a preponderance of the evidence, jurisdiction exists, and Samantha may afford herself of the PDVA's protections. The matter shall be set down for a final hearing.