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**IN THE MATTER OF THE  
ESTATE OF AGNIESHKA  
BURKE, DECEASED**

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION

DOCKET NO.: A-

Sat Below:

HON. LISA M. ADUBATO, P.J.Ch.

DOCKET NO. BELOW: CP-0420-2024

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**BRIEF IN SUPPORT OF DEFENDANT, JARED BURKE'S MOTION FOR  
LEAVE TO APPEAL THE ORDER OF NOVEMBER 6, 2025**

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## PRELIMINARY STATEMENT

This application presents a pure question of statutory interpretation, the resolution of which carries significant statewide consequences for both the Probate and Family Parts. The November 6, 2025 Order on appeal declares, contrary to the statutory text, legislative history, and more than four decades of matrimonial jurisprudence, that a decedent’s estate may litigate equitable distribution against a surviving spouse after the death of a divorce litigant. And, based on that erroneous premise, the Probate Part further held that the Defendant, Jared Burke, the Decedent’s surviving spouse and her chosen Executor, is automatically conflicted and therefore disqualified from serving in that role.

The ramifications of the November 6, 2025 Order are profound. The ruling:

- Creates a new cause of action (“estate-initiated equitable distribution”) unknown to New Jersey law;
- Expands N.J.S.A. 2A:34-23(h)(2) beyond anything contemplated by the Legislature;
- Contradicts and subverts N.J.S.A. 3B:3-14 revoking probate and non-probate transfers only upon the entry of a judgment of divorce or annulment, not the filing of a complaint;
- Removes a duly-appointed Executor solely because he opposes litigation the Decedent never intended; and

- Disrupts the orderly administration of the Estate and the interests of its minor beneficiaries.

This is precisely the type of legal issue warranting interlocutory intervention, in the interest of justice, under R. 2:2-4 and State v. Reldan, 100 N.J. 187 (1985): a matter of first impression involving an important public question and a legal determination that, if left uncorrected, will cause manifest injustice.

Because the order rests on clear legal error, because further proceedings will only compound the disruption, and because the Executor's removal creates irreparable harm not remediable on final appeal, leave to appeal should be granted.

### **FACTS AND PROCEDURAL HISTORY**<sup>1</sup>

This appeal arises from a probate action commenced after the unexpected death of Agnieszka Burke (hereinafter "Decedent") on August 14, 2024, while legally married to Jared Burke (hereinafter "Defendant"). Da20. Though a Complaint for Divorce had been filed prior to her death, on March 11, 2024, no Final Judgment of Divorce had been entered as of the date of the Decedent's death. Da3.

At the time of her death, the Decedent's only heirs were Defendant and her two children, Cadence and Riley Burke. Da3. Cadence is 18 years old and Riley is 15. Da3. Defendant is the father of both Cadence and Riley. Da3.

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<sup>1</sup> Because the facts and procedural history of this matter are interrelated, those sections are combined.

Prior to her death, Decedent executed a Last Will and Testament (hereinafter “Will”) on October 12, 2022, naming Defendant as Executor and primary beneficiary, among other things. Da3. Also prior to her death, Decedent obtained and maintained a term life insurance policy with Banner Life Insurance having a face value of \$500,000.00 and naming Defendant as her sole primary beneficiary. Da4.

Following Decedent’s death, her Will was admitted to probate, and Letters Testamentary were issued to Defendant on August 29, 2024. Da5. However, on September 4, 2024 Decedent’s sister, Katarzyna Kostro (hereinafter “Plaintiff”), filed a caveat and protest of “any paper purporting to be the Will of Agnieszka Burke, as well as the appointment of a personal representative for the Estate of Agnieszka Burke.” Da5.

Thereafter, on September 16, 2024, Plaintiff caused to be filed a Verified Complaint and Order to Show Cause for Probate of Will and Appointment of Executor of the Estate of Agnieszka Burke, wherein she sought the following relief:

- a. To admit to probate the Last Will and Testament of the Decedent dated October 12, 2022;
- b. To find that the appointments and distributions to the Respondent are revoked due to the doctrine of implied revocation and/or the express provisions of the Will;

- c. To find the Respondent has a present conflict of interest with respect to appointment as Executor due to the pending divorce litigation;
- d. To appoint the Plaintiff as Executor of the Estate of the Decedent;
- e. To find the proceeds of any life insurance policy of the Decedent belongs to the marital estate of the Decedent and Respondent, and, as such, is subject to equitable distribution before the Family Part;
- f. To order Banner Life Insurance Company and its parent company, Legal & General America, to withhold distribution (or pay into Court) the proceeds of the Decedent's life insurance policy;
- g. To award the Plaintiff costs and fees against the Respondent;
- h. To award such other relief as the Court deems proper.

Da5.

Additionally, on September 30, 2024 Plaintiff filed an Order to Show Cause in the Family Part seeking various relief in the parties' divorce action, including, in relevant part, her appointment as personal representative of Decedent's interests in the divorce proceedings and to continue the action on Decedent's behalf; the freezing of marital assets; and Defendant's deposit of any life insurance proceeds received by him into trust. Da6. The outcome of this application was a Family Part Order dated October 1, 2024 restraining and enjoining any party from transferring, converting, hypothecating and/or dissipating any marital assets outside of the

ordinary course, and requiring that any life insurance policy proceeds received by either party be placed into that party's attorney trust account, pending further Court Order. Da7.

Also on October 1, 2024, the Surrogate Court Clerk signed Plaintiff's Order to Show Cause in the probate action and scheduled the matter for a hearing November 1, 2024. Da7.

Within the time prescribed by the October 1, 2024 Order to Show Cause, on October 22, 2024, Defendant filed a Verified Answer to the Verified Complaint and Counterclaim. Da7. By way of his Verified Answer to the Verified Complaint and Counterclaim, Defendant sought the following relief:

- a. To dismiss the caveat filed by the Plaintiff;
- b. To admit to probate the Last Will and Testament of the Decedent dated October 12, 2022;
- c. To find the Respondent does not have a present conflict of interest with respect to his appointment as Executor of the Decedent's estate;
- d. To order that the appointments of and distributions to the Respondent under the Decedent's Will shall remain in place and not be revoked;
- e. To appoint the Respondent as the Executor of the Decedent's Estate;

f. To order that the proceeds of the Decedent's life insurance policy shall be the sole property of the Respondent as the sole beneficiary of the policy, and not the property of the marital estate for equitable distribution;

g. To order Banner Life Insurance Company to release all life insurance proceeds on the Decedent's policy to the Respondent;

h. To award the Respondent costs and fees against the Plaintiff;

i. In the alternative, to order the Respondent costs and fees against the Decedent's estate;

j. To award such other relief as the Court deems proper.

Da7.

Simultaneous to the filing of Defendant's Verified Answer to the Complaint and Counterclaim, Plaintiff filed an Amended Verified Complaint. Da8. The relief requested in Plaintiff's Amended Verified Complaint was substantially the same as the relief requested in the Verified Complaint, without the request of the request to admit Decedent's Will to probate, which had already been done. Da8.

Then, on October 29, 2024, Banner Life Insurance Company filed an Amended Complaint for Interpleader in the Federal District Court. Da9. And, on October 31, 2024, as a result of Banner Life Insurance Company's Complaint, the Honorable Katherine S. Hayden, Federal District Court Judge, entered a Restraining Order preventing Plaintiff and/or Defendant from prosecuting any proceeding

concerning Decedent's life insurance in any other court during the pendency of the federal proceeding. Da9.

In light of the October 31, 2024 Restraining Order, the Honorable Lisa M. Adubato, P.J.Ch. entered an Order dated November 18, 2024 staying the within matter, including Plaintiff's Order to Show Cause, until further Court Order. Da9.

On February 18, 2025, a Consent Final Judgment Order was entered in the Federal District Court matter providing, in relevant part, for Decedent's life insurance proceeds to be deposited into Defendant's attorney's trust account, and for the parties' respective claims to said life insurance proceeds to be litigated in the Superior Court of New Jersey without further participation by Banner Life Insurance Company. Da9.

On April 29, 2025, after the administrative stay of the probate matter was lifted, Defendant filed a Verified Answer to the Amended Complaint and Counterclaim requesting substantially the same relief requested in his original Verified Answer and Counterclaim. Da9. And, on May 9, 2025, Plaintiff filed an Answer to the Counterclaim. Da10.

On June 13, 2025, Defendant filed a Motion in the probate matter seeking summary judgment dismissing all Plaintiff's claims and affirming his appointment and rights under the Will. In relevant part, Defendant argued that:

a. Decedent's will is valid and effective, and the appointments and distributions to Defendant are not revoked;

b. The estate has no right to equitable distribution and Defendant has no conflict of interest; and

c. The life insurance proceeds belong solely to Defendant and are not subject to equitable distribution or court deposit.

Da13.

On July 1, 2025, Plaintiff filed a Cross-Motion in the probate part. Da16. By way of her Cross-Motion, Plaintiff sought summary judgment granting all claims set forth in her Complaint and denying Defendant's counterclaim. In relevant part, Plaintiff argued that:

a. The estate does have the right to equitable distribution pursuant to N.J.S.A. 2A:34-23(h);

b. Decedent intended to exclude Respondent from her Will under these circumstances;

c. The life insurance proceeds belong to the marital estate and are subject to equitable distribution; and

d. Defendant has a conflict of interest between his own interests and his responsibilities as personal representative of Decedent's estate.

Da16.

Defendant responded to Plaintiff's Cross-Motion on July 28, 2025, and oral argument was thereafter heard by the Honorable Lisa M. Adubato, P.J.Ch., on August 15, 2025. During the oral argument, Judge Adubato requested additional briefing on whether the Probate Part was the proper venue to decide the "legal threshold issue" of whether the right to pursue equitable distribution in the Family Part after a party dies during divorce proceedings extends to an estate.<sup>2</sup>

Plaintiff and Respondent submitted the supplemental briefs requested by Judge Adubato on September 3 and 4, 2025, respectively, and the matter was thereafter scheduled for a continuation of oral argument on November 5, 2025.

Oral argument continued, as scheduled on November 5, 2025. After determining the Probate Part was, in fact, the proper venue to decide the legal threshold issue, and thereafter hearing additional arguments on the legal threshold issue itself, Judge Adubato adjudicated the motions by entering the November 6, 2025 Order now on appeal, which stated the following:

a. The Court finds and declares that N.J.S.A. 2A:34-23(h)(2) permits the personal representative of the estate of a decedent to seek equitable distribution before the Family Part when an application for dissolution of marriage has been filed

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<sup>2</sup> Due to time and money constraints, transcripts of the August 15, 2025 and November 5, 2025 oral arguments were unable to be obtained before the filing of this motion, but are being ordered in association herewith.

and not dismissed pursuant to R. 4:6-2 of the Rules of Court, and thereafter but prior to the entry of final judgment either party to the dissolution proceedings should die.

b. The Court finds and declares that the Respondent, Jared Thomas Burke, has a conflict of interest between his interests as an individual and his fiduciary responsibilities to the Estate of Agnieszka Burke with respect to the Estate's right to seek equitable distribution, and therefore is disqualified from serving as the Executor of the Estate for that purpose.

c. The Court finds and declares that the question of whether the proceeds of the Banner Life Insurance Policy held on the life of Agnieszka Burke (policy no. 180102302) belong to the marital estate of the Decedent and Respondent, or whether the proceeds belong to the Respondent as the named beneficiary, is within the jurisdiction of the Family Part and shall be subject to further proceedings therein.

d. Except for the foregoing, the Motion for Summary Judgment filed by Respondent and the Cross-Motion for Summary Judgment and all other relief requested therein are hereby DENIED.

e. Case Management Order entered on even date.

Da1.

A Case Management Order dated November 6, 2025 was also entered at that time. Da19.

**LEGAL ARGUMENT**

**POINT I:**

**THIS CASE WARRANTS INTERLOCUTORY REVIEW BECAUSE IT PRESENTS A NOVEL, PURELY LEGAL QUESTION OF STATEWIDE IMPORTANCE (Da1)**

The standards governing grants of interlocutory review are stringent, State v. Reldan, 100 N.J. 187 (1985), and leave is sparingly granted. Romano v. Maglio, 41 N.J. Super. 561, 567-68, (App. Div. 1956). The court grants leave under R. 2:2-3 only in exceptional cases where, on a balance of interests, justice suggests the need for a review of an interlocutory order. Romano, *supra*, at 565. The rationale that supports this stringent standard may be found in our general policy against piecemeal review of trial-level proceedings." Brundage v. Est. of Carambio, 195 N.J. 575, 599 (2008); Grow Co. v. Chokshi, 403 N.J. Super. 443, 461 (App. Div. 2008).

That being said, leave to appeal an interlocutory order should be granted where "there is the possibility of 'some grave damage or injustice' resulting from the trial court's order." Brundage, 195 N.J. at 599 (quoting Romano v. Maglio, 41 N.J. Super. 561, 568 (App. Div. 1956)). Likewise, leave should be applied "where the appeal, if sustained, will terminate the litigation and thus very substantially conserve the time and expense of the litigants and the courts . . . ." Ibid. As an example, leave to appeal may be appropriate if it will resolve a fundamental procedural issue and thereby prevent the court and the parties from embarking on an "improper or

unnecessary course of litigation.” See Brundage, *supra*, 195 N.J. at 599 (citing Dinizo v. Butler, 315 N.J. Super. 317, 319 (App. Div. 1998)). An improper or unnecessary course of litigation is precisely what Defendant seeks to avoid here.

The November 6, 2025 Order sought to be appealed here satisfies every criterion identified by the Supreme Court and Appellate Division for granting interlocutory review. First, it presents a pure question of statutory interpretation, i.e. whether N.J.S.A. 2A:34-23(h)(2) authorizes an estate, as opposed to a surviving spouse, to pursue equitable distribution after the death of a party. That question has never before been addressed by a reviewing court of this State. Issues of first impression that will “have significant precedential impact” are classic examples of matters warranting immediate review. The Probate Part’s interpretation expands the statute far beyond its text and legislative intent, effectively creating a new cause of action, “estate-initiated equitable distribution,” that does not and should not exist in this State. The importance of clarifying this novel and far-reaching question of law cannot be overstated.

Second, the trial court’s ruling places the Estate and Defendant on an improper procedural trajectory that, if allowed to continue, will cause the very type of “grave damage or injustice” that warrants interlocutory intervention. Unless corrected now, the parties, and the Probate and Family Parts, will expend substantial time, resources, and judicial energy litigating a claim that is not legally cognizable in the first place.

The trial court has directed a trial to determine who should serve as Executor, premised on its threshold legal error and resultant disqualification of Defendant. The trial court's Order, if allowed to stand, will also beget extensive litigation in the Family Part, regarding equitable distribution and life insurance, that would be obviated should interlocutory review result in a reversal of the legal threshold issue. In other words, interlocutory review offers the only mechanism to prevent the Estate from being embroiled in litigation that should never have commenced. *See Brundage, supra*, 195 N.J. at 599.

Third, the prejudice to Defendant is immediate and irreparable. The order strips him, without any finding of misconduct, of the fiduciary role expressly conferred upon him by Decedent in a valid, admitted Will. Removal of an Executor is among the most drastic remedies available in probate practice. Once displaced, Defendant not only loses authority to marshal and protect Decedent's assets, but also his own given the broad range of assets subject to equitable distribution in divorce matters. In fact, Defendant has already lost control of such assets, simply by virtue of the October 1, 2024 Order entered in the Family Part restraining and enjoining him from "transferring, converting, hypothecating and/or dissipating any marital assets outside of the ordinary course, and requiring that any life insurance policy proceeds received by either party be placed into that party's attorney trust account,

pending further Court Order.” Da7. Such harms cannot be remedied on a final appeal.

Fourth, interlocutory review will materially advance the termination of the litigation. If the Appellate Division agrees that N.J.S.A. 2A:34-23(h)(2) does not confer standing upon an estate to pursue equitable distribution in the Family Part, then every derivative issue, including the alleged “conflict of interest” and the scheduled trial to determine the new Executor, necessarily collapses. The appeal will therefore “terminate the litigation and substantially conserve the time and expense of the litigants and the courts.” Romano, supra, 41 N.J. Super. at 568. Few matters fit this description as precisely as the present one.

In sum, this case involves a novel statutory question of exceptional public importance, presents a substantial risk of irreversible harm, and, if left unchecked, will propel the parties into unnecessary litigation. Under the principles articulated in Reldan, Romano, Brundage, and Dinizo, this matter is a textbook candidate for interlocutory review, and leave to appeal should be granted.

**POINT II:**

**THE PROBATE COURT MISCONSTRUED N.J.S.A. 2A:34-23(h)(2), WHICH DOES NOT AUTHORIZE A DECEDENT’S ESTATE TO PURSUE EQUITABLE DISTRIBUTION (Da1)**

In 2024, the New Jersey Legislature passed an amendment to the “equitable distribution statute,” N.J.S.A. 2A:34-23(h)(2), intended to close the “black hole”

previously recognized by the Supreme Court of this State. Specifically, in the matter of Carr v. Carr, 120 N.J. 336 (1990), the Supreme Court acknowledged that, whereas no statutory scheme, including the equitable distribution statute and/or the elective share statute, provided a surviving spouse with an enforceable interest against marital assets legally held by a decedent spouse when the decedent died after a Complaint for Divorce was filed, but before a Judgment of Divorce was entered, and left nothing to the surviving spouse in his/her will, the surviving spouse's plight was akin to a "black hole."

Following the Carr decision, litigators and lobbyists alike went to work trying to pass legislation to close the metaphorical "black hole." Their efforts and intentions in this regard were memorialized in senate judiciary committee reports spanning many years. However, they were largely unsuccessful until 2024, when a bill was finally passed. Specifically, in 2024, N.J.S.A. 2A:34-23 was amended to provide that:

If a complaint not dismissed pursuant to R.4:6-2 of the Rules of Court has been filed for an action under paragraph (1) of this section, and (a) either party to the litigation dies prior to the entry of the final judgment, or (b) if the parties had and remained entered into a validly executed equitable distribution cut-off agreement, termination agreement, or marital settlement agreement where the underlying subject matter of the agreement is divorce, dissolution of civil union, termination of domestic partnership, or divorce from bed and board at the time of death of the decedent occurring prior to the entry of the final judgment, the court's authority to effectuate an equitable distribution of the property shall not abate. Pursuant to subparagraph (a)(3) of R.4:3-1 of the Rules

of Court, all such matters shall be filed and heard in the Family Part of the Chancery Division of the Superior Court.

As stated, the passing of the 2024 amendment to N.J.S.A. 2A:34-23 had one purpose, and one purpose only: to close the “black hole” identified in Carr that would otherwise leave the surviving spouse destitute. This is confirmed in the October 17, 2022 and June 12, 2023 reports of the senate judiciary committee regarding the bill proposing the specific amendment. Da21-24. In both instances, the statement of the committee shows a clear and incontrovertible intent to grant only a surviving spouse the right to equitable distribution. The clearest demonstration of this intent is the committee report from June 12, 2023, explaining that:

Under current law, if a spouse or partner dies while the divorce, dissolution, or termination is pending, the survivor is excluded from an award of equitable distribution, as the matter gets removed from the Superior Court, Chancery Division, Family Part (the family court) to be handled as a probate matter of the decedent’s estate. In such probate matters, if the surviving spouse or partner was no longer cohabitating with the other spouse or partner at the time of death, the probate law precludes that surviving spouse or partner from being able to claim an elective share of the decedent’s estate. Thus, in some scenarios, a surviving spouse or partner who was still legally married or partnered at the time of the other’s death, having not gotten an equitable distribution through the family court, may also not have a claim on any share of the estate. This bill would address this by permitting the family court action to proceed and the surviving spouse or partner receiving an award of equitable distribution of the former couple’s property.

*Emphasis added.* Da24.

Noticeably missing from the language in the statute as cited above, or the committee reports, is any reference to a personal representative being permitted to pursue equitable distribution on behalf of an estate. This is because the statute did not intend to grant estates the right to pursue equitable distribution following the death of a party to a divorce litigation; it only intended to grant surviving spouses such right.

Moreover, even assuming *arguendo* that the amended statute does not affirmatively prohibit an estate from pursuing equitable distribution, nothing in its text, structure, or purpose supports the Probate Court's conclusion that such a remedy is automatic, self-executing, or mandatory simply because a divorce Complaint remained pending at the time of death. The Legislature did not create a free-floating property right that attaches to the estate by operation of law upon a litigant's death. Equitable distribution has always been a personal, elective remedy grounded in the economic interests of the spouses themselves, not an asset directly transferrable to the decedent's estate. Had the Legislature intended to confer such a dramatic and unprecedented right on personal representatives, it would have said so expressly. Its silence in this regard is dispositive.

The facts of this case provide a textbook illustration of why estate-initiated equitable distribution cannot be presumed and should never arise automatically. Decedent died testate, having executed a Will that expressly appointed her husband,

Defendant, as both Executor and primary beneficiary, and naming their minor children as the alternate beneficiaries. She signed this Will, and did not change it after the Complaint for Divorce was filed, even though she had the right to do so.

Automatically imposing equitable distribution in this context not only disregards the statutory text and legislative history, it violates bedrock probate principles. New Jersey courts have long held that “the testator's intent is paramount,” and that courts must honor the fiduciary and distributive choices expressed in a valid Will absent compelling evidence of misconduct or incapacity. The Probate Court’s ruling, however, subordinated Decedent’s clear testamentary choices to a litigation right she never authorized or intended, thereby enabling a non-beneficiary third-party to invoke a statutory remedy that the Legislature conferred solely upon surviving spouses. This turns probate administration on its head.

Finally, the automatic-application theory adopted by the Probate Court would yield results so inconsistent with both probate and matrimonial jurisprudence as to be unworkable. Under the Court’s approach, estates could routinely initiate economic warfare against surviving spouses—even where the decedent died testate, even where the decedent’s Will left the entire estate to the surviving spouse, and even where the surviving spouse is the natural guardian of minor children. This interpretation would allow distant relatives or disinherited heirs to weaponize the mere pendency of a divorce complaint to override a decedent’s estate plan, oust a

chosen Executor, and force the estate into unintended litigation. It is inconceivable that the Legislature intended such sweeping and destabilizing consequences when it amended N.J.S.A. 2A:34-23(h)(2) for the singular purpose of preventing unjust impoverishment of surviving spouses. Not only that, but the entire meaning and purpose of N.J.S.A. 3B:3-14, which revokes probate and non-probate transfers only by divorce or annulment, not the mere filing of a Complaint, would be subverted.

For all these reasons, the Probate Court's interpretation must be reversed. The statute does not authorize an estate to pursue equitable distribution, and even if such authority could be implied, which it cannot, it would not arise automatically, and certainly not in a case where the decedent died testate and elected the very spouse now being targeted as her chosen Executor.

**POINT III:**

**WHETHER THE STATUTORY INTERPRETATION IS RIGHT OR  
WRONG, THE FINDING OF CONFLICT OF INTEREST IS LEGALLY  
UNSUSTAINABLE (Da1)**

Clearly, should this reviewing court agree that N.J.S.A. 2A:34-23(h)(2) confers the right to pursue equitable distribution only on a surviving spouse, and not an estate, then the Trial Court's finding of a conflict of interest on behalf of Defendant also fails.

However, even if one were to assume that the 2024 amendment does not expressly prohibit an estate from pursuing equitable distribution, nothing in the

statutory text or structure suggests that such right should automatically disqualify a surviving spouse from serving as Executor of the decedent's estate when otherwise duly appointed. To rule otherwise would virtually invalidate N.J.S.A. 3B:3-14, which only revokes probate and non-probate transfers in the event of divorce or annulment, not the mere filing of a Complaint. However, the Legislature never intended to invalidate N.J.S.A. 3B:3-14. If they had, they would have done so simultaneous to the amendments to N.J.S.A. 2A:34-23(h)(2), as they did with N.J.S.A. 3B:5-3 regarding elective share. *See* the June 12, 2023 senate judiciary committee report confirming the committee's simultaneous consideration of both statutes. Da23.

In sum, N.J.S.A. 2A:34-23(h)(2) neither authorizes nor contemplates estate-initiated equitable distribution, and the legislative history makes clear that the amendment was intended solely to protect *surviving spouses*, not to create a post-mortem economic remedy for estates. But even assuming the statute leaves open the theoretical possibility of an estate pursuing equitable distribution, such a remedy cannot automatically disqualify the surviving spouse from serving as the estate's representative when, the Decedent died testate, expressly chose her surviving spouse as Executor, and made no effort to alter her Will during the pendency of the divorce action. Automatic application in these circumstances overrides testamentary freedom, disrupts settled probate principles, and creates precisely the kind of absurd

and destabilizing results (i.e. another kind of “black hole”) that the revised statute was designed to avoid.

**POINT IV:**

**BECAUSE THE STATUTORY INTERPRETATION IS WRONG, THE REFERRAL OF THE LIFE INSURANCE QUESTION TO THE FAMILY PART ALSO CANNOT STAND (Da1)**

It is basic that the “marital estate,” for purposes of equitable distribution pursuant to a divorce, is limited to that property which was “legally and beneficially acquired by [the parties] or either of them during the marriage or civil union.” N.J.S.A. 2A:34-23(h). By definition, proceeds of life insurance paid to a surviving spouse following the death of the other spouse were not acquired “during the marriage,” as the marriage ended upon the decedent spouse’s death. As such, life insurance proceeds are, by definition, not part of the “marital estate.”

Notwithstanding the foregoing basic principles, Plaintiff in this matter seeks a finding that the proceeds of Decedent’s life insurance policy naming Defendant as sole beneficiary are part of the marital estate, subject to equitable distribution between Defendant and Decedent’s estate. Rather than making a determination on the merits of that request on summary judgment, the Trial Court referred it to the Family Part for determination in association with Plaintiff’s equitable distribution claim.

Decedent died over a year ago and her life insurance proceeds have been held up ever since as a result of this litigation. Instead of being used to support Decedent's children, they have been sitting in an attorney trust account for months while Defendant struggles to make ends meet. Since it is plain the proceeds of Decedent's life insurance policy were acquired after the marriage, and are therefore not part of the marital estate, this reviewing Court should reverse the Trial Court's referral of the issue to the Family Part and exercise its authority to order the life insurance proceeds be immediately distributed to Defendant as their rightful beneficiary.

Alternatively, should this reviewing Court be unwilling to exercise original jurisdiction to distribute the life insurance to Defendant, but agree that N.J.S.A. 2A:34-23(h)(2) confers the right to continue a Family Part action and pursue equitable distribution only upon the surviving spouse, and not the estate, then it should at least direct the Probate Part to make a determination on the life insurance, as there will be no legitimate reason to refer that issue to the Family Part.

### **CONCLUSION**

For all the foregoing reasons, Defendant respectfully submits that this matter presents the rare and exceptional circumstances warranting interlocutory intervention, and that the November 6, 2025 Order rests on clear legal error that will otherwise result in irreparable harm and needless litigation. This reviewing Court should therefore grant leave to appeal, reverse the Probate Part's interpretation of

N.J.S.A. 2A:34-23(h)(2), vacate the finding of an alleged conflict of interest, and reinstate Defendant as the duly-appointed Executor in accordance with Decedent's express testamentary intent.

**HOVANEK & DIVITO, LLC**  
Attorneys for Defendant-Appellant

Dated: November 26, 2025



MARISA LEPORE HOVANEK, ESQ.

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**IN THE MATTER OF THE ESTATE  
OF AGNIESHKA BURKE, DE-  
CEASED**

SUPERIOR COURT OF NEW JER-  
SEY APPELLATE DIVISION

DOCKET NO.: AM-000212-25

Sat Below:  
HON. LISA M. ADUBATO, P.J.Ch.

DOCKET NO. BELOW:  
CP-0420-2024

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**BRIEF IN OPPOSITION TO DEFENDANT, JARED BURKE'S MOTION  
FOR LEAVE TO APPEAL THE ORDER OF NOVEMBER 6, 2025**

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**PRELIMINARY STATEMENT**

This submission is in opposition to Defendant/Appellant, Jared Burke's Motion for Leave to Appeal the Order of November 6, 2025, issued by the Honorable Lisa M. Aduato, P.J.Ch..

Plaintiff/Respondent Katarzyna Kostro concurs with the Defendant/Appellant that the matter presents rare and exceptional circumstances warranting interlocutory review, as it involves novel and far-reaching questions of law. However, the Plaintiff respectfully submits that the November 6, 2025 Order is sound and should be affirmed.

The essential issues presented in this appeal are:

**Interpretation of N.J.S.A. § 2A:34-23(h)(2):** Whether the Probate Part correctly determined that this statute authorizes the Estate of a decedent to continue an action for equitable distribution, initiated before the decedent's death, against the surviving spouse. The Plaintiff contends that the statute's plain language—stating that the court's authority to effectuate equitable distribution "shall not abate" if "either party to the litigation dies"—expressly permits the estate to continue the action, consistent with the Legislature's intent to avoid the arbitrary results of prior law.

**Conflict of Interest with Respect to Equitable Distribution:** Whether the Probate Part correctly found a conflict of interest that disqualifies the Defendant, Jared Burke, from serving as the Executor of the Estate specifically with respect to the Estate's right to seek equitable distribution against him. The Plaintiff argues that allowing the Defendant to elect whether to pursue a claim against his own economic interest on behalf of the Estate creates a direct and impermissible conflict.

**Appropriate Venue for Marital Estate Determination:** Whether the Probate Part correctly deferred the question of whether the proceeds of the Decedent's life insurance policy are part of the marital estate for resolution by the Family Part, as the venue for determining the nature and extent of the marital estate. The Plaintiff argues that the Probate Part was correct in deferring this question to the Family Part.

In sum, the Plaintiff asks this Court to grant leave to appeal but to affirm the Probate Part's rulings on all three substantive points.

**FACTS AND PROCEDURAL HISTORY**

Plaintiff Katarzyna Kostro (hereinafter, “Plaintiff”) finds the characterization of the facts and procedural history offered by Defendant Jared Burke (hereinafter, “Defendant”) to be accurate and complete.

**LEGAL ARGUMENT**

**POINT I:**

**THIS MATTER WARRANTS INTERLOCUTORY REVIEW (Da1)**

The Plaintiff concurs with the Defendant’s characterization of the standard for interlocutory review, and with the application of that standard to the matter at hand. The Plaintiff contests the conclusory statements of law that Defendant makes throughout this section of his brief regarding the other issues, which will be addressed in detail in the Points II through IV, but for clarity and specificity:

In the Defendant’s Appellate Brief (hereinafter cited as “AB”) at page 12, he states: “The Probate Part’s interpretation expands the statute far beyond its text and legislative intent, effectively creating a new cause of action, “estate-initiated equitable distribution,” that does not and should not exist in this State. The importance of clarifying this novel and far-reaching question of law cannot be overstated.”

While Plaintiff agrees with the importance of clarifying the novel issue of law, she disputes Defendant’s assertion that the Probate Part’s interpretation is beyond either the text or legislative intention, and disputes that a new cause of action is created by this ruling.

Further, Defendant states that: "The order strips him, without any finding of misconduct, of the fiduciary role expressly conferred upon him by Decedent in a valid, admitted Will" (AB at 13). This is a mischaracterization of the Order, which is narrowly drawn to only disqualify him from the Executorship. Specifically: "the Respondent [Defendant-Appellant in this Appeal], Jared Thomas Burke, has a conflict of interest between his interests as an individual and his fiduciary responsibilities to the Estate of Agnieszka Burke with respect to the Estate's right to seek equitable distribution, and therefore is disqualified from serving as the Executor of the Estate for that purpose." While the Plaintiff did request a finding that the Defendant was disqualified as the Executor generally, that relief was not granted in the November 6, 2025, Order.

Otherwise, Plaintiff concurs with Defendant's presentation of the issues and the conclusion that interlocutory review of the subject Order of November 6, 2025 (Da1).

**POINT II:**

**THE PROBATE PART CORRECTLY DETERMINED THAT N.J.S.A. §  
2A:34-23(h)(2) AUTHORIZES AN ESTATE TO CONTINUE AN ACTION  
FOR EQUITABLE DISTRIBUTION (Da1)**

The Plaintiff asked for the Probate Part to interpret N.J.S.A. § 2A:34-23(h)(2): “If a complaint not dismissed pursuant to R.4:6-2 of the Rules of Court has been filed for an action under paragraph (1) of this section, and (a) either party to the litigation dies prior to the entry of the final judgment, ... the court’s authority to effectuate an equitable distribution of the property shall not abate.” The Court found “that N.J.S.A. 2A:34-23(h)(2) permits the personal representative of the estate of a decedent to seek equitable distribution before the Family Part when an application for dissolution of marriage has been filed and not dismissed pursuant to R. 4:6-2 of the Rules of Court, and thereafter but prior to the entry of final judgment either party to the dissolution proceedings should die.”

The Defendant contends that the interpretation of the statute must be constrained by the legislative history, however, when examining a new statute, the New Jersey Supreme Court has instructed us that determining “The Legislature's intent is the paramount goal when interpreting a statute and, generally, the best indicator of that intent is the statutory language.” DiProspero v. Penn,

183 N.J. 477, 492-93 (2005), and that “It is not the function of this Court to “rewrite a plainly-written enactment of the Legislature or presume that the Legislature intended something other than that expressed by way of the plain language.”” Id., citing O’Connell v. State, 171 N.J. 484, 488, 795 A.2d 857 (2002).

The language chosen by the Legislature is clear. The key clauses in contention are: “either party to the litigation dies prior to the entry of the final judgment” and “the court’s authority to effectuate an equitable distribution of the property shall not abate.” We see that there is no reference to either a surviving spouse or to a personal representative of the estate, but rather the Legislature chose to write “either party.” Likewise, the Legislature does not write that the survivor’s right to equitable distribution does not abate, but rather that “the court’s authority . . . shall not abate.” The Court should hold that this means that the action seeking equitable distribution may be continued by the personal representative of either party.

As the language of the statute is clear, the Defendant’s contention that the meaning of the statute should be constrained by the purposes described in the legislative history should not be given weight, as “A court should not “resort to extrinsic interpretative aids” when “the statutory language is clear and unambiguous, and susceptible to only one interpretation . . . .” Id.,

citing Lozano v. Frank DeLuca Const., 178 N.J. 513, 522, 842 A.2d 156 (2004).”

Even if the Court were to hold that the statute could be susceptible to multiple interpretations, it should be noted that while the impetus for the Legislature to act may have been remedying the “black hole” of Carr v. Carr, 120 N.J. 336, no language regarding the surviving spouse appears in N.J.S.A. § 2A:34-23(h)(2). The Legislature knew that the primary problem being remedied was the “black hole” that impacted the surviving spouse, but elected not to include any limitation of the rights being created to the surviving spouse in the final text of the statute. The Court should hold that the limitation being proposed by the Defendant is not provided for by the statute, and as “We cannot “write in an additional qualification which the Legislature pointedly omitted in drafting its own enactment,”” DiProspero v. Penn, citing Craster v. Bd. of Comm'rs of Newark, 9 N.J. 225, 230, 87 A.2d 721 (1952), the argument must be rejected.

Additionally, holding that an estate cannot pursue equitable distribution would lead to results that undercut the fundamental purpose of the act, which is: to avoid the arbitrary results that Carr leads to. The problem with the “black hole” was that when a person died mid-divorce, equitable considerations were disregarded in favor of unreasoning results driven by the titling of assets. To hold that the new statute can only be utilized by a surviving spouse leads to the

same sort of result. The intention of the new statute is to allow stakeholders to continue the action seeking an equitable result. If that right is limited to only the surviving spouse, then the result will be inherently arbitrary vis-a-vis the interests of the decedent and their estate. Even more absurd is the result when both parties die, as then we revert to the same form-over-substance results that Carr brings: the outcomes will be driven by what was titled to whom and which party died first. Defendant's interpretation of the statute is directly opposed to the purpose of the statute, and "courts should avoid interpreting a statute in a manner that leads to an absurd, anomalous, or unreasonable result. Statutory interpretations should turn on the breadth of legislative objectives and the common sense of the situation." Cty. of Camden v. S. Jersey Port Corp., 312 N.J. Super. 387, 396 (App. Div. 1998).

The Defendant is correct that the legislative history does not speak to the rights of estates, as the record appears to be devoid of any mention thereof. As there is no mention of estates, we have no way of knowing whether the Legislature even considered the question. "Where a statute or ordinance does not expressly address a specific situation, the court will interpret it "consonant with the probable intent of the draftsman 'had he anticipated the matter at hand.'"" Twp. of Pennsauken v. Schad, 160 N.J. 156, 170 (1999), citing AMN, Inc. v. Township of S. Brunswick Rent Leveling Bd., 93 N.J. 518 (1983).

Given that the purpose of the statute was to avoid the arbitrary results of Carr, if the Legislature had anticipated the anomalous results that Defendant's interpretation of the law would create (as described above), it is likely that the law would have been written to explicitly permit both estates and surviving spouses to continue divorce actions and to seek equitable distribution.

Additionally, Defendant argues that "Equitable distribution has always been a personal, elective remedy grounded in the economic interests of the spouses themselves, not an asset directly transferrable to the decedent's estate. Had the Legislature intended to confer such a dramatic and unprecedented right on personal representatives, it would have said so expressly" (AB at 17). The legislature did say such a thing expressly when it wrote that if after the filing of an action of dissolution of marriage and equitable distribution of the marital estate, "either party to the litigation dies prior to the entry of the final judgment, ... the court's authority to effectuate an equitable distribution of the property shall not abate." The change in the statute demonstrates that the legislature precisely intended to separate the right to equitable distribution (and the power and authority of the Court to effect it) from the personal rights of the litigants.

Defendant argues that a new cause of action is created if the Plaintiff's argument is found to be correct, specifically, that it leads to "estate-initiated equitable distribution" (AB at 17). This conclusion is inaccurate and insupport-

able. Plaintiff does not argue that an estate may initiate an action for equitable distribution, but rather that an estate may continue an action for equitable distribution that was properly brought by a living person if that action was not dismissed before the time of their death.

Defendant states that “Decedent died testate, having executed a Will that expressly appointed her husband, Defendant, as both Executor and primary beneficiary, and naming their minor children as the alternate beneficiaries. She signed this Will, and did not change it after the Complaint for Divorce was filed, even though she had the right to do so.” And that “New Jersey courts have long held that “the testator's intent is paramount,” and that courts must honor the fiduciary and distributive choices expressed in a valid Will absent compelling evidence of misconduct or incapacity” (AB at 17-18). The Testator’s intention is not the subject of the November 6, 2025, Order (Da1) (the Probate Part having determined that the Testator’s intention was a triable issue of fact) and therefore this issue is not properly before this Court. Nevertheless, Defendant’s reliance on the doctrine of testator’s intention is misplaced. Here, what is at issue is the scope of the authority of the Court, not whether the Plaintiff would have intended to continue the equitable distribution action had she survived. If that issue is germane, it is a triable issue of fact and not properly a matter for this interlocutory appeal.

Plaintiff largely agrees with Defendant's assertion that ruling in favor of the Plaintiff has dramatic and wide-reaching implications, but argues that those impacts are precisely by legislative design, as evidenced by the statutory language. Plaintiff disagrees that there is any implication regarding the meaning of N.J.S.A. § 3B:3-14, as the authority to effect equitable distribution of the marital estate is not the same as a revocation of testamentary transfers and appointments. Plaintiff's arguments for revocation of appointments and bequests to the Defendant are rooted in the Testator's intentions as evidenced in the text of the will, not N.J.S.A. § 3B:3-14, and have not yet been ruled on by the Probate Part, and are therefore not properly part of this interlocutory appeal.

**POINT III:**

**THE DEFENDANT HAS A CONFLICT OF INTEREST WITH RESPECT  
TO PURSUING EQUITABLE DISTRIBUTION ON BEHALF OF THE  
ESTATE AGAINST HIMSELF (Da1)**

In Point III, Defendant mischaracterizes the November 6, 2025, Order. While Plaintiff requested that the Probate Part should find a global conflict of interest between Defendant's interests and his fiduciary responsibilities, the Court limited its ruling to the continuation of the equitable distribution action. The Court's ruling should be left undisturbed, as "The rule which forbids those who fill fiduciary positions from making use of them to benefit their personal interests is deservedly strict in its requirements and operation. It extends to all transactions, where the individual's personal interest may be brought into conflict with his acts in a fiduciary capacity, and it works independently of the questions of whether there was fraud, or whether there was good intention. Where the possibility of such a conflict exists, there is the danger intended to be guarded against by the absoluteness of the rule." Dufford v. Nowakoski, 125 N.J. Eq. 262, 269 (1939). The question of whether and to what extent equitable distribution should be pursued against the Defendant is inherently inimical to his own interests, and creates a direct conflict between his own interests and that of the Estate.

**POINT IV:**

**THE FAMILY PART IS THE MOST APPROPRIATE VENUE FOR DETERMINING THE NATURE OF THE MARITAL ESTATE (Da1)**

It is indisputable that Defendant’s interpretations of the law would have been reasonable and accurate before the passage of P.L.2023, c. 238. However, the changes to the statute create entirely new situations that must be addressed. If an estate may continue an action for equitable distribution, then it stands to reason that the definition of the marital estate will evolve. Plaintiff does not argue that the proceeds of the life insurance were acquired during the lifetime of Agnieszka Burke (and therefore during the marriage) – however, the policy itself was. By definition, before the change in N.J.S.A. § 2A:34-23(h)(2) there never have been proceeds from life insurance available for equitable distribution because equitable distribution could not be pursued after a party to a divorce proceeding’s death. Now, if one of the parties to a dissolution proceeding dies, “the court’s authority to effectuate an equitable distribution of the property shall not abate.”

That being said, the Probate Part’s ruling that this question is beyond the scope of authority of that Court, and should be deferred for ultimate resolution by the Family Part is reasonable and well-rooted in the law and the Rules of Court. For instance, R. 4:3-1(a)(3) states that “All actions in which the princi-

pal claim is unique to and arises out of a family or family-type relationship, including palimony actions, shall be filed and heard in the Chancery Division, Family Part.” Such actions include actions for equitable distribution, by the terms of the statute that is primarily at-issue in this appeal, N.J.S.A. § 2A:34-23(h)(2), which states in relevant part: “Pursuant to subparagraph (a)(3) of R. 4:3-1 of the Rules of Court, all such matters shall be filed and heard in the Family Part of the Chancery Division of the Superior Court.”

Indeed, the Appellate Division determined that certain matters which have both Family and Probate characteristics may often be heard in the Family Part when it held that “The Family Part is a court of general jurisdiction with power to decide "all civil actions in which the principal claim is unique to and arises out of a family or family-type relationship." R. 5:1-2(a). Our Supreme Court has stated that deference is to be given to the special expertise developed by Family Part judges in dealing with family or family-type matters. Moreover, probate actions arising out of family relationships or family-type relationships have been previously held cognizable in the Family Part.” N.J. Div. of Youth & Family Servs. v. M.W., 398 N.J. Super. 266, 287 (App. Div. 2008).


In this matter, the determination of the nature and extent of the marital estate is best left for the special expertise of the Family Part, and the Probate Part’s ruling should be left undisturbed.

**CONCLUSION**

For all the foregoing reasons, the Plaintiff concurs with the Defendant that this matter presents the rare and exceptional circumstances warranting interlocutory intervention. However, the Plaintiff respectfully submits that the November 6, 2025 Order is sound and should be left undisturbed. This reviewing Court should therefore grant leave to appeal, but should affirm the Probate Part's interpretation of N.J.S.A. § 2A:34-23(h)(2), affirm the finding of a conflict of interest with respect to equitable distribution action, and affirm that the question of whether the proceeds of the Decedent's life insurance policy are part of the marital estate is a question best heard in the Family Part.

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Dated: December 11, 2025

  
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