

## **Family Law**

The New Jersey Supreme Court consistently has been at the forefront of matters involving family relationships. The issues it has addressed have been as varied as human nature itself. As early as 1971, the Court corrected the course that family law had been on and recognized the notion of marriage as a shared enterprise in which the spouse's contributions are to be valued equally. *Khalaf v. Khalaf*, 58 N.J. 63 (1971). It went on to uphold the constitutionality of the equitable distribution statute, *Painter v. Painter*, 65 N.J. 196 (1974) and identified a non-vested pension plan with future monetary benefits earned during the marriage as within the marital estate. *Kikkert v. Kikkert*, 88 N.J. 4 (1981).

In addition, recognizing that all relationships entitled to protection are not traditional marriages, the Court declared that committed same-sex couples must be afforded the same rights and benefits enjoyed by married opposite sex couples, *Lewis v. Harris*, 188 N.J. 415 (2006) and permitted the enforcement of financial agreements between unmarried parties living together based on promises that had been made and expectations developed. *Kozlowski v. Kozlowski*, 80 N.J. 378 (1979).

In cutting edge legal analyses, the Court identified the elements of battered women's syndrome in *State v. Kelly*, 97 N.J. 178 (1984); struck down surrogacy contracts as contrary to New Jersey law and public policy in *Matter of Baby M*, 109 N.J. 396 (1988); and denied a former husband's claimed entitlement to frozen embryos without his ex-wife's consent, *J.B. v. M.B.*, 470 N.J. 9 (2001).

The Court has also dealt with important questions relating to children, including custody, support, education and visitation, always with the welfare of the child polestar under its *parens patriae* jurisdiction. In so doing, it has recognized the viability of joint custody as disposition in a family law case, *Beck v. Beck*, 86 N.J.

480 (1981); limited the psychological parent doctrine to permit one who has served in that role for a child to stand in the shoes of a biological parent and applied the doctrine to same sex couples, *VC v. MJB*, 163 N.J. 200 (2000); and permitted visitation by grandparents and siblings over the objection of parents, to avoid harm to the child, *Moriarty v. Bradt*, 177 N.J. 84 (2003) even after adoption by unrelated parties. *IMO DC & DC Minors*, 203 N.J. 541 (2010).

In addition to the cases cited above, attached is a list of other notable Supreme Court Family Law decisions that have impacted the lives of our fellow citizens in a multitude of ways.

*Williams v. Williams*, 59 N.J. 229 (1971): Considerations that apply to award of counsel fees are the financial circumstances of the parties, including the need and ability to pay; the reasonableness and good faith of parties, counsel fees paid and previously awarded; results obtained; the degree to which the fees were incurred to enforce prior orders or to compel discovery and any other relevant factor.

*Lepis v. Lepis*, 83 N.J. 139 (1980): Setting forth standards for establishing “changed circumstances”.

*Newburgh v. Arrigo*, 88 N.J. 529 (1982): Identifying college education as a necessity and setting forth a multi-factor test for determining when parents must contribute. The test includes the amount at issue; the nature of the education sought; the expectations of the parties; the financial resources of both parents; the child’s aptitude; the availability of financial aid; the financial resources of the child including the ability to earn, and the child’s relationship to the paying parent.

*Lynn v. Lynn*, 91 N.J. 510 (1982): Husband's medical degree and license were not properly subject to equitable distribution, but equity would be served by award of alimony taking into account the parties' expectations and vastly different circumstances.

Gayet v. Gayet, 92 N.J. 149 (1983): Cohabitation by divorced spouse constitutes changed circumstances justifying discovery and hearing in proceeding for modification of alimony; test for modification of alimony remains whether relationship has changed the financial needs of dependent former spouse.

Innes v. Innes, 117 N.J. 496 (1990): Income from pension treated as an asset for equitable distribution is not to be considered in determining alimony.

Kinsella v. Kinsella, 150 N.J. 276 (1997): Communications by husband to psychologist in therapy sessions that both husband and wife attended were protected from disclosure under marriage and family therapist privilege but as to parties' child custody dispute, remand was required for proper balancing of need for treatment records with important public policy underlying psychologist-patient privilege.

Crews v. Crews, 164 N.J. 11 (2000): Parties' standard of living must be established in all alimony cases.

Mani v. Mani, 183 N.J. 70 (2005): Reaffirmed the joint enterprise theory of marriage and held marital fault irrelevant to alimony except in cases in which the fault has affected the parties' economic life or in which the fault so violates societal norms that continuing the economic bonds between the parties would confound notions of simple justice.

Fawzy v. Fawzy, 199 N.J. 456 (2009): Within the constitutionally protected sphere of parental autonomy is the right of parents to choose the forum in which their disputes over child custody and rearing will be resolved, including arbitration.

Bisbing v. Bisbing, 230 N.J. 309 (2017): Courts should conduct a best interest analysis to determine "cause" under N.J.S.A. 9:2-2 in all contested relocation disputes in which the parents share legal custody. In so holding, the Court abandoned the relocation standard established in Baures v. Lewis, 167 N.J. 91 (2001).

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147 family law cases for review by the authors of the family law report.