

Equal Justice

NEWSLETTER OF THE NYS JUDICIAL COMMITTEE ON WOMEN IN THE COURTS



AUGUST 2009 CONTENTS

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New Law Imposes Automatic Stays in Matrimonial Actions

New legislation signed into law in June will make unfair maneuvering in divorce litigation more difficult by imposing restrictions on changes in a family's financial status during the course of matrimonial litigation.

Often the start of a divorce sets off a scramble for an advantage as husbands and wives begin to untangle their joint economic lives. Lawyers typically respond to this potential danger by making motions to keep existing arrangements in place.

The legislation amends Domestic Relations Law Sec. 236 (B)(2) to include provisions for automatic orders to go into effect as soon the divorce begins. Both parties are prohibited from selling property, mortgaging real estate, depleting bank accounts, invading pension funds, running up credit card debt, or removing a spouse or child from life insurance and medical plans. Only a court order or an agreement of the divorcing couple can override the stay.

The new law will short-circuit the process of protecting assets, cut back on lawyers' fees, and save judicial time. It also will protect vulnerable family members from unscrupulous attempts to hide family property or deplete assets.

The bill is A02574 and S2970. It is effective on September 1, 2009. The text can be found at <http://assembly.state.ny.us/leg/?bn=A02574&sh=t>

Expanded Family Court Jurisdiction for Orders of Protection

In the year since New York State enacted legislation expanding access to family court orders of protection, litigants have filed 7200 cases under the new statute. Judges have found jurisdiction for cases brought by a recently-divorced woman against her former father-in-law, an adopted child against her biological mother, and a woman against the ex-girlfriend of her live-in boyfriend. Without the new legislation, none of these petitioners would have been able to obtain relief in Family Court.

The new Fair Access statute extends family court jurisdiction to persons "who are not related by consanguinity or affinity [but] who are or have been in an "intimate relationship." The statute provides a non-exclusive list of factors to which judges may look when faced with a question of whether or not an intimate relationship exists. Included are the frequency of interactions and the duration of the relationship. Sexual intimacy is only one factor and by no means a requisite for an intimate relationship. "Casual acquaintance [and] ordinary fraternization . . . in business and social contexts" are explicitly excluded.

The law went into effect on July 21, 2008. It can be found at Family Court Act § 812(1)(e).

PUBLISHED CASES UNDER THE FAIR ACCESS TO FAMILY COURT PROVISIONS

Matter of Maria B. v Ndoc S. (NYLJ, April 10, 2009, p. 25, col. 1) (Fam. Ct. Kings Co., Apr. 10, 2009). A woman filed a petition against her father-in-law, who was also the grandfather of her child, alleging that he had stalked and harassed her. While the proceeding was pending, the petitioner and her husband were divorced, thereby severing the father-in-law/daughter-in-law relationship that had allowed her to proceed under the long-standing section Family Court Act that permits petitions for orders of protection to be filed by people related by affinity or marriage.

Utilizing the new statute, the court found that the former daughter-in-law had an “intimate relationship” within the meaning of the amended Family Court Act partly because she had been related by affinity to the respondent but also because her child was his grandchild and because her former husband was living with the respondent.

K.J. v K.K., 23 Misc.2d 754 (Fam. Ct. Orange Co., Feb. 4, 2009). A mother petitioned family court for an order of protection on behalf of her adopted daughter against the girl’s biological mother, who, the petition alleged, had frightened the daughter by stalking her. The girl, in her teens at the time of the petition, had lived with the respondent biological mother for several years until she was placed in a foster home.

In denying a motion to dismiss for lack of jurisdiction, an Orange

County Family Court judge ruled that the child and the biological mother were not only related by consanguinity but also by an intimate relationship within the meaning of the recent amendment to the Family Court Act.

R.M.W. v G. M. M., 2009 WL 237680 (Fam. Ct., Nassau Co., Jan. 30, 2009). A woman and a man living together with the man’s children sought an order of protection against the man’s former girlfriend, who was also the mother of his children. According to a Nassau County family court judge, the male petitioner fell squarely within the bounds of the Family Court Act even without the new amendment, since he and the respondent had children in common.

The judge ruled that the woman who joined him as petitioner also was covered by the Family Court Act. The judge found that the woman shared an intimate relationship with respondent, first, by virtue of living with the father of respondent’s children and, second, by living with respondent’s children. The judge likened the relationship to that of stepmother, suggesting “a close association, contact or familiarity between the two.”

K. V. v K. F., 22 Misc.3d 372 (Fam. Ct., Onondaga Co., Nov. 10, 2008). In an early case under the new statute, an Onondaga family court judge, in the course of ruling that the new statute extended to acts committed before the statute was enacted, decided that a woman could bring a petition for a family court order of protection against her ex-boyfriend.

“FINDING SAFETY AND SUPPORT” NOW IN MULTIPLE LANGUAGES

Spanish, Russian, Chinese, and Arabic versions of “Domestic Violence: Finding Safety and Support” now join the English version on the OCA’s website.

“Finding Safety and Support,” published by the NYS Office for the Prevention of Domestic Violence, is a major resource for domestic violence victims. It includes as well advice for people who have a friend, a member of the family, or a colleague with an abusive partner.

To view “Domestic Violence: Finding Safety and Support,” in English, Spanish, Russian, Chinese or Arabic, visit <http://www.nycourts.gov/ip/womeninthecourts/publications.shtml#other>

UPDATED VERSION OF “IMMIGRATION AND DOMESTIC VIOLENCE” AVAILABLE

“When immigrant women turn to the state courts for protection against violent men in their lives... coloring all response, and often overriding other considerations, is concern about immigration status and fear of deportation. The danger is real, and abusers know it.”

From Immigration and Domestic Violence: A Short Guide for New York Judges

An updated version of the booklet “Immigration and Domestic Violence: A Short Guide for New York State Judges” is available at <http://www.nycourts.gov/ip/womeninthecourts/ImmigrationandDomesticViolence.pdf> Published by the New York State Judicial Committee on Women in the Courts, this booklet briefly explains federal remedies designed to help immigrant domestic violence victims. It also discusses the critical implications of criminal proceedings for victims and their abusers.