

Family Law Services Alert: New Jersey Appellate Division Rules COVID is Not a Permanent Change of Circumstances to Modify Support

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1/28/2022

As the COVID-19 pandemic first emerged, courts throughout the country struggled to balance once-in-a-lifetime global panic with long-standing well-developed legal precedent. Litigants, particularly in the matrimonial context, viewed the COVID-19 pandemic as an opportunity to obtain decisions deviating from the long-standing and well-developed body of law concerning issues of child custody, visitation, and support by simply citing generalized pessimism and fears about COVID-19.

One of the earliest post-COVID-19 decisions concerned a mother seeking to unilaterally withhold custody of a child citing nothing more than generalized fears about COVID-19. The Court held:

The mother has failed to articulate, submit evidence, or even allege any particularized health concern such that the Court would consider suspension of in-person visits. A generalized fear of the coronavirus crisis we all face is insufficient to severely limit and perhaps harm a child's relationship with a parent. This pandemic is not to be used to limit access by a parent or to flout valid orders of the court. Rather, valid orders of the court must be followed during this crisis unless a parent can articulate specific health or safety risks, and can demonstrate to the Court that suspension of visits is warranted, which may be a heavy burden. S.V. v. A.J., 68 Misc.3d 330 (N.Y. Fam.Ct., Bronx County, May 7, 2020).

On January 25, 2022, New Jersey's Appellate Division affirmed the denial of a father's motion seeking a downward modification of child support based on a transient and temporary reduction in income due to the COVID-19 pandemic. Citing the trial judge's reasoning, the Appellate Division echoed:

COVID-19 related reductions in salary are not sufficient to create a presumption of permanent changed circumstances. COVID-19 related reductions in salary have only existed since March 2020. There is no evidence, as states

*begin to reopen their economies, that salaries, such as [d]efendant's will [not] rise to [their] pre-pandemic levels. Additionally, [d]efendant admits to the [c]ourt that he is currently in search of a higher-paying position. **Defendant has failed to show a permanent change in circumstance[s]** warranting a downward modification in child support.*

*Although [d]efendant is currently earning less than he did in 2017, the [c]ourt has neither enough current financial documents from [d]efendant, nor **any proof of more than a temporary change in circumstance** to warrant a downward modification in child support. Gerstrel v. Gerstrel, Docket No. A-4065-19, 2022 WL 211506 (N.J. App. Div., January 25, 2022) (emphasis added).*

Citing *Lepis v. Lepis*, 83 N.J. 139, 151 (1980), the Court reasoned, "Courts have consistently rejected requests for modification based on circumstances which are **only temporary** or which are expected but have not yet occurred." (emphasis added).

Gerstrel is significant for matrimonial practitioners because it sends a clear message to the bar that courts in New Jersey will maintain their commitment to a more disciplined approach of basing requests for modification on long-standing well-developed legal precedent over unsubstantiated fears about the future, and expressly reject the argument or suggestion that the economic consequences of the COVID-19 pandemic constitute a "permanent" change in circumstances absent any additional evidence supporting such a position.

If you have any questions about this alert, please contact:

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