TO: **New Jersey Law Revision Commission**
FROM: **Whitney G. Schlimbach, Counsel**[1]
RE: **Modification of Child Support for Emancipation and Adult Adoption**
DATE: **May 6, 2024**

MEMORANDUM

Project Summary

N.J.S. 2A:17-56.23a provides that child support payments "shall [not] be retroactively modified by the court except with respect to the period during which there is a pending application for modification."[2] The statute has consistently been read to prohibit retroactive reductions of child support obligations for the period predating an application for modification.[3]

In *K.A. v. F.A.*, the Superior Court, Chancery Division, considered "a question of first impression: may a child support obligation be modified retroactively prior to the date of application where the substantial, permanent change in circumstances is an adult adoption that terminated the obligor's parental rights."[4] The Court held that "N.J.S.A. 2A:17-56.23a's ban on retroactive modification to child support does not bar modification, or even termination, of child support retroactive to the date of the adult adoption," similar to termination when a child is emancipated.[5]

In January 2024, the Commission released a Tentative Report proposing modifications to N.J.S. 2A:17-56.23a that were intended to codify the holding of *K.A.* and other decisions with similar holdings.[6] In response to outreach, commenters provided important context for the statutory ban on retroactive modification of child support in N.J.S. 2A:17-56.23a and suggested alternative modifications.[7] In view of the feedback received, Commission guidance is requested regarding the continued direction of the project.

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[1] Preliminary work on this project was conducted by Nicole I. Sodano and Shelby E. Ward, Esq., during their time as pro bono volunteers.
[2] N.J. STAT. ANN. § 2A:17-56.23a (West 2024) (modification may be made "from the date the notice of motion was mailed either directly or through the appropriate agent").
[3] *K.A. v. F.A.*, 473 N.J. Super. 151, 156 (Ch. Div. 2020) ("With limited exceptions, courts doggedly enforce the prohibition on retroactive modifications.").
[4] *K.A.*, 476 N.J. Super. at 155.
[5] *Id.* at 157 ("The most notable exception to the statutory ban on retroactive modifications – and most analogous to the circumstances here – is for a child's emancipation.") (citing *Mahoney v. Pennell*, 285 N.J. Super. 638, 643 (App. Div. 1995) *and Bowens v. Bowens*, 286 N.J. Super. 70, 73 (App. Div. 1995)).
[6] N.J. Law Revision Comm'n, *Tentative Report Addressing Exceptions to Ban on Retroactive Modification of Child Support for Emancipation and Adult Adoption*, at 4-6 & 10-11 (Jan. 25, 2024), www. njlrc.org (last visited Apr. 30, 2024, 2024); *see also* N.J. Law Revision Comm'n, Minutes of NJLRC Meeting, at 2-3, Jan. 25, 2024, www.njlrc.org (last visited Apr. 30, 2024) (releasing Tentative Report with amendments made by Commissioner Long, proposing the catch-all language, and Commissioner Hartnett, eliminating the reference to New Jersey's adult adoption statute).
[7] *Infra* at pp. 7-10.

Statutes Considered

N.J.S. 2A:17-56.23a provides, in relevant part, that:

* * *

No payment or installment of an order for child support, or those portions of an order which are allocated for child support established prior to or subsequent to the effective date of P.L.1993, c. 45 (C.2A:17-56.23a), shall be retroactively modified by the court except with respect to the period during which there is a pending application for modification, but only from the date the notice of motion was mailed either directly or through the appropriate agent. The written notice will state that a change of circumstances has occurred and a motion for modification of the order will be filed within 45 days. In the event a motion is not filed within the 45-day period, modification shall be permitted only from the date the motion is filed with the court.

The non-modification provision of this section is intended to be curative and shall apply to all orders entered before, on and after the effective date of P.L.1993, c. 45 (C.2A:17-56.23a).[8]

N.J.S. 2A:17-56.67 provides, in relevant part, that:

a. Unless otherwise provided in a court order, judgment, or court-approved preexisting agreement, the obligation to pay current child support or provide medical support, or both for a child shall terminate by operation of law without order by the court on the date that a child marries, dies, or enters the military service. In addition, a child support obligation shall terminate by operation of law without order by the court when a child reaches 19 years of age unless . . .[9]

* * *

Background

K.A. and F.A. married in 1997, had three children, and divorced in 2008.[10] F.A.'s child support obligation to his two younger children was unallocated.[11] K.A. later remarried.[12] On July 19, 2018, the two oldest children, both over eighteen years of age, were adopted by their

[8] N.J. STAT. ANN. § 2A:17-56.23a (emphasis added).
[9] N.J. STAT. ANN. § 2A:17-56.67 (West 2024) (emphasis added). *See also* N.J. STAT. ANN. § 2A:17-56.69 (West 2024) (stating that when a child support obligation that is "terminated by operation of law pursuant to [N.J.S. 2A:17-56.67], any arrearages that have accrued prior to the date of termination shall remain due and enforceable") (emphasis added).
[10] *K.A.*, 473 N.J. Super. at 156.
[11] *Id.* ("When the oldest child matriculated at college, the court modified F.A.'s ongoing child support in February 2017, such that a portion of the support obligation was allocated to the oldest child, but the remainder of the support obligation was unallocated among the two younger children.").
[12] *Id*.

stepfather.[13] When F.A. became aware of the adoptions, he requested termination of child support for his two oldest children and modification of his child support obligation to his youngest child retroactive to the date of the adoptions.[14]

K.A. objected to retroactive modification to the date of the adoptions because the child support obligation was unallocated between the unadopted youngest child and the adopted middle child.[15] She argued that modification may only be retroactive to the date of the application pursuant to N.J.S. 2A:17-56.23a.[16]

Analysis

In *K.A. v. F.A.*, the Court addressed, as a matter of first impression, "whether the adult adoption of a child constitutes an additional, limited exception to N.J.S.A. 2A:17-56.23a's otherwise applicable ban on retroactivity."[17] The *K.A.* Court drew a parallel between the adult adoption and emancipation of a supported child, and concluded that "N.J.S.A. 2A:17-56.23a cannot bar the cancellation of child support for a period during which no duty of support existed."[18]

Emancipation

The *K.A.* Court indicated that the effect of emancipation on a child support obligation was addressed by the Appellate Division in *Mahoney v. Pennell*[19] and *Bowens v. Bowens*,[20] decided on the same day.[21] Because "[e]mancipation is the conclusion of 'the fundamental dependent relationship between parent and child,'"[22] it entails the termination of "the rights and obligations related to care, custody, and . . . support incident to the parent-child relationship."[23]

Mahoney v. Pennell

In *Mahoney*, the Appellate Division addressed whether the retroactivity ban in N.J.S. 2A:17-56.23a "applie[d] to a retroactive termination of the support obligations based on the emancipation of the child where the date of emancipation occur[red] after the statute's effective date."[24] Upon the final judgment of divorce of the plaintiff and defendant in *Mahoney*, the defendant was required to pay child support for his two sons.[25] The plaintiff repeatedly attempted

[13] *Id*.
[14] *Id*. (noting that the application for modification was filed "20 months" after the adoptions).
[15] *Id.*
[16] *Id*.
[17] *Id.* at 157–58.
[18] *Id.* at 161.
[19] *Mahoney v. Pennell*, 285 N.J. Super. 638 (App. Div. 1995).
[20] *Bowens v. Bowens*, 286 N.J. Super. 70 (App. Div. 1995).
[21] *K.A.*, 473 N.J. Super. at 157.
[22] *Id.* at 158 (quoting *Filippone v. Lee*, 304 N.J. Super. 301, 308 (App. Div. 1997)).
[23] *Id.*
[24] *Mahoney*, 285 N.J. Super. at 639.
[25] *Id.*

to enforce the child support order against the sporadically compliant defendant and in the meantime, both children turned eighteen, graduated high school, and became employed full-time.[26]

At the time each child turned eighteen, the defendant provided written notice to the Camden County Probation Department that he would no longer be paying child support and was thereafter notified of "substantial support arrearages."[27] The trial court denied the defendant's motion to terminate his child support obligations retroactive to the dates of his sons' eighteenth birthdays, but "did terminate defendant's support obligation, emancipating [the children] as of the date the motion was heard."[28]

The defendant filed a motion for reconsideration and the plaintiff filed a cross-motion requesting reconsideration of the emancipation of her older son, who was enrolled in college as a full-time student at the time.[29] Both motions were denied and the trial court "concluded that N.J.S.A. 2A:17-56.23a precluded it from granting a "request to eliminate retroactively the child support arrearages to the dates of [the children's] emancipation."[30]

The Appellate Division reviewed the legislative history and purpose of the statute,[31] and analyzed the impact of emancipation on child support obligations.[32] The *Mahoney* Court found that the statute "was enacted to insure that on-going support obligations that became due were paid."[33] The Court explained, however, that, "[i]mplicit . . . in the judicial obligation to enforce the terms of a child support order is the underlying premise that a duty to support exists."[34] The Court concluded, therefore, that "[w]here there is no longer a duty of support by virtue of a judicial declaration of emancipation, no child support can become due."[35]

The *Mahoney* Court recognized that emancipation is a "fact sensitive issue," and held that "N.J.S.A. 2A:17–56.23a does not bar the cancellation of child support arrearages which accrued subsequent to the date of the minor's emancipation as retroactively determined by the court."[36]

Bowens v. Bowens

Similarly, in *Bowens*, the plaintiff filed a motion to "eliminat[e] . . . all support arrearages incurred following [his son's] eighteenth birthday."[37] The trial court found the child was

[26] *Id.* at 639-41 (providing that the older son enlisted in the Navy after high school and enrolled as a full-time college student following his discharge from the Navy, and the younger began working full-time after high school graduation).
[27] *Id.* at 640.
[28] *Id.*
[29] *Id.* at 641.
[30] *Id.*
[31] *Id.* at 642-43.
[32] *Id.* at 643-44.
[33] *Id.* at 643.
[34] *Id.*
[35] *Id.*
[36] *Id.*
[37] *Bowens*, 286 N.J. Super. at 71 (noting the child turned eighteen five years prior to the filing of the motion).

emancipated at eighteen but also held that the court "was constrained by the anti-retroactivity provisions of N.J.S.A. 2A:17-56.23a from eliminating the arrearages."[38]

As in *Mahoney*, the Appellate Division set forth the statute's legislative history as well as the Legislature's goal in enacting it.[39] The *Bowens* Court concluded that "it is implicit in [a divorce] judgment that the support obligation terminates upon emancipation."[40]

Therefore, the Court held that because the child "was found by the motion judge to be emancipated when he became [eighteen] on May 20, 1988, those unpaid arrearages accruing from the emancipation date shall be canceled."[41]

New Jersey Rules of Chancery Division, Family Part Rule 5:6-9

In addition to the case law, the rules governing the Chancery Division, Family Part, also reinforce the principle that child support obligations terminate upon a child's emancipation. Rule 5:6-9, entitled "Termination of Child Support Obligations," provides guidelines for the various circumstances of termination and continuation of child support obligations.[42]

In subsection (e), the rule provides for termination of child support based on "[c]ourt-ordered emancipation," which "shall terminate the obligation of an obligor to pay current child support, as of the effective date set forth in the order of emancipation."[43] The section continues that "[a]ny arrearages accrued prior to the date of emancipation shall remain due and enforceable by the obligee or the Probation Division, as appropriate."[44]

Adult Adoption

The *K.A.* Court then considered whether "the principles undergirding *Mahoney* and *Bowens* should be extended" to adult adoption.[45] The Court described adult adoption as "[s]olely a creature of statute," which must be requested by the adult adoptee and does not require "notice [to] be provided to the natural parent or parents."[46]

Adult adoption "establishes the same rights, privileges, and obligations between the parties as if the adopted adult had been born of the adoptive parent."[47] In doing so, the adoption "terminates all other 'rights, privileges and obligations due from the natural parents to the person

[38] *Id.*
[39] *Id.* at 71-72.
[40] *Id.* at 72-73.
[41] *Id.* at 73.
[42] N.J. R. CH. DIV. FAM. PT. R. 5:6-9 (West 2024).
[43] N.J. R. CH. DIV. FAM. PT. R. 5:6-9(e).
[44] *Id.*
[45] *K.A.*, 473 N.J. Super at 159.
[46] *Id.* (citing N.J. STAT. ANN. §§ 2A:22-1 to -3 (West 2024)).
[47] *Id*. at 159-160.

adopted."[48] Unlike child adoption, however, "adopted adults retain the right to inherit intestate from their natural parents," as is the case with an emancipated child.[49]

In addition, the Court observed that "[t]he adult adoption statute reflects the State's public policy of allowing 'adoption[s] between consenting persons, with the ability to enter a contract, when there is a strong benefit to be gained.'"[50] Considering this foundational principle of adult adoption, the Court determined that "an adult child who applies for an adult adoption has moved beyond the parental sphere of influence required for a finding of emancipation."[51]

Given the "fundamental similarity between adult adoption and emancipation whereby both terminate parental obligations of support," including financial support, the *K.A.* Court held that "N.J.S.A. 2A:17-56.23a does not bar a retroactive modification to child support where the substantial, permanent change in circumstances[[52]] is an adult adoption."[53]

Retroactive Modification of Unallocated Child Support Obligation

Finally, the Court considered how its holding affected the unallocated support obligation to the two youngest children.[54] The Court referred to N.J.S. 2A:17-56.68, which requires that, when support is unallocated, "the amount of the child support obligation in effect immediately prior to the date of the termination shall remain in effect for the other children."[55] The statute further provides that "[e]ither party may file an application . . . to adjust the remaining child support amount to reflect the reduction in the number of dependent children."[56] As the Court noted, however, "[t]hat statutory provision is silent . . . regarding retroactivity."[57]

To resolve this question, the Court relied on *Harrington v. Harrington*, which addressed

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[48] *Id.* at 160.
[49] *Id.*
[50] *Id.* at 161 (pointing out that "the adult adoption statute does not require . . . notice to – the natural parent or parents," which "recognizes the fact that with adulthood come rights and responsibilities of the adult not enjoyed by any child") (quoting *In re Estate of Fenton*, 386 N.J. Super. 404, 414 (App. Div. 2006)).
[51] *Id.*
[52] *Id.* (noting the parties did not disagree that "[a] child's adoption or emancipation constitutes [a substantial, permanent] changed circumstance" (citing *Lepis v. Lepis*, 83 N.J. 139, 157 (1980))). *See Lepis*, 83 N.J. at 149-53 ("[t]he party seeking modification has the burden of showing such 'changed circumstances' as would warrant relief from the support" and when modifying child support, an "examination of the child's needs and the relative abilities of the spouses to supply them" is required).
[53] *K.A.*, 473 N.J. Super at 161.
[54] *Id.*
[55] N.J. STAT. ANN. § 2A:17-56.65(a) (West 2024).
[56] *K.A.*, 473 N.J. Super at 161.
[57] *Id.* at 162.
As set forth *infra*, comment was received from Legal Services of New Jersey regarding the proposed modifications. *See* LSNJ Letter, *infra* note 69. LSNJ described this aspect of the *K.A.* holding as "controversial" and "inconsistent with the treatment of terminating support by operation of law for one of multiple children under" N.J.S. 2A:17-56.68(a). *Id.* at 2.

"the issue of previously unallocated support" in the context of a child's emancipation.[58] The *Harrington* Court held that "where a party requests a retroactive modification of unallocated child support for multiple children premised on emancipation, the court has 'discretion to retroactively modify . . . child support back to the date of a child's emancipation, depending upon certain equitable factors . . . ."[59] The *K.A.* Court analyzed these factors in the context of the case and ordered the parties to "proceed to mediation for the recalculation of child support."[60]

Outreach

Following the release of the January 2024 Tentative Report, outreach was conducted to interested and knowledgeable individuals, including Legal Services of New Jersey, the New Jersey Division of Family Development in the Department of Human Services, the Essex County Legal Aid Association, Volunteer Lawyers for Justice, the New Jersey State Bar Association, and the attorneys who represented the *K.A.* parties.

Response was received from the Division of Family Development, Legal Services of New Jersey, and Angela Pastor, who represented the plaintiff in *K.A. v. F.A.*

New Jersey Division of Family Development, Office of Policy and Legal Affairs

A letter was received from Kareen Bar-Akiva, Assistant Director of the Office of Policy and Legal Affairs, on behalf of the New Jersey Division of Family Development, Office of Child Support Services ("DFD-OCSS").[61] The DFD-OCSS "respectfully requests the NJLRC not proceed with the proposed modifications to N.J.S.A. 2A:17-56.23a" because the "[p]roposed language is generally prohibited under federal law."[62]

DFD-OCSS explained that its opposition to the proposed modifications is due to the fact that "retroactive modifications of child support obligations and/or arrearages is generally prohibited under the Social Security Act."[63] Federal law requires "[s]tate agencies operating a

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[58] *K.A.*, 473 N.J. Super at 162 (citing *Harrington v. Harrington*, 446 N.J. Super. 399 (Ch. Div. 2016)).

[59] *Id.* (listing the factors: (1) the "time . . . between the date of . . . emancipation and the filing date . . . "; (2) "the specific reasons for any delay . . . in filing . . . "; (3) whether "the non-custodial parent continue[d] to pay the same level of child support . . . even after he/she could have filed a motion . . . "; (4) whether "the custodial parent or child engage[d] in any fraud or misrepresentation . . . "; (5) whether "the non-custodial parent alleges that the custodial parent failed to communicate facts that would have led to emancipation and modification . . . "; (6) whether "retroactive modification of child support . . . [would] be unduly cumbersome and complicated . . . "; (7) whether "the custodial parent previously refrain[ed] from seeking to enforce or validly increase other financial obligations of the non-custodial parent . . . "; (8) whether "the non-custodial parent [is] seeking only a credit against unpaid arrears . . . "; (9) "the estimated dollar amount of child support that the non-custodial parent seeks to receive back . . . "; (10) "any other factors the court deems relevant . . . " (quoting *Harrington*, 446 N.J. Super. at 407-09)).

[60] *Id.* at 164 ("a number of considerations prohibit the court from recalculating child support at this juncture").

[61] Letter From Kareen Bar-Akiva, Assistant Director, NJ Division of Family Development, Office of Policy and Legal Affairs, to Whitney G. Schlimbach, Counsel, NJLRC (March 26, 2024) [hereinafter "DFD-OCSS Letter"].

[62] *Id.* at *1.

[63] *Id.* (citing 42 U.S.C. § 666(a)(9)(c) (West 2024)). *See* 42 U.S.C. § 666(a)(9)(c) (requiring that "[p]rocedures which require that any payment or installment of support under any child support order, whether ordered through the State

Child Support Program under Title IV-D" of the Social Security Act to have "laws and procedures in effect that prohibit state courts from ordering retroactive modification of child support obligation and/or arrearages."[64] Therefore, "DFD-OCSS must oppose the proposed modification . . . because it . . . would potentially put the State at risk for financial penalty and/or loss of federal funding if it were found to be in violation of its Child Support State Plan."[65]

However, DFD-OCSS pointed out that "N.J.S. 2A:17-56.67 et seq. does address the termination of an obligation to pay child support by operation of law on the date that a child marries, dies, enters military serve or turns age 19."[66] DFD-OCSS suggests that a "more practical legislative solution may be to revise the termination statute at N.J.S.A.2A:17-56.67(a) to include adult adoption as a basis for termination by operation of law."[67] By doing so, the Child Support Program would be "provide[d] the necessary authority . . . to utilize the date of adoption as the date of termination without further order from the court," avoiding the issue of retroactive modification.[68]

Legal Services of New Jersey

Mary M. McManus-Smith, Chief Counsel for Family Law provided a letter setting forth the position of Legal Services of New Jersey ("LSNJ"), informing Staff that that "LSNJ does not support the NJLRC recommending a change to N.J.S.A.2A:56.23a."[69] LSNJ echoed the concerns of DFD-OCSS, explaining that "New Jersey passed the anti-retro provision of N.J.S.A. 2A:56.23a in response to federal law that conditions federal funding for child support collection on states having a variety of specific laws and procedures" including that "any payment or installment of support . . . is . . . not subject to retroactive modification."[70]

LSNJ further explained that "New Jersey case law makes clear that child support terminates when a child has reached majority and is no longer in the sphere or control of a parent,"[71] but that

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judicial system or through the expedited processes required by paragraph (2), is (on and after the date it is due. . . not subject to retroactive modification by such State or by any other State; except that such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor").

[64] *Id.* ("also known as the Bradley Amendment after Senator William Bradley from New Jersey, [this provision] is codified in regulations at" 45 C.F.R. §§ 302.70(a)(9)(iii) ("Procedures to prohibit retroactive modification of child support arrearages" & 303.106(a)(3) ("Required State laws")).

[65] *Id.*

[66] *Id.* ("unless another age not to exceed 23 is ordered by the court or the child suffers from a severe mental or physical incapacity requiring support past the age of 23"). *See also supra* at p. 2 *and infra* at p. 12.

[67] *Id.*

[68] *Id.* at *1-2 (explaining further that "[t]he Child Support Program is already poised to handle termination cases including those that have multiple children on the order and whether the obligation is unallocated or allocated").

[69] Letter from Mary M. McManus-Smith, Chief Counsel for Family Law, Legal Services of New Jersey, to Whitney G. Schlimbach, Counsel, NJLRC, at *3 (March 26, 2024) ["LSNJ Letter"].

[70] *Id.* at *1 (quoting 42 U.S.C. § 666(a)(9)(c)).

[71] *Id.* (citing *Mahoney v. Pennell*, 285 N.J. Super. 638 (App. Div. 1995)).

"[c]ases tend to avoid framing this as retroactive modification of support arrears and, instead, describe it as child support terminating by operation of law."[72] Rather, "[t]he *Mahoney* case and others regarding emancipation terminating a child support obligation by operation of law, permit courts to acknowledge child support having ended by operation of law and ordering the correction of child support records held by Probation and the courts."[73]

LSNJ also advised that "exception" is not the appropriate term to describe "situations, such as child emancipation, that end support obligations by operation of law."[74] Although acknowledging that "[c]ourts have not been entirely consistent in discussing emancipation or other bases as 'termination . . . by operation of law' rather than an 'exception' to the anti-retro statute," LSNJ emphasized that "it is important, in order to avoid drawing federal attention and potentially contravening federal law" that any potential revisions of the statute are "drafted in terms of termination by operation of law."[75]

LSNJ provided that "[i]ncorporating into the statute a list of those circumstances in which child support terminates by operation is unnecessary, as they are identified in statute or case law" and added that "[i]nserting an incomplete list of circumstances that trigger termination by operation of law could . . . suggest the legislature intended to repeal previously recognized circumstance[s] that result in termination by operation of law."[76] LSNJ also expressed concern that "incorporat[ing] a specific list of circumstances that constitute termination of child support by operation of law is likely to have a chilling effect on the development of case law on the issue."[77]

Although LSNJ strongly urged the Commission "tak[e] no action on this issue," the organization made two suggestions "[i]f the NJLRC . . . chooses to recommend legislation inserting [such] a list of circumstances."[78] First, a statutory list should "include all of the bases that have been identified in statute or by courts, including change of custody."[79] In addition, the proposed language "should reference child support terminating 'by operation of law' (rather than

[72] *Id.* ("distinguish[ing this] from most other changes in circumstances that may affect child support obligations . . . which require an affirmative request to modify and adjudication of the relevant facts and application of law").
[73] *Id.* at *2 (noting also that N.J.S. 2A:17-56.67 et seq. . . . terminates support by operation of law when a child dies, marries, enters the military, or presumptively when they turn 19" with some exception).
[74] *Id.* (explaining additionally that, while there is a general "legal concept of extinguished claims," the term "extinguish" is not "used in child support").
[75] *Id.* at *2-3 ("LSNJ has concerns that framing a statutory revision in terms of exceptions to the anti-retro statute may threaten NJ's federal child support funding," adding that "legislation that threatens funding for child support collection and enforcement is counter to the interest of low-income families, and particularly children in low-income families").
[76] *Id.* at *3 (explaining that "[t]he law is continuing to develop around when support terminates by operation of law" and providing the example that "whether typically a change in custody results in a termination of the current child support obligation" has been discussed but not yet decided by the courts) (citing *Ohlhoff v. Ohfhoff*, 246 N.J. Super. 1 (App. Div. 1991)).
[77] *Id.*
[78] *Id.*
[79] *Id.*

'exceptions') along with the authority of the court to order correction of records regarding accrued child support arrears."[80]

Angela Pastor, Esq.

Angela Pastor, who represented the plaintiff in *K.A.*, provided her comments regarding the proposed modifications during a phone call with Staff.[81] Mrs. Pastor indicated that, from an equity standpoint, codifying the principle articulated in *K.A.* is appropriate.[82] She acknowledged that, although the issue is unlikely to arise often, the current statutes do not provide adequate notice to parties or attorneys that adult adoption is an event terminating child support obligations immediately.[83]

Consequently, Mrs. Pastor cautioned that, if the argument is raised at all, it is likely to be made as an equitable argument unless the parties and court are familiar with the holding in *K.A.*.[84] She noted that, particularly in the context of modification requests, it is difficult for the moving party to obtain relevant information about the other party without court intervention, especially given that estrangement is not uncommon in such situations.[85] She therefore expressed support for a modification that provides notice that adult adoption is an event terminating a child support obligation as of the date of adoption, as held in *K.A.*.[86]

Legislative History of N.J.S. 2A:17-56.23a and N.J.S. 2A:17-56.67

As explained by both DFD-OCSS and LSNJ, the legislative history of N.J.S. 2A:1756.23a provides important context for the statutory language banning retroactive modification of child support obligations.[87] As also noted by both organizations, N.J.S. 2A:17-56.67(a) sets forth specific circumstances which terminate a child support obligation "by operation of law without order by the court on the date that" the circumstance occurs.[88]

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[80] *Id.* LSNJ provided the following language as an example:

> If a change in the child's circumstances triggers termination of child support by operation of law, such as (but not limited to) emancipation, adoption, the child no longer being in the physical custody of the child support recipient, or termination of child support under N.J.S.A. 2A:17-56.64 et seq., or similar statutes in another jurisdiction, a court may order that Probation and other records of accrued child support arrears be corrected to reflect the termination of child support by operation of law.

Id.

[81] Phone Call with Angela F. Pastor, Esq., Pastor and Pastor, LLC, and Whitney G. Schlimbach, Counsel, NJLRC (Mar. 27, 2024 12:15 PM EST) [hereinafter "Pastor Phone Call"].

[82] *Id.*

[83] *Id.*

[84] *Id.*

[85] *Id.*

[86] *Id.*

[87]

[88] N.J. STAT. ANN. § 2A:17-56.67(a).

N.J.S. 2A:17-56.23a

The New Jersey Legislature enacted N.J.S. 2A:17-56.23a in 1988.[89] The original statute granted child support orders from New Jersey or other states "full faith and credit," and barred the retroactive modification of child support past the date of mailing the application for modification.[90]

The Statement accompanying the bill explained that the ban on retroactive modification was "consistent with the recent law, (P.L. 99-509 S9103) sponsored by Senator Bill Bradley, which mandates that every state enact such a provision for any child support order."[91] The Statement further provided that "requir[ing the obligor parent] to officially notify the custodial parent and the court" of a changed circumstance warranting modification of child support obligations "is necessary to ensure that debts that accumulate to children and families are treated with the highest regard."[92] The Statement also confirmed that "[w]ithout such a provision, the State would not be in compliance with the federal regulatory requirements."[93]

Following the enactment of the statute, the Appellate Division held in *Ohlhoff v. Ohlhoff* that N.J.S. 2A:17-56.23a was "prospective in operation only and therefore d[id] not bar the elimination of child support arrearages for the period prior to its effective date, November 20, 1988."[94] In response to *Ohlhoff*, the New Jersey Legislature amended the statute "to clarify that the provisions of [N.J.S. 2A:17-56.23a] apply to all orders entered before, on or after its effective date."[95] The Legislature explicitly intended "the bill's provisions [to be] curative in nature."[96]

A third amendment was made to the statute in 1998, as part of the "New Jersey Child Support Program Improvement Act,"[97] which "implement[ed] requirements which [New Jersey was required to] adopt under the federal 'Personal Responsibility and Work Opportunity Reconciliation Act of 1996,' Pub.L.104-193."[98] The 1998 amendment to N.J.S. 2A:17-56.23a "[r]equire[d] the State to cooperate with other states in interstate child support cases."[99]

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[89] N.J. STAT. ANN. § 2A:17-56.23a (West 2023); *see also* L.1988, c. 111, § 1, eff. Nov. 20, 1988.
[90] L.1988, c. 111, § 1, eff. Nov. 20, 1988.
[91] Statement to S.B. 1510, 1988 Sess., 202nd Leg. (1988) (enacted as L.1988, c. 111, § 1, eff. Nov. 20, 1988) (referring to 42 U.S.C. § 666(a)(9) also known as the "Bradley Amendment").
[92] *Id.* ("The Governor's Commission on Child Support heard extensive testimony that child support owed to the child and the custodial parent is often retroactively modified, causing an unjust hardship on the family.".
[93] *Id. See also* Senate Judiciary Statement to S.B. 1510, 1988 Sess., 202nd Leg. (1988) (enacted as L.1988, c. 111, § 1, eff. Nov. 20, 1988) (deleting "language which would have made the provisions of the bill applicable to orders for alimony and maintenance").
[94] *Ohlhoff v. Ohlhoff*, 246 N.J. Super. 1, 5 (App. Div. 1991) ("The primary issue presented by this appeal is whether N.J.S.A. 2A:17–56.23a, which bars any retroactive modification of child support, is applicable with respect to child support payments which accrue during a period when a supported child is residing with the supporting parent.").
[95] Statement to S.B. 752, 1992 Sess., 205th Leg. (May 7, 1992) (enacted as L.1993, c. 45, § 1, eff. Feb. 18, 1993).
[96] Assembly Senior Citizens and Social Services Committee Statement to S.B. 752, 1992 Sess., 205th Leg. (May 7, 1992) (enacted as L.1993, c. 45, § 1, eff. Feb. 18, 1993).
[97] L.1998, c. 1, § 25, eff. Mar. 5, 1998.
[98] Statement to A.B. 1645, 1998 Sess., 208th Leg. (Jan. 29, 1998) (enacted as L.1998, c. 1, eff. Mar. 5, 1998).
[99] *Id.* at 43.

N.J.S. 2A:17-56.67

N.J.S. 2A:17-56.67 was enacted in 2017 to "clarify[y] certain circumstances under which the obligation to pay child support terminates and provides that such termination would occur by operation of law."[100] The qualifying circumstances are set forth in N.J.S. 2A:17-56.56(a) and include when "a child marries, dies, or enters the military service [or] reaches 19 years of age" unless certain other statutory conditions are met.[101]

Notably, prior to the enactment of the statute, the proposed bill was amended to "remove the reference to the term 'emancipation' . . . because the bill's provisions relate only to the obligation to pay child support, and not to other parental duties, rights, and responsibilities."[102] According to the Statement accompanying the second reprint of the bill with Assembly Floor Amendments incorporated, the determination of legal emancipation of a child was left to the courts.[103]

Another amendment in 2019 "clarif[ied] certain procedures concerning the collection of child support on behalf of a child over the age of 19 when such support has been ordered by the court."[104]

Pending Bills

There are currently no pending bills that address N.J.S. 2A:17-56.67. There is one pending bill proposing an amendment to N.J.S. 2A:17-56.23a but the proposed change does not involve the issue of retroactive modification of child support obligations.[105]

Conclusion

As pointed out by commenters, the proposed modifications to N.J.S. 2A:17-56.23a potentially interfere with New Jersey's compliance with federal requirements for receiving funding for the state's child support program. Although the majority of commenters opposed the proposed

[100] Statement to S.B. 1046, 2015 Sess., 216th Leg. (Jan. 30, 2014) (enacted as L.2017, c. 223, § 1, eff. Feb. 1, 2017).
[101] N.J. STAT. ANN. § 2A:17-56.67(a).
[102] Statement to [Second Reprint] S.B. 1046, 2014 Sess., 216th Leg. (Jan. 30, 2014) (enacted as L.2015, c. 223, § 1, eff. Feb. 1, 2017).
[103] *Id.* ("As amended, nothing in the bill would affect the authority of the court to make judicial determinations regarding the legal emancipation of a child.").
[104] Statement to S.B. 4286, 2019 Sess., 218th Leg. (Dec. 9, 2019) (enacted as L.2019, c. 453, § 1, eff. Dec. 1, 2020).
[105] S.B. 2704, 221st Leg., 2024 Sess. (Feb. 15, 2024) ("amends the statutes concerning the docketing of child support judgments").

modifications on that basis,[106] alternatives were also provided by both DFD-OCSS[107] and LSNJ.[108] Therefore, Commission guidance is requested regarding the continued direction of the project.

[106] *See* Pastor Phone Call, *supra* note 81 (expressing support for a modification codifying the holding in *K.A.* from an equitable standpoint because parties and courts should have notice that adult adoption is a terminating event).
[107] *See* DFD-OCSS Letter, *supra* note 61 (proposing that a modification reflecting the holding in *K.A.* should be made in N.J.S. 2A:17-56.67(a) instead).
[108] *See* LSNJ Letter, *supra* note 69 (opposing modification but providing alternative language if the Commission moves forward with the proposed modifications).