

To: New Jersey Law Revision Commission
From: Samuel M. Silver
Re.: Definition of “Household Members” for purposes of the Prevention of Domestic Violence Act as discussed in *E.S. v. C.D.*, 460 N.J. Super. 326 (Ch. Div. 2018).
Date: November 09, 2020

MEMORANDUM

Executive Summary

The New Jersey Legislature considers domestic violence a serious crime against society.¹ The victims of domestic violence come from all social and economic backgrounds and ethnic groups.² As a result, the Legislature enacted the Prevention of Domestic Violence Act (PDVA) to “assure the victims of domestic violence the maximum protection from abuse the law can provide.”³

In *E.S. v. C.D.*, the court considered whether it had jurisdiction under the PDVA to enter a restraining order against a defendant based on her employment relationship to the victim.⁴

Background

In *E.S. v. C.D.*, the defendant was employed as a full-time, live-in nanny in the plaintiff’s household for seven months.⁵ The defendant was ultimately fired for assaulting the plaintiff’s child.⁶ For several weeks after being discharged from her employment, the defendant made numerous telephone calls to the plaintiff in addition to sending her threatening and harassing text messages.⁷ As a result of this behavior, the plaintiff sought a final restraining order against the defendant under the PDVA.⁸

Analysis

The PDVA specifically delineates who is considered a “victim of domestic violence” under the Act.⁹ The definitional statute, N.J.S. 2C:25-19(b), protects any individual eighteen years or older who has been subjected to domestic violence by a present, or former, “household member.”¹⁰ The term “household member,” however, is not defined in the PDVA.¹¹ Thus, the issue before the

¹ N.J. STAT. ANN. § 2C:25-18 (West 2020).

² *Id.*

³ N.J. STAT. ANN. § 2C:25-17 – 35 (West 2020).

⁴ *E.S. v. C.D.*, 460 N.J. Super. 326 (Ch. Div. 2018).

⁵ *Id.* at 328.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 327.

⁹ N.J. STAT. ANN. § 2C:25-19(d) (West 2020). *See E.S. v. C.D.*, 460 N.J. Super. at 327.

¹⁰ *Id.*

¹¹ Louis Locascio, *Nanny is a Member of Household for Domestic Violence Purposes*, New Jersey Law Journal, March 02, 2020, at 1.

court in *E.S. v. C.D.* was whether a party is entitled to protection under the PDVA, given the parties' economic relationship.¹²

To determine whether a defendant was "at any time a household member" a court will consider six factors¹³

- 1) the nature and duration of the prior relationship; 2) whether the past domestic violence relationship provided a special opportunity for abuse and controlling behavior; 3) the passage of time since the end of the relationship; 4) the extent and nature of any intervening contacts; 5) the nature of the precipitating incident; and 6) the likelihood of ongoing contact or relationship.¹⁴

In *E.S. v. C.D.*, the Court examined the plaintiff's allegations against the backdrop of these factors.¹⁵ The Court determined that: the defendant resided in plaintiff's home for seven months with her and her child¹⁶; by virtue of her employment the defendant gained insight into aspect of the plaintiff's life that rendered plaintiff vulnerable to personal attacks; two months had passed since the defendant left plaintiff's household; no intervening act would have given cause for defendant's actions; the defendant threatened and harassed the plaintiff after their economic relationship ended; and it was likely that this behavior would continue via social media.¹⁷

Since the adoption of the PDVA, New Jersey Courts have liberally interpreted the phrase "member of the household."¹⁸ Despite the absence of a traditional familial, sexual, or romantic relationship, the Appellate Division determined that a male guest, employed as a bookkeeper, who lived with the plaintiff for seven months, was a household member for purposes of the PDVA.¹⁹ Under certain circumstances, college suitemates, who were not roommates, were considered members of the same household for purposes of the PDVA.²⁰

The fact that an individual receives a monetary benefit from engaging in a relationship does not automatically disqualify that person from seeking protection under the PDVA.²¹ Conversely, the Court in *E.C.* determined that the fact "that a victim had provided an economic benefit to a

¹² *E.S. v. C.D.*, 460 N.J. Super. at 327.

¹³ *Id.* at 328; citing *Coleman v. Romano*, 388 N.J. Super. 342, 351-52 (Ch. Div. 2006).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.* at 328-29.

¹⁸ Louis Locascio, *Nanny is a Member of Household for Domestic Violence Purposes*, New Jersey Law Journal, March 02, 2020, at 1. (noting that the phrase "household" is so broad and "chameleon like" that it is akin to "obscenity," in that it falls into the category of terms which defy a precise definition yet are readily recognizable when encountered). See *Fireman's Fund v. Caldwell*, 270 N.J. Super. 157, 163-164 (Law Div. 1993).

¹⁹ *S.Z. v. M.C.*, 417 N.J. Super. 622 (App. Div. 2011).

²⁰ *Hamilton v. Ali*, 350 N.J. Super. 479 (Ch. Div. 2001).

²¹ *J.S. v. J.F.*, 410 N.J. Super. 611 (App. Div. 2009).

defendant should not automatically disqualify the victim from seeking relief under the PDVA.”²²
As such, the court determined that the plaintiff in *E.C.* was a protected party under the PDVA.²³

Conclusion

Staff seeks authorization to conduct additional research and outreach to determine whether the definition of “household member”, as set forth in the PDVA, would benefit from modification to address a victim is entitled to the protection of the Act in the absence of a traditional familial, sexual, or romantic relationship between the parties.

²² *E.S. v. C.D.*, 460 N.J. Super. at 329.

²³ *Id.*