

TO: New Jersey Law Revision Commission
FROM: Nicole Sodano, Pro Bono Volunteer¹
RE: Retroactive Modification of Child Support (N.J.S. 2A:17-56.23a):
Exceptions for Emancipation and Adult Adoption
DATE: November 6, 2023

MEMORANDUM

Project Summary

N.S.J. 2A:17-56.23a provides that child support payments shall not be retroactively modified by the court except that they may be modified for the period during which an application for modification was pending.² Otherwise, the statute has consistently been read, with very limited exceptions, to prohibit retroactive reductions in child support obligations for the period predating an application for reduction.³

In *K.A. v. F.A.*, the Superior Court of New Jersey, considered, as a matter of first impression, the issue of whether a child support obligation may be retroactively modified prior to the date on which the notice of motion was mailed where the change in circumstances was an adult adoption that terminated the parental rights of the obligor.⁴

The Court examined case law and the provisions of N.J.S. 2A:17-56.23a to determine whether an exception to the ban on retroactive modification of child support was appropriate in the case of adult adoption.⁵ The Court held that although N.J.S. 2A:17-56.23a generally bans retroactive modification of child support, the statute does not bar modification of child support retroactive to the date of an adult adoption.⁶

Thus, emancipation and adult adoption have been identified by the New Jersey courts as exceptions allowing retroactive modification prior to the date of application, but neither is included in the express terms of N.J.S. 2A:17-56.23a.

Statute Considered

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

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¹ Additional research and drafting were contributed by Shelby E. Ward, Esq., pro bono volunteer.

² N.J. STAT. ANN. § 2A:17-56.23a (West 2023).

³ *K.A. v. F.A.*, 473 N.J. Super. 151, 155 (Ch. Div. 2020).

⁴ *Id.*

⁵ *Id.* at 159.

⁶ *Id.* at 160.

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).

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

The New Jersey Legislature enacted N.J.S. 2A:17-56.23a in 1988.⁷ In 1993, the New Jersey Legislature amended N.J.S. 2A:17-56.23a to modify the language regarding the application of retroactive modifications of child support orders from the date on which the notice of motion is mailed.⁸ The amendment applies to all orders entered before, on, and after February 18, 1993.⁹ The Assembly Senior Citizens and Social Services Committee statement concerning the Senate Bill explained, “[t]he bill's provisions are curative in nature and reflect the New Jersey Superior Court's decision in *Ohloff v. Ohloff*, 246 N. J. Super. 1 (App. Div., 1991).”

In *Ohloff v. Ohloff*, the Appellate Division concluded that N.J.S. 2A:17-56.23a was prospective in operation only and allowed for the elimination of child support arrearages prior to its effective date, November 20, 1988.¹⁰ The 1993 amendment corrected this interpretation by clarifying the legislative intent to give N.J.S. 2A:17-56.23a limited retroactive effect.¹¹

New Jersey courts have since held that there are limited exceptions to the otherwise total bar to modifying child support prior to the application date. In *Mahoney v. Pennell*, the Appellate Division held that emancipation was “a substantial, permanent change in circumstances”¹² that qualified as an exception to the retroactive modification provision in N.J.S. 2A:17-56.23a.¹³

More recently, in *K.A. v. F.A.*, the Superior Court held that N.J.S. 2A:17-56.23a also permits modification or termination of child support obligations retroactive to the date of an adult

⁷ N.J. STAT. ANN. § 2A:17-56.23a (West 2023); *see also* L.1988, c.111, § 1, eff. Nov. 20, 1988.

⁸ L.1993, c. 45, § 1, eff. Feb. 18, 1993.

⁹ *Id.*

¹⁰ *Ohloff v. Ohloff*, 246 N.J. Super. 1, 5 (App. Div. 1991).

¹¹ Assembly Senior Citizens and Social Services Committee Statement to S.B. 752 (Jan. 11, 1993).

¹² *K.A. v. F.A.*, 473 N.J. Super. 151, 155 (Ch. Div. 2020).

¹³ *Mahoney v. Pennell*, 285 N.J. Super 638 (App. Div. 1995); *see also* *Bowens v. Bowens*, 286 N.J. Super 70 (App. Div. 1995).

adoption terminating the obligor's parental rights.¹⁴

Background

K.A. and F.A. married in 1997, had three children, and divorced in 2008.¹⁵ K.A. later remarried.¹⁶ On July 19, 2018, the two oldest children, both over eighteen years of age, were adopted by their stepfather.¹⁷ This change in circumstances prompted F.A. to request the termination of child support for his two oldest children and the modification of his child support obligation for his youngest child retroactive to July 19, 2018.¹⁸ F.A.'s child support obligation to his two younger children was unallocated.¹⁹

K.A. objected to any retroactive modification, arguing that because the support obligation was unallocated between the unadopted youngest child and the middle child who had been adopted as an adult, modification may only be retroactive to the date of application and not the date of the adoptions.²⁰

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.”²¹

Changed Circumstance Prompting Modification

Child support orders may be modified based “on a prima facie demonstration of a substantial, permanent change in circumstances.”²² As the Supreme Court in *Lepis v. Lepis* explained, “changed circumstances” may include:

(1) an increase in the cost of living . . . ; (2) increase or decrease in the supporting spouse's income . . . ; (3) illness, disability or infirmity arising after the original judgment . . . ; (4) the dependent spouse's loss of a house or apartment . . . ; (5) the dependent spouse's cohabitation with another . . . ; (6) subsequent employment by the dependent spouse . . . ; and (7) changes in federal income tax law²³

¹⁴ *K.A.*, 473 N.J. Super. at 155.

¹⁵ *K.A.*, 473 N.J. Super. at 157–58.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 157–58.

²² *Id.* at 157.

²³ *Lepis v. Lepis*, 83 N.J. 139, 151 (1980).

Emancipation as an Exception to Retroactive Modification

The statutory prohibition on retroactive modification of child support obligations prior to the date of application has been strictly enforced by the courts.²⁴ This rigid application has led to “unforgiving impacts,” including serious financial consequences for an obligor who fails to file a timely motion.²⁵ Courts have, however, carved out limited exceptions to avoid the possible inequitable effects of N.J.S. 2A:17-56.23a, including exceptions for a child’s emancipation and a child’s death.²⁶

The Superior Court in *K.A.* explained that emancipation is the most analogous to the circumstances presented by *K.A. v. F.A.*²⁷ When a child is emancipated, the “rights and obligations related to care, custody, and – most relevant here – support incident to the parent-child relationship are extinguished.”²⁸ While “rights to inheritance and other limited rights continue,” a “parent relinquishes the right to custody and is relieved of the duty to support a child” once the child is emancipated.²⁹

In 1995, the Appellate Division decided *Mahoney v. Pennell*, which discussed the intersection of emancipation and the N.J.S. 2A:17-56.23a ban on retroactive modification.³⁰ In *Mahoney*, the court explained that “N.J.S. 2A:17-56.23a was enacted to insure on-going support obligations were paid” and could not be retroactively modified to avoid accrued arrearages.³¹ However, the court noted that the judicial obligation to enforce a child support order implies the existence of a duty to support the child.³² Because emancipation terminates the parental duty of support to the child, no child support can become due once the child is judicially declared emancipated.³³

Therefore, the *Mahoney* court held the statute barring retroactive modification of child support obligations does not apply to the termination of a support obligation based on the emancipation of a child.³⁴

Comparing Emancipation to Adult Adoption

The *K.A.* Court considered whether “adult adoption is sufficiently analogous to

²⁴ *K.A.*, 473 N.J. Super at 157.

²⁵ *Mallamo v. Mallamo*, 280 N.J. Super. 8, 14 (App. Div. 1995).

²⁶ *Mahoney v. Pennell*, 285 N.J. Super 638, 643 (App. Div. 1995); *Centanni v. Centanni*, 408 N.J. Super. 78, 82 (Ch. Div. 2008).

²⁷ *K.A.*, 473 N.J. Super at 157.

²⁸ *Id.* (citing *Newburgh v. Arrigo*, 88 N.J. 529, 543 (1982)).

²⁹ *Id.*

³⁰ *Mahoney v. Pennell*, 285 N.J. Super. 638, 643 (App. Div. 1995).

³¹ *Mahoney*, 285 N.J. Super. at 643.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

emancipation, such that the principles... should be extended to create an additional, limited exception to N.J.S. 2A:17-56.23a's ban on retroactive modification to child support."³⁵ Adult adoption, characterized as "[s]olely a creature of statute," "establishes the same rights, privileges, and obligations between the parties as if the adopted adult had been born of the adoptive parent."³⁶ One key distinction between adult and child adoption is that "adopted adults retain the right to inherit intestate from their natural parents."³⁷ Aside from that distinction, an adult adoption "terminates all rights, privileges and obligations due from the natural parents to the person adopted."³⁸

In both adult adoption and emancipation, the natural parent no longer retains legal authority or control over the child, custodial rights are relinquished, and there is no longer a financial obligation to support the child.³⁹

Unlike situations involving minor children, an adult adoption does not require approval or notice to the natural parent(s) of the adult requesting the adoption.⁴⁰ Since the parental financial obligations end with the adult adoption, and the natural parent need not be notified of the adoption, the Court concluded that N.J.S. 2A:17-56.23a "cannot bar the cancellation of child support for a period during which no duty of support existed."⁴¹

Regarding the issue of unallocated support, the Court looked to *Harrington v. Harrington*, which set forth factors to aid in determining whether to retroactively modify child support back to the date of a child's emancipation.⁴²

Ultimately, the Court in *K.A.* held that retroactive modification of child support is not barred "where the substantial, permanent change in circumstances is an adult adoption because on adoption, as on emancipation, any on-going financial support obligation is extinguished."⁴³

Pending Bills

Currently there are two pending bills concerning statute N.J.S. 2A:17-56.23a, but the proposed amendments do not address the issue of retroactive modification decided in *K.A. v. F.A.*⁴⁴

³⁵ *K.A.*, 473 N.J. Super at 159.

³⁶ *Id.* at 159-160.

³⁷ *Id.* (citing N.J. STAT. ANN. § 2A:22-3(a) (West 2023)).

³⁸ *Id.* at 160 (citing N.J. STAT. ANN. § 2A:22-3(b)) (emphasis in original).

³⁹ *Id.*

⁴⁰ *Id.* at 161.

⁴¹ *Id.*

⁴² *Id.* at 162 (citing *Harrington v. Harrington*, 446 N.J. Super. 399 (Ch. Div. 2016))

⁴³ *K.A.*, 473 N.J. Super at 160.

⁴⁴ S.B. 1437, 220th Leg., 2022 Sess. (Feb. 10, 2022) (proposing language that "[p]rovides that Probation Division would file child support judgment as a lien only when the amount of judgment equals or exceeds amount of child support due for a one-month period") S.B. 1196, 220th Leg., 2022 Sess. (Jan. 31, 2022) (proposing language that "[m]akes child support arrearages collectable anytime by public welfare or other social services board or agency

Conclusion

Staff seeks authorization to engage in additional research and outreach to determine whether N.J.S.A. 2A:17-56.23a would benefit from modification to reflect the determinations of the courts regarding the exceptions to the statutory ban on retroactive modification of child support obligations for emancipation and adult adoption.

against obligor or obligor's estate based on the amount of public assistance provided due to the obligor's failure to pay support").