

LEGALLY SPEAKING

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Appellate Court Extends Hostile Environment Claims to Public Schools

Law Against Discrimination Reaches New Places

On December 7, 2005, the New Jersey Appellate Division created new law under the New Jersey Law Against Discrimination (“LAD”). In the reported case of *L.W. v. Toms River Regional Schools Board of Education*, a mother filed a complaint with the Division on Civil Rights claiming that the Toms River school district had violated the LAD because her son had been repeatedly subjected to harassment by other students because of his perceived sexual orientation.

At a hearing, the boy testified that beginning as early as the fourth grade, he was taunted and physically assaulted on the basis of the perception that he was homosexual, that he was called gay, homo and fag, that a student grabbed his genitals and engaged in a simulated sexual act while he waited in line in the school cafeteria, that he was told that he was unwelcome in the school, and that he was slapped, punched and struck with a neck chain.

The Appellate Division held that the LAD recognized a claim against a public school district for peer harassment based on an individual’s affectional or sexual orientation. The court further held that principles for determining whether the peer harassment constitutes a violation were substantially the same as those employed to determine workplace

hostile work environment.

The court further held that the actions taken by the school district were not effective and the delay in ending the harassment was unreasonable. As a result, the court upheld an award of \$50,000 to the student as damages for his emotional distress as not being excessive.

This case is significant because it recognizes that the bounds of decency which are required in New Jersey in the employment workplace also are now judicially recognized on a different level in our public schools.

—Charles Z. Schalk, Esq.

Mr. Schalk is a partner who concentrates his practice in the field of employment, discrimination, civil rights and criminal defense.

Significant Changes to New Jersey Estate Tax Law on Estates of More than \$675,000

The State of New Jersey amended the New Jersey Estate Tax law effective for estates of decedents dying after January 1, 2002. New Jersey essentially “decoupled” the New Jersey Estate Tax from the Federal Estate Tax Law which allowed a credit for state death taxes.

New Jersey, like many other states, was reacting to the changes in the federal estate tax laws brought about by the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). One aspect of this act was the phase out of the federal credit for state death taxes (estate and inheritance taxes). Under EGTRRA only 75% of the credit would be allowed for 2002, 50% of the credit would be allowed for 2003, 25% of the credit would be allowed in 2004 and no credit would be allowed in 2005. For estates of decedents dying after December 31, 2004, an estate is able to take a deduction for the amount of any state death taxes, such as estate or inheritance tax, rather than a credit against the federal tax.

Prior to EGTRRA, the New Jersey Estate tax was considered a “sponge tax,” which meant that the estate tax due to New Jersey was exactly the amount of the credit allowed against any tax due on the Federal Estate Tax return. Therefore, the estate did not pay any additional tax due to the New Jersey Estate tax, it merely took the tax out of the federal pocket and put it into the state’s pocket.

Developments in Family Law

As with most areas of the law, the concepts and rules governing family law are in a continuous state of flux. Some changes are small, serving to adjust only the details of the relationship between parents and children, spouses and former spouses, others are more significant. The following cases were recently decided by the courts in New Jersey and deal with the right to choose a child’s surname, grandparent’s visitation rights and the right to decide upon a child’s religious education.

New Jersey revamped its Estate Tax law in response to the potential loss of revenue which would result from the phase out of the state death tax credit by EGTRRA. The New Jersey law effective January 1, 2002, provides that the New Jersey Estate Tax will be based on the State death tax credit as calculated based on the 2001 Federal Estate Tax Return.

As the applicable exclusion amount/unified credit allowed on the Federal Estate tax return was equal to \$675,000.00 in 2001, the New Jersey Estate Tax is now imposed on all estates of \$675,000 or more. The result is that many estates that are no longer subject to the Federal Estate Tax law, which allows an applicable exclusion amount of \$1,500,000 in 2005, will now be subject to New Jersey tax.

Prior to 2002, the New Jersey Estate Tax was not an issue in estate planning. This has changed radically. With the increase in the Federal Applicable Amount to \$1,500,000 in 2005 and to \$2,000,000 in 2006, the New Jersey Estate Tax is more of a problem for most estates. Couples with more than \$1,350,000 in assets, should consider implementing new estate planning strategies including, modifying their bypass trusts, modifying the tax clauses in their Wills and splitting assets equally between the spouses to minimize this tax.

-Ellen M. Gillespie, Esq.

Ms. Gillespie is a partner who concentrates her practice in estate planning and elder law.

In the case of Ronan v. Adley, 182 NJ 103 (2004), the court addressed the issue of a custodial parent’s right to decide on a child’s surname and the burden which must be met by the parent opposing that right. The parties were unmarried and the child had taken the name of her father at birth. The mother later decided to change the child’s name so that it would be same as hers. The court found that, absent a showing that the name change is not in the child’s best interests, it is the custodial parent who has the right to decide which name the child shall have.

The secondary caretaker opposing the name change must demonstrate by a preponderance of the evidence that the change is not in the child's best interests.

The court dealt with the issue of grandparent's visitation in Mizrahi v. Cannon, 375 NJ Super. 221 (App. Div. 2005). While the issue of grandparent's visitation has been the subject of several important court decisions in the past two years, this case refined the standards applied to decide these issues. In determining the right of the child's paternal grandparents to visitation, the court held that a child's parents have a fundamental right to raise their children without the interference of others. Therefore, the court will only mandate visitation with the child's grandparents if the child will be harmed if the visitation does not take place. The grandparent has the burden of establishing that a particular, identifiable harm, specific to the child will occur if the visits do not take place.

Lastly, the courts have also defined the parameters for determining the religious education of a child of divorced parents. In Feldman v. Feldman, 378 NJ Super. 83 (App. Div. 2005), the Appellate Division was called upon to decide a controversy between divorced parents about the religious instruction of a child by the non-custodial parent. The court held that it is the parent with physical custody who has the exclusive right to determine the appropriate course of religious instruction for the children of the marriage. That right includes a decision as to the faith in which the children should be instructed and the secondary caretaker may not enroll the children in a different religious course of study against the wishes of the primary custodian. To do so would interfere with the primary caretaker's right to decide the religious upbringing of the children.

-Laura J. Genecki, Esq.

Ms. Genecki is an attorney who concentrates her practice in family law, divorce, child support, custody, property settlements, domestic violence and visitation.

Did You Know ... ?

- ***Studies suggest anywhere between 40-70% of women and 10-20% of men have experienced sexual harassment in the workplace.*** If you are an employee, you should know your rights. If you are an employer, you should know how to protect your business. Please contact Charles Z. Schalk, Esq. of our office to discuss these important issues.
- ***The state with the highest divorce rate is Nevada. The state with the lowest divorce rate is Massachusetts.*** If you are about to contribute to New Jersey's statistics, you need a competent and reasonable attorney whom you can trust. Please see Laura Genecki, Esq. if the need should unfortunately arise.
- ***From 1980 to 1992, the leading causes of occupational injuries were motor vehicles, machines, homicides, falls, electrocutions and falling objects. Beginning in 1993, the leading causes of occupational injuries were overexertion, contact with objects or equipment, and falls.*** While the workplace has certainly become safer, workplace injuries in all forms continue to occur. For guidance on these issues, please contact Darren Leotti, Esq. of our office.
- ***Ralph Waldo Emerson stated, "Life is a succession of lessons which must be lived to be understood."*** You cannot underestimate the value of experience in your legal matters. Take advantage of the trusted experience of William Savo, Esq. and Michael V. Camerino, Esq. in your business, commercial and municipal needs.
- ***The police do not always need a warrant to conduct a search. The police may often legally conduct a search without a warrant if you consent to the search, search you and your immediate surroundings if you are arrested, search***

you if it is necessary to protect the safety of the police or the public, or to prevent the destruction of evidence. Your rights and protections are critical and should be evaluated by an attorney with specialized knowledge in this area. Should the need arise, please contact Charles Z. Schalk, Esq.

- ***Only 5% of doctors are responsible for 54% of malpractice pay outs.*** In other words, it is a small number of dangerous doctors who commit the most malpractice. If you believe you were hurt by one of these very small number of doctors, you should speak to Thomas Chansky, Esq., a certified civil trial attorney with significant experience in the area of medical malpractice.

- ***A majority (more than 50%) of Americans die without a will or some other safeguard of estate planning in place.*** If a loved one dies without an estate plan, the surviving family members may face unnecessary headaches and financial hardship at a difficult plan. No matter how large or small someone's estate or assets are, everyone needs a plan. If you part of the majority, you should make an appointment with Ellen Gillespie, Esq. today to help.

For all your legal needs, please contact our attorneys today at Mauro, Savo, Camerino & Grant, 77 North Bridge Street, 08876, 908-526-0707