

SUPREME COURT OF NEW JERSEY
DOCKET NO. 52471

Walter Sacharow

Plaintiff-Respondent

-v-

Cynthia Sacharow

Defendant-Petitioner,

Civil Action

Sat Below:

Hon. James J. Petrella, P.J.A.D.
Hon. Edwin R. Alley, J.A.D.

BRIEF of AMICUS CURIAE LEGAL SERVICES OF NEW JERSEY

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Introduction to Argument

This case raises the question of whether a court can order a domestic violence victim to disclose her address when she has gained the right to keep her address confidential through New Jersey's Address Confidentiality Program (ACP), *N.J.S.A. 47:4-1 et seq.* Appellant, Ms. Sacharow, was accepted into the ACP in March 2001, after the Division on Women determined that she was a victim of domestic violence consistent with the program's eligibility requirements, and therefore entitled to keep her address confidential. In January 2002, when the parties appeared in court to resolve their divorce action, the court ordered appellant to disclose her address to respondent, the very person from whom she sought protection through the ACP.

Despite her participation in the ACP, the trial court ruled that because she had no Final Restraining Order (FRO), she was not a victim of domestic violence and therefore not permitted to conceal her location. The court also held that disclosure was compelled because appellant had custody of their child and respondent had a right to know his child's address. Amicus urges this court to reverse the lower court's disclosure order and enforce appellant's right to address confidentiality as afforded by the ACP law.

LEGAL ARGUMENT

THE TRIAL COURT ERRED IN COMPELLING APPELLANT TO DISCLOSE HER ADDRESS WHILE SHE WAS A PARTICIPANT IN THE ADDRESS CONFIDENTIALITY PROGRAM

The ACP law was adopted in 1998 to protect domestic violence victims who relocate from being tracked by their abusers. It recognizes that "persons attempting to escape from actual or threatened domestic violence frequently establish new addresses to prevent their assailants from finding them." *N.J.S.A. 47:4-2*. Research confirms that after a victim leaves her abusive partner, violence often escalates, increasing the risk of danger for women and children who seek safety in separation. S. Doyne, J. Bowermaster, J. Meloy, etc., "Custody disputes involving domestic violence: Making children's needs a priority," *Juvenile and Family Court Journal* at 5 (Spring 1999); B. Hart, "Children of Domestic Violence: Risks and Remedies," *Child Protective Services Quarterly*, Pittsburgh, PA: Pittsburgh Bar Association, Winter, 1992, available at <http://www.mincava.umn.edu/hart/risks&r.htm>. Similarly, domestic violence victims are not required to provide their address when filing either civil or criminal domestic violence complaints. *N.J.S.A. 2C:25-25c*; *N.J.S.A. 2C:25-28b*.

New Jersey's ACP law allows a victim accepted into the program to have "an address designated by the [Department of Community Affairs]¹ as the applicant's address," *N.J.S.A. 47:4-4*; *N.J.A.C. 5:61-1.1*, which can also be used as the victim's work address. *N.J.S.A. 47:4-4e*. Participation in the program also allows a victim to designate the Commissioner of DCA as her agent to accept service of process and receive all mail directed to her. *N.J.A.C. 5:61-4.1(b)5*. The participant's actual address "shall be available only to the [Commissioner] and to those employees involved in the operation of the address confidentiality program and to law enforcement officers for law enforcement purposes." *N.J.S.A. 47:4-4*; *N.J.A.C. 5:61-9.1(a)* (establishing criteria for release to law enforcement agencies).

There are only limited exceptions to the ACP law, and none are applicable in this case. First, the law permits the ACP to provide information to a law enforcement agency only if: 1) the participant gives written authorization; 2) a court order is in effect; 3) the law enforcement agency

¹ Initially the Department of State was the agency designated to run the program; now the Division on Women within the Department of Community Affairs directs the program. *N.J.S.A. 47:4-3 n1*.

has a "bona fide statutory or administrative requirement" to have the actual address, or 4) an emergency exists that imperils the safety or health of a program participant and her children. *N.J.A.C.* 5:61-9.1; 9.3. Second, the law requires all State and local agencies to accept the designated address, but provides an exception for agencies that can demonstrate "a bona fide statutory basis" for requiring disclosure of the actual address. *N.J.S.A.* 47:4-6.

The regulations allow further exceptions for release of information by the ACP with the express written authorization of the participant or by court order. *N.J.A.C.* 5:61-8.1. These additions appear to extend beyond the statutory authority. Moreover, they apply only to the release of information by the agency, which can challenge the ordered release, and only when information is released to someone who will maintain the information in "strict confidence." *N.J.A.C.* 5:61-9.5. Nothing in the law permits disclosure to an abuser, which would defeat the entire purpose of the ACP law.

Once accepted into the program, a person is certified as a participant for four years unless the certification is withdrawn or invalidated at an earlier time. *N.J.S.A.* 47:4-4c. A participant may withdraw from the program by

submitting written notification. *N.J.A.C.* 5:61-5.1. The program can only invalidate the certificate if: 1) the participant changes her name by court order, 2) the participant changes her address and does not give seven days notice to the program, 3) mail forwarded by the program to the participant is returned undeliverable, or 4) information on the participant's application is false.

N.J.S.A. 47:4-5; *N.J.A.C.* 5:61-5.2.

At the time Ms. Sacharow went to court for her divorce proceeding, she was a certified participant in the ACP. T22-13 to 15; 18 to 21. Had she not been a participant in the program, the court would have had discretion to decide whether or not to require the release of her address. The program, however, had certified her ten months earlier, and had never invalidated or withdrawn her certificate. Plainly none of the law's exceptions applied to her situation. Nonetheless, at the conclusion of her divorce case, the court ordered her to provide respondent with her actual address.

The trial court cited two reasons. Although the court conceded that the ACP could protect appellant's confidentiality if she were a domestic violence victim, it found that she was not a victim of domestic violence because she had no Final Restraining Order (FRO). T22-1 to

9. The court also ruled that address disclosure was mandatory because respondent has "the right to know where his son is living." T20-25 to T21-1.

The court erred in ordering appellant to reveal her address because she lacked a FRO. The ACP law does not require participants to obtain FROs. Instead, it is sufficient that an applicant reported the abuse to either a law enforcement agency or court. *N.J.A.C. 5:61-3.1(b)1ii.* An applicant must also explain why she believes she is a domestic violence victim and state that she fears further violent acts from her abuser. *N.J.S.A. 47:4-4a(1).* The ACP found that Ms. Sacharow satisfied the program requirements for eligibility as a victim of domestic violence. The court, however, ignored the actual requirements and the ACP's determination, and improperly substituted its own standards and judgment for that of the agency authorized to determine address confidentiality.

Not only is the ACP law clear that no FRO is required, but other government programs similarly protect victims of domestic abuse without the requirement of a FRO. For example, a victim may obtain unemployment benefits when she loses her job due to domestic violence despite the lack of a FRO. *N.J.S.A. 43:21-5(j).* Under the unemployment law, a restraining order is only one of many options for

documenting abuse; others include police records, documentation of a conviction for a domestic violence offense, medical documentation, a certification from certain domestic violence experts, or other documentation provided by any professional who has assisted the individual in dealing with the domestic violence. *Id.*

Similarly the Division of Family Development (DFD) provides exemptions from certain harsh welfare rules for low-income domestic violence victims without requiring an FRO. By submitting an affidavit demonstrating that domestic violence poses a barrier to complying with work requirements, a victim can get a temporary exemption from work as well as the five-year lifetime limit on welfare benefits. *N.J.A.C. 10:90-1.1(f)1.* A victim can also be excused from the obligation to assist the welfare agency in collecting child support from the child[ren]'s father by attesting to her fear that she and/or her children will be at risk of emotional or physical harm. *N.J.A.C. 10:90-16.5(a); (b)iv.*

The court's view that only a restraining order proves domestic violence ignores the reality that many victims do not seek or obtain legal protection for a wide variety of reasons. Victims may avoid the legal system because they fear police involvement, confronting their batterer in

court, reprisal from the batterer and other possible risks. Undocumented victims may be afraid that seeking help will result in charges by the Immigration and Naturalization Service (INS). When victims do come forward, their cases can present distinct challenges. In many instances there are no witnesses and the court and professionals involved are simply weighing one party's statements against the other's. Gender bias studies in a number of states document that women are believed less often than men are. J. Zorza, "Protecting the Children in Custody Disputes When One Parent Abuses the Other," *Clearinghouse Review* 1113, 1117 n51 (April 1996). The parties' appearances may affect the outcome as well. Victims are typically anxious and afraid when testifying in court in the face of their abuser. The abuser, on the other hand, may remain very calm and collected on the witness stand and may belie the court's image of a violent, coercive person. N. Lemon, *Domestic Violence and Children: Resolving Custody and Visitation Disputes: A National Judicial Curriculum* 34 at 78 (Family Violence Prevention Fund 1995).

Further, in ruling that appellant's address could not be safeguarded absent a FRO, the court erroneously suggests that the Prevention of Domestic Violence Act (PDVA), N.J.S.A. 2C:25-17 *et seq.*, provides the exclusive remedy

for protection in this case. In ordering disclosure, the court stated:

I need you to give him the address.... If he abuses that, if he harasses you or does anything, you have the domestic violence laws to protect you...So, you have protections available to you. Not disclosing your address is not something that I can allow." T21-7 to 15.

The ACP, however, provides an entirely different remedy from a restraining order, one the Legislature viewed as an additional, necessary protection for victims, not a substitute.

There is simply no support for the court's additional ruling that the respondent is entitled to appellant's address because she has custody of their child. While parents have a fundamental right to contact with their children, even that right is not absolute. Contact can be terminated or restricted where the parent-child relationship is harmful to the child or the parent is unfit. *Wilke v. Culp*, 196 N.J. Super. 487, 496 (App. Div. 1984) cert. denied 99 N.J. 243 (1985). Further, non-custodial parent's right to contact with his child has never been held to create an absolute right to know where his or her child resides.

Alternatives exist so that children and parents can maintain regular contact without infringing on the

custodial parent's right to conceal her location. The Prevention of Domestic Violence Act specifically requires courts to ensure that parenting time orders will not interfere with a victim's safety. *N.J.S.A. 2C:25-29b(3)*. Respondent's right to contact with his child could have been ensured in this case by requiring the children to be picked up and dropped off away from the victim and her home. *See, id.* In addition, the court could have required appellant to provide respondent with the phone number of a third party who could reach her in case of emergency, without disclosing appellant's number. *See N.J.A.C. 5:61-3.1(b)vi* (program participant must provide ACP with address and phone number for contact person). Should respondent seek a legal remedy regarding access to his child, he could serve appellant with process through the Commissioner of DCA. *N.J.S.A. 47:4-4a(2)*. The ACP law's purpose of protecting victims when they relocate cannot be eviscerated whenever children are involved.

Indeed the presence of children may create even greater risks that amply justify keeping the victim and her children's address from the abuser. Child abuse by a batterer "is more likely when the marriage is dissolving, the couple has separated, and the husband/father is highly committed to continued dominance and control of the mother

and children." Hart, *supra* at 2, (citations omitted). And of the more than 350,000 children who are abducted by parents in this country each year, more than half occur in the context of domestic violence, and most are perpetrated by fathers after separation or divorce. *Id.*

Maintaining the confidentiality of appellant's location is also fully consistent with New Jersey public policy, which calls for providing the fullest protections possible to victims of domestic violence. As this Court has recognized, domestic violence poses a very serious and pervasive societal threat and New Jersey has been "in the forefront of states that have sought to curb domestic violence." *Brennan v. Orban*, 145 N.J. 282, 299 (1996); *Cesare v. Cesare*, 154 N.J. 394, 397-400 (1998). Finally, the ACP would have no meaningful purpose if a court could simply overturn program determinations without regard to the ACP's standards and findings.

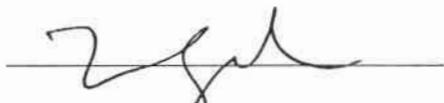
Conclusion

In order to protect appellant and uphold the purpose and integrity of the ACP, this Court should reverse the lower court's order requiring appellant to disclose her confidential location.

Respectfully submitted,

Legal Services of New Jersey

By:


Nancy Goldhill

Dated: August 1, 2002