

Eric Damiani *pro se*, Defendant
829 Kings Croft
Cherry Hill, NJ 08034
(856) 269-0119

YVONNE DAMIANI,
n/k/a Yvonne Principato
Plaintiff,

vs

ERIC DAMIANI,
Defendant.

:NEW JERSEY SUPERIOR COURT
:CHANCERY DIVISION-FAMILY PART
:CAMDEN COUNTY
:
:DOCKET NO.: FM-04-898-04
:
:
:
:CIVIL ACTION

**MOTION FOR DECLARATORY JUDGMENT TO CHALLENGE THE
PERMANENT ALIMONY AND PROPERTY DISTRIBUTION**

PROVISIONS (N.J.S.A. 2A:34-23 et al)

AS VIOLATIVE OF NEW JERSEY CONSTITUTION

ARTICLE I PARAGRAPH 1 RIGHT OF PRIVACY AND

ARTICLE III PARAGRAPH 1 SEPARATION OF POWERS

“The Constitution protects individuals, men and women alike, from unjustified state interference, even when that interference is enacted into law for the benefit of their spouses.” Planned Parenthood of Southeastern Pa. v. Casey, 505 U.S. 833, 847 (1992)

INTRODUCTION

Comes now the Defendant, Eric Damiani, *pro se*, pursuant to N. J.S.A. 2A:16-52 Declaratory Judgment statute to request this court declare N.J.S.A. 2A:34-23et seq. , permanent alimony statute impermissibly infringes Article I Paragraph 1 N.J. Constitution Right to Privacy and Article III Paragraph 1 N. J. Constitution Separation of Powers.

In support he offers:

1. N.J.S.A. 2A:16-52 declaratory judgment is to be liberally construed, N.J.S.A. 2A:16-51.
2. A declaratory judgment on the constitutionality of N.J.S.A. 2a:34-23 et seq will terminate the uncertainty of the application of the statute to this divorce proceeding.
3. This Court has jurisdiction pursuant to N.J.S.A. 2A:16-52 to address the constitutionality of N.J.S.A. 2A:34-23 et seq permanent alimony provisions.
4. Eric Damiani has standing pursuant to N.J.S.A. 2A:16-53 as one who claims an interest, is in doubt, has his rights, status, equitable and legal relations affected by the noted N.J.S.A. 2A:34-23 et seq provisions such that he desires and requires a declaration of rights, status, equitable and legal relations thereunder.

Statutes

5. N.J.S.A. 2A:34-23 et seq require a former spouse to a marriage with the ability to pay to support the other former spouse with a need, for life, with threat of wage garnishment, lose of driver's license, loss of professional license, contempt and imprisonment.
6. The spousal support provisions mandate that the state invade the marriage, through the judiciary, to examine, evaluate, determine and conclude the terms and nature of the interpersonal relationship, spousal roles, spousal conduct, parental decision making, parenting conduct, economic standard of living, occupations, education, savings, assets, charitable contributions and most importantly the intimate emotional, psychological and physical details of the parties during their marriage to apply a discretionary opinion using an equitable standard in order to implement the statutory provisions. This court did so.

7. The Respondent is before this court involuntarily.

Constitution

8. Article I Paragraph 1 N.J. Const. Right to Privacy restricts the government from intruding into privacy protected zones of the Defendant and all New Jerseyites lives without a compelling state interest minimally applied.
9. Federal Constitution and Judicial rulings have determined the existence of a right of privacy that includes a Privacy Protected Zone of “personal decisions relating to marriage,” i.e. here divorce. (U.S. Constitution Fourteenth Amendment Due Process Clause; Littlejohn v. Rose, 786 F.2d 785, 786 (6th Cir. 1985); Griswold v. Connecticut, 381 U.S. 479 (1965); Carey v. Population Serv. Int’l., 431 U.S. 678, 684-685 (1977); Parenthood v. Casey, 505 U.S. 833, (1992); Zablocki v. Redhail, 434 US 374 (1978); Florida Constitution Article I Section 23; Winfield v. Division of Para-Mutual Wagering, 477 So. 2d 544 (Fla. 1985)), N. Fla. Women's Health & Counseling Servs., Inc. v. State, 866 So. 2d 612, 635 (Fla. 2003).
10. N.J.S.A. 2A:34-23 et seq impermissibly infringe Article I Paragraph 1, N,J, Const. Separation of Powers as the impermissible delegation by the legislature to the judiciary of exclusive legislative law making powers.
11. Eric Damiani is entitled to recover all costs and a reasonable attorneys’ fee for required attorney consultation to pursue this declaratory relief.

Prayer for Relief

“It is well settled that . . . if a law ‘impinges upon a fundamental right explicitly or implicitly secured by the Constitution [it] is presumptively unconstitutional.’”
Harris v. McRae, 448 U.S. 297, 312 (1980) (quoting City of Mobile v. Bolden,
466 U.S. 55, 76 (1980))

WHEREFORE Eric Damiani prays that the Court take jurisdiction over this matter, enter such orders as are appropriate to expedite consideration of this motion, and:

1. Enter a declaratory judgment that Eric Damiani and all New Jerseyites have a constitutional right under the Privacy amendment to be free of the undue burden of the permanent alimony provisions of N.J.S.A. 2A:34-23 et seq;
2. Enter a declaratory judgment that Eric Damiani has a constitutional right under the equal protection laws of New Jersey to be free of the undue burden of N.J.S.A. 2A:34-23 et al;
3. Enter a declaratory judgment that N.J.S.A. 2A:34-23 et seq impermissibly infringe Article III Paragraph 1 N.J. Const. Separation of Powers, and; impermissibly infringe Article I Paragraph 1. N.J. Const. Right to Privacy.
4. Awarding Eric Damiani all costs and reasonable attorneys’ fee for the prosecution of this declaratory judgment proceeding.

Respectfully submitted,

Eric Damiani *pro se*
829 Kings Croft
Cherry Hill, NJ 08034
(856) 269-0119

February 2, 2006

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of February, 2006, I caused a true and accurate copy of this Motion to be sent by U.S Mail to Yvonne Damiani n/k/a Yvonne Principato at 112 Wright Avenue, Stratford, NJ 08084.

Respectfully submitted,

Eric Damiani *pro se*
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