NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

L. MANTLE[1],

Plaintiff,

v.

C. MANTLE,

Defendant.

SUPERIOR COURT OF NEW JERSEY
OCEAN COUNTY
CHANCERY DIVISION
FAMILY PART

DOCKET NO. FM-15-656-15
OPINION

Decided: March 9, 2015

Lindsay Lutz, for plaintiff
Kevin Young, for defendant

L.R. Jones. J.S.C.

This case presents legally and socially complex issues regarding a type of restriction known in family court as a "DeVita" restraint.[2] In New Jersey's legal community, a DeVita restraint is the term used to describe a court order which limits the amount of contact and exposure which a divorcing parent may permit a child to have with the parent's new girlfriend or

[1]The court in its discretion utilizes pseudonyms in place of the parties' actual names.

[2] "DeVita" restraints arise from the 1976 case of DeVita v. DeVita, 145 N.J. Super 120 (App. Div. 1976), which is addressed in detail, infra.

boyfriend. Such a restraint may include, but not necessarily be limited to, prohibiting a dating partner from staying overnight while the child is present.

In the emotionally charged realm of matrimonial litigation, battles over DeVita restraints have been among the most contentious types of disputes in family court. Yet, since publication of the DeVita opinion itself, there has been very little subsequent case law interpreting the decision or otherwise establishing guidance on this matter.

For the reasons set forth in this opinion, the court holds the following:

> 1) Neither DeVita , or any reported decision in New Jersey thereafter, stands for the proposition that exposing a child to a new dating partner, or even allowing a dating partner to stay overnight with a child present, is per se inappropriate and contrary to the child's welfare and best interests in every case.
>
> 2) In the present matter, as there is no evidence or allegation of any inappropriate conduct by a new girlfriend or boyfriend towards the parties' child, the court denies enforceability of an indefinite, "no contact" provision in a consent agreement prohibiting contact between a young child and any dating partner of either parent. The court will, however, enforce reasonable temporary, short-term restraints, designed to protect the child's emotional interest following his parents' recent separation, by providing a period of gradual transition and introduction to new parental dating partners over a reasonable period of time.

FACTUAL BACKGROUND

Plaintiff and defendant married in 2006. They had one child, T.M., a son who is presently six years old. In October, 2014, the parties permanently separated. Three weeks later, in November, 2014, plaintiff filed a divorce complaint under N.J.S.A. 2A:34-23(i) seeking marital dissolution on the no-fault grounds of irreconcilable differences. In her pleadings, plaintiff sought sole legal and residential custody of T.M.

Four days later, defendant filed an emergency order to show cause, asserting that plaintiff was refusing to allow him to have any contact with T.M. In response, and prior to the scheduled hearing date, the parties entered into a consent order under which the parties shared joint legal custody, with plaintiff designated as the "parent of primary residence" and defendant designated as the "parent of secondary residence". The parties further expressly agreed, however, that neither party would permit new girlfriends or boyfriends in the presence of the child during their respective parenting times, unless and until further order. This mutual restriction contained no definitive period of time for expiration, or any other terms providing for the gradual and natural relaxation of the prohibition itself.

In January, 2015, plaintiff filed a motion to enforce the "no exposure to dating partners" restraint against defendant.[3] In her application, plaintiff alleged that defendant now had a new girlfriend, who he was permitting be around the parties' son. Plaintiff objected to the girlfriend having contact with the child because, in her view, defendant's actions not only violated the terms and spirit of the prior consent order, but could be potentially "confusing" and "extremely damaging" to the child. Plaintiff , however, did not allege that defendant's new girlfriend engaged in any specific conduct which was objectively inappropriate or harmful to T.M. Nonetheless, plaintiff sought a pendente lite enforcement order from the court, directing that defendant be restrained from exercising his parenting time with the child (T.M.) while in the presence of his girlfriend.

In response to the enforcement application, defendant asserted that plaintiff was attempting to manipulate T.M. in an effort to alienate the child from him. Defendant further denied that he ever "slept" with his girlfriend in front of his son. Defendant did not, however, deny plaintiff's allegation that he was in fact allowing ongoing contact between the child and his girlfriend.

The legal question presented is whether to grant plaintiff's application to enforce the prior restraints against bringing new dating partners around the

[3] Plaintiff's application addressed other issues as well, which are outside the scope of the issue in this opinion.

child, or to deny same as inappropriate and unreasonable under the circumstances.

LEGAL ANALYSIS

DEVITA AND SUBSEQUENT REPORTED CASES

In the 1976 case of DeVita v. DeVita, 145 N.J. Super 120 (App. Div. 1976), the custodial parent (mother) successfully sought a court order prohibiting the non-custodial parent (father) from permitting his girlfriend to stay overnight at his home while the parties' children were present for parenting time. The mother in DeVita alleged that, in her subjective opinion, the "moral welfare" of the children was endangered if such a restriction was not imposed. Id. at 128. The DeVita trial court ultimately granted the mother's request and implemented the restriction, even though the trial proofs actually reflected that (a) the father and his dating partner slept in separate bedrooms and (b) there was no evidence of any harmful psychological effect upon the children of the marriage by reason of the girlfriend's frequent presence in defendant's household. Id. at 123.

When the father appealed the trial court's ruling, the appellate panel upheld the restriction by a 2-1 split vote. A strong dissent, however, was authored by Judge Melvin Antell, who regarded the decision as an improper attempt by the majority to impose its own moral code upon the father. Id. at

129. Judge Antell noted that while the majority contended that it was not attempting to determine whether having an overnight dating partner was moral or immoral, the majority expressly found that the mother's concerns over the father's conduct (i.e, having a dating partner stay overnight) were, in 1976, "not contrary to those of a substantial body of the community." Id. at 128. Judge Antell took issue with the majority's reasoning, stating that "notwithstanding its abstention from expressly deciding 'what is moral or immoral in this context,' its unusual determination to insure these children a completely sanitary moral environment leaves little doubt as to what the majority's preferences are." Id. at 129. Judge Antell further opined that, "by using visitation to make the father toe the line in respects which are not properly any of our concern, the court has lost sight of its first obligation to strain every effort to attain for the child the affection of both parents rather than one. . . . All that is accomplished is to deprive the children on the broadest and most liberal rights of visitation to which they are entitled." Id. at 130.

Since its initial publication nearly forty years ago, DeVita is routinely cited by lawyers and litigants alike when one spouse seeks a court-ordered prohibition against the other spouse (a) permitting a dating partner to stay overnight during his or her parenting time, or (b) in even more restrictive

fashion, permitting any contact between the child and a new dating partner at all.

Trial courts follow appellate court rulings. In analyzing DeVita, however, it is critical to carefully analyze the language of the 1976 opinion to determine what the majority actually did and did not hold. First, a close reading of DeVita reveals that the appellate court did not establish the proposition that permitting contact between a child and a new parental dating partner in the course of the divorce, or having a dating partner stay overnight during such time, is automatically harmful per se to a child in every case, regardless of the specific facts and attendant circumstances of a familial situation. Nor did DeVita create any binding presumption or inference mandating such a conclusion, or mandate any type of blanket prohibition against a divorcing parent ever choosing to have a dating partner discreetly stay overnight while a child is present for parenting time. Rather, the DeVita majority held only that the trial court in that case had not abused its discretion in granting the custodial parent's request for the imposition of such a restraint in the first place. Id. at 129.

There is a massive difference between an appellate court requiring the imposition of restraints, which did not happen in DeVita, and declining to reverse a trial judge's discretionary decision, which did happen in DeVita.

Unlike the former, the latter arguably constituted an implicit recognition by the DeVita majority that the trial court could have ruled either way on the issue of restraints, and that neither decision would have necessarily been wrong to the point of constituting an abuse of discretion and reversible error. Hypothetically, had the DeVita trial court declined the mother's request to impose restraints against the father's girlfriend staying overnight in the child's presence, there is nothing in the opinion which supports an irrefutable conclusion that the appellate court would have reversed or found fault with such decision by the trial court either . Rather, whether the trial court upheld or struck down the restraints, either result may have ultimately been supported by the appellate court as a trial court's appropriate exercise of judicial discretion following a fact-sensitive analysis.

Against this backdrop, the court interprets Devita to permit and support the ability of a trial court in the family part to exercise reasonable and flexible discretion in determining (a) whether to grant or deny a parent's initial request for any type of DeVita restraints, and (b) whether to enforce, modify, or terminate any previously imposed DeVita restraints in a prior order or consent order.

Further, there is a very legitimate present-day question as to whether part of the rationale employed in 1976 by the DeVita majority is or is not still

even socially viable in 2015. The issue is particularly relevant given the DeVita majority's explicit finding that the custodial parent's views against having overnight dating partners were "not contrary to those of a substantial body of the community." Id at 128. Today, nearly forty years after DeVita, it is highly debatable whether a "substantial body of the community" would still find anything immoral or inappropriate about a party having a dating partner sleep overnight in his or her home, or that a child's moral welfare would be significantly compromised by such action. Sociologically speaking, 1976 was a million years ago. Given the overwhelming number of couples from all walks of life who presently live together full-time without the benefit of marriage, the landscape has changed drastically since the long gone days of the Bicentennial. While DeVita is still valid case law, it is in fact a fairly aged decision.

When attempting to interpret and apply the context and spirit of family court decisions authored in past generations, a trial court's exercise of logic and discretion must be adaptable and flexible enough to keep pace with undeniable social change in order to remain responsive to the realities of current day society. This concept is especially material in the present matter, since DeVita does not compel the issuance of restraints on a mandatory basis, but rather permits trials courts to exercise discretion on the issue given the facts presented in a particular case. In some cases, there may be very sound

reason to grant temporary restraints against introducing a child to new parental boyfriends or girlfriends, or in having new dating partners stay overnight in a child's presence. Such reason, however, must logically rest more on the need of a child for reasonable transition than upon general conclusions about social morality.

Unfortunately, there has been little published appellate case law interpreting DeVita since its original release in 1976. There have been, however, two published trial level opinions on the subject, one from the 1980's and another from the 1990's, which reflect a gradual swinging of the social pendulum in the opposite direction away from DeVita in the years since its initial publication.

The first such case was Kelly v. Kelly , 217 N.J, super 147 (1986), rendered ten years after DeVita. In Kelly, the Honorable James Clyne authored a detailed opinion which permitted the non-custodial parent (father) to have the children for overnight parenting time in the presence of his girlfriend, over the objection of the custodial parent (mother). While recognizing that there may always be factual circumstances where certain restraints may be appropriate, Kelly nonetheless denied issuance of DeVita restraints, while distinguishing Kelly from DeVita by noting in dicta that the former involved a

post-judgment rather than pre-judgment application for restraints. Said the court:

> . . . The question does not arise in a pre-divorce setting where the children are usually confused, insecure and are required to sort out their feelings for their parents. In a pre-divorce setting, the children must come to grips with the loss of a relationship between their parents. They should not, in most circumstances, be required to comprehend a new relationship between their father or mother and someone else. Moreover, the parents during separation are usually so involved with their own emotional turmoil that they are ill-equipped to assist their children in dealing with either a mother or father's new relationship. Id. at p. 155-56.

The Kelly court noted that in a pre-divorce setting, there may be additional factual concerns which do not arise in a post-divorce setting. Such concerns, however, are inferentially not related to the legal technicality of the parties still being "married" in pre-judgment proceedings, but more to the fact that parental separation and divorce proceedings may be a fairly new development in a child's life. In such circumstance, a child may need a reasonable opportunity for a transitional period to absorb, digest, and ultimately adjust to sudden and major changes in his or her domestic life.

Given the implicit recognition by the Kelly court of the need to accommodate a child's need for transition, this court does not interpret Kelly to stand for the proposition that DeVita restraints must automatically apply

in all pre-judgment cases, regardless of how long the parties have already been separated, or consideration of other material facts and circumstances as well. Rather, this court interprets Kelly to inferentially underscore the trial court's need to consider various relevant factors, as part of the totality of the factual circumstances, when determining whether or not to impose or enforce pre-judgment DeVita restraints in the context of a newly instituted divorce proceeding.

Ten years after Kelly, a subsequent trial court issued a published opinion regarding the enforceability of restraints which were in fact even more restrictive than those found in either DeVita or Kelly. In Giangeruso v. Giangeruso, 310 N.J. Super 476 (Ch. Div. 1997) the parties previously entered into a consent agreement which provided that their children would not have contact with either parent's future love interests, if the children "expressed reluctance" to do so. In post-judgment enforcement proceedings, the Giangeruso court found the parties' consent agreement to be invalid and unenforceable, noting that such a provision placed too heavy a burden on the children to have a "final say" on the issue, in a manner contrary to the children's own emotional welfare. Id. at p. 479. Giangeruso further noted that plaintiff-mother, who was attempting to enforce the agreement and prohibit defendant-father from allowing his girlfriend to be in the presence of

the children, failed to demonstrate that the children were subjected to any specific risk of physical or emotional harm by the girlfriend. Id. at 481-82. The court noted that "(t)he children need to spend time with their father and should be free to do so without being afraid that they might disappoint their mother or hurt her feelings if their father's girlfriend is present." Id. at 482.

As with Kelly, Giangeruso differed from DeVita in that the case involved a post-judgment rather than a pre-judgment matter. Giangeruso further differed from Devita in that the requested restraints would have prohibited a paramour from not only from staying overnight, but from having any contact with the parties' children whatsoever.

What naturally and logically flows from the rationale of both Kelly and Ginageruso is the concept that the imposition or enforcement of DeVita restrictions,which limit a party's right to introduce a new girlfriend or boyfriend into a child's life, must equitably turn on more than the singular point of whether a case is pre-judgment or post-judgment in nature. For a child, the technicality of when a judge formally signs a divorce decree, and transforms a case from "pre-judgment" to "post-judgment", likely has far less practical relevance than other points relative to the child's best interests. The visible and active involvement of a new boyfriend or girlfriend in a parent's life is an event which a child may take reasonably well or poorly, independent of

when a court formally bangs a gavel and dissolves the marriage itself. In fact, it is entirely possible that a well-adjusted child, whose parents are in the midst of relatively civil pre-judgment divorce litigation, may be far more able to accept and adjust to a new dating partner in a parent's life than a more emotionally fragile child, whose parents are already divorced but who nonetheless proceed to drag their child through extended uncivil and hostile post-judgment proceedings over every imaginable issue, including but not limited to attempted restrictions on, or introductions to, new romantic interests.

There are multiple factual scenarios where the concerns of the DeVita court, as relating to protecting the child, are substantially less than in other circumstances. For example, what if the child at issue is an emotionally mature teenager with a strong and healthy disposition, and who is largely unaffected by either parent's dating habits? What if parents have been separated for years before the divorce, and have each already moved on to other new and different dating partners? What if the objecting parent has not been involved in the child's life for years?

There is also another possible scenario, which some parents seeking DeVita restraints against their ex-spouses parent might not want to acknowledge as even a remote possibility: What if the dating partner is

good for the child? For example, what if the child has long known this person, and has a strong, positive relationship with the individual? Alternatively, what if both parents have a volatile relationship with each other, while the dating partner is actually a relatively stable "voice of reason", whom the child feels comfortable talking with during the emotionally challenging and traumatic experience of divorce itself? Further, what if the dating partner has special skills which can be of assistance to the child, such as training in education, substance abuse counseling, psychology or social work, or even in recreational activities such as sports or the arts? With more and more hypothetical scenarios, the focus becomes more clear that protection of a child's best interests requires more than a general, blanket, indefinite prohibition against a parent bringing any dating partners around a child as a presumptive threat to a child's best interests.

Ultimately, family court is a court of equity, with a paramount interest in protecting the interests of children. The enforceability or non-enforceability of DeVita restraints must logically and heavily depend on the reasonableness or unreasonableness of same as to scope and duration, given the particular elements of a case and the child at issue. In reconciling the general principles of DeVita, Kelly and Giangeruso, the court finds that a court has equitable discretion to either grant, deny, enforce, or strike down DeVita restraints in a

given case, depending upon the circumstances. While such restraints arguably may often carry more importance in a pre-judgment action following relatively recent parental separation, the court may decline to enter or enforce DeVita restraints even in a pre-judgment circumstance, following consideration of whether the nature and scope of the restraints are reasonable.

Even in a purported settlement agreement or consent order where parties have mutually agreed upon prohibitions or restraints against dating partners in a child's presence, such restraints must still be reasonable to be enforceable by a court. It is true that New Jersey has long espoused a policy favoring the use of consensual agreements to resolve marital controversies. J.B. v. W.B., 215 N.J. 305, 326 (2013) (citing Konzelman v. Konzelman, 158 N.J. 185, 193 (1999). It is equally true, however, that matrimonial agreements are enforceable "to the extent that they are just and equitable." Lepis v. Lepis, 83 N.J. 139, 146 (1980) (quoting Schlemm v. Schlemm, 31 N.J. 557, 581–82 (1960)). Further, the law grants particular leniency to agreements made in the domestic arena, and allows family courts greater discretion when interpreting and addressing such agreements. See Pacifico v. Pacifico, 190 N.J. 258, 266 (2007); Guglielmo v. Guglielmo, 253 N.J.Super. 531, 542 (App.Div.1992)).

When a matrimonial agreement involves the welfare of a child, the court is never permanently and irrevocably bound by same, as (a) the child is not a party to the agreement, and (b) the court always exercises ongoing parens patriae jurisdiction over the child. Parens patriae is the power of the State of New Jersey by its judicial branch to protect and watch over the interests of children who are incapable of protecting themselves. In re Baby M, 217 N.J. Super 313, 324 (Ch. Div., 1987), rv'd on other grounds, sub.nom., Matter of Baby M, 109 N.J. 396 (1988). When weighed, balanced and tested against competing principles, the welfare of the child jurisdiction must have paramount importance, and generally take priority over the interests of the parents. See Fiore v. Fiore, 49 N.J. Super. 219, 225 (App. Div., 1958): Hoefers v. Jones, 288 N.J. Super. 590, 608 (Ch. Div., 1994). As regarding child related issues such as the parameters of custody and parenting time, the touchtone of the court's jurisprudence is the safeguarding of the children's welfare and happiness. A court may make such order touching the care, custody, education and maintenance of the children as the circumstances of the parties and the nature of the case renders fit**.** See Henderson v. Henderson, 10 N.J. 390, 395 (1952). Further, facts rather than principles of law ultimately decide cases**.** McKinley v. Naters, 419 N.J. Super 205, 211 (Ch. Div. 2010). Equity never permits a rigid principle of law to smother the factual realities to which it is sought to be

applied**.** American Assoc. of Univ. Profs v Bloomfield College, 129 N.J. Super 249, 274 (Ch. Div., 1974), aff'd, 136 N.J. Super 442 (App. Div., 1975). Depending on the circumstances, an equitable adjustment of the rights of the parties may vary from one case to another. Vasquez v. Glassboro Service Ass'n, 83 N.J. 86, 108 (1980).

RESTRAINTS vs. NO RESTRAINTS: COMPETING CONCERNS

In determining the reasonableness and enforceability of a restraint against exposing a child of divorcing parents to new parental boyfriends and girlfriends, there are certain unfortunate possibilities of which the family court must always be cautious. First is the reality that following separation or divorce, some parents may act unreasonably, with a primary focus trained far more heavily on their own emotional needs than those of their own children. For example, it is not difficult to envision a circumstance when a party who does not want a divorce in the first place starts improperly demanding the imposition of DeVita-type restraints against the other party. Such insistence may at times actually have little to do with a child's protection and best interests, and much more to do with a spouse's personal agenda of control, payback, or the simple explanation that he or she does not want the former husband or wife party happily dating anybody else.

Further, some divorcing parents may be so ultra-possessive over "their" child that they become highly agitated and threatened over any new adult figure entering the child's domestic life, subjectively fearing that their own parental role will somehow be diluted or diminished in the process. Sometimes, competitiveness, jealousy, over-reaction and paranoia steamroll over reason, flexibility and common sense, resulting in an unnecessary insistence upon DeVita-type restraints under the pretext that such restrictions are necessary for the sake of the child rather than the parent.

Reciprocally, however, there is often the equally inappropriate and self-absorbed conduct by a divorcing parent who is so personally over-anxious to immediately lock into a committed relationship with a replacement partner that that he or she literally shoves a new "special someone" in their child's face, fully expecting and insisting their child to instantly embrace this new person with open arms. While it may be easy for some divorcing parents to completely dismiss an entire past history with an ex-spouse following a bad marital experience, the situation may be far more emotionally complex for a young child, who may have deep-rooted and highly torn feelings over the entire situation, and might simply be unready or unwilling to immediately share the parent's head-over-heels

enthusiasm over a new dating partner. Separation and divorce can sometimes be difficult enough for a young child to accept and absorb without a mother or father ignoring the values of time, patience and understanding in providing a child with a reasonable period for gradual transition and adjustment.

In balancing these competing concerns, it is reasonable to conclude that when parties separate and file for divorce shortly thereafter, there is often an appropriateness in creating well-fashioned, balanced, mutual, temporary, short-term restraints against introducing a child to new parental boyfriends and girlfriends, so long as such restraints are reasonable and sensible as to nature and duration. Conversely, however, a restraint which perpetually and indefinitely keeps all dating partners away from a child, under penalty of contempt for violating a court order, may inevitably contradict social reality and practicality.

When married parents separate and commence divorce proceedings, it is predictable, logical and natural that in time, each parent will likely begin seeking new dating partners and starting new relationships. While some people loudly proclaim at the start of a divorce that they will never marry or date again, human nature usually proves otherwise. No detailed social study needs to be conducted for the court to recognize the fundamental reality

that people generally seek domestic companionship, and that most adults who have ended a prior marriage ultimately enter new relationships with new partners. While the timetable involved for each individual may vary, rare is the case where one actually and intentionally adopts a permanent monastic lifestyle. To the contrary, the pursuit of a new relationship following the end of a prior marriage is not only natural, but generally encouraged as a mentally, emotionally, and socially healthy and constructive step in moving onward from what may have been a very hurtful chapter in one's life. Thus, a court order which intentionally or unintentionally puts an indefinite clamp on this possibility, at an ex-spouse's insistence, is subject to equitable scrutiny.

While children should not be suddenly thrust into an emotionally overloading situation overnight, they logically cannot be raised in a vacuum either. Certainly, it is important to try and soften blows for children during separation and divorce. It is quite another, however, to attempt to continue raising them by pretending there was no separation or divorce in the first place. While children may likely experience some degree of pain and stress when parents end their marriage, it is unrealistic to expect to indefinitely shield children from the occurrence of the divorce itself, or the fact that both parents will likely proceed to seek new relationships with new partners. As with many

other aspects of raising a child, the most sensitive approach to this subject involves a reasonable dose of parental discipline and temporary self-sacrifice, with an eye towards developing an appropriate gradual phase-in plan for introducing the child to new parental boyfriends and girlfriends in due course.

In considering the reasonableness of a new or ongoing Devita restraint, there are multiple logical questions which a trial court may might ask, including but not necessarily limited to the following:

1) How long have the parties been living separately?

2) How old is the child at issue?

3) How long have the parent and partner been dating?

4) Is the new dating partner already known to the child?

5) Has the child previously been introduced to other dating partners of either party?

6) Does the child have a previously specified diagnosis of a psychiatric, psychological or emotional nature which may require special consideration and attention under the circumstances of the case?

The court further notes that there may in fact be instances where a specific dating partner does in fact pose a specific threat of harm through inappropriate actions and/or comments. For example, if one's new dating partner has a history of child abuse, or is violent, or harasses a child, or actively misuses and chronically abuses drugs, or engages in other specific behavior which subjects

the child to an unreasonable risk of physical or emotional harm, a court may exercise parens patriae jurisdiction and potentially grant an application restricting the parent from permitting that specific person around the child, in unsupervised or even supervised fashion, when appropriate. Such an order, however, is not a traditional DeVita restraint based on the general fact that the person at issue is a new dating partner, but rather a restraint based upon specific facts relating to the dating partner's individual conduct, which may in some cases render court-ordered parameters appropriate in a child's best interest. See Mishlen v. Mishlen, 305 N.J. Super 643, 646-49 (App. Div. 1997).

THE PRESENT CASE: BALANCING OF CONCERNS

In the present matter, the restrictions which plaintiff seeks to enforce against defendant are not specific to any individual dating partner whose conduct presents a substantially increased risk of harm to a child. Instead, the restraint is against any parental dating partners at all, no matter who they are or what their background may be, and regardless of whether they may actually play positive roles in a child's life. Moreover, the prohibition which plaintiff seeks to enforce has no limitation to scope or duration, or any specific timetable for each parent to gradually phase in the freedom to start naturally living their lives again as single parents with new dating partners. The restriction not only prohibits dating partners from staying overnight, but prohibits them from

having any contact with the child, period. The court finds this restriction in its present form, to be unenforceable as a perpetually ongoing and overly broad prohibition, with no inclusion of a natural and gradual phase-in period for exposing the child to new relationships

Under prior order, the parties had indeed agreed to mutual "no contact" provisions regarding all boyfriends and girlfriends. As per Giangeruso, such expansive and restrictive restraints are disfavored. The court finds Judge Antell's concerns in the Devita dissent to be persuasive, in that unreasonably overbroad restraints can have a chilling effect on a child's right to have a healthy relationship with each parent. This is especially true in cases when there is no evidence, or even allegations, that a new dating partner has acted inappropriately, or through words and actions poses a particularly heightened risk of emotional harm to a child.

While plaintiff may have a legitimate concern about T.M. being confused if he is exposed too soon to a new parental companion, this does not mean that a phase-in period must absolutely wait until after the divorce proceedings are finally completed to begin. The fact that this case is technically still "pre-judgment", as opposed to "post-judgment" does not mean that the child cannot slowly adjust to the normalcy of such a situation, i.e., a parent moving on to a

new relationship, when provided with a reasonable period of transition and adjustment.

In reconciling these principles and concerns, the court notes the following with reference to this specific case: First, the parties did at least initially agree to no-contact restraints for boyfriends and girlfriends. Second, while these restraints were entered at the very start of their divorce litigation in a consent order, there is no objective evidence supporting the extension of such restraints beyond anything more than a temporary, limited, and reasonable transitional period. Third, while certain reasonable restraints may have been appropriate as a precautionary matter, the parameters of any continuation of such restraints should hereinafter be explicitly set forth so that both parties are on the same page in terms of understandings and expectations. Fourth, the continuation of any such restraints should relate to a specific purpose, relative to the best interest of the child. Conversely, a general restraint which endlessly prohibits parents from having new dating partners around a child is an invitation for potential legal mischief, i.e., for one party to unreasonably attempt to control the other party's dating life without any legitimate reason, while obstructing the anticipated natural progression and right of the other parent to pursue new relationships following separation or divorce.

Here, the child is six years old. His parents separated approximately five months ago. It is unclear how long defendant has actually been dating again, but according to plaintiff, the child is already familiar with the new girlfriend. There is no evidence or allegation presented that this dating partner has acted inappropriately toward or around the child, or has said inappropriate things to him or otherwise emotionally traumatized him. Nor is there any evidence that she poses any specific risk to the child, such as a history of child abuse or neglect, or of criminal convictions, or violence, or present illegal drug use. Further, there is no evidence that the child has any specific psychiatric, psychological, or emotional disorders, diagnoses or challenges which may be relevant to consider in a best interest analysis.

Notwithstanding these points, however, there is also something positive to be said for slowly acclimating this very young child to the reality of his parents' separation before defendant starts moving in a new friend's luggage and toothbrush in his son's presence. While separated spouses are free to date other people any time they want, introducing the child to new dating partners is a completely different issue. In this case, the best interests of this child reasonably support a gentle and logical progression rather than a sudden and abrupt one, in order to safeguard and protect the child's emotional well-being.

For all of the foregoing reasons in this case, the court will order the following one-year transitional schedule regarding the prior consensual restraints against exposing the child to new parental girlfriends and boyfriends:

1) Neither party will expose a new dating partner to the child for a period of six months following the parties' separation, which in this case was October, 2014.

2) After six months, (i.e. as of April 2015) but before twelve months the parties may introduce and expose the child to new dating partners, but will not have the dating partner stay overnight in the child's presence.

3) After twelve months, each parent at his or her discretion may choose to have a dating partner stay overnight, so long as the parent and dating partner do not expose the children to any age-inappropriate conduct (i.e., sexual activity), in the child's presence.

4) At no time may the dating partner attempt in any way to obstruct or interfere with the relationship which the child has with the other parent; nor may the dating partner talk negatively about the other parent to the child or in front of the child. Breach of this order my result in sanctions or other relief, including imposition of further restraints against the dating partner's permissible contact with the child.

The court in its discretion finds that the foregoing provisions provides the child with a reasonable phase-in period, and comports with the spirit of parties' original agreement, without creating an unrealistic restriction on each parent's ability to move forward with his or her social life.

If either party contends that any of these deadlines should be extended over the spouse's objection, it is that party's obligation to file an application and meet the burden of proof to convince the court that the time periods set forth in this

order should be extended in the child's best interests. Any such application must contain more than a general discussion about a parent's subjective beliefs, but must specifically address how and why the foregoing schedule is contrary to the health, safety or welfare of the specific child at issue.

Further, if either party contends that a specific dating partner of a spouse is in some manner physically, verbally or emotionally hurting the child, he or she may file an application, by way of motion or order to show cause as applicable, for further relief. The court's decision regarding a phase-in schedule is based upon the presumption that the dating partner has acted, and will continue to act, appropriately around the child. If a dating partner verbally harasses, torments or abuses a child physically or emotionally, however, there may be cause for an appropriate application seeking judicial intervention and further restrictions in the child's best interests.

Finally, if the court finds in the future that if either party has filed an application unreasonably, or in bad faith or for improper purpose, the court may impose sanctions and counsel fees as appropriate, and grant any other relief deemed equitable and just under the circumstances. See Rule 5:3-7.

All parties are hereinafter expected to act reasonably and flexibly moving forward into their respective futures as separated or divorced parents, consistent

with their ongoing joint obligation to always consider, first and foremost, the best interests of their young child.