

# New Jersey Law Journal

VOL. 209 - NO 12

SEPTEMBER 17, 2012

ESTABLISHED 1878

IN PRACTICE

## FAMILY LAW

### Palimony, Alimony and (Now) Preglimony

The past, present and future of support obligations in family law

By Madeline Marzano-Lesnevich

Former spouses may receive alimony; former partners may receive palimony; children indirectly receive child support; and now unborn children and their mothers may be able to receive preglimony. “Preglimony?” you ask. Is this even a word, perhaps a spoonerism or *mash-up* of some kind? If you Google it, the search engine will auto-complete the suffix of the word for you if you make it to p-r-e-g-l, so someone must have searched for it before you did.

Preglimony is the term that is being given to the prospect of support being paid to mothers for the costs associated with the unborn children they are presently carrying. As a comparison, these are the type of expenses that are normally paid voluntarily by adoptive parents, and often paid to a woman in cases of surrogacy by couples or individuals who

---

*Marzano-Lesnevich is a fellow of the American Academy of Matrimonial Lawyers and the immediate past president of the N.J. chapter. She is certified by the Supreme Court of N.J. as a matrimonial attorney. She thanks Seth Parker for his assistance with the preparation of this article. Parker was an associate of the law firm Lesnevich & Marzano-Lesnevich LLC.*

are unable to have children.

The unsettled issue of preglimony pertains only to children born to unmarried couples because when a child is born during a marriage, the husband is presumed to be the biological father of the child unless and until a paternity test demonstrates otherwise. The husband’s financial obligations to the mother (i.e., his wife) and to the unborn child commence automatically based upon the fact of the marriage itself. In contrast, an unmarried mother does not yet have an automatic right to seek contribution for prenatal costs from the putative father.

Furthermore, medical insurance coverage generally cannot extend to another person unless he or she is related by blood, or through marriage or some other legally recognized form of partnership, or unless the obligation is ordered by a court. Therein lies a potential benefit for a *newborn* child, but whether an *unborn* child can similarly benefit remains to be debated and resolved.

Through the further development of technology, a paternity test no longer requires a child to be born to confirm the father of the child. A prenatal blood test now allows a woman’s blood to be drawn during the pendency of her pregnancy to genetically link the father to the child. As a result, there is a grow-

ing dialogue that suggests fathers should contribute to the cost of the expenses incurred before birth once confirmed to be the father of the unborn child. At present, a father’s obligation to contribute to the support of a child only begins at birth in most nondissolution matters. This raises complex issues that are not yet being addressed by the New Jersey courts.

I anticipate that there will be much debate about which prenatal costs are necessary and reasonably incurred by a mother, when and if she seeks financial contribution from the father, and whether he was appropriately consulted before they were incurred. These prenatal costs would ostensibly include gynecological visits, Lamaze classes, ultrasound expenses and blood tests. However, the question remains whether this would also require the mother to limit her prenatal expenses to those covered by insurance, or for a judge to determine whether a C-section or natural birth was more cost-effective. Further, preglimony may function as a catalyst to the premature termination of relationships due to the pecuniary interests that may become viable, which were not previously made available by the courts. While these types of disputes are likely to occur if in fact preglimony becomes a viable and codified claim in New Jersey, there is a more far-reaching constitutional issue that may also arise from this nebulous financial obligation.

If a father has an obligation to contribute to the cost of prenatal care, he would likely also be obligated to contribute to the cost of an abortion if the mother chooses that option. In turn, this

raises the novel consideration that if a father has an obligation to contribute to the cost of the abortion, he may also have a say in its implementation. While the holding of *Roe v. Wade* may have confirmed a woman's right to privacy under the Due Process Clause of the 14th Amendment, it did not contemplate that the pro-life and pro-choice camps could be further fractured into determining when joint legal custody rights really begin. Given that many parents already have a difficult time co-parenting their children with allegations of parental alienation and child abduction unfortunately becoming far too common place, it goes without saying that litigation surrounding abortion, if it ceased to be an individual's right, would be inevitable. Either way, the legislature will have to determine whether a woman's constitutional right to choose could be jeopardized by compelling a father's contribution to her prenatal medical expenses. Further, they will need to consider how the suppression of that right is being quantified and if that potential burden would be outweighed by the benefit of this additional financial obligation.

It will further raise the issue in determining the parties' respective percentage obligations to contribute to these prenatal costs. In turn, fathers will likely want to know when mothers choose to begin their maternity leave, and whether there should be income imputed to them to off-

set a potential lack of income. Further, it may incentivize a father's contribution to these costs in order to ensure that the child's surname contains his own, at least before or after a hyphen. This will likely increase litigation as complaints for custody and support will be filed approximately six to eight months earlier than they are now. Normally, claims for child support can only be sought retroactive from when the original application is filed, and normally require there to be written notice given to the father. It will be interesting to see how stringently these two requirements will be applied to the issue of preglimony in the context of unplanned pregnancies.

Moreover, the legal battles that could and would likely arise from the advent of preglimony are numerous. For example, could a father have a say in when and if a pregnant mother could fly and under which circumstances this would be in the best interest of the unborn child? Could a father seek reimbursement for prenatal costs he has paid if a miscarriage occurs due to the fault of a mother involved in a *risky* behavior? Further, fathers could be permitted to inquire about and potentially limit an expecting mother's diet and activity in invasive ways never before deemed permissible by the court system. The intricacies of this form of support could further polarize the already too frequent denizens of the Family Part courtrooms of New Jersey.

It has been suggested in other articles that the prospect of these costs would somehow function as a deterrent to unprotected sex. If the prospect of contributing to the cost of unreimbursed medical expenses, extracurricular activities and college expenses on top of periodic child support is an insufficient financial deterrent, I would suggest that the additional trimester or two of support would not make much of a difference in increasing the likelihood of partners practicing safe sex.

The issue of preglimony gives rise to the potential for far-reaching and multifaceted consequences in the ever-evolving world of family law in New Jersey. On one hand, some individuals may argue that preglimony will overcomplicate and inflame the already litigious nature of our society, and that its limited financial value to a mother will be outweighed by her resultant loss of privacy. On the other hand, some may argue that the financial burden of a pregnancy should not be the mother's sole responsibility, and that whether a woman is married or unmarried should not alter a father's financial obligation to his child. It remains to be seen whether the legislature shall give credence to the claim of preglimony, the way that it presently does with alimony and child support. Either way, the issue shall further inform the ongoing dialogue about reproductive equality in this country. ■