EXPERT OPINION

Should Coercive Control Be Added as a Factor for Consideration in Awarding Maintenance and Equitable Distribution?

This article discusses New York Domestic Relations Law §236B.

March 26, 2025 at 12:39 PM

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Since the Equitable Distribution Law, New York Domestic Relations Law (DRL) §236B became effective on July 19, 1980, the divorce and family law bar has seen the development and expansion of the factors that apply to both the division of marital property, DRL §236B(5)(d)(1) – (16) and the similar, but not identical, factors that apply to post-divorce spousal maintenance awards, DRL §236B(6)(e)(1)(a) – (o).

Absent from the early, more limited number of factors was any reference to and recognition of domestic violence as a factor to which the courts should give specific consideration.

Utilizing the "catch-all factor" common to both awards of equitable distribution and maintenance, namely "any other factor which the court shall expressly find to be just and proper," the courts developed the concept of "egregious fault that shocks the conscience of the court" within that catch-all factor. *See, e.g., Havell v. Islam,* 288 AD2d 160 (First Dept. 2001); *Howard S. v. Lillian S.,* 14 NY3d 431 (2010). Ultimately in 2020, factors (14) and (g) were added to the factors for equitable distribution and maintenance, respectively.

Those factors specifically require the court to consider "whether either party has committed an act or acts of domestic violence, as described in subdivision one of section four hundred fifty-nine-a of the social services law, against the other party and the nature, extent, duration and impact of such act or acts."

DRL §236B(5)(d)(14). However, with respect to maintenance, this factor is limited to those "acts by one party against another that have inhibited or continue to inhibit a party's earning capacity or ability to obtain meaningful employment." DRL §236B(6)(e)(1)(g). *See,* Brandes, 3 Law and the Family, New York §§37:22, 37:24 and 55:62.

Article 6-A of the Social Services Law is titled the "Domestic Violence Prevention Act."

It was added in 2019 and contains Section 459-a, *supra.,* which defines a victim of domestic violence as a person or their minor child "who is a victim of an act which would constitute a violation of the penal law, including, but not limited to acts constituting disorderly conduct, harassment, aggravated harassment, sexual misconduct, forcible touching, sexual abuse, stalking, criminal mischief, menacing, reckless endangerment, kidnapping, assault, attempted assault, attempted murder, criminal obstruction of breathing or blood circulation, strangulation, identity theft, grand larceny or coercion . . ."

Thus, the legislature has focused on acts that constitute traditional forms of criminal conduct when providing financial remedies for the injured spouse/victim of domestic violence in the divorce context.

Long absent from the foregoing statutory scheme is the failure to address more insidious forms of domestic violence. However, in recent times, members of the New York Legislature have begun moving towards recognizing and addressing those forms of domestic violence in areas of the law other than the Domestic Relations Law.

Thus, some six years ago, legislation was introduced in the New York State Assembly and Senate that seeks to establish the crime of "coercive control."

Sponsored by Assembly Member Andrew Hevesi and Senator Kevin S. Parker, the bill is meant to address a pervasive form of intimate partner violence that is sometimes not accompanied by physical assault but is manifested by what the sponsors define to be "abuse as a 'strategic course of oppressive behavior'."

In other words, as used by the sponsors, "battering" that is "based on multiple tactics like violence, intimidation, degradation, isolation and control." *See, Memorandum in Support of Legislation,* Assembly Bill # A00679 and Senate Bill # S04079 of the 2025-2026 Legislative Session.

More specifically, the bill proposes to add a new section to the Penal Law, Section 135.80, which would read as follows:

A person is guilty of coercive control when such person engages in a course of conduct against a member of such person's same family or household, as defined in section 530.11 of the criminal procedure law, without the victim's consent, which results in limiting or restricting, in full or in part, the victim's behavior, movement, associations or access to or use of such victim's own finances or financial information.

For the purposes of this section, lack of consent results from forcible compulsion as defined in subdivision eight of section 130.00 of this title, or from fear that refusal to consent will result in further actions limiting or restricting the victim's behavior, movement, associations or access to or use of such victim's own finances or financial information.

This section shall not apply to actions taken pursuant to a legal arrangement granting one person power or authority over another person, including, but not limited to, power of attorney arrangements as defined in paragraph (j) of subdivision two of section 5-1501 of

the general obligations law, guardians of the property or person as defined in subdivisions (c) and (d) of section 83.03 of the mental hygiene law, or parental control of a minor child.

"Coercive control is a class E felony."

The same assembly sponsor, Assembly Member Andrew Hevesi, is also the sponsor of a bill seeking to enact "Kyra's Law" the avowed purpose of which is "To protect children by ensuring [that] courts promote the safety of children in child custody and visitation proceeding." Assembly Bill # A6194/Senate Bill # S05998 of the 2025-2026 Legislative Session.

Despite having the same sponsor in the Assembly, the Kyra's Law proposal has a more specific definition and a more fulsome description of "coercive control," as an evidentiary factor to be considered in determining custody, than that proposed for Penal Law §135.80 *supra.* The proposal for Kyra's Law utilizes the following language for proposed DRL §240-e (1)(b):

"(b) 'Coercive control' means a pattern of behavior that unreasonably restricts a party's safety or autonomy through threats, or intimidation, or by compelling compliance. This conduct includes, but is not limited to:

(i) isolating the other party from friends, family or other sources of support;

(ii) interfering with a party's freedom of movement;

(iii) depriving the other party of basic necessities such as food, sleep, clothing, housing, medication or medical care;

(iv) controlling, regulating, surveilling or monitoring the other party's movements, communications, daily behavior, appearance, finances, economic resources or access to services;

(v) compelling the other party by force, threat of force, or intimidation, including but not limited to threats based on actual or suspected immigration status, to engage in conduct from which the other party has a right to abstain or to abstain from conduct in which the other party has a right to engage;

(vi) interfering with the other party's education or employment;

(vii) forcing or compelling the other party to perform sex acts, or threats of a sexual nature, including but not limited to threatened acts of sexual conduct, threats based on a person's sexuality or threats to release intimate images; or

(viii) cleaning, accessing, displaying, using or wearing a firearm or other dangerous weapon in an intimidating or threatening manner."

There are boundless examples of the need for legislation addressing the exercise of coercive control by one party to a litigation against the other party.

One recent example is found in *Matter of Aisha R.,* 79 Misc.3d 1106 (Family Ct., Kings County 2023), where Judge Erik S. Pitchal denied a respondent father's motion to dismiss a neglect petition brought by the administration for Children's Services (ACS) which alleged that the father of the children had committed acts of domestic violence against the mother in the presence of their children.

Pitchal found that the respondent in that case had engaged in a pattern of behavior that included preventing the mother from leaving their home, not permitting her to see family or friends, throwing away her belongings, addressing her in a demeaning fashion that was repeated by their two-year-old child, etc.

He held that ACS had pleaded a cause of action for neglect based on serious allegations of domestic violence that had been demonstrated by the father's utilization of power and control over the mother, causing actual or imminent impairment of the children.

In 2023 and 2024, Justice Ariel D. Chesler, then sitting in a Supreme Court Matrimonial IAS Part, rendered several decisions addressing coercive control. In *S.D. v. D.D.,* 79 Misc.3d 1223(A), 191 N.Y.S.3d 918 (Sup. Ct. N.Y. County, 6/26/2023), citing the testimony of the forensic custody evaluator, Chesler allowed the mother to relocate to North Carolina, found that the parties could no longer share joint decision making with respect to their children and awarded final decision making authority to the mother based in part on the forensic's finding "that the father had engaged in coercive control, which is a form of domestic violence."

Similarly, in *K.M. v. T.O.,* 82 Misc.3d 1216(A), 206 N.Y.S.3d 887 (Sup. Ct. N.Y. County, 12/18/2023), Chesler again cited the coercive control exercised by the father against the children's mother. Among other things.

Chesler concluded that it was in the children's best interests to award sole custody to the mother, while affording the father supervised visitation based on his diagnosis of Narcissistic Personality Disorder (NPD) and conduct that constituted significantly abusive forms of coercive control exercised against the mother, which are described in detail in the decision.

The issue of coercive control has reared its head even in the area of counsel fees. *S.L. v. D.E.,* 83 Misc.3d 1224(A), 212 N.Y.S.3d 553 (Sup. Ct. N.Y. County, 6/26/2024), involved a decision with respect to the plaintiff-wife's application for an award of *pendente lite* counsel fees where Chesler cited to "compelling allegations of domestic violence."

Among other things, the defendant-husband was accused of "physical abuse, threatening language, tracking [the wife's] movements, the use of cameras in the marital home, and threats to cut off [the wife] financially."

Chesler went on to find that the husband's "alleged physical and financial abuse, which are supported by proofs offered by [the wife], indicates that his coercive control in the

relationship reduced [the wife's] ability to earn – specifically by making her work without pay – and by committing acts of violence against her.

Financial abuse of a spouse is domestic violence, even without a bruise the harm is still potent, and the court must not turn a blind eye to such conduct.

This would leave [the wife] financially, and thus, legally helpless and would atrophy her ability to litigate and defend her rights." He then goes on to state that "the apparent financial coercive control in this case must be given strong consideration as it relates to an award of counsel fees.

Thus, this court must act to prevent [the husband] from crippling [the wife's ability to litigate this action and defend her rights." He awarded $50,000 in interim counsel fees to the wife.

Finally, Justice Chesler addressed the issue of coercive control in the context of equitable distribution in *Anonymous v. Anonymous,* 83 Misc.3d 1283(A), 217 N.Y.S.3d 429 (Sup. Ct. N.Y. County, 7/16/2024).

In that matter, the wife was granted an "advance against equitable distribution" of $29,600,000, based on a finding that were the court to ignore the husband's conduct "it would amount to the court's acquiescence to a self-evident pattern of financial coercive control demonstrated by the husband, and which prejudiced the wife and violated the spirit of the court's orders and the authority of this court."

It is clear that the legislature and the courts are beginning to recognize the fact that domestic violence encompasses more than physical abuse, threats or intimidation, but that its various forms can pervade all areas of a victim's life.

All of this leads to the conclusion that the next step in the evolution of the Equitable Distribution Law is for the legislature to add "coercive control" as an additional factor for

the courts to consider in awarding both a division of marital property and spousal maintenance in order to more fully address the extensive impact of all forms of domestic abuse in the context of a divorce action.

The negative impact of coercive control is real and extensive, and should be considered on an equal basis as the currently existing factors contained in the statute.

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