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**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2025-21**

**IN THE MATTER OF THE
ESTATE OF STIPO JURIC,
deceased.**

Submitted March 21, 2023 – Decided April 3, 2023

Before Judges Geiger and Susswein.

On appeal from the Superior Court of New Jersey,
Chancery Division, Bergen County, Docket No. P-
000164-21.

Gruber, Colabella, Liuzza, Thompson & Hiben,
attorneys for appellants Gizela Juric and the Estate of
Stipo Juric (Chris H. Colabella and Samuel C.
Colabella, on the briefs).

Blagoja Petreski, attorney for respondent Ljiljana Juric.

PER CURIAM

Defendants Gizela Juric and the Estate of Stipo Juric appeal from a Probate Part order granting summary judgment to plaintiff Ljiljana Juric, the decedent's surviving spouse, enforcing her right to receive an elective share of

decedent's augmented estate, and denying summary judgment to defendants. For the following reasons, we affirm.

I.

Decedent and his first wife, Nadia Juric, had two children together, Gizela Juric and Roger Juric.¹ On December 1, 2014, Nadia passed away. Plaintiff asserts she met decedent in June 2016. Defendants assert they met in October 2016. Regardless, the parties agree that at the time they met, plaintiff was staying in the United States pursuant to a temporary visa. The visa originally expired on October 18, 2016, however, after decedent and plaintiff started dating, plaintiff filed for an extension so that she could see if their relationship progressed to marriage. United States Citizenship and Immigration Services (USCIS) granted plaintiff's extension request. Decedent and plaintiff were married on December 12, 2016. The parties agree that decedent and plaintiff did not tell decedent's children about the marriage ceremony.

Decedent's friend, Nevenka Grandov, visited the couple shortly after their marriage, and submitted an unsigned certification about the encounter. According to the certification, during the visit, decedent told Grandov that he

¹ Because several parties and family members share the same surname, we refer to them by their first names. We intend no disrespect.

married plaintiff "to help her . . . gain her papers." The certification also stated that plaintiff showed Grandov her bedroom, which was separate from decedent's bedroom.

On February 21, 2017, decedent executed a will devising his entire estate to Gizela and Roger. The will disinherited plaintiff, stating "it was my intention not to make provision in this Will for my wife." The will named Gizela as executrix of the estate and Roger as successor executor.

The will was executed under the following circumstances. Gizela took decedent to the will appointment and was present during its execution "to assist if necessary." During the same appointment, decedent also executed a health care directive, which named Gizela as his agent and Roger as his alternate agent, and a waiver of elective share form, which required plaintiff's signature to be effective. During her deposition, Gizela testified plaintiff insisted she "didn't want anything" from decedent, and that she "promised to sign" the waiver form.

The marriage between decedent and plaintiff was tumultuous. Beginning in March 2017, less than four months after they were married, the police were frequently summoned when the parties had verbal disputes. Because the incidents are relevant, we recount them to provide context to the allegations raised by defendants.

On March 31, 2017, decedent called the police, and upon their arrival, stated that he was "having a verbal dispute." Two weeks later, plaintiff called the police, and upon their arrival, stated that she "found out [decedent] was cheating on her." Plaintiff stated that decedent "did not want a divorce but [also] did not want her to live there anymore." Plaintiff stated she was "actively looking for a new place to live." On April 22, 2017, plaintiff called the police regarding a verbal dispute.

Around this same time, Gizela told plaintiff "they must go to the bank to sign the [e]lective [s]hare [w]aiver." Plaintiff agreed to go,² however, once at the bank, she refused to sign. Gizela testified that plaintiff stated: "She wanted to talk to her lawyer [because] she didn't understand what she was signing." Sometime thereafter, plaintiff was again asked to sign the waiver, but she again refused.

On June 24, 2017, the police were dispatched to a verbal dispute between decedent and plaintiff. About a week later, police responded to another verbal dispute between decedent and plaintiff. Decedent told police that plaintiff was "moving out."

² Decedent and Gizela accompanied plaintiff to the bank. The parties dispute whether Roger also went to the bank, however, Roger himself recalls going.

On January 19, 2018, decedent called police to report that plaintiff was missing. Plaintiff told police that "she left the house to let things cool down" after an argument earlier in the day and that decedent "is a different person when he consumes alcohol, and they argue constantly."

On January 27, 2018, police responded to a "domestic dispute" between decedent and plaintiff. They explained that while out they had an argument over whether they should return home. Decedent wanted to go home, while plaintiff did not. The parties eventually returned home at which point decedent "repetitively told [plaintiff] to leave the residence." Plaintiff refused to do so.

On March 17, 2018, police were dispatched to another "domestic dispute" between decedent and plaintiff. Plaintiff explained that "she was staying at a friend's house when [decedent] took her vehicle and drove it back to the [marital residence] without her having any knowledge of it." Decedent then "continuously called" plaintiff and accused her of "losing the vehicle." Decedent admitted to taking the vehicle but stated that he was the registered owner. He also stated that "he [did] not like when [plaintiff] stay[ed] with friends," but that "he would stop calling [her] going forward."

On February 11, 2019, decedent filed a divorce complaint alleging "irreconcilable differences." One week later, police responded to a "verbal

argument" between decedent and plaintiff and were told plaintiff would be "leaving the house for the day."

On March 4, 2019, police were dispatched to the marital residence regarding plaintiff's attempt to take decedent's phone away because he was talking to another women, and in the process, she had "scratch[ed decedent] on his left hand leaving signs of injury." Plaintiff was arrested, transported to the police station, and charged with harassment.

On March 19, 2019, plaintiff was served with the divorce complaint. One day later, decedent left a voice message to plaintiff professing his love for her.

As part of the current litigation, decedent's divorce attorney, Kathleen Garvey, was deposed by plaintiff's counsel. Garvey testified that after service of the complaint, decedent and plaintiff visited her office, and plaintiff "said that [decedent] agreed . . . to let the divorce complaint go." Garvey testified that she felt plaintiff had "pressured" decedent into the decision. Garvey then spoke to decedent alone, who indicated that "he didn't want to do anything that was going to harm [plaintiff]" in relation to her immigration status. At this point, Garvey recommended a postnuptial reconciliation agreement, which would "not have any immigration consequences," but would still protect decedent's assets. Garvey drafted an agreement, but decedent and plaintiff could not agree on

adding language plaintiff sought that the agreement would be void if decedent filed for divorce before May I, 2021.

In May 2019, decedent told Garvey that he did not want to pursue a divorce anymore. The parties agree that "[d]ecedent was aware that after his death [plaintiff] would have a share of his estate." Nonetheless, the parties agree that decedent "changed his mind about wanting to divorce plaintiff."

On June 5, 2019, police responded to a "dispute" between decedent and plaintiff. Plaintiff alleged that decedent "punched" her shoulder and head, and "bit" her nose. Plaintiff further asserted that "there ha[d] been other times that [decedent] assaulted her but she never reported it to the police." Police arrested decedent and charged him with simple assault.

On June 6, 2019, decedent and plaintiff discussed their marital problems. Decedent told plaintiff "I care for you as my wife." The next day, plaintiff reported that decedent physically abused her again and she had locked herself in another room to escape. Although a temporary restraining order was issued, it was dismissed six days later.

On June 14, 2019, police responded to a "domestic dispute" between decedent and plaintiff but on their arrival were told "there was no verbal or physical dispute." Instead, plaintiff told police that she was "attempting to leave

the residence for the day and [decedent] became angered at the fact that she was leaving . . . and attempted to make her stay at the residence." Decedent stated that "he was angry because his wife was leaving to possibly see another man and did not want her to do so." After speaking to police, plaintiff left the residence.

On June 15, 2019, Garvey received an "initial dismissal notice" of the divorce complaint. Garvey informed decedent who said "[j]ust let it go for now."

On June 27, 2019, police were dispatched to the marital residence. Police observed that plaintiff was "crying and upset." Plaintiff explained that decedent "ma[de] her nervous," that she was "in fear of him," and that she had "anxiety and high blood pressure" because of the relationship. Plaintiff was transported to the hospital. Over the next two days, decedent left plaintiff two voice messages stating he loved her.

On July 2, 2019, police were dispatched in response to a "dispute" between decedent and plaintiff. Plaintiff explained that decedent "called the police because he did not want her at the residence any longer."

On August 24, 2019, decedent's divorce complaint was dismissed for lack of prosecution. On November 9, 2019, decedent and plaintiff filed a "Petition

to Remove Conditions on Residence" with USCIS. On November 15, 2019, decedent filed a second divorce complaint alleging "irreconcilable differences."

On November 21, 2019, police responded to a verbal "domestic dispute" between decedent and plaintiff. On January 13, 2020, police responded to yet another "domestic dispute" between decedent and plaintiff. Upon their arrival, the parties again explained they had a "verbal dispute."

In May 2020, decedent and plaintiff engaged in "FaceTime" chats while decedent was in the hospital. Around this time, decedent was diagnosed with terminal cancer.

On July 18, 2020, decedent's second divorce complaint was dismissed for lack of prosecution. Five days later, decedent filed a third divorce complaint again alleging "irreconcilable differences."

In August and September 2020, hospice aide Christine Turner visited decedent at his residence to provide end-of-life care. During her deposition, Turner testified that plaintiff was the "only one" with decedent during "[m]ost of [her] visits." Turner also testified that plaintiff "provided care for [decedent] when [hospice was] not present," and that the couple's relationship seemed "caring" and "loving." In contrast, an unsigned certification by Margaret Hill, a tenant at one of decedent's properties, stated she "personally witnessed

[plaintiff] screaming and shouting at [decedent] even as he got sick in the last few months of his life."

On September 3, 2020, plaintiff filed an answer to the third divorce complaint, denying there were irreconcilable differences. The divorce action was not completed because decedent passed away on September 20, 2020.

Gizela submitted decedent's will for probate. Gizela was appointed executrix of his estate on January 13, 2021. In October 2020, plaintiff's counsel advised defendants that plaintiff intended to file a complaint seeking her elective share of decedent's estate. On November 16, 2020, USCIS found that plaintiff's record "d[id] not contain sufficient evidence to establish that [her] marriage [to decedent was] bona fide." USCIS explained that decedent "was in the process of divorcing [plaintiff] before he died." USCIS therefore requested an interview with plaintiff.

On March 29, 2021, plaintiff filed a verified complaint seeking an elective share of decedent's estate. On April 6, 2021, the deputy surrogate issued an order to show cause why judgment should not be entered: (a) restraining and enjoining the executrix from removing or dissipating any estate assets; (b) compelling the executrix to render an accounting; (c) fixing the amount of plaintiff's elective share; (d) awarding plaintiff costs; and (e) permitting plaintiff

to return to the marital residence during the pendency of the action. Plaintiff alleged that Gizela discarded plaintiff's belongings from the marital residence and changed the locks.

On May 24, 2021, Gizela filed a contesting answer in her individual capacity and as executrix of the Estate. The court conducted an initial hearing on June 4, 2021. Due to a pending sale of the property, plaintiff withdrew her request to return to the marital residence.

Following discovery, which included numerous depositions, the parties filed cross-motions for summary judgment. On March 4, 2022, the trial court heard argument, and issued an order and oral decision granting plaintiff's motion for summary judgment and denying defendants' cross-motion for summary judgment. The court directed the parties to calculate the elective share of the augmented estate within ninety days, and if an agreement was not reached, final determination would be made by the court on application by a party.

In his oral decision, the judge began by summarizing the parties' arguments:

On one side we have the decedent's children who take the position that this was some sort of . . . paper marriage, [that] it was . . . for immigration purposes.

[Gizela] says in her certification, plaintiff never loved my father, and instead used him as a means to become

a United States citizen. . . . [P]laintiff had a separate life from my father, lived in separate bedrooms from day one, contributed nothing financially, did not clean the home or cook or provide food. She abused my father mentally, emotionally, and physically, resulting in police involvement. My father filed for divorce from plaintiff on three separate occasions, and it was not until his terminal illness that in essence all of a sudden [plaintiff] started feigning concern and faking pictures and so forth.

On the flip side, the decedent and the plaintiff obviously met later in life. He was much older . . . and it is not uncommon that later in life people seek out companionship. And [plaintiff's] argument . . . is that they met, they truly cared for each other, they married, [] they lived as husband and wife[,] and that she was the caregiver for him.

. . . .

[According to plaintiff] it was the kids who took [decedent] to these divorce lawyers and he would right away dismiss it, and they are the ones that wanted to disinherit [plaintiff] in the will, because it [was] about the money.

The judge then recounted the relevant facts. Finally, the court applied the applicable legal principles to the facts and drew the following conclusions:

I guess if you don't have a good relationship, or a good marriage, or one person is consuming a lot of alcohol, and it is leading, in certain instances, to these types of situations, that [] somehow means [] they weren't married, or they are not cohabitating as man and wife, or as we get into it, [there] was a cause of action for divorce.

But it is not that simple[] because . . . [the court cannot] deprive the spouse of her elective share [just because] it wasn't a good relationship. It doesn't work that way.

. . . .

[I]t was argued in this case that [decedent and plaintiff] were living [] separate and apart in different habitations because they were living in separate bedrooms.

That argument has absolutely no merit. Many couples live in separate bedrooms. They [were] obviously living together during this entire time, whether for better, [or] for worse, they were cohabitating.

. . . .

I think it was pretty clear, even with police interaction, even with their arguments . . . in their own way, there seemed to be a loving relationship.

. . . .

[U]nder N.J.S.A. 3B:8-1, it has to be shown that there existed a cause of action at the time of the death.

. . . .

So we look at irreconcilable differences which have to be for the last six months . . . and really, in the last six months[,] besides him being driven to file these complaints, it seem[s] that the drinking had stopped, the man was seriously ill, and it seems like they were together pretty much all the time. Caregiver or not.

. . . .

He is literally on his death bed and then he is taken back, you know, to file the [final divorce complaint] which obviously they never got divorced.

....

[M]y findings are that certainly they weren't living separate and apart. . . . I think it is pretty clear from these undisputed facts, that even with the police interactions, even with all the fights, even with whatever problems they were having, again, whether it was the age, or whether it was the drinking, or whether it was her personality, they stayed together as many husbands and wives do.

....

[T]hey cohabited as husband and wife, and at the end there was not a cause of action for divorce for the prior six months. Not based on these facts and their relationship.

And as a result, the plaintiff's motion for summary judgment is granted. She is entitled to [an] elective share.

This appeal followed. The trial court granted defendants' motion to stay the order pending the outcome of this appeal.

II.

On appeal, defendants argue:

I. THE TRIAL COURT'S GRANT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT WAS AN ABUSE OF DISCRETION AS

IT MADE FACTUAL FINDINGS WHEN IT SHOULD ONLY HAVE MADE LEGAL FINDINGS.

II. THE TRIAL COURT FAILED TO PROPERLY APPLY THE STANDARD OF REVIEW FOR IRRECONCILABLE DIFFERENCES.

III. SUMMARY JUDGMENT SHOULD HAVE BEEN RULED IN DEFENDANTS' FAVOR AS THE FACTS VIEWED IN THE LIGHT MOST FAVORABLE TO THE PLAINTIFF SHOW THAT SHE IS NOT ENTITLED TO THE ELECTIVE SHARE UNDER THESE CIRCUMSTANCES.

A.

We review the trial court's grant or denial of a motion for summary judgment de novo, applying the same standard used by the trial court. Samolyk v. Berthe, 251 N.J. 73, 78 (2022). A motion for summary judgment must be granted "if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). "To decide whether a genuine issue of material fact exists . . . [we] 'draw[] all legitimate inferences from the facts in favor of the non-moving party.'" Friedman v. Martinez, 242 N.J. 450, 472 (2020) (second alteration in original) (quoting Globe Motor Co. v. Igdalev, 225 N.J. 469, 480 (2016)). We do not defer to the trial court's legal

analysis. RSI Bank v. Providence Mut. Fire Ins. Co., 234 N.J. 459, 472 (2018). "A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference." Kieffer v. Best Buy, 205 N.J. 213, 223 (2011) (quoting Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995)).

We must consider "whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party." Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). "The court's function is not 'to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial.'" Rios v. Meda Pharm., Inc., 247 N.J. 1, 13 (2021) (quoting Brill, 142 N.J. at 540). Summary judgment is not meant to "shut a deserving litigant from his [or her] trial." Brill, 142 N.J. at 540 (alteration in original) (quoting Judson v. Peoples Bank & Tr. Co. of Westfield, 17 N.J. 67, 77 (1954)).

B.

On appeal, defendants argue that the "trial court did not use the correct standard of review" because it "fail[ed] to consider the facts in the light most favorable to the non-moving party." Specifically, defendants argue that because

plaintiff provided inconsistent statements about having an ex-husband, "the court should have assumed that . . . [p]laintiff's credibility was at issue and that anything she stated needed to be seriously dissected by a jury." Relatedly, defendants argue the trial court reached conclusions about the "intent and motive" of the parties, which "are questions of fact for a jury to determine."

Next, defendants argue that divorces in this State are liberally granted, and, therefore, the trial court should have found that irreconcilable differences existed. Defendants again assert the trial incorrectly viewed the facts in favor of plaintiff. Defendants also assert that decedent's relationship with plaintiff bore "no resemblance to that of a typical marriage."

C.

The Legislature has provided a statutory elective share to a surviving spouse. N.J.S.A. 3B:8-1 provides:

If a married person or person in a domestic partnership dies domiciled in this State, on or after May 28, 1980, the surviving spouse or domestic partner has a right of election to take an elective share of one-third of the augmented estate under the limitations and conditions hereinafter stated, provided that at the time of death the decedent and the surviving spouse or domestic partner had not been living separate and apart in different habitations or had not ceased to cohabit as man and wife, either as the result of judgment of divorce from bed and board or under circumstances which would have given rise to a cause of action for divorce or

nullity of marriage to a decedent prior to his death under the laws of this State.

"The object of [N.J.S.A. 3B:8-1] was to prohibit disinheritance of a surviving spouse who needs continuous support." In re Est. of Brown, 448 N.J. Super. 252, 269 (App. Div. 2017). "[T]he spousal elective share 'provides a kind of statutory safety net to . . . a surviving spouse.'" I.G. v. Dep't of Hum. Servs., 386 N.J. Super. 282, 290 (App. Div. 2006) (quoting In re Est. of Friedlein, 230 N.J. Super. 100, 105 (App. Div. 1989)). It "provide[s] a surviving spouse with an option to take one-third of the estate if he or she were not adequately provided for by the decedent." Est. of Brown, 448 N.J. Super. at 269-70 (quoting In re Est. of Hersh, 195 N.J. Super. 74, 77 (App. Div. 1984)).

The elective share equals "one-third of the augmented estate," N.J.S.A. 3B:8-1, and "[t]he augmented estate consists of the value of all property of both the deceased and surviving spouse as well as other property transferred to third parties without adequate consideration before the decedent's death," I.G., 386 N.J. Super. at 290 (internal quotations omitted) (quoting Friedlein, 230 N.J. Super. at 104).

As an initial matter, N.J.S.A. 3B:8-1 only applies if a decedent was "married" or "in a domestic partnership" at the time of death. N.J.S.A. 3B:8-1. As such, "N.J.S.A. 3B:8-1 prevents a spouse, if divorced, from claiming the right

to share in the decedent's estate." Est. of Brown, 448 N.J. Super. at 252 (citing Carr v. Carr, 120 N.J. 336, 344 (1990)). If not divorced, "[t]here must be evidence that the [spousal] relationship was 'sufficiently removed from the normally thought of state of matrimony as to make such an election inappropriate.'" Ibid. (quoting Hersh, 195 N.J. Super. at 77). This requires establishing that the spouses had been "living separate and apart in different habitations" or had "ceased to cohabit as man and wife." N.J.S.A. 3B:8-1.

Based on the last clause of N.J.S.A. 3B:8-1, spouses must also be in a "quasi-divorced state," defined as "a separation [that is] either [effectuated] by judicial decree or accompanied by circumstances [that] would have enabled the decedent to obtain a divorce." Ibid. (quoting Hersh, 195 N.J. Super. at 77). Therefore, if no judicial decree is present, "there must be evidence, beyond mere separation, of a cause of action for divorce to disqualify a surviving spouse from elective share rights." Ibid.; accord Carr, 120 N.J. at 345-46 ("[T]he wife, having separated from her husband and embarked on a divorce action with good cause prior to her husband's death, is not entitled to an elective share of his estate under N.J.S.A. 3B:8-1."); McKay v. Est. of McKay, 205 N.J. Super. 609, 616 (Law Div. 1984) ("[T]he Legislature intended [] the clause 'under circumstances which would have given rise to a cause of action for divorce . . .' [to] modif[y]

the clause 'at the time of death the decedent and the surviving spouse had not been living separate and apart in different habitations.'" (omission in original)).³

While "the Legislature has adopted liberal grounds for citizens to end their marriages but statutory elements must still be demonstrated." Steiner v. Steiner, 470 N.J. Super. 112, 120 (App. Div. 2021). There are "nine grounds on which a court may dissolve a marital partnership." Id. at 118 (citing N.J.S.A. 2A:34-2). "Whatever ground is asserted must be proven by the party seeking a divorce." Id. at 120.

A divorce may be granted based on "irreconcilable differences," N.J.S.A. 2A:34-2(i), when there has been a "breakdown of the marriage for a period of six months and . . . it appear[s] that the marriage should be dissolved and that there is no reasonable prospect of reconciliation," Steiner, 470 N.J. Super. at 118 (quoting N.J.S.A. 2A:34-2). The phrase "irreconcilable differences" does not have a "precise meaning" because "what constitutes an irreconcilable difference may vary from couple to couple." Id. at 118-19. "By adopting an otherwise unexplained standard, the Legislature left it to the courts to ascertain what is irreconcilable on a case-by-case basis." Id. at 119. In other words,

³ McKay assumed that the clause "under circumstances which would have given rise to a cause of action for divorce" modified the clause "ceased to cohabit as man and wife." 205 N.J. Super. at 615-16.

"Family [Part] judges know irreconcilable differences when they see them." Id. at 118.

The summary judgment standard does not require every disputed fact to be resolved in the non-moving party's favor, only genuinely disputed facts. "If there exists a single, unavoidable resolution of [an] alleged disputed issue of fact, that issue should be considered insufficient to constitute a 'genuine' issue of material fact" Brill, 142 N.J. at 540 (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986)). Similarly, disputed facts of an "insubstantial nature" cannot defeat a motion for summary judgment. Id. at 529-30 (quoting Judson, 17 N.J. at 67).

Here, the trial court accurately noted that it relied on "largely undisputed" facts. Moreover, the facts that were disputed, such as plaintiff not being credible because she provided inconsistent information about having an ex-husband, are irrelevant to the elective share analysis. See N.J.S.A. 3B:8-1. Likewise, the "intent and motive" of the parties are not material "questions of fact" in this case. In re Est. of Peck, 429 N.J. Super. 409, 415 (Ch. Div. 2012) ("The elective share statute has nothing to do with carrying out the decedent's actual intent. In fact, the statute may be utilized to circumvent the actual intent to disinherit a surviving spouse.").

Next, the trial court correctly found that decedent and plaintiff did not live "separate and apart in different habitations." N.J.S.A. 3B:8-1. In the context of a no-fault ground for divorce pursuant to N.J.S.A. 2A:34-2(d), living in "separate bedrooms" in the same residence has been rejected as a ground for establishing "different habitations." DeRienzo v. DeRienzo, 119 N.J. Super. 192, 195 (Ch. Div. 1972). Moreover, in that same context, even when living in "different habitations," spouses are not necessarily living "separate and apart" where their "associations and dealings . . . with each other after the alleged separation continue to include a substantial number of the many elements and ties which go into and make up the marital relationship and bind the parties together." Ellam v. Ellam, 132 N.J. Super. 358, 363-64 (Ch. Div. 1975). Here, decedent and plaintiff lived in the same house for the entirety of their marriage, and even during periods of disagreement, continued to exhibit the "elements and ties" that define a marriage.


Experiencing repetitive domestic disputes – none of which resulted in the issuance of a final restraining order under the Prevention of Domestic Violence Act, N.J.S.A. 2C:25-17 to -35, – does not mean the parties were not in a marital relationship for purposes of plaintiff's right to an elective share. After each argument, plaintiff and decedent reconciled and continued living in the same

residence. Although decedent filed three divorce complaints, he allowed the first two to be administratively dismissed for lack of prosecution. The third, which was contested, was not completed. Moreover, the divorce complaints alleged irreconcilable differences as the cause of action, not separation. Notably, the summons prepared by decedent's attorney in the third divorce action listed the address where plaintiff could be served as the same address listed as decedent's residence in his complaint. Plaintiff filed a contesting answer but not a counterclaim for divorce.

The trial court's findings are supported by substantial evidence in the record and its legal conclusions are consonant with applicable law. We discern no basis to disturb the summary judgment granted to plaintiff and denied to defendants.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION