

The Law Office of
David Perry Davis
112 West Franklin Ave
Pennington NJ 08534
(609) 737-2222
(609) 737-3222 (fax)
Attorney ID: 047451996
Attorney for plaintiff-appellant

Prasad Kumarapurugu	:	SUPREME COURT OF NEW JERSEY
	:	DOCKET #076227
Plaintiff-Appellant	:	
	:	
vs.	:	
	:	
Padmini Thota,	:	NOTICE OF MOTION
	:	
Defendant-Respondent	:	
	:	

PLEASE TAKE NOTICE that, on a time and date fixed by the Supreme Court, the undersigned shall move for an Order:

- A. Permitting the filing of plaintiff's petition for certification as within time;
- B. Summarily remanding this matter to the Appellate Division for reconsideration of the appeal on the present appellate record before a new panel;
- C. For such further relief as the court may deem equitable and just.

Appellant shall rely on the enclosed letter brief. Telephonic oral argument is requested in the discretion of the Court.

David Perry Davis, Esq.

The Law Office of
David Perry Davis
112 West Franklin Ave
Pennington NJ 08534
(609) 737-2222
(609) 737-3222 (fax)
Attorney ID: 047451996
Attorney for plaintiff-appellant

Prasad Kummarapurugu,	:	SUPREME COURT OF NEW JERSEY
	:	DOCKET #076227
Plaintiff-appellant	:	
	:	<u>Civil Action</u>
vs.	:	
	:	
Padmini Thota,	:	PROOF OF SERVICE
	:	
Defendant-respondent	:	

Timothy Davis-Napier, of full age, hereby certifies as follows:

1. I am a paralegal employed by the Law Office of David Perry Davis, attorney for the plaintiff-appellant in this matter.
2. On this date, I caused a copy of the enclosed documents and this Proof of Service to be served upon the following:

Padmini Thota
606 Deerbrook Dr
Yardley PA 19067
Via regular and certified mail

3. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.

DATED:

Timothy Davis-Napier

DAVID PERRY DAVIS

Attorney at Law
A Professional Corporation

112 West Franklin Avenue
Pennington, NJ 08534

Telephone
(609) 737-2222

Facsimile
(609) 737-3222

August 14, 2015

Supreme Court of New Jersey
Richard J. Hughes Justice Complex
25 Market Street - PO Box 970
Trenton, NJ 08625-0970

Re: Kummarapurugu v. Thota
Docket #076227

Dear Justices:

Please accept this letter brief in lieu of a more formal submission in support of plaintiff's application to extend the time for the filing of the petition for certification and for summary remand to the Appellate Division.

At issue in this matter is the proper functioning of the judicial system and its ability to correct an error and to thus provide justice via the uniform application of the law.

Procedural History

Plaintiff, proceeding *pro se*, filed a motion seeking a support review on July 8, 2013 (Pa 19-58). Defendant, also self-represented, filed a cross motion on July 23, 2013 (Pa 59-72). Plaintiff filed a reply certification on July 31, 2013 (Pa 73-114). The Court conducted oral argument on August 8, 2013 (1T). No written order was issued.

Almost four months later, on October 31, 2013, an order was entered setting forth a specific list of additional information the Court required (Pa 5-8) so as to recalculate child support. Without the parties present, the trial court placed a decision on the record outlining the reason the information was required

(2T 5-3 to 5-11).

The parties timely supplied the requested information (Pa 141-162).

An order was issued six weeks later on February 12, 2014 (Pa 1-4).

Following attempts to correct the error with minimal additional proceedings, plaintiff filed a timely notice of appeal.

Following briefing and argument, a decision on the appeal was issued on May 21, 2015. The decision summarized plaintiff's appellate argument as his stating "it is unfair to have his child support amount modified as the court failed to consider the appropriate child support guideline factors." Slip Opinion at page 3. Plaintiff in fact had argued that the trial court had erroneously copied completely uncontested information from the record before it into the computer software. The decision further held that "the judge appropriately addressed the recalculation of child support through application of the statutory factors", Slip Opinion at page 6-7, even though both the trial court and the Appellate Division noted that this was a guidelines case, not one where the statutory factors applicable to an off-guidelines matter were at issue. Slip Opinion at 2-3.

Plaintiff filed a timely motion for reconsideration before the Appellate Division (Exhibit A). That motion was denied without comment on June 11, 2015.

Plaintiff filed a timely Notice of Petition for Certification to this court.

Over a month later, on August 3, 2015, plaintiff received a

notice from the Clerk's office dated July 29, 2015, acknowledging the Notice of Petition for Certification had been filed June 26 (Exhibit B). The notice indicated that the supporting brief was to be submitted "within 30 days after the entry of the final judgment in the Appellate Division" (or by July 26, 2015). This date had already passed when the notice was mailed to plaintiff. On August 10, 2015, a notice of deficiency was entered, noting that over 30 days had been since the entry of the Appellate Division's final order.

This application followed.

I. LEAVE TO FILE AS WITHIN TIME SHOULD BE GRANTED.

Plaintiff obviously could not proceed with filing his petition and supporting brief until a docket number had been assigned by the Supreme Court. By the time the notice was received, the 30 day deadline had already passed.

The court is permitted to accept as within time a brief in support of a petition for certification upon a showing of good cause and an absence of prejudice. In Re Johnson, 162 N.J. 485 (1999). It is respectfully asserted that receiving a docket number after the deadline has passed for the filing of a brief constitutes good cause. There would be no prejudice to defendant in this matter being considered on its merits.

II. THE SUPREME COURT SHOULD SUMMARILY REMAND THIS MATTER TO THE APPELLATE DIVISION FOR RECONSIDERATION OF THE APPEAL ON THE PRESENT APPELLATE RECORD BEFORE A NEW PANEL.

When, as here, a review of the record demonstrates that a clear error occurred in the trial court and that the Appellate Division did not consider a party's arguments as presented, either initially or on motion for reconsideration, this Court should remand to the Appellate Division to have the arguments considered by a new panel.

The Supreme Court has utilized this procedure in similar circumstances. See, State v. Daniels, 220 N.J. 97 (2014) (matter summarily remanded to the Appellate Division for reconsideration of the appeal on the present appellate record before a new panel); State in the Interest of A.O., 192 N.J. 474 (2007) (summary disposition is granted, to the end that the matter is summarily remanded to the Appellate Division for reconsideration on the merits); Carlin v. Cornell, 151 N.J. 69 (1997) (matter summarily remanded to the Appellate Division for reconsideration); Connaghan v. Connaghan, 107 N.J. 82 (1987) (summarily remanded to the Appellate Division for reconsideration of its judgment); State v. Burbic, 105 N.J. 513 (1986) (matter summarily remanded to the Appellate Division for reconsideration on the merits).

Conclusion

The system has not functioned in a fair or just manner. It took almost four months for the trial court to enter an initial order requesting additional information. It then took another four months before an order was entered, and that order misread completely uncontested data from the court's file. Plaintiff filed an appeal seeking a remand to correct this error. The Appellate Division mischaracterized his argument on appeal in its decision and then denied without comment his application for reconsideration. He then sought review from this court and did not receive a docket number from the clerk's office until after the deadline to file his brief had already passed. Our system should not work this way. This is the court of last resort.

It is respectfully requested that the petition for certification be granted insofar as necessary to establish the jurisdiction necessary to remand this matter to the Appellate Division for consideration of the merits of the argument plaintiff presented and, ultimately, the correction of the error in the information provided to calculate support on the guidelines.

Respectfully,

David Perry Davis, Esq.

Cc: Prasad Kummarapurugu *(Via PDF)*
Padmini Thota *(By regular and certified mail, RRR)*

SUPREME COURT OF NEW JERSEY

MARK NEARY
CLERK

GAIL GRUNDITZ HANEY
DEPUTY CLERK



OFFICE OF THE CLERK
PO BOX 970
TRENTON, NEW JERSEY 08625-0970

July 29, 2015

TO: DAVID PERRY DAVIS PC - DAVID PERRY DAVIS

SUBJECT: PRASAD KUMMARAPURUGU V. PADMINI THOTA DOCKET NUMBER 076227

A notice of petition for certification from the judgment of the Appellate Division in A-003656-13 was received by this office on 06/26/2015. It has been assigned the above docket number, which must appear on all papers submitted.

Your notice satisfies Rule requirements and has been filed.

ATTENTION PETITIONER:

In addition to the above, petitioner must submit an original and three copies of a petition for certification in compliance with R. 2:12-7 and R. 2:12-4, together with four copies of their Appellate Division briefs and appendices, within 30 days after the entry of the final judgment in the Appellate Division.

(SEE NEXT PAGE OF THIS NOTICE FOR IMPORTANT REMINDERS REGARDING BRIEF FORMATTING.)

TAKE NOTICE THAT the failure to file timely briefs may result in the dismissal of the action. (see 104 N.J.L.J. 73 (July 26, 1979)). Any extension of time must be requested prior to the due date of the brief(s).

Pursuant to R. 2:12-5, petitioners in civil actions must deposit \$300 with the Clerk of the Court to answer the costs of the petition, if denied, or the appeal, if certification is granted. This sum must be deposited within 30 days of the submission of the notice of petition for certification.

ATTENTION RESPONDENTS:

Within 15 days of the filing of the petition for certification, respondents must file an original and three copies of either a Supreme Court respondent's brief or a letter relying on the brief filed with the Appellate Division.

In addition, Respondents must forward four copies of their briefs and appendices filed with the Appellate Division. (see R. 2:12-8). Any extension of time must be requested prior to the due date of the briefs.

(SEE NEXT PAGE OF THIS NOTICE FOR IMPORTANT REMINDERS REGARDING BRIEF FORMATTING.)

TAKE NOTICE THAT the failure to file timely briefs may result in the suppression of respondent's brief(s) and the Court may dispose of the matter solely based on the petitioner's papers.

PLEASE SEE THE NEXT PAGE FOR IMPORTANT INFORMATION REGARDING DEFICIENCIES

ADD
RECON MOTION
AS EXHIBIT
A + denial
order from
APP DIV

B

NOTICE TO ALL PARTIES

Brief Format

The format requirements of Rule 2:6-10 apply to all briefs filed in the Supreme Court. Briefs shall have no more than 26 double-spaced lines of text per page. Each line may have no more than 65 characters, including spaces. Type or font size should be the equivalent of 10-pitch pica. Margins must be no smaller than one inch, top and bottom, left and right.

Footnotes must use the same type size as the main text. They may be single-spaced. Please note, however, that the Court strongly discourages the use of footnotes.

The Court understands that computerized fonts can generate legible type styles that are smaller than the sizes called for by the Rule. In addition to legibility, the format requirements are intended to keep submissions to the Court uniform and the actual length of briefs within the limits of the appropriate Rules. For that reason, parties using proportional fonts with more than sixty-five characters, including spaces, per line will have their briefs rejected by the Clerk's Office. Other format violations (margins, lack of double-spacing, etc.) will similarly result in rejection of the brief.

Brief Deficiencies

Briefs submitted by any party that do not comply with the appropriate sections of R. 2:6 or R. 2:12 shall be marked deficient. A notice of deficiency will be sent to the attorney. Failure to correct deficiencies may result in the dismissal of the petition for certification or the suppression of the respondent's brief, as appropriate.

Following is a list of common deficiencies:

1. Omission of the notice of petition for certification or cross-petition for certification;
2. Omission of Appellate Division opinions or orders;
3. Omission of transcript of oral opinion of trial court when it is not included in the Appellate Division appendix;
4. Omission of Appellate Division briefs and appendices;
5. Illegibility of briefs, appendices or other documents in the record, including Appellate Division briefs and appendices.
6. In excessive sentence cases, the omission of the indictment; judgment of conviction; presentence report; plea, sentencing and Appellate Division oral argument transcripts, and the Appellate Division order of disposition.

Any questions related to this matter should be referred to KIM D LOVETT at (609) 292-4839.

c. Padmini Thota, Pro Se