

ORDER ON EMERGENT APPLICATION

GAIL WEINSTEIN,

Plaintiff-Respondent,

vs.

BARRY WEINSTEIN,

Defendant-Appellant.

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO.

MOTION NO.

PART: G

JUDGE(S) :KEEFE

COLLESTER

EMERGENT APPLICATION

FILED: MARCH 23, 2000

ANSWER(S) FILED: MARCH 23, 2000

for respondent

By: David Perry Davis

attorney for appellant

By: Edward Fradkin, attorney

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS 27th DAY OF APRIL, 2000, HEREBY ORDERED AS FOLLOWS:

EMERGENT APPLICATION FOR	GRANTED	DENIED	OTHER
EMERGENT RELIEF FROM ORDER OF	(X)	()	(X)
INCARCERATION FOR FAILURE TO			
PAY SUPPORT ENTERED ON MARCH			
17, 2000			

SUPPLEMENTAL:

Leave to appeal is granted. The order of March 17, 2000 is reversed on the ground that the trial court failed to determine whether defendant has the ability to pay all or part of the support arrears. We note that on March 7, 2000, a Superior Court judge, other than the judge who conducted the subject hearing, determined that defendant was indigent for the purpose of prosecuting civil litigation that he filed in Monmouth County as a plaintiff. Defendant shall be released from custody on condition that he appear before Judge Hayser on Friday, March 31, 2000 at 1:30 p.m. for the purpose of a plenary hearing to determine defendant's ability to pay the outstanding order of support.

Defendant shall file a Case Information Statement (see Appendix V of the Rules

Governing the Courts) with the court and serve a copy of same on his adversary no later than 4:00 p.m., Wednesday, March 29, 2000. If the plenary hearing can not be completed on March 31, the court may continue the matter another date and time convenient to the court. There shall be no enforcement of the support order until the plenary hearing has been concluded and an order entered, unless defendant fails to appear at the March 31 hearing, or fails to appear at dates established by the trial court continuations of same.

FOR THE COURT:

JOHN E. KEEFE, J.A.D.