

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION, FAMILY PART  
OCEAN COUNTY DOCKET NO. FM-15-990-00-N

AMELIA MANYA EMILY ORT, )  
 )  
 )  
 Plaintiff, )  
 )  
 ) TRANSCRIPT  
 v. )  
 ) OF  
 ABRAHAM ORT, )  
 )  
 ) MOTION  
 Defendant. )  
 )

Place: Ocean County Courthouse  
125 Washington Street  
Toms River, NJ 08754

Date: September 15, 2017

BEFORE:

THE HONORABLE VALTER H. MUST, J.S.C.

TRANSCRIPT ORDERED BY:

DAVID PERRY DAVIS, ESQ., (Law Office of David Perry Davis)

APPEARANCES:

JOHN P. PAONE, ESQ., (Paone, Zaleski & Murray)  
Attorney for Plaintiff

DAVID PERRY DAVIS, ESQ., (Law Office of David Perry Davis)  
Attorney for Defendant

Transcriber, Karen English  
**Karen English Transcription Svc.**  
P.O. Box 1276  
Island Heights, NJ 08732  
(732) 255-1247 - Fax (732) 255-1366

Electronically Sound Recorded  
Recorded by: Helen Kulberda

I N D E X

<u>MOTION</u>	<u>PAGE</u>
By Mr. Davis	5
Reply by Mr. Paone	16
Response by Mr. Davis	24
Decision By The Court	33

1 THE COURT: This is in the matter of Ort  
2 versus Ort, FM-15-990-00N.  
3 Counsel, please place your appearances on the  
4 record.  
5 MR. PAONE: Good morning, Your Honor. John  
6 Paone from the law offices of Paone, Zaleski and  
7 Murray, 146 Green Street, Woodbridge, New Jersey on  
8 behalf of the plaintiff and cross-movant, Amelia Manya  
9 Emily Ort, and Mrs. Ort is with me this morning.  
10 THE COURT: Okay.  
11 MR. DAVIS: Good morning, Judge, and may it  
12 please the Court, David Perry Davis on behalf of the  
13 defendant and moving party, Abraham Ort.  
14 THE COURT: Very well.  
15 I don't have the -- the tentative.  
16 COURT CLERK: I'll do another one.  
17 THE COURT: Okay.  
18 MR. PAONE: I can give you mine, Your Honor.  
19 COURT CLERK: I have it.  
20 THE COURT: That's okay. I'll get it. I  
21 know what it is anyway.  
22 I'm assuming, Mr. Perry, your client is  
23 objecting to the tentative; is that correct?  
24 MR. DAVIS: Mr. Davis, but yes, Judge.  
25 THE COURT: Oh --

1 MR. DAVIS: My client did object, but we sent  
2 in a three-page letter outlining the issues that we  
3 plan to address at oral argument.

4 THE COURT: I didn't get it.

5 COURT CLERK: (Indiscernible.)

6 THE COURT: That's it?

7 COURT CLERK: Yeah.

8 THE COURT: Why didn't I see it?

9 COURT CLERK: Here.

10 THE COURT: Okay.

11 MR. DAVIS: If Your Honor --

12 THE COURT: I'll hear you.

13 MR. DAVIS: If Your Honor feels it would be  
14 helpful, we could certainly --

15 THE COURT: No, no. That's okay.

16 MR. DAVIS: -- take a break for a moment  
17 while you read.

18 THE COURT: I'll hear you. There's nobody  
19 else in the courtroom so we've got all -- all the time  
20 in the world. Go ahead.

21 MR. DAVIS: Just so the Court could -- could  
22 review it and the basis for the request for oral  
23 argument.

24 THE COURT: That's fine. Go ahead.

25 MR. DAVIS: Judge, the tentative decision

1 states that many of these issues have been litigated  
2 before. That -- that -- the letter sets forth that  
3 they really haven't. The application is based, in  
4 large part, on an affidavit that we discovered from Ms.  
5 Ort that had been completed in 2016. So, the last time  
6 there was a trial court proceeding was in 2013. So,  
7 that affidavit could not have existed, nor could the  
8 proofs that were contained in it existed.

9 Well, I don't know if -- I don't want to just  
10 go through and read the letter that I sent into -- to  
11 the Court, but obviously, we object to the application  
12 of the fugitive disentitlement doctrine, the tentative  
13 didn't state it in exactly those terms, but that's what  
14 Your Honor was doing. This issue was briefed by both  
15 counsel, and we set forth numerous cases that would  
16 explain why it is not appropriate here, specifically  
17 that the doctrine has never been applied when the  
18 application is to review the support obligation itself  
19 and the underlying basis for the warrant. The  
20 Appellate Division actually had quoted Judge Jones, who  
21 had ruled that.

22 On page 2 of the letter, I note that Judge  
23 Jones noted at oral argument that in his experience, he  
24 had not seen the doctrine used in a child support case  
25 to prevent the payor from seeking a reduction even if a

1 warrant had been issued.

2 We have a change in circumstances here that  
3 no one is denying occurred, in that all the children  
4 are now emancipated since the last time we were in  
5 court. So this began as what I thought would be a  
6 relatively simple motion to just come in and to affirm  
7 that there was no ongoing support obligation, and then  
8 as we set forth in the brief, when there is an  
9 emancipation event, the Court can -- must retroactively  
10 adjust child support to the date of the emancipation  
11 events. So, it became a matter of looking what the  
12 support obligation should be and what the final  
13 judgment would be.

14 THE COURT: Where is your client?

15 MR. DAVIS: My client is in the Middle East,  
16 Judge, in Jerusalem.

17 THE COURT: And I assume you've got authority  
18 -- you've spoken to him. You have authority to proceed  
19 on his behalf?

20 MR. DAVIS: I'm his attorney. Yes, Judge.

21 THE COURT: Yeah? Okay. You --

22 MR. DAVIS: I spoke to him on the way here.  
23 Judge, as we -- as I went through the record  
24 to try to determine what the correct number should be,  
25 this issue of -- and I'm assuming that the Court has

1 read the documents and is aware of --

2 THE COURT: I've read this entire file. It's  
3 --

4 MR. DAVIS: Good.

5 THE COURT: -- amazing.

6 MR. DAVIS: Good. The transfer of the East  
7 16th Street property that -- the transfer of title and  
8 Ms. Ort beginning to receive those rents was a  
9 triggering event to change the child support obligation  
10 from \$11,000 per month to 300 per week.

11 THE COURT: And I assume you read her  
12 opposition and the reasons why she believes that it  
13 wasn't a triggering event, because it not only required  
14 the transfer of the title of the property and give her  
15 access to the rents, which she was not getting because  
16 of what she alleged to be fraudulent actions by your  
17 client creating these liens against the property, which  
18 continues to be litigated in New York and causing her  
19 hundreds of thousands of dollars of legal fees. So,  
20 and --

21 MR. DAVIS: Your Honor, that was one of the  
22 big discoveries that we came across when we were  
23 preparing to file this motion, is that, in fact, Ms.  
24 Ort had title transferred in 2007. This had never been  
25 revealed in a New Jersey court. In fact, the last --

1 THE COURT: Your -- wait. Your client --  
2 you're saying your client was unaware of the transfer  
3 of the title?

4 MR. DAVIS: No. Mrs. Ort -- my client was  
5 unaware that Mrs. Ort had done this.

6 THE COURT: I find that incredible. I find  
7 it incredible in -- and especially in view of  
8 everything I've read here, I don't think there's a  
9 single thing that I can believe that your client has  
10 ever said.

11 MR. DAVIS: Judge, --

12 THE COURT: I'm just being honest with you  
13 here. I've read this file. And it's one of the most  
14 amazing cases I've ever seen. Why your client was not  
15 prosecuted for criminal contempt of court is probably  
16 because it's so hard to do.

17 MR. DAVIS: Judge, as far as people being  
18 disingenuous in this case, during the last motion  
19 hearing, I was not counsel for Mr. Ort at that time.

20 THE COURT: I understand that.

21 MR. DAVIS: But the transcript reveals that  
22 Judge Jones specifically asked of then counsel, "Did  
23 the plaintiff ever receive title, plaintiff and the  
24 children ever receive title of East 16th Street?" And  
25 Mr. Ort's prior counsel said, "No."

1 And Mr. Paone was sitting at counsel table,  
2 and I'm not in any way disparaging him. He can only go  
3 by what his client has informed him of, but there was  
4 complete silence. That should have been a, Your Honor,  
5 excuse me, I don't want to interrupt, but the answer to  
6 that question is yes. Ms. Ort received title back in  
7 2007.

8 Did she ever receive the rents? Well, Judge,  
9 the levy was vacated in 2008. The levy in favor of Mr.  
10 Martin was vacated in 2008.

11 THE COURT: But can your client say that his  
12 brother was paying those rents over to his -- to the  
13 plaintiff?

14 MR. DAVIS: Judge, my client was --

15 THE COURT: I don't have any certification in  
16 that regard. In fact, there's evidence to the contrary  
17 that your client was receiving that money in violation  
18 of the court order.

19 MR. DAVIS: Judge, the only evidence to the  
20 contrary that would support that was that there was a  
21 notation that said "distribution to partners", if  
22 that's what Your Honor is referring to. Distribution  
23 to the partner --

24 THE COURT: That's what they allege. There's  
25 no opposition to that. Okay.

1 MR. DAVIS: Legally, it was still -- a  
2 distribution to a partner is -- still legally implies  
3 Mr. Ort.

4 THE COURT: I understand.

5 MR. DAVIS: However, it was levied on. Mr.  
6 Phillip (phonetic) Ort was obeying a judicial order  
7 from New York, a levy. He had no discretion to say,  
8 oh, I'll give it to Mrs. Ort instead. He did not have  
9 the power to do that, and this is the huge question  
10 here is why did Mrs. Ort not go into the court in front  
11 of a judge that was --

12 THE COURT: She shouldn't have had to.

13 MR. DAVIS: Okay.

14 THE COURT: She shouldn't have had to do all  
15 the things that she was caused to do as a result, from  
16 what I gather, from the actions of your client. And  
17 I'm not going to relitigate that. I read the file, and  
18 again, that's very -- a lot of these issues were before  
19 the arbitration panel.

20 MR. DAVIS: Well, Judge, this has never been  
21 litigated. It was never -- it was unknown. Obviously,  
22 from the transcript at oral argument and from the  
23 specific representations of Mrs. Ort in her Appellate  
24 pleadings, there -- this fraud that she had not  
25 received title and had no right to receive the rents

1 was carried on for a decade. Mrs. Ort needed solely to  
2 ask the judge in New York, Judge -- not only stop the  
3 levy against -- that's paying to Mr. Martin, make that  
4 levy payable to me. If she had done that --

5 THE COURT: She shouldn't have to do that.

6 MR. DAVIS: Okay, Judge, but that doesn't  
7 answer why she didn't. The only reason for why she  
8 didn't -- the only explanation from this record is that  
9 she was receiving money from the children's custodial  
10 accounts that she never would have been able to touch  
11 otherwise and she continued to accrue this judgment.

12 THE COURT: And your client is asking for a  
13 credit against what the children got from their own  
14 money, correct?

15 MR. DAVIS: That's not one of the credits  
16 that he's asking for, Judge.

17 THE COURT: I -- that's the way I read it.

18 MR. DAVIS: Judge, we gave you a very  
19 detailed listing of the credits. We gave one with the  
20 initial papers, and we recognized in the cross-motion,  
21 there were a couple of valid points, and we changed the  
22 credit. But even if Your Honor accepts the uncontested  
23 credits, Mr. Ort owes no money. That is -- that cannot  
24 be contested based on the credits that --

25 THE COURT: They did contest it.

1 MR. DAVIS: I believe it was exhibit Z, with  
2 the reply certification where we went through each and  
3 every amount. Is there any question but that he's  
4 entitled to the funds that were paid from Grand Street?  
5 No. The arbitration decision said that he was. That's  
6 \$239,664 as a credit.

7 Is there any -- well, I suppose there's a --  
8 there was no denial on this key point, Judge, but my  
9 client said, who pays \$50,000 to have a condo renovated  
10 that you're going to sell when you don't even know if  
11 the new owner is going to like your design. Mrs. Ort  
12 had said, I had to do that to place the property on the  
13 market. I could not --

14 THE COURT: And they answered that. They did  
15 answer that; didn't they in their papers?

16 MR. DAVIS: No.

17 THE COURT: As to why they did that. That  
18 the place was in shambles.

19 MR. DAVIS: Right. Fifty --

20 THE COURT: Well, again, are you -- you want  
21 the Court to take judicial notice of what's reasonable?

22 MR. DAVIS: No, I don't, Judge. We gave you  
23 -- I'm sorry, Judge. I didn't mean to cut you off.

24 THE COURT: I understand. I heard it. You -  
25 - okay. I --

1 MR. DAVIS: What we --

2 THE COURT: I'm aware of that point. You can  
3 move on.

4 MR. DAVIS: We gave you a certification from  
5 a realtor who said the average amount of repairs is  
6 \$2,000. What -- what makes sense here is that there  
7 was a side deal. It's -- and this was never denied,  
8 Judge. This has never been denied. The -- how is it  
9 that someone can come into court and say I must spend  
10 \$50,000 to make the condo marketable, when, in fact,  
11 they didn't spend that money until two months after the  
12 sale?

13 There -- there's -- obviously, Judge, what  
14 goes on here is that Mr. Ort gets a credit for the sale  
15 price. So anything we can get out of the sale price,  
16 he doesn't get. So to cut a side deal where a certain  
17 amount is paid to Mrs. Ort and then 50,000 is taken off  
18 the price, puts -- directly puts \$50,000 in her pocket.  
19 There's no other reasonable explanation in light of the  
20 certification from the realtor and the comparable sales  
21 for people that did put in 2 or \$3,000, which were in  
22 line with the sale price that -- that was received by  
23 Mr. Ort.

24 Judge, the next issue is Grant Street rent.  
25 Whether or not there -- why there was a delay of 13

1 months before the condo was sold. The fair market  
2 value of that rental would have been about \$2,600 per  
3 month. He's entitled to a credit for the time that it  
4 was sitting there, actual or imputed rent. And I think  
5 that it must have been actual rent.

6 The maintenance arrears that never would have  
7 accrued had the property been sold. I'm going through,  
8 Judge, what we had. I'm sorry. It was exhibit AA with  
9 the reply certification. If you add up all the credits  
10 that he's entitled to and then you go back and you say  
11 that -- and we calculate emancipation dates for the  
12 children, Mr. Ort is owed somewhere between -- Mr. Ort  
13 is owed money. That's the bottom line, whether it's  
14 \$300,000 or not.

15 And that's before we take into account the  
16 Regina Ort Trust mortgage that is held against it that  
17 my client is the beneficiary of. With interest, that  
18 mortgage is worth, I think it's \$800,000. We gave the  
19 exact number in a breakdown in a mortgage calculator in  
20 our papers. But that more than outweighs any of the  
21 arrears that have been discussed.

22 THE COURT: Anything else?

23 MR. DAVIS: Judge, we have a change in  
24 circumstances here. We are asking the Court to  
25 recognize that the warrant should be vacated. The

1 fugitive disentitlement doctrine has never been applied  
2 under those circumstances. The Court would be forever  
3 foreclosing review to Mr. Ort. He cannot comply with  
4 an order.

5 No one has -- he has alleged specifically, I  
6 do not have \$100,000. He has said that specifically.  
7 He has given you all the documentation required by our  
8 court rules to establish that. That fact has not been  
9 contested. It has not been opposed. So for there to  
10 be a \$100,000 purge amount, when there is no allegation  
11 in the record -- not even proofs, there's no allegation  
12 in the record that he has that kind of money, I submit  
13 is -- is error, and the warrant should be vacated as  
14 the children are all now emancipated.

15 Finally, Judge, because the children are all  
16 emancipated, there is no child support obligation. And  
17 all the public policies that justify the entry of a  
18 warrant no longer exist. As a matter of law, as the  
19 Supreme Court stated in Pasqua v. Council, there are  
20 different public policy considerations behind an  
21 ongoing child support obligation and what is now a  
22 common debt. It doesn't mean it doesn't have to be  
23 paid, but the Court should not be applying a warrant  
24 based on a number that nothing in the record says Mr.  
25 Ort could pay.



1 THE COURT: Very well. Anything else?  
2 MR. DAVIS: I would wait for a rebuttal after  
3 Mr. Paone gives his presentation --  
4 THE COURT: Very well.  
5 MR. DAVIS: -- but nothing else at this time,  
6 Judge.  
7 THE COURT: Mr. Paone.  
8 MR. PAONE: Just very briefly, Your Honor,  
9 because I can clearly see that the Court has read the  
10 voluminous file that you have in front of you. I have  
11 the pleasure now --  
12 THE COURT: Oh, that's only part of it.  
13 MR. PAONE: I understand that. I've had --  
14 THE COURT: It's a very small part of it.  
15 MR. PAONE: I know. I've had the pleasure of  
16 being in this case for 17 years, and I've been the only  
17 attorney for Mrs. Ort.  
18 You know, you've got to ask yourself why  
19 would an arbitration panel craft an order that says,  
20 you know, you get \$11,000 a month child support, but if  
21 title goes to you, it only gets to be \$300 a month.  
22 Why would that be? Well, fortunately we have their  
23 findings of facts and you see that. It was very clear  
24 that the problems with Mr. Ort preceded their decision.  
25 And so it was going to be a tough slay (phonetic) for

1 my client to get the deed into her name. She  
2 understood that was not going to be easy. And then  
3 even getting the deed into her name was going to be  
4 problematic, because of the Jeffrey Martin situation,  
5 which was very clever, of course, but not disclosed to  
6 anyone. And no one yet accounts for that here today.  
7 No one accounts for the hundreds of thousands of  
8 dollars in fees and costs generated by that litigation  
9 and how we get to this point.  
10 I think the most important --  
11 THE COURT: Correct me if I'm wrong. Wasn't  
12 part of the arbitration award, that at the time when  
13 there was this lien against the property, that if he  
14 did not transfer the property free and clear, the  
15 arbitrator made a finding that that would constitute  
16 fraud?  
17 MR. PAONE: Well, yes, except for the fact  
18 that no one knew about the Jeffrey Martin lien.  
19 THE COURT: Okay.  
20 MR. PAONE: But the arbitrators did say,  
21 because there were other liens -- you heard now today,  
22 for example, oh, there's this mortgage. It's a  
23 mortgage not recorded anywhere, but there's a mortgage.  
24 The arbitrators knew --  
25 THE COURT: But didn't your client -- didn't

1 the arbitration award account for that mortgage?

2 MR. PAONE: It did. It addressed that issue,  
3 as well. It addressed the fact that, hey, if she does  
4 not get clear title, there are going to be other  
5 ramifications here. This was all out there. And so,  
6 what's happening here today is, because you're probably  
7 the seventh or eighth judge on this file, it's easy to  
8 say let me throw these things up and have you  
9 relitigate them. The thing you've got to know is this,  
10 not one penny has affirmatively been paid in child  
11 support since the original judgment was entered. And I  
12 go back even before the judgment by Judge Goldman in  
13 2008 with the bench warrant, the judgment in 2012 for  
14 the 561, the order entered by Judge Jones in 2013,  
15 which we opposed. We think Judge Jones got it wrong by  
16 saying, I don't care what you owe. I'm going to let  
17 you out if you just pay \$100,000. And yet, they didn't  
18 appeal that.

19 Here we are now four years later and the  
20 argument is you know, well, when we do our math, we  
21 think we've actually paid the 100,000, and therefore,  
22 we're back in business.

23 And then finally, there's the argument here  
24 -- he doesn't submit himself to the Court. This is not  
25 somebody who is sitting in a work house here, who is

1 coming to Your Honor and saying Your Honor, you've got  
2 to change the purge amount. I can't pay. Here's a guy  
3 who's got the benefit of not appearing before the  
4 Court, continuing to pummel my client with litigation.  
5 The only thing you can do, as you've done here in your  
6 tentative decision is to award fees, but unfortunately,  
7 not one penny of those fees have been paid, and so,  
8 here we are.

9 The system doesn't work perfectly,  
10 unfortunately, and while it's doing the best it can,  
11 when you're dealing with matters such as this, if Mr.  
12 Ort wants his day in court, he knows how to get it. It  
13 starts with him being here. And it starts with him  
14 addressing the bench warrant and the purge amount. And  
15 until he does that, rather than paying for attorneys in  
16 New York and New Jersey and all other kind of  
17 machinations, I think Your Honor got it right, and we  
18 rest with regard to the tentative.

19 THE COURT: Now, there was an issue that came  
20 up regarding this mortgage. They brought it up that  
21 your client never -- that he was never given credit for  
22 that mortgage. If I remember correctly, did your  
23 calculations in coming to your number account for that?

24 MR. PAONE: The Regina Ort mortgage is what  
25 he is raising and that issue was raised before the

1 arbitrators.

2 THE COURT: I understand that.

3 MR. PAONE: And it was -- and it has nothing  
4 to do with regard to any of the calculations, because  
5 th issue with regard to that was what is the relevance  
6 of that in terms of this marital estate and the like.

7 THE COURT: I understand, but if --

8 MR. PAONE: So, that got resolved there.

9 THE COURT: If your -- but my question is,  
10 let's say he owes whatever number it is in child  
11 support, and he has some money coming from her for this  
12 mortgage, wouldn't he be entitled to a credit against  
13 whatever he owes in support?

14 MR. PAONE: And our position would be no.  
15 You know, and again, we'd be happy to relitigate that  
16 if we ever got to that point, but at this point the  
17 answer would be no. No more than, you know, the  
18 Jeffrey Martin lien somehow encumbers what she's  
19 entitled to. The end of the -- at the end of the day,  
20 the problem here, unfortunately, is the fact that this  
21 is a man who had the ability to pay, and all he needed  
22 to do was just cooperate with the orders. And we  
23 shouldn't have to go running after him to have titles  
24 transferred and things like that.

25 THE COURT: Now, you continue to say that

1 your client hasn't received a single penny --

2 MR. PAONE: That's correct.

3 THE COURT: -- in child support. Has she  
4 received other things of value?

5 MR. PAONE: Yes.

6 THE COURT: They -- they say should be  
7 charged against his child support.

8 MR. PAONE: That's right. Well, that's  
9 right. In terms of some of the properties, for  
10 example, on Grand Street, we provided the accounting  
11 and provided that information to the Court in terms of  
12 what she netted and how that was applied to reduce the  
13 child support amount.

14 THE COURT: How much money has she actually  
15 received? They indicate in their papers that she's  
16 received value of approximately a million and a half  
17 dollars.

18 MR. PAONE: No, that's nowhere --

19 THE COURT: Where are they getting that  
20 number from?

21 MR. PAONE: Yeah. That's a pie in the sky  
22 number that doesn't exist.

23 THE COURT: Okay.

24 MR. PAONE: My client has received money. I  
25 don't have the hard number in front of us, but suffice

1 to --

2 THE COURT: But that was equitable  
3 distribution.

4 MR. PAONE: Some of it was -- some of it was  
5 equitable distribution, but I'm talking now with regard  
6 to the monies that were credited toward child support.  
7 Those credits have always been provided to the Court,  
8 and in arriving at the judgment figures, those  
9 deductions have been made. So, he's already received  
10 credit for that.

11 There is nothing magical out there that  
12 somehow or another Mr. Ort is going to be able to rely  
13 upon and say, oh geez, look at that. That gets me out  
14 of my \$100,000 purge number. That just doesn't --  
15 doesn't exist. He needs to affirmatively come forward  
16 and pay what he owes. It is actually -- it --

17 THE COURT: Now --

18 MR. PAONE: Go ahead.

19 THE COURT: Here's another question. Your  
20 client agrees, does she not, that there came a time  
21 that the children were emancipated?

22 MR. PAONE: Yes.

23 THE COURT: Did she have any obligation to  
24 modify the order as to child support to allow him to  
25 receive those credits? Why did he have to file the

1 motion to have the children emancipated?

2 MR. PAONE: No, he didn't have to do that.  
3 In fact, what happened was, when we calculated what was  
4 owed, we already dealt with the fact that the children  
5 were emancipated.

6 THE COURT: Well, they're -- well, they're --

7 MR. PAONE: Now, remember there are 13.

8 THE COURT: The argument I anticipate is,  
9 look, Judge, you're whacking me with attorneys fees.  
10 I'm the one who filed the motion. I had to file the  
11 motion to get the emancipation, so why should I have to  
12 pay the fees?

13 MR. PAONE: Yeah. I don't think it --

14 THE COURT: How do you answer that?

15 MR. PAONE: Yeah. I don't think that's -- I  
16 don't think that accurately reflects what happened. I  
17 believe, ultimately -- keep in mind, there were 13  
18 children, and there's a big story almost as it relates  
19 to all of them. At one time, there was a guardian that  
20 had to be appointed for the children.

21 THE COURT: I saw that.

22 MR. PAONE: There's a part of this case that  
23 actually is reported now where one child came to court  
24 to ask to be emancipated --

25 THE COURT: I saw that.

1 MR. PAONE: -- over Mr. Ort's objection.

2 THE COURT: Yes.

3 MR. PAONE: Even though he wasn't paying any  
4 child support. Every child that was emancipated, part  
5 of this calculation with regard to child support, we  
6 provided that cutoff, so to speak, so that there's no  
7 money here that's being charged against Mr. Ort that  
8 somehow or another is an overcharge or some credit that  
9 he might receive, because of some argument that geez, a  
10 child needs to be retroactively emancipated. That is  
11 not the case. And I don't even think that's their  
12 argument. I think their argument is that somehow  
13 there's money out there that Mrs. Ort is receiving,  
14 will receive and I think right now, they're trying to  
15 sort of make it a gray area so that you're blinded  
16 between what is equitable distribution and what was his  
17 rightful child support obligation.

18 THE COURT: Very well.

19 MR. DAVIS: Judge --

20 THE COURT: I'll hear you, Mr. Davis.

21 MR. DAVIS: And as far as the funds that have  
22 been received by Mrs. Ort, we have \$167,000 that was  
23 credited to him from the sale. It should have been  
24 239,000, but at least \$167,000 was paid toward his  
25 arrears.

1 We then have \$300,000 that was received from  
2 the back rents on East 16th Street and there was  
3 another -- it was initially 252,000. There's been at  
4 least \$50,000 more paid from that. And the 1.5 million  
5 is set forth and it's detailed in exhibit E. That's  
6 money from custodial accounts that my client's family  
7 and my client set up to benefit his children. And  
8 those, because Mrs. Ort had not redirected the levy,  
9 which would have caused her to receive sometimes \$4,000  
10 a month. In the worst months after the crash, she  
11 would have gotten \$4,200 in a month. Instead, she went  
12 and took 11,000 that month out of the children's  
13 custodial accounts and got the accruing judgment  
14 against Mr. Ort. Financially, that's a win/win  
15 situation for her.

16 Judge, the mortgage -- the validity of the  
17 mortgage was again affirmed by Mrs. Ort in exhibit S on  
18 page 4, paragraph 14. She acknowledges that there is a  
19 valid mortgage against this property. The mortgage is  
20 an asset. If the Regina Ort Trust perhaps could pledge  
21 \$100,000 of that mortgage, would that satisfy the Court  
22 as far as a purge amount? I would really like to see  
23 this case come to a resolution. I've only been in it  
24 for a couple years, but I don't want to be in it 17  
25 years from now either. And I think that we should be

1 able to get there.

2 THE COURT: How much -- how much money has  
3 your client voluntarily paid in child support?

4 MR. DAVIS: Well, Judge, there's been  
5 \$252,000 from the Grand Street sale, \$300,000 from back  
6 rent --

7 THE COURT: That wasn't -- that wasn't as  
8 child support.

9 MR. DAVIS: Judge, the Court's indicated --

10 THE COURT: How much have you been paid by  
11 the defendant?

12 MR. DAVIS: Zero. Absolutely zero, Judge.

13 THE COURT: So you -- you're doing this pro  
14 bono?

15 MR. DAVIS: Judge, I was -- my sentence was  
16 not done. Members of the community, there's several of  
17 them here behind me today have passed the hat. And  
18 Judge, let me be clear. I spoke with some of them this  
19 morning. And I let them know what an appeal was going  
20 to cost. And rather than come up with \$5,000 as a  
21 retainer towards an appeal, that's a number even though  
22 Mr. Ort doesn't have it himself, that the community  
23 would come up with as purge amount.

24 Judge, I -- Your Honor started off --

25 THE COURT: Okay.

1 MR. DAVIS: -- asking how much he's paid. It  
2 has never been contested from the first days of the  
3 arbitration ruling, from the first -- no one has ever  
4 --

5 THE COURT: That's not -- believe me, that's  
6 not the sense I got from reading all these papers. I  
7 understand your argument, but that's not the sense I  
8 got.

9 MR. DAVIS: Well, just so I can be clear for  
10 the record, Judge, my client is a Talmudic scholar. He  
11 has been his whole life.

12 THE COURT: I understand that.

13 MR. DAVIS: He has never had a traditional  
14 job.

15 THE COURT: I understand that.

16 MR. DAVIS: What he provides is a tremendous  
17 -- tremendously valuable service to -- to the people  
18 that study with him.

19 THE COURT: I'm not denying that.

20 MR. DAVIS: But when Your Honor says --

21 THE COURT: Believe me, I was born and raised  
22 in Lakewood, so --

23 MR. DAVIS: Okay.

24 THE COURT: I really understand the community  
25 and their -- their sense of dedication to the religion.

1 I understand that.

2 MR. DAVIS: Then --

3 THE COURT: But again, people make their  
4 choices and -- and he had many assets available to him.

5 MR. DAVIS: What assets? Judge, nobody has  
6 alleged that.

7 THE COURT: And he -- he owned --

8 MR. DAVIS: That's outside the record.

9 THE COURT: Okay.

10 MR. DAVIS: Judge, no -- nobody --

11 THE COURT: I read the file. I read the  
12 arbitration file. Those -- I'm not going to change the  
13 findings that were unappealed that were found by the  
14 arbitration board and confirmed by court order.

15 MR. DAVIS: Judge, I'd just ask you to adhere  
16 --

17 THE COURT: So I'm bound by the facts inside  
18 that opinion.

19 MR. DAVIS: I ask you to be so bound, Judge,  
20 --

21 THE COURT: Okay.

22 MR. DAVIS: -- because what you're saying is  
23 not what the arbitration panel found. When you say has  
24 he spent -- has he paid this money for child support  
25 and at the same time acknowledging that he is a

1 Talmudic scholar and he doesn't have a traditional job,  
2 the value that he produces for the world is not even  
3 what somebody working at Taco Bell -- he doesn't get a  
4 paycheck like that. So, there has been no way for him  
5 to say that.

6 THE COURT: I'm not going to relitigate that.

7 MR. DAVIS: It has never been alleged to the  
8 contrary, Judge. For my client to come --

9 THE COURT: I'm not going to relitigate that.

10 MR. DAVIS: For my client to come up with  
11 \$5,000 toward a purge amount would be not money that's  
12 coming from him. It would be donations from people  
13 that want to see him go forward. I would ask that in  
14 light of the fact there's a question about whether  
15 there should be any arrears, that the 5,000 be held in  
16 escrow, but that a purge amount be set that is in line  
17 with his ability to pay as per the mandate of Pasqua v.  
18 Council and all the case law before and after it going  
19 back to Federbush in the 1950s. A purge amount must be  
20 tied to the ability of the payor -- the obligor to pay  
21 it. He's saying he will pledge up to --

22 THE COURT: And -- and I'm assuming that when  
23 that was said a long, long time ago, that the judge had  
24 a factual basis to set that.

25 MR. DAVIS: I --

1 THE COURT: And that was not appealed and I'm  
2 not going to be the Appellate Division. That purge  
3 amount was not set by me. That was set a long time  
4 ago.

5 MR. DAVIS: And now we have a change in  
6 circumstance in that all the children are emancipated.  
7 We have no current child support obligation, and we  
8 need --

9 THE COURT: That doesn't reopen an  
10 examination of everything that's happened from day one.

11 MR. DAVIS: One thing I'm asking you to  
12 reevaluate, Judge, not everything. At this point, I'm  
13 asking you to evaluate whether or not \$5,000 as a purge  
14 amount would be sufficient in light of the fact that  
15 there is no ongoing child support obligation, combined  
16 with the Regina Ort Trust pledging \$100,000 toward the  
17 arrears. That absolutely is security and a guarantee  
18 that -- that's an appropriate purge amount.

19 THE COURT: It -- it --

20 MR. DAVIS: The only purge amount that this  
21 record would support.

22 THE COURT: Okay. Anything else?

23 MR. DAVIS: Judge, briefly, just from my  
24 notes as Mr. Paone was speaking, these things have  
25 never been litigated. They couldn't have been. They

1 didn't exist. The affidavit didn't -- from 2016 and  
2 the discovery of how much money would have been  
3 received had the levy been redirected as would have  
4 taken one simple motion before a sympathetic New York  
5 judge, they've never been litigated before.

6 And I would ask Your Honor to stay any  
7 portion of the order pending the completion of the  
8 Appellate process that -- that purports to modify the  
9 judgment in any way without also taking into account  
10 the credits that Mr. Ort is entitled to. And I would  
11 ask you to set a purge amount that is in line with Mr.  
12 Ort's ability to pay or his ability to borrow from the  
13 community and to hold that in escrow along with a  
14 portion of the mortgage from the Regina Ort Trust.

15 That's the purpose, Judge. It's not a  
16 vendetta by Mrs. Ort to keep him away from the  
17 community. It should not be the Court expressing  
18 frustration over unclean hands, which do exist on both  
19 sides, Judge. Mrs. Ort is in open violation of the  
20 order to supply a case information statement. That  
21 can't be disputed. If Your Honor wants to look at the  
22 arbitration ruling, what set this case on such a  
23 negative tone was the theft of \$600,000. And the --  
24 that's the arbitration panel. They don't use the word  
25 "theft". They say they find deeply troubling and



1 warranting equitable --

2 THE COURT: I read that. Again, I'm not  
3 going to relitigate that.

4 MR. DAVIS: Okay. Judge, when you start off  
5 a case by stealing \$600,000 that your spouse is  
6 supposed to inherit --

7 THE COURT: I heard you twice now. I'm not  
8 going to relitigate that.

9 MR. DAVIS: Okay. Well, for Your Honor to  
10 apply the doctrine of unclean hands, you have to find  
11 clean hands, and I respectfully submit that the record  
12 does not support that.

13 THE COURT: I hear your argument.

14 MR. DAVIS: The record does not support the  
15 purge amount of \$100,000. Mr. Ort has shown a change  
16 in circumstance, and there should be further  
17 proceedings to determine what his accurate arrears are,  
18 make a payment schedule that would permit that to  
19 happen and not to doom this case to years more  
20 litigation, up to the Appellate Division and then back  
21 here again in a couple of years, I submit, is in no  
22 one's interests under the uncontested -- uncontestable  
23 facts before the Court.

24 THE COURT: Very well. Anything else?

25 MR. PAONE: Nothing further, Your Honor.

1 THE COURT: Okay. I've listened to the  
2 argument of counsel. I've read this extensive file.  
3 It's almost like going back to law school reading it.  
4 It was very interesting. It took me many, many, many,  
5 many hours to read it.

6 The defendant makes an application. Clearly,  
7 there was a change in circumstances on the emancipation  
8 of the children. I agree with that and that opens the  
9 door to the Court reexamining what should happen, and  
10 it has done so.

11 However, one thing that is very troubling to  
12 the Court is that the defendant continues to be in open  
13 contempt of the court. This file is replete with every  
14 judge that has touched this finding that he is in  
15 contempt of court, that -- that he has intentionally  
16 thwarted the Court's attempts to get the children their  
17 rightful support from their father, who apparently had  
18 certain assets at his disposal. There were real estate  
19 assets that he had an interest in with his brother. He  
20 was receiving rents. All these things. There's a long  
21 history that I'm not going to relitigate.

22 But ultimately, a warrant was issued for his  
23 arrest. And the judge, I think it was Judge Goldman --  
24 also I would note, someone who was born and raised in  
25 Lakewood and we understand the community -- but he

1 entered a \$100,000 purge amount. Judge Goldman,  
2 apparently, did that and I -- I'm going to accept that  
3 he did that believing that the defendant had the  
4 ability to pay that amount, and he has not. He has not  
5 attempted to. He did not appeal it. He has made no  
6 application except for the most recent one now years  
7 later to set that aside. I am not going to set that  
8 aside. The warrant will remain. The purge amount will  
9 remain at \$100,000.

10 The defendant has unclean hands, and the  
11 unclean hands of -- I know that the plaintiff also took  
12 self-help steps that were litigated and dealt with in  
13 the arbitration award. I am not going to relitigate  
14 that. I'm not going to bring that up again. I'm  
15 looking at what happened since the last order was  
16 entered. That's really what's behind me -- ahead of  
17 me. I'm not going to change that.

18 So the bench warrant will remain. The purge  
19 amount will remain at 100,000, and I'm also finding  
20 that because there's been such bad faith and unclean  
21 hands, that the defendant, in any further application,  
22 pay that purge amount and appear before the Court to  
23 answer questions as to why he has not lived up to the  
24 obligations that he's been previously ordered to do.

25 Now, as to ongoing support. Clearly, there's

1 been emancipation of the children. The defendant's  
2 child support obligation has come to an end. So, these  
3 arrears are not continuing to accumulate. I have  
4 accepted the accounting provided by the plaintiff that  
5 from what has already been entered as arrears, there  
6 has been an additional \$102,767.17 accumulated in  
7 arrears to the end of his obligation. So, that is his  
8 entire obligation. I find that to be the number, and  
9 I'm entering -- did I -- and I'm entering a judgment as  
10 to that amount on top of whatever other judgments are  
11 out there already. Whether that's ever collectible or  
12 not, and at this point, that's a -- that's for the  
13 plaintiff to determine how she's going to collect that.

14 Here's my question to you, and I believe  
15 defendant makes a good point. I did find that he is in  
16 contempt of court, continues to be. The purpose of a  
17 purge amount and a warrant is to crack the whip so that  
18 he continues to pay. I have said that we know -- we  
19 now know what that number is. Your client has  
20 judgments. Whether she's ever going to collect that or  
21 not is a good question. Why should I continue the  
22 warrant now that I've set a final amount? He may never  
23 come back to the States ever again. You now have to  
24 chase that amount. You may never collect it. He does  
25 not have an ongoing child support obligation. Why

1 should I continue a warrant?

2 MR. PAONE: Well, --

3 THE COURT: Would it be just punitive at this  
4 point?

5 MR. PAONE: No. I think the warrant serves  
6 as the really only means to potentially get him to pay.  
7 Not only with regard to child support, but again, all  
8 the other orders that have been entered as far as  
9 counsel fees and the like. He --

10 THE COURT: But these are all money judgments  
11 now.

12 MR. PAONE: These are -- these are --

13 THE COURT: And my understanding of the  
14 warrants -- and that, you know, we could -- if I were  
15 to get a judgment against him, let's say we had a car  
16 accident, and I didn't have insurance and -- and I'm  
17 not paying it. I say, if you want your money, you come  
18 and get me. You've got a judgment, execute on the  
19 judgment. I couldn't get a warrant from the court to -  
20 - in an aid of that, could I?

21 MR. PAONE: You can only get a warrant if  
22 you're in contempt of court.

23 THE COURT: I know.

24 MR. PAONE: And that's where he found himself  
25 to be and -- and still is, quite frankly, as it relates

1 to satisfying obligations.

2 THE COURT: Because he had ongoing  
3 obligations as to -- continuing and future obligations.  
4 And I am -- I have to say, I'm a little bit troubled,  
5 because at this point, it becomes a money case. He no  
6 longer -- I don't have to worry about him paying child  
7 support into the future. That obligation has ended,  
8 has it not, and I've given you a judgment for the full  
9 amount. Whether you're going to collect past due  
10 amounts or not, that's an issue. There is not going to  
11 be any continuing obligation for -- from what I can  
12 tell, the kids aren't going to college and that type of  
13 thing and have to worry about tuition.

14 MR. PAONE: It's very clear to me, Your  
15 Honor, that this is the basis for the defendant's  
16 application. If the bench warrant is effectively  
17 dissolved, he wins. If the bench warrant is dissolved,  
18 there's no purge amount.

19 THE COURT: Okay. But here's --

20 MR. PAONE: Right? I mean at the end of the  
21 day, Your Honor is indicating that you wouldn't disturb  
22 the purge amount.

23 THE COURT: Well --

24 MR. PAONE: But if there's no bench warrant -  
25 -

1 THE COURT: Here's -- but you know what I am  
2 doing? I am not going to disturb that, but that  
3 portion where I said that he has to personally appear  
4 before me for any future application -- let's say there  
5 were no bench warrant, and he had chosen to pursue his  
6 career in Jerusalem. You can hire lawyers to come and  
7 appear before, you don't have to appear personally on  
8 something like that. I'm going to take that  
9 requirement out of my order, but I will leave the bench  
10 warrant with the purge amount.

11 MR. PAONE: Thank you, Your Honor.

12 THE COURT: But he doesn't have to appear  
13 before me. If he wants to send lawyers here to do that  
14 and pay them to do that, that's his business.

15 MR. PAONE: Thank you, Your Honor.

16 THE COURT: But if he does come to the  
17 States, there's a warrant out there and the purge  
18 amount was set prior. I'm not going to change that  
19 ruling by a previous judge. I think it was Judge  
20 Goldman who entered that order.

21 Okay?

22 MR. PAONE: Thank you, Your Honor.

23 THE COURT: As to counsel fees now, I am  
24 going to order that he pay. I didn't give you the full  
25 amount of \$10,000 as counsel fees on this application.

1 It was very complicated. Tell you the truth, I'm --  
2 I'm putting that together. The hours I took just  
3 reading this application on both sides, I'm granting  
4 those fees.

5 Okay. That's the order of the Court. I'll  
6 get a copy of that order out to you and good luck to  
7 you.

8 MR. PAONE: Thank you, Your Honor.

9 MR. DAVIS: Judge, I don't know if there's  
10 someone else I could ask as just procedurally, but when  
11 does this court do ability to pay hearings if somebody  
12 does appear to --

13 THE COURT: Well, here's what happens on  
14 those from what I understand. Let's say he was picked  
15 up on a warrant, then we have the purge hearing.

16 MR. DAVIS: Or showed up here.

17 THE COURT: You know, then we have a purge  
18 hearing and --

19 MR. DAVIS: Right.

20 THE COURT: -- and as it goes, you know, that  
21 -- that's a whole different story.

22 MR. DAVIS: I'm aware, Judge.

23 THE COURT: Okay.

24 MR. DAVIS: I did pass --

25 THE COURT: The fact that --

1 MR. DAVIS: -- to counsel.  
2 THE COURT: -- yeah, the fact that we -- I  
3 set the purge at 100,000, maybe --  
4 MR. DAVIS: That's -- that's a different  
5 amount --  
6 THE COURT: It's just a statement.  
7 MR. DAVIS: Right. That's a different amount  
8 than an ability to pay hearing --  
9 THE COURT: Yes.  
10 MR. DAVIS: -- why you might come up with.  
11 THE COURT: Absolutely.  
12 MR. DAVIS: All right. So if he were just to  
13 show up here, Judge, is it just a matter of  
14 surrendering in the morning and give Mr. Paone some  
15 notice out of courtesy and --  
16 THE COURT: Well, you know, I'm not sure how  
17 they schedule that. In fact, they would probably -- he  
18 would be arrested. He would be put in the lock-up and  
19 he would appear before a judge on a purge hearing on a  
20 video. It's -- it's not a nice process.  
21 MR. DAVIS: But could we arrange to come in,  
22 rather --  
23 THE COURT: I don't know that I can -- we  
24 don't have that type of concierge type of service.  
25 MR. DAVIS: Okay.

1 THE COURT: I don't know if -- if there's a  
2 warrant out for him, law enforcement is going to effect  
3 that warrant, --  
4 MR. DAVIS: Right.  
5 THE COURT: -- and I don't have any control  
6 to tell them how to do their job in that regard.  
7 MR. DAVIS: Okay, Judge. It's AO -- the  
8 directive 1508 says that if the person shows up  
9 physically in court for hearing --  
10 THE COURT: That you might be right. You  
11 probably know better than I do.  
12 MR. DAVIS: Okay.  
13 THE COURT: So it is what it is.  
14 COURT CLERK: If I may? If it's a probation  
15 warrant, if counsel wants to reach out to probation?  
16 MR. DAVIS: It's not. It's not a probation  
17 warrant.  
18 COURT CLERK: It's not a court warrant.  
19 MR. DAVIS: No.  
20 COURT CLERK: No, it's not -- it's not --  
21 THE COURT: It's not a probation department  
22 warrant.  
23 MR. DAVIS: Correct.  
24 COURT CLERK: It's not a court warrant,  
25 Judge.

1 THE COURT: Okay.  
2 MR. DAVIS: Right.  
3 THE COURT: It was done through probation.  
4 MR. DAVIS: No.  
5 THE COURT: No, I don't think it was.  
6 MR. DAVIS: This case has never gone through  
7 probation.  
8 THE COURT: I think it was Judge Goldman  
9 entered the warrant, and it wasn't a probation  
10 department application.  
11 COURT CLERK: You sure?  
12 MR. DAVIS: Right.  
13 THE COURT: Yeah.  
14 MR. DAVIS: That's actually a good question,  
15 because then whether 1508 -- because that talks about  
16 probation a lot.  
17 THE COURT: Right.  
18 MR. DAVIS: The AOC directives.  
19 THE COURT: And they -- they -- there's  
20 procedures where you can make a -- go directly there  
21 and work out a purge amount --  
22 MR. DAVIS: Right.  
23 THE COURT: -- with them no matter what the -  
24 - was set.  
25 COURT CLERK: That -- that's what I --

1 MR. DAVIS: That's right. That --  
2 THE COURT: I'm not sure that that applies in  
3 this case.  
4 MR. DAVIS: Okay. Well --  
5 THE COURT: I'm not sure.  
6 MR. DAVIS: Okay. Okay, Judge.  
7 THE COURT: Okay.  
8 MR. DAVIS: But I mean, is there somebody  
9 else maybe on your staff that I can talk to or in  
10 Family Management about how we would arrange that for  
11 --  
12 THE COURT: You can reach out to them. I  
13 don't know what the warrant unit does on that, tell you  
14 the truth.  
15 MR. DAVIS: Okay.  
16 THE COURT: Okay?  
17 MR. DAVIS: Thank you, Judge.  
18 MR. PAONE: Thank you, Your Honor.  
19 THE COURT: I'll get you a copy of the order.  
20 MR. PAONE: Are we to wait for that or do you  
21 want --  
22 THE COURT: Yeah, yeah. No. Why don't you  
23 wait for it. I'll get it to you.  
24 (Proceedings Concluded.)  
25 \* \* \* \* \*

**C E R T I F I C A T I O N**

I, Karen English, the assigned transcriber,  
do hereby certify the foregoing transcript of  
proceedings on electronic recording dated 9/15/17,  
index number from 10:15:20 TO 11:03:41 is prepared in  
full compliance with the current Transcript Format for  
Judicial Proceedings and is a true and accurate  
compressed transcript of the proceedings as recorded.

/S/ Karen English  
SIGNATURE

#421  
AOC NUMBER

**Karen English Trans. Svc.**  
AGENCY

October 20, 2017  
DATE