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Abbey L. Sharp

Plaintiff / Respondent

vs.

Gregory K. Sharp

Defendant / Appellant

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SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2164-99-T5

Civil Action

On appeal from A Final Judgment of the  
Superior Court of New Jersey, Chancery  
Division, Family Part, Mercer County.

Sat below:  
Hon. Gerald J. Council, JSC

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Defendant's Reply Brief

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David Perry Davis, Esq.  
On the Brief

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Counter-Statement to Plaintiff's Preliminary Statement

Plaintiff is incorrect is asserting that "at issue is whether the Honorable Gerald J. Council correctly required the defendant to contribute to the cost of his only child's college education pursuant to Newburgh v. Arrigo, 88 N.J. 529 (1982)."

At issue is whether the trial court erred in finding that defendant's contacts with the State of New Jersey justified the decision to exercise *in personam* jurisdiction over him, and, if the exercise of personal jurisdiction was justified, whether the trial court erred by exceeding the relief sought by plaintiff and by assessing college costs and expenses with first holding a hearing pursuant to Newburg v. Arrigo.

Plaintiff's allegation that defendant's counsel did not contact the trial court prior to the return date of the motion is incorrect. Although this matter is nowhere referenced in the record before this Court, in fact defendant's counsel contacted the trial court to request an adjournment of the then-pending September 10 motion<sup>1</sup> so that the issue of jurisdiction could be properly raised. The request was denied however, as plaintiff indicates, defendant's counsel was invited to appear on the return date, and did so, requesting that an adjournment be

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<sup>1</sup> The Court should note that plaintiff acknowledges, as indeed he must, that the original motion filed sought only to have a hearing ordered. He does not claim that the issue of the ultimate relief (the actual apportionment of college expenses) was even before the trial court on September 10, 1999.

granted so the jurisdiction issue could be raised.<sup>2</sup>

As plaintiff indicates, this request was denied and the trial court entered an order exceeding the relief sought. Upon a motion for reconsideration, the trial court refused to address the jurisdiction issue, incorrectly holding that the September 15 Order, which "reserves its decision on the issue of whether or not Defendant must contribute to the college expenses of the parties' daughter" (Da 72-73) was a final order subject to the 20 day time limit of R. 4:49-2.

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<sup>2</sup> The Court should also note that plaintiff does not dispute that defendant appeared at oral argument on September 10, 1999 for the purpose of requesting an adjournment (Pb 3) for the sole purpose of raising the jurisdictional issue.

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LEGAL ARGUMENT

I. PLAINTIFF'S ARGUMENT THAT THE TRIAL COURT'S SEPTEMBER 15  
1999 ORDER WAS A FINAL ORDER IS PATENTLY FRIVOLOUS.

The trial Court's September 15, 1999 Order specifically states that the Court "reserves its decision on the issue of whether or not Defendant must contribute to the college expenses of the parties' daughter, Jennie Suzanne Sharp." (Da 72-73).

An interlocutory Order is one that does not dispose of all issues as to all parties. No Order that, by its terms, reserves decision on any issue can be said to be final. If even a counsel fee determination is reserved, the Order remains interlocutory, Greco v. Zecchino, 285 N.J. Super. 418 (App.Div. 1995), and is therefore not subject to the 20 day time limit of R. 4:49-2. Johnson v. Strapping Corp., 220 N.J. Super. 250 (App.Div. 1987), N.J. Court Rules, 2000 Edition pp 1472.

Plaintiff presents no authority whatsoever to rebut this well established rule of law.

II. THIS COURT MUST DISMISS THE COMPLAINT AS THERE IS NO QUESTION BUT THAT NEW JERSEY LACKS *IN PERSONAM* JURISDICTION OVER DEFENDANT

In his reply brief, plaintiff continues to simply ignore the conclusion mandated by a review of the relevant caselaw from every court to address the issue of *in personam* jurisdiction. Plaintiff presents no authority whatsoever to rebut this, and does not so much as address any of the controlling United States Supreme Court caselaw. Asahi Metal Industry Company v. Superior Court of California, 480 U.S. 102, 107 S.Ct. 1026 (1987); World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297-98, 100 S.Ct. 559, 567-68, 62 L.Ed.2d 490, 501-02 (1980); Kulko v. Superior Court of California, 436 U.S. 84, 91, 98 S.Ct. 1690, 1696, 56 L.Ed.2d 132, 140-41 (1978); Lebel v. Everglades Marina, Inc., 115 N.J. 316, 322 (1989)(citing International Shoe Co. v. Washington, 326 U.S. 310, 316, 66 S.Ct. 154, 158, 90 L.Ed. 95, 102 (1945); Avdel Corp. v. Mecure, 58 N.J. 264, 268 (1971)).

Even if, *arguendo*, the New Jersey choice of law cases cited by plaintiff supported the proposition that a state can obtain *in personam* jurisdiction via the presence of a defendant's child, this argument would still fail in the face of the uncontroverted mandate of the federal caselaw. U.S. CONST. ART. VI (Supremacy Clause), Cooper v. Aaron, 358 U.S. 1 (1958), Marbury v. Madison, 1 Cranch 137, 177 (1803).

The matter must be dismissed as defendant lacks the requisite

ties with New Jersey to justify the exercise of *in personam* jurisdiction over him. Plaintiff presents no authority whatsoever to rebut this.

III. THE TRIAL COURT DID NOT ERR IN DENYING PLAINTIFF'S APPLICATION FOR COUNSEL FEES AND COSTS

Initially, defendant lacks minimum contacts with the State such that any award, including an award of counsel fees, would be permissible.

The decision to award counsel fees rests within the sounds discretion of the trial court. When considering a request for fees, the court should consider the parties' respective needs, their ability to pay and the good faith in instituting or defending the action. Williams v. Williams, 59 N.J. 229 (1971).

In this matter, defendant defended the motion<sup>3</sup> in good faith. By contrast, plaintiff's actions in filing this matter in New Jersey without having conducted even preliminary legal research as to the issue of jurisdiction indicate bad faith.

In any case, the trial court did not make any findings warranting the imposition of counsel fees (2T).

This court should not disturb a trial court decision when same was based on substantial, credible evidence as reflected in the record on the whole. Rova Farms Resort v. Investors Ins. Co., 65

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<sup>3</sup> Plaintiff also fails to ever rebut the allegation that no complaint was ever filed or served; only the the motion was filed.



N.J. 474, 483-484 (1974). The trial court's decision on this issue should be affirmed.

Conclusion

For the foregoing reasons, this court should hold that New Jersey does not have jurisdiction over the defendant and should enter an Order dismissing the matter. The trial court's denial of counsel fees should be affirmed.

Respectfully submitted,

David Perry Davis, Esq.  
Attorney for defendant