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Paralegal

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THIS APPLICATION DOES NOT QUALIFY FOR EMERGENT RELIEF. ACCORDINGLY, THE APPLICATION IS DENIED. COUNSEL IS FREE TO FILE A MOTION WITH THE CLERK'S OFFICE.

SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION

Michael Winkelstein
Michael Winkelstein
JAO
8/11/06

APPLICATION TO FILE APPEAL OR MOTION ON AN EMERGENT BASIS

TO: Hon. Michael Winkelstein DATE: 8/9/06
FROM: David Perry Davis, Esq. TELEPHONE: 609-737-2222

The following questions are to be answered by the attorney or pro se litigant requesting emergent relief. This questionnaire is simply designed to determine if the application be handled in the ordinary course or on an emergency basis. COMPLETION OF THIS APPLICATION DOES NOT IN ANY SENSE CONSTITUTE THE FILING OF AN APPEAL OR MOTION. There is no right to be heard orally on an emergency application.

CASE NAME: Tomlin v. Winn IV

1. What is the vicinage of the matter? (i.e. what judge, in what county or what agency entered the decision?)
Hon. Allison E. Accurso, JSC
Mercer - 609-571-4902 (voice)
2. a) What is your name, address, phone number and fax number?
David Perry Davis, Esq.
112 West Franklin Ave
Pennington NJ 08534
609-737-2222
b) Whom do you represent?
Plaintiff (Jill Tomlin)
3. What is your adversary's name, address, phone number and fax number?
Robert Allen Winn IV
14 Bradford Avenue Apt 9
Hamilton NJ 08610
609-731-1620 voice
No fax number
4. Do you have a written order or judgement entered by the judge or a written agency determination? YOU MUST ATTACH A COPY OF THE ORDER, JUDGEMENT OR DECISION.
No. This is precisely the issue. An unopposed motion was returnable July 21. The situation has become emergent. As explained below, I ask the Appellate Division to view the lack of an order as a *de facto* denial (as the appellate division did in the matter of Brookins v. Tolbert, attached)

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MICHAEL WINKELSTEIN, J.A.D.

5. Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees? IF SO, THE DECISION IS NOT FINAL, BUT RATHER INTERLOCUTORY, AND LEAVE TO APPEAL MUST BE SOUGHT.
No.
6. Have you filed for a stay before the trial court or agency? If so, do you have a court order or agency decision denying or granting same?
No
7. If the order or agency decision is interlocutory, are you filing a motion for leave to appeal?
N/A
8. If interlocutory, are you filing a motion to stay the trial court or agency proceeding?
N/A
9. If the order, judgement or agency decision is final, have you filed a notice of appeal?
Will file upon disposition of this application.
10. What is the essence of the order, judge or agency decision?
De facto denial of application to freeze funds to be received from inheritance and imminent sale of real estate.
11. Has any aspect of this matter been presented to or considered by another judge or part of the Appellate Division by emergent application or prior appeals proceedings? If so, which judge or part?
No.
12. What is the nature of the emergency?
Real estate is on the verge of being sold and funds dissipated.
13. What is the irreparable harm?
The child's right to support.
14. What relief do you seek?
An order freezing the funds and addressing the other issues raised in plaintiff's motion.
15. What citation is most important for the proposition that you are likely to prevail on appeal?
Crcwe v. DeGioia, 90 N.J. 126 (1982) reh'g on remand 203 N.J. Super. 22 (App. Div. 1985) citing Citizens Coach Co. v. Camden Horse R.R. Co., 29 N.J.Eq. 299, 303 (E. & A. 1878); Paternoster v. Shuster, 296 N.J. Super. 544 (App. Div. 1997);

Cerro Metal Products v. Marshall, 620 F.2d 964, 972 (3d. Cir. 1980)

16. Have you notified your adversary that you will be appealing?
Yes, by telephone.
17. If this application is being made during trial, does the judge know of it?
Not applicable
18. Have you served your adversary with all papers?
Yes.
19. Have any transcripts been ordered (particularly of the trial judge's challenged ruling)?
Not applicable.

If so, when will the transcripts be available?

20. Please give me a brief summary of the facts of your case:

A motion was filed in the trial court returnable July 21. In sum, defendant has paid no child support, day care, medical expenses or other obligations under the parties' judgment of divorce. He currently has arrears of \$7,358.08.

Under the parties' judgment of divorce, payment was direct (not through probation); therefore, there is no automatic judgment nor enforcement through probation.

In early June, plaintiff learned that defendant's father had passed away, leaving defendant his entire estate, including a home in Hunterdon County worth in excess of \$500,000 and liquid accounts. Defendant refused to turn over any information concerning the estate to plaintiff. Plaintiff obtained a copy of the will from the probate court in Flemington.

Plaintiff filed a motion seeking to freeze the funds to be received from the sale of the home, to create a fund (annuity) for the payment of future support, for a full disclosure of all documents related to the inheritance, for all future payment to be through probation and for other relief.

The motion was properly served and is unopposed.

Plaintiff's counsel made several inquiries as to the status of the order on the unopposed motion. It has now been almost a month since the return date.

On July 24, 2006, plaintiff's counsel inquired as to the status of the motion.

On July 28, 2006, plaintiff's counsel inquired as to the status of the motion.

On August 4, the trial court was notified in writing that defendant had sold the real estate, was in the process of loading moving vans, and that the situation was now emergent.

August 8, 2006, plaintiff's counsel again inquired as to the status of the motion.

August 9, 2006, plaintiff's counsel again inquired as to the status of the motion.

This application followed.

The appellate division is asked to treat the lack of an order as a *de facto* denial. Even if the other issues in the motion are not addressed immediately, judgment should be entered on the child support arrears so plaintiff's counsel can at least secure payment of past due support.