THE STATE OF NEW HAMPSHIRE

SUPREME COURT

2018-0700

IN THE MATTER OF MATTHEW KAMIL AND ROBIN KAMIL

APPELLANT'S REPLY BRIEF

F. Michael Keefe, Esquire, NH Bar #1322
Law Offices of F. Michael Keefe, PLLC
40 West Brook Street
Manchester, NH 03101
(603) 647-4707

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES: **PAGES**

NEW HAMPSHIRE STATE AUTHORITIES:

NEW YORK STATE AUTHORITIES:

FEDERAL AUTHORITIES:

OTHER:

I. Contemporaneous execution of a prenuptial agreement is not required under New York law and the Court's order invalidating it on that basis must be reversed.

In the Appellee's Brief, the Appellee correctly recites the necessary elements of a valid acknowledgment. Citing Galetta v. Galetta, 21 N.Y.3d 186, 991 N.E.2d 684 (2013), a decision of the NY Court of Appeals, the Appellee's Brief states:

> Three provisions of the Real Property Law must be read together to discern the requisites of a proper acknowledgment. Real Property Law §292 requires that the party signing the document orally acknowledge to the notary public or other officer that he or she in fact signed the document….Real Property Law §303 precludes an acknowledgment from being taken by a notary or other officer "unless he [or she] knows or has satisfactory evidence that the person making it is the person described in and who executed such instrument." Id. And Real Property Law §306 compels the notary or other officer to execute "a certificate…stating all the matters required to be done, known, or proved" and to endorse or attach that certificate to the document. Id.

The Appellee, however, erroneously creates an additional requirement for a proper acknowledgment: "New York law requires that an acknowledgment of a signature on a prenuptial agreement needs to be contemporaneous with the signature itself." Appellee's Brief, page 13. This is nowhere to be found in the law cited by the Appellee. Indeed, the requirement of an "oral acknowledgment" would seem to be contrary to the additional requirement alleged by the Appellee. If an individual must orally

acknowledge making a signature, what would be the purpose of also requiring that making the signature occur in front of a notary? And why would the statute not specifically state that such **written** acknowledgment must be made in front of a notary, while specifically stating that "**oral** acknowledgment" must occur?

Indeed, New York State teaches its notaries that contemporaneous acknowledgement is specifically not required. In the Appellee's Brief, the Appellee hand waves this, claiming that "while for standard notary practice it is not essential that a person appear before a notary to sign her name before a notary, the Trial Court properly ruled that NY Real Property Law Section 292 and Domestic Relations Law Section 363-B(3) [*sic*, the proper citation is Domestic Relations Law Section 236B(3)], place more stringent requirements on a prenuptial agreement's execution."

This is simply not true. DRL § 236B(3) requires that a prenuptial agreement must be "acknowledged or proven in the manner required to entitle a deed to be recorded." Id. The requirements for a deed to be record are already listed above, and are found in RPL §§ 292, 303, and 306. None of those provisions require contemporaneous written acknowledgment. Nor did New York see fit to add an asterisk to its clear instruction that contemporaneous written acknowledge is not required.

The cases cited by the Appellee all concern acknowledgments that either contained factually incorrect statements, or were made after divorce proceedings had commenced! The Appellee's Brief spends a significant amount of time studying Smith v. Smith, 263 A.D.2d 628, 694 N.Y.S.2d 194 (3d Dept. 1999). Preliminarily, Smith is a Third Department case, which does not directly govern the parties. Smith is also a case that predates

the high court case Galetta by 14 years. Finally, Smith studied an acknowledgment that contained a factually incorrect statement, which is not the case here. As the Smith court stated:

> "Inasmuch as the foregoing strongly suggests that defendant did not actually sign the agreement before Mac Cue **as indicated in the written acknowledgment,** there is clear and convincing evidence supporting Supreme Court's conclusion that the agreement was not acknowledged in accordance with the requirements of Domestic Relations Law § 236 (B) (3) and is, therefore, unenforceable. Id. at 630, emphasis added."

Smith has since been cited in eight published decisions[1]. In none of those decisions has it been cited for the proposition that the Appellee claims it stands for: that a contemporaneous signature is required for an acknowledgment.

In the remaining cases cited by the Appellee to support her position, the courts studied acknowledgments that were only made *after* divorce proceedings had begun. The courts in these cases went so far as to say that acknowledgment, as the law understands it, did not occur at all. See Katz v. Katz, 41 Misc. 3d 1225(A), 981 N.Y.S.2d 636 (Sup. Ct. 2013) (the "complete absence of an acknowledgment"); Schoeman, Marsh & Updike, LLP v. Dobi, 264 A.D.2d 572, 573, 694 N.Y.S.2d 650 (1999) (postnuptial

[1] *Leighton v. Leighton*, 46 A.D.3d 264, 847 N.Y.S.2d 64 (1st Dept. 2007); *In re Estate of Levinson*, 11 A.D.3d 826, 784 N.Y.S.2d 165 (3d Dept. 2004); *Lounsbury v. Lounsbury*, 300 A.D.2d 812, 752 N.Y.S.2d 103 (3d Dept. 2002); *Demblewski v. Demblewski*, 267 A.D.2d 1058, 701 N.Y.S.2d 567 (4th Dept. 1999); *Kuznetsov v. Kuznetsova*, 39 Misc. 3d 1215(A), 971 N.Y.S.2d 72 (Sup. Ct. 2013), *aff'd*, 127 A.D.3d 1031, 8 N.Y.S.3d 350 (2d Dept. 2015); *V.R. v. M.R.*, 10 Misc. 3d 1077(A), 814 N.Y.S.2d 893 (Sup. Ct. 2006); *Doukas v. Doukas*, 47 A.D.3d 753, 849 N.Y.S.2d 656 (2d Dept. 2008); *Stearns v. Stearns*, 11 A.D.3d 746, 783 N.Y.S.2d 686 (3d Dept. 2004).

agreement "was never acknowledged or certified as required by law"); Stein v. Stein, 14 Misc. 3d 453, 458, 825 N.Y.S.2d 335 (Sup. Ct. 2006) ("that parties in the midst of a divorce proceeding should not be able to obtain retroactive validation of a postnuptial agreement").

The Appellee cites a concern, raised by the Stein court, that a postnuptial agreement could become an "option" contract if retroactive acknowledgment were allowed. This is a valid concern, but it is not a concern in this matter. The Stein court was faced with a party who, *after divorce proceedings started*, tried to cure an improper acknowledgment. Here, the Appellant orally acknowledged his signature on the prenuptial agreement not only before divorce proceedings commenced, but before the parties were married.

The Appellee also cites the court's note in Matisoff v. Dobi, 90 N.Y.2d 127, 136, 681 N.E.2d 376, 381 (1997) that the law's requirements regarding acknowledgments impose a measure of deliberation on the signing of a document. This is true, but a contemporaneous acknowledgment would *reduce* that deliberation. The law requires two separate processes: a signature, and an oral acknowledgment. These may be done separately (like here) but they must be done. This increases deliberation. The Matisoff court explicitly noted this multistep process, and separated the act of signing from the act of acknowledgment: "When [the grantor] came to part with his freehold, to transfer his inheritance, the law bade him deliberate. It put in his path formalities to check haste and foster reflection and care. **It required him not only to sign, but to seal, and then to acknowledge or procure an attestation, and finally to deliver.** Every step of the way he is warned by the requirements of the law not to act

hastily, or part with his freehold without deliberation." Id. at 136, quoting Chamberlain v. Spargur, 86 N.Y. 603, 606 (1881), emphasis added.

There is no requirement in New York law that a marital agreement be signed in the presence of a notary public. There is a requirement that such signature be "orally acknowledged," and the parties do not dispute that this happened in this matter.

II. The Appellee has failed to adhere to requirements of the perseveration doctrine and hence her issue #1 must be summarily dismissed by this Court. Alternatively, as to said Issue #1 the Trust is not a present interest and is not a divisible martial asset.

Likewise, the Appellee's attempt to create an issue of the Harvey and Eileen Kamil 2012 Trust is not properly preserved and is without merit. This issue was raised by Appellee's trial counsel during a review/motion hearing, and after Appellant advised the Court that he had been removed as a named Trustee, (and hence could not obtain copies of trust documentation) and later had requested and was refused copies of the document from his parents (the Grantors), as a result of the order (attached hereto as Appellant's Reply Brief Appendix). The Appellee, represented by counsel, was clearly aware of alternative means to obtain the document and to further explore her claims, and elected not to do so.

Appellee's invocation of Shafmaster v. Shafmaster, 138 N.H. 460 (1994) is unavailing. The Appellant has consistently maintained that according to his understanding, he has no present interest in the Trust, and would only receive benefit if he were predeceased by his children, his other sibling, and her children. As such, he was under no obligation to disclose his current non-interest and his failure to do so is of no consequence.

Shafmaster is readily distinguishable from this matter. In Shafmaster, the offending party provided valuations upon which his spouse relied, while being fully aware of a later financial statement which showed significantly increased values and which he did not share or disclose. That critical factual distinction removes this case from Shafmaster and its holding, which involved reliance upon a factual representation of value made by a party in exclusive control of information about said valuations. Shafmaster involved an act of affirmative fraud (by concealing the later higher valuations) which is not present here.

What is critical for this analysis is that no interest had vested in Petitioner by the time of the conclusion of the final hearing, and hence are not includable within this martial estate. In the Matter of Eckroate-Breagy and Breagy, 170 N.H. 247 (N.H. 2017).

Appellee, when appearing pro se at the commencement of the schedule five-day merits hearing, produced no further documentation, not even a financial affidavit.

It is also beyond dispute that the Appellee, of her own volition, elected to voluntarily absent herself from the scheduled five-day merits hearing during the middle of the first day of said hearing, leaving the courtroom and not returning, while not seeking court permission to do so.

As such, procedurally, the issues raised by the Appellee must be summarily disposed of by this court, consistent with its long-standing precedent and requirements of the preservation doctrine.

The general rule is that a "contemporaneous and specific objection is required to preserve an issue for appellate review." Petition of

Guardarramos-Cepeda, 154 N.H. 7, 9 (2006); Appeal of Timothy Alexander, 163 N.H. 397 (N.H. 2012).

In the absence of a specifically identifiable preservation attempt, this court has consistently deemed such claims waived or abandoned by a litigant.

If an objection is first raised in a post-trial motion that is filed several days after the conclusion of the trial, the objection is not timely regardless of whether it is well founded." Edward Broderick, Administrator, ET. al. v. Ida Watts, 136 N.H. 153 (N.H. 1992); *see* Mailhot v. C & R Const. Co., 128 N.H. 323, (1986) (*per curiam*). The purpose of the timeliness requirement is to ensure that the trial court has the chance to correct errors at the earliest possible opportunity. Broderick, Id., at pg. 169.

The fact that the Appellee was acting in a pro se capacity at the Final Hearing provides her with no relief from these requirements.

> "*Pro se* litigants, however, are bound by the same procedural rules that govern parties represented by counsel." Appeal of Demeritt, 142 N.H. 807, 811, 713 A.2d 378 (1998); see Faretta v. California, 422 U.S. 806, 834-35 n. 46, (1975) (recognizing that the right of self-representation is not a license to not comply with the relevant procedural rules). The Respondent was informed of all applicable procedural deadlines throughout the entire proceedings.
>
> In the Matter of Birmingham and Birmingham, 154 N.H. 51, 56 (N.H. 2006).

Accordingly, despite the erstwhile and dedicated efforts of Appellee's current counsel to salvage some aspect of Appellee's position, and create some viable issue for appellate review, the Appellee by her own

actions and inactions, has wholly failed to preserve these issues for appellate review and they must be summarily dismissed by the court.

Appellee raised a variety of speculative and conjectural allegations throughout this litigation that were simply never pursued or proven by her. The issue concerning this trust is but another of those phantom issues, not properly developed or preserved by Appellee.

III. The remainder of Appellee's arguments are challenges to the Court's discretionary rulings have not been properly preserved, and must fail under existing standards of review.

Appellee's issues numbered 2, 3, 4, 7, 9, set forth on pages 24-26 of her brief, all involve challenges to the trial court's exercise of discretion in issuing property distribution orders, and have also not been properly preserved. " . . . (this Court) will not overturn trial court's determination of property distribution absent unsustainable exercise of discretion). In the Matter of Gronvaldt & Gronvaldt, 150 N.H. 551, 554, (2004). That now familiar standard requires that "when we determine whether a ruling made by a judge is a proper exercise of judicial discretion, we are really deciding whether the record establishes an objective basis sufficient to sustain the discretionary judgment made." State v. Lambert, 147 N.H. 295, 296, 787 A.2d 175 (2001), requires that a complaining party must demonstrate that the court's ruling was clearly untenable or unreasonable to the prejudice of his case." Id. at pg 296.

Aside from repeated use of buzzwords like "illogical" and "prejudicial" the Appellee's challenges are devoid of merit and fail to satisfy the requisite standards set above and must be denied.

Appellee's issues numbered 5 and 6 (involving challenges to the trial court's orders on failure to award her parenting time and the necessity of completion of structured graduated therapeutic reunification) are also issues within the Court's discretion in parenting matters.

"The trial court has wide discretion in matters involving parental rights and responsibilities under RSA 461-A:6 (Supp.2011), and we will not overturn its determination except when there has been an unsustainable exercise of discretion. In the Matter of R.A. & J.M., 153 N.H. 82, 93, 891 A.2d 564 (2005) (plurality opinion); cf. State v. Lambert, 147 N.H. 295, 296, (2001) (explaining unsustainable exercise of discretion standard). In the Matter of Bordalo and Carter, 164 N.H. 310, 313-314 (N.H. 2012)."

Appellee's issue number 8 can be similarly dispensed with by this Court.

> " . . . .within the trial court's sound discretion are determinations of whether to bifurcate, see Panas v. Harakis & K-Mart Corp., 129 N.H. 591, 607, 529 A.2d 976 (1987), or sever, see Morley v. Clairmont, 110 N.H. 12, 14, 259 A.2d 136 (1969), the issues before it. See generally 5 R. Wiebusch, *New Hampshire Practice, Civil Practice and Procedure* §§ 42.07-42.08, at 270-72 (1998). "[T]he manner and timing of the trial of all or part of the issues in an action is a question of justice and convenience within the discretion of the trial judge [whose] findings will not be disturbed in the absence of a showing of abuse." Jamestown Mut. Ins. Co. v. Meehan, 113 N.H. 639, 641, (1973) (citation omitted). Kenneth E. Blevens v. Town of Bow, 146 N.H. 67, 72 (N.H. 2001).

Appellee's claim that the Court's narrative order is deficient (Issue #10) is equally without merit.

In addition to ruling on multiple request for findings of fact submitted by the Appellant, the Court issued a lengthy narrative order and

created distribution charts which provide more than adequate basis for this Court to review and sustain the challenges to same by the Appellee.

"The purpose of requiring a written decision stating the ... findings of fact and rulings of law is to provide a basis for presenting this court the questions of law arising on the facts found by the trial court. This purpose is fulfilled when the trial court files, in narrative form, findings of fact which sufficiently support [the] decision. (Pg. 633) Taylor v. Davidson Rubber Co., 122 N.H. 428, 433, (1982) (citations, quotation, and ellipsis omitted); see Howard v. Howard, 129 N.H. 657, 659, 531 A.2d 331, 332-33 (1987)." Geiss v. Bourassa, et al. 140 N.H. 629, 632-633 (N.H. 1996).

IV. While himself challenging some of the Court's discretionary rulings, (Issues #2-5) Appellant has demonstrated that they are clearly untenable and prejudicial to the detriment of his case and must be reversed.

Appellant's issues number 2-5 stand on entirely different footing. Although the Appellant is a person of some means, he has already been required to pay for two failed reunification attempts. He has also borne all costs associated with this litigation. The trial court found he had paid $234,000.00 in alimony and $46,893.50 directly to Appellee for legal fees. The trial court also ruled that Appellee had spent $179,675.00 from joint accounts. Appellant has also maintained the former marital residence and was exclusively responsible for all costs and care for the parties' minor children, during the almost four years this matter has been pending. He is not an endless fount of money, and simply because he can pay does not, in the interest of equity, mandate that he continue doing so indefinitely. Given the amount of assets that may be awarded Appellee, she can surely then

afford, and for the first time should be required, to bear the costs of her award and share in some of the costs associated with the delay that has followed this case.

CONCLUSION

There is no requirement in New York law that a marital agreement be signed in the presence of a notary public. There is a requirement that such signature be "orally acknowledged," and the parties do not dispute that this happened in this matter. The agreement was in fact properly acknowledged under New York law and the trial court's decision invalidating the agreement on that basis must be reversed.

Appellee's claims on appeal must summarily fail, as they have not been properly preserved for appellate review by this tribunal, as required by long established rules and precedent mandating preservation of any such issue at the trial court level. The remaining issues raised in the cross appeal involve challenges to the exercise of trials court's inherent broad discretion, and while Appellee is obviously dissatisfied with those orders, there was no proof offered to demonstrate that said exercises of discretion were clearly an abuse of discretion and prejudicial to her case.

CERTIFICATION

I, F. Michael Keefe, Esquire, hereby certify that a copy of the foregoing has this date been forwarded via e the Court's e-file system, to David W. Sayward, Esquire, counsel for Appellee.

Dated: October 2, 2019

/s/ F. Michael Keefe
F. Michael Keefe, Esquire
NH Bar ID 1322

CERTIFICATE OF COMPLIANCE

I, F. Michael Keefe, hereby certify that pursuant to Rule 16(11) of the New Hampshire Supreme Court Rules, this reply brief contains approximately 2,929 words, which is fewer than the words permitted by this Court's rules. Counsel relied upon the word count of the computer program used to prepare this brief (MS Word 2015 Version).

Dated: October 2, 2019

/s/ F. Michael Keefe
F. Michael Keefe, Esquire
NH Bar ID 1322

STATE OF NEW HAMPSHIRE

STRAFFORD, SS

7TH CIRCUIT COURT
FAMILY DIVISION – ROCHESTER
COMPLEX CASE DOCKET

IN THE MATTER OF

MATTHEW KAMIL AND ROBIN KAMIL

DOCKET NO. 632-2015-DM-00045

PETITIONER'S OBJECTION TO RESPONDENT'S MOTION TO COMPEL PRODUCTION OF THE HARVEY AND EILEEN KAMIL 2012 IRREVOCABLE TRUST AND DOCUMENTATION RELATIVE TO H&EK603, LLC

NOW COMES the Petitioner, Matthew Kamil, by and through his attorneys, Law Offices of F. Michael Keefe, PLLC, and F. Michael Keefe, Esquire, and by way of Objection to Respondent's Motion to Compel Production of the Harvey and Eileen Kamil 2012 Irrevocable Trust and Documentation Relative to H&EK603, LLC (hereinafter "Respondent's Motion to Compel"), states as follows:

1. That on or about June 21, 2018, the Respondent, through counsel, filed her Motion to Compel seeking the production of certain trust and LLC documents.

2. That in the first instance, while the Petitioner certainly cannot deny the existence of the Harvey and Eileen Kamil 2012 Irrevocable Trust (hereinafter "the Trust"), the remaining allegations in Respondent's Motion to Compel represent a clear misunderstanding on the Respondent's part relative to the structure of the aforementioned trust.

3. That the Petitioner admittedly was previously named as a trustee of the Trust, however, he was removed from that position on March 23, 2018 and a copy of the notification of removal was provided to counsel for the Respondent. Further, he is not now, nor has he ever been named as a beneficiary of the Trust, let alone a "vested beneficiary" as is claimed by the Respondent. In point of fact, there are no named beneficiaries in the trust document.

4. The Trust herein is a generation skipping trust, a trust structured for purposes of avoiding or minimizing estate/inheritance taxes. If the Grantor of a trust names his or her child as a beneficiary of the Trust, when the assets of the trust transfer to the child, they must pay the inheritance tax (up to 40% depending on the value of the assets), and when they pass and their children are later awarded assets under the trust, they too have to pay an estate/inheritance tax. By creating the generation skipping trust, a great deal of the tax liability is avoided, "Generation Skipping Trusts and Why They are Advantageous, 2018". (www.investorguide.com)

5. The Trust and its assets are not the property of the Petitioner, and as such the Trust is not subject to property division in the instant divorce action.

6. Further, if it remains the Respondent's contention that the Petitioner has a future interest in any of the Trust assets, she is still barred from having any interest in the value of the Trust. In the recent decision issued *In re: Eckroate-Breagy,* 170 N.H. 247, 250, 168 A.3d 1148 (2017), the New Hampshire Supreme Court states "the plain language of the statute stops the accrual of marital property when a " dissolution of a marriage *is decreed,*" not when the decree becomes final or effective. RSA 458:16-a, II (emphasis added). Thus, property acquired by either party after the date that the divorce decree is issued is not marital property."

7. While this matter has not yet reached the final hearing, the Petitioner has not received any benefit or asset from the Trust, and as such any request for division of that asset is premature and is not ripe for inclusion in the litigation of the instant matter.

8. As to the request in Respondent's Motion to Compel regarding provision of documents related to the H&E603, LLC, the Petitioner states that he has provided the documents (K-1) that he has and/or is entitled to receive.

9. The Respondent has again misstated the position and/or title of the Petitioner. He is merely a minority member of the LLC, he is not an owner, and as such is not entitled to the same information as an owner would be.

10. Accordingly, it is the Petitioner's position that the Trust and LLC documents requested by the Respondent are not discoverable in the instant action. As such, the Respondent's Motion to Compel should be denied in its entirety.

WHEREOFRE, your Petitioner respectfully requests that this Honorable Court:

A. SUMMARILY DENY the Respondent's Motion for the reasons set forth herein; or alternatively;

B. SCHEDULE this matter for a hearing as soon as the Court's docket will allow, notifying all parties accordingly and after said hearing DENY the Respondent's Motion and the requests set forth therein; and

C. AWARD the Petitioner his reasonable attorney's fees and costs incurred in having to respond to the Respondent's frivolous filing; and

D. GRANT such other and further relief as this Court may deem equitable, just and proper.

Respectfully submitted,
Matthew Kamil, Petitioner
By and through his attorneys,

Date: July 2, 2018

F. Michael Keefe, Esquire
NH Bar #1322
Law Offices of F. Michael Keefe, PLLC
40 West Brook Street
Manchester, NH 03101
(603) 647-4707

CERTIFICATE OF SERVICE

I, F. Michael Keefe, Esquire, do hereby certify that a copy of the foregoing has this day been forwarded via (first class US Mail, postage prepaid) (~~hand delivery) (electronic mail~~) to Sandra Kuhn, Esquire, counsel for the Respondent.

F. Michael Keefe, Esquire

THE STATE OF NEW HAMPSHIRE
JUDICIAL BRANCH
NH CIRCUIT COURT

7th Circuit - Family Division - Rochester
259 County Farm Road, Suite 302
Dover NH 03820

Telephone: 1-855-212-1234
TTY/TDD Relay: (800) 735-2964
http://www.courts.state.nh.us

JUL 10 2018

NOTICE OF DECISION

F. MICHAEL KEEFE, ESQ
LAW OFFICES OF F MICHAEL KEEFE PLLC
40 WEST BROOK STREET
MANCHESTER NH 03101

FMK
SC1
SC2
Scanned
CC Client
Docketed

Case Name: **In the Matter of Matthew Kamil and Robin Kamil**
Case Number: **632-2015-DM-00045**

Enclosed please find a copy of the Court's Order dated July 06, 2018 relative to:

Respondent's Motion to Compel Production of the Harvey and Eileen Kamil 2012 Irrevicable Trust and Documentation Relative to H&EK603, LLC

July 09, 2018

Cheryll-Ann Andrews
Clerk of Court

(207)
C: Sandra Ann Kuhn, ESQ; Andrea L. Daly, ESQ

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS

7TH CIRCUIT – FAMILY DIVISION - ROCHESTER

In The Matter Of:

MATTHEW KAMIL AND ROBIN KAMIL

Case No: 632-2015-DM-00045

RESPONDENT'S MOTION TO COMPEL PRODUCTION OF THE HARVEY AND EILEEN KAMIL 2012 IRREVICABLE TRUST AND DOCUMENTATION RELATIVE TO H&EK603, LLC

NOW COMES Robin Kamil, the Respondent in the above matter, by and through her attorneys, Family Legal Services, PC and files this request that the Court compel the Petitioner to produce all documents relative to the Harvey and Eileen Kamil 2012 Irrevocable Trust as well as all documents he has relative to the H&EK603, LLC . In support of this Motion for Reconsideration, the Respondent states as follows:

The Trust

1. During the course of the parties marriage, the Respondent was aware that the Petitioner was the Trustee of the Havey and Eileen Kamil 2012 Irrevocable Trust (hereafter referred to as the "Trust").

2. The Respondent was informed that the Trust was created in or about June of 2012 and that the Trustees of the Trust were the Petitioner, Jack Silver, and Susan Kamil.

3. The beneficiaries of the Trust were named as the descendants of Harvey and Eileen Kamil, for which the Petitioner would be one.

426

4. New Hampshire RSA 458:16-a, II provides in pertinent part that, "when a dissolution of marriage is decreed, the Court may order an equitable division of property between the parties."

5. New Hampshire RSA 458:16-a, II further states in pertinent part that the Court may order, "that an equitable division would not be appropriate after considering one or more of the following factors: a) the duration of the marriage; (b) the age, health, social or economic status, occupation, vocational skills, employability separate property, amount and sources of income, needs and liabilities of each party; (c) opportunity of each party for future acquisition of capital assets and income; and (o) any other factor the court deems relevant."

7. New Hampshire RSA 458:16-a, I states that marital property, "shall include all tangible and intangible property and assets, real or personal, belonging to either or both parties, whether title to the property is held in the name of either or both parties".

8. It is well settled law that a vested beneficial interest in an irrevocable trust is marital property subject to property division by the Court, see Flaherty v. Flaherty, 138 NH 337, 340 (1994).

9. Shortly after the inception of the instant case Mrs. Kamil's counsel had propounded interrogatories and requests for production of documents to Mr. Kamil.

10. In those answers, Mr. Kamil indicated he was a beneficiary of his parents' trusts but declined to produce copies of the actual trusts. Mrs. Kamil has a copy of the unsigned trust documents which were emailed to Mr. Kamil during the marriage and for which he is designated as one of the Trustees of the Trust.

11. On or about February 22, 2018, the Respondent propounded additional requests for production of documents upon the Petitioner.

12. On or about April 20, 2018, the Petitioner provided responses which did not produce the Trust.

13. The Petitioner instead produced a notice signed by his mother that he was removed as Trustee of the Trust on March 23, 2018, after the request for production of documents was propounded.

14. The Petitioner was both the Trustee and a beneficiary under the Trust during the pendency of this case and should be ordered to produce the Trust documents which he clearly would have had given his standing as the Trustee during the case as well as his standing as a descendant beneficiary under the Trust.

15. Article One of the Trust referenced above assigns, transfers and conveys to the trustees all right, tie and interest in the certain Grantor property and vests that ownership with the Trustees of the Trust. The Petitioner claims his mother discharged him after the February 2018 request for production of documents was received by him and that he does not have a copy of the Trust for which he is a beneficiary. That position lacks all common sense as the corpus of the trust was vested in ownership by the Trustees since 2012 for which the Petitioner had responsibilities articulated in the Trust. To say that he does not have a copy of a trust for which he operated as a fiduciary would make no sense.

16. Further the Trust(s) were formed under Florida law.

17. Pursuant to Florida Trust Code F.S. 736.0813, contains provisions relative to the duties of Trustee's of irrevocable trusts including keeping qualified beneficiaries reasonable informed relative to the Trust and trust administration and obligations on the part of the Trustee to provide copies of the trust to beneficiaries. Florida Trust Code F.S. 736.08135 further provides that beneficiaries of irrevocable trusts receive annually relative to the Trust. Further the law in Florida provides that upon reasonable request, the trustee shall provide a qualified beneficiary with relevant information about the assets and liabilities of the trust and the particulars relating to administration.

18. The Petitioner is entitled to a copy of the Trust(s) under Florida law.

19. The Petitioner's interest in the Trust would be a marital asset for which the same should be discoverable and the Petitioner should be ordered to produce it.

20. The Court is mindful that it has ordered the Respondent to produce information as to her credit card charges, bank statements and other financial information which she did not keep and ordered her to get it. To order that the Petitioner does not have to produce information on a marital asset for which he exercised control during the marriage would be patently unfair and grounds to an appeal.

The Limited Liability Company

21. During the course of the parties' marriage, they parties filed income tax returns claiming partnership distributions for a business known as H&EK603, LLC .

22. The Respondent requested documentation relative to the formation and other documents relative to the same namely:

"Please attach copies of any and all documents associated with the formation of H&K603, LLC and any and all yearly reports and any other documents issues for that business from the date of formation until the present time."

23. None were produced other than the Petitioner's income tax returns.

24. The Petitioner should have copies of the documents requested relative to the business, for which the parties had reported on their income tax returns.

25. In the first set of interrogatories drafted to the Petitioner he disclosed that he owns a share of the property in which his parents reside in Florida under the name of H&EK603, LLC.

26. The same would be a marital asset for which the same should be discoverable and the Petitioner be ordered to produce it.

27. As an owner of the limited liability company, the information on the company that the Petitioner owns would be accessible and readily obtainable for him.

WHEREFORE, the Respondent prays that the Court:

A. COMPEL the production of the aforementioned information and documentation; AND

B. GRANT such other relief as is just and necessary.

Respectfully Submitted,
ROBIN KAMIL

By Her Attorneys
FAMILY LEGAL SERVICES P.C.

6/21/2018
Date

Sandra A. Kuhn, Esq. Bar #8804
FAMILYLEGAL
141 Airport Road
Concord, NH 03301

CERTIFICATE OF SERVICE

I hereby certify that a true copy of this document was sent U.S. Mail this 21 day June 2018 to the following parties:

Michael Keefe, Esq.

Law Offices of F. Michael Keefe, PLLC
40 West Brook Street
Manchester, NH 03101

6/21/2018
Date

Sandra Kuhn, Esq. NH Bar # 8804

7/6/18 Obviously, this Court has no jurisdiction or authority over Harvey and Eileen Kamil. However, Matthew Kamil is ordered to produce all requested documentation in his possession and to exercise his best efforts to obtain all other requested documentation.

Robert J. Foley
Judge