

**THE STATE OF NEW HAMPSHIRE  
SUPREME COURT**

**NO. 2019-0027**

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**AMANDA COLBURN**

**V.**

**WAYNE SAYKALY, JR.**

**&**

**NICHOLAS SAYKALY**

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**Discretionary Appeal Pursuant to Rule 7 from a Final Decision  
of Goffstown District Court**

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**REPLY BRIEF FOR THE APPELLANT  
NICHOLAS SAYKALY**

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**(Fifteen Minutes Oral Argument  
Requested by Attorney Winters)**

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## ARGUMENT

Appellee claims that there is no jurisdictional issue in this case. The record belies the Appellee's claim. *See* T. at 26 ("I have to tell you, I think there's a significant jurisdictional question regarding the Court's determination of property—of possession of property that is at the subject of a marital proceeding . . . between two spouses."). The trial court's own words rebut the argument set forth by Appellee: "There may not be jurisdiction over the husband and wife, because that may be—if [it is] marital property, I may be in the wrong court." T. at 8.

In her brief, the Appellee enters into an apagogic and semantic argument, struggling with Mr. Saykaly's use of the term "Landlord-Tenant Court" instead of referring to the trial court as the "District Court." *See* Appellee's Brief at 9. Again, the record rebuts the Appellee's concern over semantics: "I'm not going to revisit temporary orders in a marital proceeding in a *landlord-tenant* proceeding." T. at 9 (emphasis added).

The focus should instead be on the trial court's lack of jurisdiction with respect to the marital property. As stated in Mr. Saykaly's Brief, the Family Division has inherent authority over all assets held by either spouse, regardless of how the assets are titled. *See* RSA 458:16-a. Appellee erroneously argues that Mr. Saykaly has "not identified any respect in which the rulings of the Circuit Court were violative of any New Hampshire statute or court rule." Appellee's Brief at 12. Appellee conveniently ignores RSA 490-D:2, which states that rulings on divorce petitions "shall be *exclusively exercised* through the judicial branch family division as procedurally jurisdiction was previously exercised in the superior, district, and probate courts . . . ." RSA 490-D:2 (emphasis added).

Appellee argues that the *Sullivan* decision justified the trial court's exercise of jurisdiction in this matter. *See* Appellee's Brief at 14–15; *see also Sullivan et al. v. Algre et al.*, 160 F. 366, 369 (8th Cir. 1908). Appellee's argument is premised on the fact that the Family Division determined that justice and efficiency would be served by permitting the trial court to act on the eviction action. *See* Appellee's Brief at 15. However, the record is completely devoid of orders from the Family Division permitting

the trial court to order eviction of Mr. Saykaly and his brother. The trial court's Final Order is similarly devoid of any analysis as to why the trial court exercised jurisdiction in this matter. Nor did the trial court issue written orders citing any legal justification for issuing orders that did not comport with the Family Division's temporary order. Even though Judge Gorman happened to be the same judge in both proceedings, the trial court did not specify how it reached its conclusions. *See* Appellant's Brief at 20. In fact, the trial court's own words at the final hearing indicate a reticence to exercise jurisdiction: "Subject matter jurisdiction is subject matter jurisdiction. I still have to have it." T. at 26.

The crux of Mr. Saykaly's argument continues to revolve around the issue that the Family Division has the inherent authority to issue temporary orders related to marital property. *See* RSA 458:16-a. The Family Division issued temporary orders allowing Mr. Saykaly to live at 23 Arrowhead Drive, exercising jurisdiction over the marital property. *See* Appendix to Appellant's Brief at A6. Exercising its first-in-time jurisdiction enabled the Family Division to exclusively exercise jurisdiction over the property until it relinquished jurisdiction. *See Sullivan*, 106 F. at 369. The Family Division issued no written orders relinquishing jurisdiction to the trial court. Appellee claims that the Family Division *de facto* relinquished jurisdiction upon the trial court's order, but that is not factually sound. *See* Appellee's Brief at 16.

Appellee also erroneously argued that Mr. Saykaly suffered no prejudice as a result of the trial court's Final Order. *Id.* This is false. Mr. Saykaly has incurred significant costs related to the trial court's Final Order and has been ordered to vacate the premises where he has been living with his brother since the Family Division issued its temporary order. To characterize Mr. Saykaly as having suffered no prejudice is patently false.

Appellee argues that this Court should not adopt a bright-line ruling as argued in Appellant's Brief. *See* Appellee's Brief at 17; *see also* Appellant's Brief at 15. Mr. Saykaly's argument for a bright-line ruling allows for clarity in situations where litigant spouses are involved in a dispute over marital property. The Family Division is in the


best position to determine use and division of marital property. Without such a ruling, there is a danger of litigant spouses filing eviction actions against the other spouse as a retaliatory measure. *See* T. at 26 (“[I]f the Court adjudicates possession of property in a landlord-tenant proceeding between spouses when the property is subject to a marital proceeding, this is just going to happen all the time.”).

### **CONCLUSION**

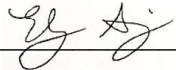
In accord with the foregoing, this Court should reverse the decision of the Goffstown District Court, remand the case for dismissal, and grant such other further relief as this Court deems fair and just.

Respectfully submitted,  
Nicholas Saykaly  
By and through his attorneys,  
Cohen & Winters, PLLC

\_\_\_\_\_  
July 2, 2019  
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### **CERTIFICATIONS**

I hereby certify a copy of the foregoing has been delivered through the electronic filing system on July 2, 2019 to all counsel of record for Appellee, and via first class mail, postage paid to Wayne Saykaly, Jr.

Pursuant to Rule 26(7), I hereby certify that this Brief contains no more than 986 words, which complies with Rule 16(11).

July 2, 2019

Date



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Andrew S. Winters, Esquire