STATE OF NEW HAMPSHIRE

SUPREME COURT

CASE NO. 2020-0009

IN THE MATTER OF

JONATHAN MERRILL

AND

LEA MERRILL

RULE 7 APPEAL OF FINAL DECISION OF THE
7TH CIRCUIT FAMILY DIVISION AT DOVER
[COMPLEX DOCKET]

REPLY BRIEF OF PETITIONER/APPELLANT, JONATHAN MERRILL

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New Hampshire Statutes
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Competency of Witnesses, etc.

Current through Chapter 39 of the 2020 Legislative Session

§ 516:29-a. Testimony of Expert Witnesses

I. A witness shall not be allowed to offer expert testimony unless the court finds:
   (a) Such testimony is based upon sufficient facts or data;
   (b) Such testimony is the product of reliable principles and methods; and
   (c) The witness has applied the principles and methods reliably to the facts of the case.

II. (a) In evaluating the basis for proffered expert testimony, the court shall consider, if appropriate to the circumstances, whether the supported by theories or techniques that:
   (1) Have been or can be tested;
   (2) Have been subjected to peer review and publication;
   (3) Have a known or potential rate of error; and
   (4) Are generally accepted in the appropriate scientific literature.

   (b) In making its findings, the court may consider other factors specific to the proffered testimony.

Cite as RSA 516:29-a

Note:

2004, 118:1, eff. July 16, 2004.

TEXT OF COURT RULES

Rule 702. Testimony by Expert Witnesses.

New Hampshire Court Rules

New Hampshire Rules of Evidence

Article VII. Opinions and Expert Testimony

As amended through June 17, 2020

Rule 702. Testimony by Expert Witnesses

A witness who is qualified as an expert by knowledge, skill, experience, training, or education, may testify in the form of an opinion or otherwise if:

(a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;

(b) the testimony is based on sufficient facts or data;

(c) the testimony is the product of reliable principles and methods; and

(d) the expert has reliably applied the principles and methods to the facts of the case.

Cite as N.H. R. Evid. 702

History. Amended April 20, 2017, eff. July 1, 2017.

Note:

2016 NHRE Update Committee Note

The amendment made by supreme court order dated April 20, 2017, effective July 1, 2017, made stylistic changes to the rule.

New Hampshire Court Rules
New Hampshire Rules of the Circuit Court of the State - Family Division of the State of New Hampshire
SECTION 1. General Provisions

As amended through June 17, 2020

Rule 1.26. Motions

A. (1) *In Cases Not Subject to Electronic Filing.* In any case filed in the family division in which the electronic filing pilot program has nc http://www.courts.state.nh.us/circuitcourt/efilingcourts.htm, parties may not address written communications directly to the ju properly filed motion with certification of delivery of a copy of the motion to the other party, unless jointly filed. No exhibits sha necessary to support an affidavit.

(2) *In Cases Subject to Electronic Filing.* In any case filed in the family division in which the electronic filing pilot program has been i http://www.courts.state.nh.us/circuitcourt/efilingcourts.htm, parties may not address written communications directly to the ju properly filed motion with certification of delivery of a copy of the motion to the other party, unless jointly filed. No exhibits sha necessary to support the factual allegation(s) contained in a filing.

B. (1) *In Cases Not Subject to Electronic Filing.* In any case filed in the family division in which the electronic filing pilot program has nc http://www.courts.state.nh.us/circuitcourt/efilingcourts.htm, the court will not hear any motion based upon facts unless the fac already contained in the court record. No exhibits shall be attached to motions unless necessary to support an affidavit. The sam facts relied upon in objections to any motions.

(2) *In Cases Subject to Electronic Filing.* In any case filed in the family division in which the electronic filing pilot program has been i http://www.courts.state.nh.us/circuitcourt/efilingcourts.htm, the court will not hear any motion based upon facts unless the mc an understanding that making a false statement in the pleading may subject that party to criminal penalties or the facts are alrea record. No exhibits shall be attached to motions unless necessary to support the factual allegation(s) contained in a filing. The s facts relied upon in objections to any motions.

C. Any party filing a motion shall certify to the court that a good faith attempt has been made to obtain concurrence in the relief sought, motions, motions for contempt or sanctions, or comparable motions where it can be reasonably assumed that the party or counsel wi concurrence.

D. Motions to which all parties assent or concur will be ruled upon as court time permits.

E. Motions that are not assented to will be held for 10 days from the filing date of the motion to allow other parties time to respond, unl Court ruling.

F. Motions to Reconsider: A motion for reconsideration or other post-decision relief shall be filed within ten (10) days of the date on the order or decision, which shall be mailed by the Clerk on the date of the notice. The motion shall state, with particular clarity, points o overlooked or misapprehended and shall contain such argument in support of the motion as the movant desires to present; but the m pages. To preserve issues for an appeal to the Supreme Court, an appellant must have given the court the opportunity to consider suc the court, in its decision, addresses matters not previously raised in the case, a party must identify any alleged errors concerning thos rule to preserve such issues for appeal. A hearing on the motion shall not be permitted except by order of the Court.

No answer to a motion for reconsideration or other post-decision relief shall be required unless ordered by the Court, but any answer ten (10) days of notification of the motion.

If a motion for reconsideration or other post-decision relief is granted, the court may schedule a further hearing.

The filing of a motion for reconsideration or other post-decision relief shall not stay any order of the Court unless, upon specific writt ordered such a stay.

Commentary:

New Hampshire Court Rules
New Hampshire Rules of the Supreme Court
Procedural Rules

As amended through June 17, 2020

Rule 15. Transcripts

(1) The parties shall attempt to enter into stipulations, such as an agreed statement of facts, that will reduce the size of transcripts or av stipulation is entered into, an original and 8 copies thereof must be filed with the clerk's office if it is not included in the notice of ap

(2) (a) *Mandatory appeals.* The moving party shall have completed the notice of appeal form which includes the transcript information, proceedings to be transcribed, the length of the proceedings, and the deposit required. A transcript of the parts of the proceedi not already on file in the trial court shall be prepared. The supreme court clerk's office shall issue a scheduling order notifying t days from the date on the written notice, the moving party must pay the deposit to the transcriber designated by the court to pr transcriber's agent. If payment is not received by the date specified, the appeal may be deemed waived and the case dismissed. required deposit, the transcriber shall proceed with the transcription. If the required deposit is not timely received, the transcrib the clerk of the supreme court. For the purposes of initial assessment of transcription costs pursuant to this rule, any party filin moving party, and in cases of multiple appeals (including cross-appeals), the clerk, within the clerk's discretion, may assess trar requires.

(b) *Other appeals from trial court decisions on the merits.* The moving party shall have completed the notice of appeal form which i information, including the dates of the proceedings to be transcribed, the length of the proceedings, and the deposit required. I court for briefing, the supreme court clerk's office shall issue a scheduling order notifying the moving party that within 15 days notice, the moving party must pay the deposit to the transcriber designated by the court to prepare the transcript or to the tran received by the transcriber by the date specified, the appeal may be deemed waived and the case dismissed. Upon timely receivi transcriber shall proceed with the transcription. If the required deposit is not timely received, the transcriber shall immediately s supreme court. For the purposes of initial assessment of transcription costs pursuant to this rule, any party filing an appeal may and in cases of multiple appeals (including cross-appeals), the clerk, within the clerk's discretion, may assess transcription cost

(3) If the moving party intends to argue in the supreme court that a finding or conclusion is unsupported by the evidence or is contrary t shall include in the record a transcript of all evidence relevant to such finding or conclusion. Unless otherwise ordered by the suprem contain all the oral proceedings except opening statements, medical testimony, arguments, and charge.

(4) Unless the parties agree, or the court otherwise orders, the transcriber shall produce an electronic version of the transcript for the co official transcript, as well as a paper copy of the transcript. The transcriber shall also produce an electronic copy of the transcript for transcript. The transcript shall be completed as early as possible within 45 days after receiving the recording of the proceedings from for extensions of time in which to prepare a transcript shall not be favored, but the transcriber may request that the supreme court g request shall give the reasons for the need for an extension.

(5) The supreme court may order that the preparation of a transcript in a case be given immediate attention.

Cite as N.H. R. Sup. Ct. 15

History. Amended on a temporary basis Apr. 27, 2012, and on a permanent basis eff. May 1, 2014; amended effective July 1, 2019.

Note:

Comment

It is a long-standing rule that parties may not have judicial review of matters not raised in the forum of trial. Absent a transcript of the pro court will generally assume that the evidence was sufficient to support the result reached by the trial court. It is the burden of the appealin court with a record sufficient to decide the issues on appeal, as well as to demonstrate that those issues were properly raised before the tr transcript of the trial court's proceedings is necessary, the appealing party should keep in mind that the appealing party is responsible for a sufficient record to decide the issues on appeal. If the appealing party fails to provide a sufficient record, the appeal may be dismissed o review an issue that the appealing party has raised. See Bean v. Red Oak Prop. Mgmt., 151 N.H. 248 (2004).

New Hampshire Court Rules
New Hampshire Rules of the Supreme Court
Procedural Rules

As amended through June 17, 2020

Rule 16-A. Plain Error

A plain error that affects substantial rights may be considered even though it was not brought to the attention of the trial court or the supr

Cite as N.H. R. Sup. Ct. 16-A

New Hampshire Court Rules
New Hampshire Rules of the Supreme Court
Procedural Rules

As amended through June 17, 2020

Rule 16. Briefs

(1) Briefs may be prepared using a printing, duplicating or copying process capable of producing a clear letter quality black image on wh ordinary carbon copies. If briefs timely filed do not conform to this rule or are not clearly legible, the clerk of the supreme court may substituted, but the filing shall not thereby be deemed untimely.

Each brief shall be in pamphlet form upon good quality, nonclinging paper 8 ½ by 11 inches in size, with front and back covers of du have a minimum margin of oneand one-half (1½) inch on all sides and shall be firmly bound at the left margin. Any metal or plastic s be flush with the covers and shall be covered by tape. The covers shall be flush with the pages of the case. *See also* Rule 26(5).

If briefs are produced by commercial printing or duplicating firms, or, if produced otherwise and the covers to be described are availa appealing party should be blue; that of the opposing party, red; that of an intervenor or amicus curiae, green; and that of any reply b in accordance with Rule 16(8), gray. The cover of the appendix, if separately printed, should be white.

The court will not accept any other method of binding unless prior approval has been obtained from the clerk of the supreme court.

(2) The front covers of the briefs and of appendices, if the appendices are separately produced, shall contain:

(a) the name of this court and the docket number of the case;

(b) the title of the case;

(c) the nature of the proceeding in this court, *e.g.*, appeal by petition pursuant to RSA 541 : 6, and the name of the court or agency

(d) the title of the document, *e.g.*, brief for plaintiff;

(e) the names, addresses and New Hampshire Bar identification numbers of counsel representing the party on whose behalf the doc

(f) the name of counsel who is to argue the case. *See* form in appendix.

(3) So far as possible, the brief of the moving party on the merits shall contain in the order here indicated:

(a) A table of contents, with page references, and a table of cases listed alphabetically, a table of statutes and other authorities, witl briefs where they are cited.

(b) The questions presented for review, expressed in terms and circumstances of the case but without unnecessary detail. While the not be worded exactly as it was in the appeal document, the question presented shall be the same as the question previously se The statement of a question presented will be deemed to include every subsidiary question fairly comprised therein. The moving any question of law not listed in the moving party's appeal document, but only if the supreme court has granted a motion to adc party has presented a record that is sufficient for the supreme court to decide the questions presented. Motions to add a questi who filed an appeal document (including a party who filed a cross-appeal), and shall be filed at least 20 days prior to the due da

After each statement of a question presented, counsel shall make specific reference to the volume and page of the transcript wh where an objection was made, or to the pleading which raised the issue. Failure to comply with this requirement shall be cause f strike the brief in whole or in part, and opposing counsel may so move within ten days of the filing of a brief not in compliance

(c) The constitutional provisions, statutes, ordinances, rules, or regulations involved in the case, setting them out verbatim, and giv provisions involved are lengthy, their citation alone will suffice at that point, and their pertinent text shall be set forth in an appe

(d) A concise statement of the case and a statement of facts material to the consideration of the questions presented, with appropri or to the record.

(e) A summary of argument, suitably paragraphed, which should be a succinct, but accurate and clear, condensation of the argume It should not be a mere repetition of the headings under which the argument is arranged.

(f) The argument, exhibiting clearly the points of fact and of law being presented, citing the authorities relied upon.

(g) A conclusion, specifying the relief sought by the party.

(h) A statement that the party waives oral argument or that the party requests oral argument. A party requesting oral argument ma requests oral argument before a 3JX panel or the full court, and may set forth reasons why the party believes oral argument is n court in deciding the case. If a party requests oral argument before the full court, and if the party believes that more than 15 mi for oral argument, the party may set forth why the party believes that good cause exists for granting additional time. The party heard if there are two or more lawyers on the party's side.

(i) A copy of each decision below that is being appealed or reviewed. If one or more of the appealed decisions are in writing, a copy besubmitted at the time of brief filing in either one of the following two ways:

(1) as the first item(s) in an addendum that is part of the brief itself, with the addendum's table of contents clearly identifying and with the addendum's page numbering sequentially following the last page number of the brief; or

(2) in a separate appendix that contains no documents other than appealed decisions and that conforms with the page-numbe The appealing party shall, immediately before the signature line on the brief, certify either that each appealed decision that submitted at the time of brief filing, or that no appealed decision is being submitted because no appealed decision is in wr in writing, the appealing party's certification shall identify the specific manner in which the party has complied with this rul appealed decision. Any brief not conforming with this rule, including a brief whose addendum or appendix intermixes the other documents from the record, may be rejected.

(4) (a) The brief of the opposing party shall conform to the foregoing requirements, except that no statement of the case need be mad necessary in correcting any inaccuracy or omission in the statement of the other side, and except that subsections (b), (c), and (l included unless the opposing party is dissatisfied with their presentation by the other side.

(b) Instead of a brief, the opposing party in a mandatory appeal may file a memorandum of law not to exceed 4,000 words in lengtl not comply with the requirements for a brief set forth in this rule, including the requirements that briefs be bound in pamphlet memorandum of law, however, shall contain:

(i) the argument, exhibiting clearly the points of fact and of law being presented, citing the authorities relied upon; and

(ii) a conclusion, specifying the relief sought by the party. A party who files a memorandum of law shall be deemed to have co argument.

(5) Reply briefs shall conform to such parts of this rule as are applicable to the briefs of an opposing party, but need not contain a summ their length, if appropriately divided by topical headings.

(6) Briefs and memoranda of law must be compact, logically arranged with proper headings, concise and free from burdensome, irrelevai and memoranda of law not complying with this section may be disregarded and stricken by the supreme court.

(7) Unless specially ordered otherwise, the original and 8 copies of the opening brief shall be filed with the clerk of the supreme court, ir for each party separately represented, 2 copies with each self-represented party, and like distribution shall be made of the opposing law, or any other brief, all within the times specified in the applicable scheduling order.

The party filing the opening brief may similarly file, and make like distribution of, a reply brief, which shall be filed by the earlier of 2 of the opposing brief or opposing memorandum of law, or 10 days before the date of oral argument. A reply brief may be filed after time period only by leave of court. Responses to a reply brief shall not ordinarily be allowed. No response to a reply brief may be filec court received in advance.

Whenever a party desires to present late authorities, newly enacted legislation, or other intervening matters that were not available in the party's brief, the party may similarly file, and make like distribution of, such new matters up to and including the day of oral argu court thereafter.

The court shall not consider any brief or memorandum of law after a case has been argued or submitted, unless the court has grante brief or memorandum of law special leave to do so in advance.

(8) If a cross-appeal is filed, the clerk shall determine which party shall be deemed the moving party for the purposes of this rule, unless the court. The brief of the opposing party shall contain the issues and argument involved in the opposing party's appeal as well as th moving party. The moving party may file an answering brief within the time specified in the scheduling order.

(9) All references in a brief or memorandum of law to the appendix or to the record must be accompanied by the appropriate page numt

(10) The party filing a brief or memorandum of law shall conclude the pleading with a certification that the party has hand-delivered or h copies of the pleading to the other counsel in the case.

The name of the party filing the brief or memorandum of law and the name of the lawyer representing the party shall appear in type pleading, and the lawyer shall sign the pleading. Names of persons not members of the bar or not parties shall not appear on the nc

memorandum of law, or in the appendix unless they have complied with Rule 33 and received prior written approval of the court. *Se*

If an attorney provided limited representation to an otherwise unrepresented party by drafting a brief or memorandum of law to be proceeding in which the attorney is not entering any appearance or otherwise appearing in the case in the supreme court, the attorn attorney's name on such pleading to be used by that party; any pleading drafted by such limited representation attorney, however, r statement **"This pleading was prepared with the assistance of a New Hampshire attorney."** The unrepresented party must comply

(11) Each brief and memorandum of law shall consist of standard sized typewriter characters or size 13 font produced on one side of eac shall be spaced at a setting of 1.5] double spaced. [The text shall be left-aligned only. The pages of the brief shall be sequentially n cover page as page 1 and using only Arabic numerals for page numbers (e.g., 1, 2, 3), including for the table of contents and table c may be suppressed and need not appear on the cover page. double spaced.

Except by permission of the court received in advance, no reply brief (or response thereto) shall exceed 3,000 words, and, except in other brief shall exceed 9,500 words, exclusive of pages containing the table of contents, tables of citations, and any addendum cor constitutions, statutes, rules, regulations, and other such matters.If a cross-appeal is filed, the opening brief and answering brief of exceed 9,500 words, and the opposing brief of the cross-appellant shall not exceed 14,000 words, exclusive of pages containing th citations, and any addendum containing pertinent texts of constitutions, statutes, rules, regulations, and other such matters. The cr brief, which shall not exceed 3,000 words.

(12) Failure of the appealing party to file a brief shall constitute a waiver of the appeal and the case shall be dismissed.

Cite as N.H. R. Sup. Ct. 16

History. Amended Nov.10, 2015., eff. Jan. 1, 2016; Amended March 29, 2018, effective March 29, 2018; amended effective July 1, 2019.

I. APPELLANT PROPERLY RAISED AND PRESERVED FOR APPEAL THE "SPENDTHRIFT" ISSUE REGARDING THE JGM 2012 TRUST.

Appellant maintains, in response to appellee's argument "B" [Appellee's Brief 34], that the issue relative to the "Spendthrift" provision of the said JGM 2012 Trust was properly raised and preserved for appeal. As is referenced in appellant's Brief, from the outset, including with the testimony of appellant's appraiser, the issue of whether or not the Trust should be included in the marital estate was raised and addressed by the court in its narrative decision.

Subsequent to receipt of the court's Decree of Divorce, the appellant timely and appropriately filed "Petitioner's Motion For Reconsideration and/or Other Relief and Request For Hearing" which raised virtually all issues appealed including, but not limited to , the improper inclusion of the Trust in the marital estate, the improper valuation of petitioner's alleged interest, the lack of any benefits received from the Trust, the improper reliance upon IRS treatment, etc. [Apx. IV at 20]* Appellant requested reconsideration and "the opportunity to be heard ...". The trial court simply denied the said motion on December 4, 2019 without further comment.

Promptly upon receipt of the court's denial, appellant submitted "Petitioner's Motion To Stay and Renewed Motion And Request For Hearing And Request For Further and/or Supplemental Reconsideration and Clarification" dated December 9, 2019, which was again denied by the court, without further comment on December 19, 2019. [Apx. IV at 30] The said motion again requested, inter alia, a hearing to address the issues presented, recited verbatim the relevant portions of RSA 564-B:5-502, and asserted that the court's action was contrary to law and beyond the court's subject matter jurisdiction.

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* hereinafter, references to Appellant's Appendix to his Brief are referenced as " Apx." followed by the volume and page number.

The present appeal was thereafter timely filed, within the time requirements following the court's denial of the first post-trial motion. Both motions had been received, considered, and acted upon by the trial court, prior to the applicable appellate deadline and prior to the appeal being filed.

Appellant clearly identified and afforded the trial court an opportunity to consider the issues addressed on appeal, including the "Spendthrift" provision. See Family Division Rule 1.26 [F]. Appellant specifically raised the arguments articulated in his Brief. The trial court clearly had an ample and appropriate opportunity to rule on the issues presented and to correct the errors before they were presented to this Honorable Court. Compare also In The Matter of Kelly and Fernandes-Pradhu, 170 N H 42 [2017].

Additionally, as identified in appellant's Brief, the inclusion of the Spendthrift Trust by the lower court constitutes " plain error" which should otherwise be subject to review under Rule 16-A of this Honorable Court. In light of the clear language of RSA 564-B:5-502 [e] [I] and RSA 458:16-a [I], the inclusion in the marital estate of the trust interest was an error that was plain, effected substantial rights of the appellant, and seriously affected the fairness of the property distribution. See Stachulski v Apple New England, LLC, 171 N H 158, 171 [2018]. The trial court wrongly included in the marital estate, the petitioner's interest in the trust which the court erroneously valued at $292,068.42 [41 shares @ $7,123.62 per share] and for which interest no benefits are being received.

Further, as addressed in appellant's Brief, the trial court lacked statutory authority and subject matter jurisdiction to include the Spendthrift Trust as a marital assets due to the provisions and mandates of RSA 564-B:5-502 [e] [1]. The legislative intent and mandate is clear. "When a statute's language is plain and unambiguous, we need not look beyond it for further indications of legislative intent". In The Matter of Muller and Muller, 164 N H 512, 517 [2013]. RSA 564-B:5-

502 does not afford the trial court discretion as to the inclusion of a beneficiary's interest in a Spendthrift Trust as a "marital asset subject to distribution". The exclusion of the same is required with the legislature mandating that the same "...is not property for purposes of RSA 458:16-a, I." [emphasis added].

"Subject matter jurisdiction is jurisdiction over the nature of the case and the type of relief sought; the extent to which a court can rule on the conduct of persons or the status of things." ..."Absent subject matter jurisdiction, a court order is void" "...A party may challenge subject matter jurisdiction at any time during the proceeding, including on appeal, and may not waive it." In The Matter of Ball and Ball, 168 N H 133, 140 [2015] [citations omitted] [emphasis added] See also In The Matter of Gray and Gray, 160 N H 62 [2010]; Daine v Daine, 157 N H 426 [2008]

RSA 564-B:5-502 [e] [I], and the prohibition it entails, cannot be waived, explicitly or implicitly. As this court noted In The Matter of Goulart and Goulart, even an express agreed-to waiver by the parties themselves "..could not confer subject matter jurisdiction where it did not exist, and any ...orders [to that effect] were void." 158 N H 328, 332 [2009]. The court, by including the trust as a marital asset "erred as a matter of law". Id.

Appellee's assertion that the appellant was required to request "...that the trial court take "judicial notice" of the statute is not supported by any authority. The applicable law to be followed is not a matter requiring "judicial notice".

Appellee's reliance on this court's decision in Riso v Riso, is misplaced. The Riso matter dealt with an affirmative defense which could be waived. As previously referenced, there can be no waiver of subject matter jurisdiction, nor can the parties confer jurisdiction on the court which has not been conferred legislatively.

To the extent the appellee challenges the Spendthrift provision itself, appellant, as referenced

in his Brief, would again reference this Honorable Court's prior decisions recognizing the identical language as a Spendthrift Trust. See for example In the Matter of Goodlander and Tamposi, 161 N H 490, 493 [2011]. Further, the provisions of the Trust, which were in evidence, clearly qualify the trust as a Spendthrift Trust. The Trust does not confer upon the beneficiary the right to transfer, pledge, or take other action with the beneficiary's interest, and specifically mandates the distribution of the assets and income of the trust corpus to appellant's issue upon his death. Per the trust documents, Appellant does "...not have the power to appoint to or for the benefit of himself, his creditors, his estate or the creditors of his estate". [Apx. VI at 3, 4]

Contrary to appellee's assertion, expert testimony was neither necessary, nor required. A qualified expert "...may testify... if the expert's 'scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue". N.H. R. Ev. 702. See also RSA 516:29-a. Other than appellee's naked assertion, appellee cites no authority for the proposition that expert testimony was required., and does not develop the argument or fully brief the same. See In The Matter of Silva and Silva, 171 N H 1, 11 [2018; State vs Blackmer, 149 N H 47, 49 [2003].

Lastly, other than appellee's challenge regarding preservation of the spendthrift issue, the appellee has failed to address or brief the other substantive issues addressed including, but not limited to, the issues regarding : [a]. Appellant's beneficial interest constituting a 'mere expectancy'; [b] the de minimis value of any interest that the appellant may receive, especially where the appellant is not receiving any distributions and where any income from the sole asset of the trust, to wit the corporate stock, cannot be disbursed in light of the bank commitments; [c] the improper method of valuing appellant's interest, [valuing the same based on the value of the trust corpus]; and [d] the improper consideration and reliance by the court upon the tax treatment of the trust.

II. THE APPELLEE'S ASSERTIONS THAT HER MOTHER NEVER INTENDED TO GIVE THE CONDOMINIUM TO HER DURING HER LIFETIME; THAT THE SAME WAS TITLED JOINTLY FOR CONVENIENCE ONLY; AND THAT THE SAME WAS NEVER INTENDED TO BE PART OF THE MARITAL ESTATE ARE NOT SUPPORTED BY THE RECORD, OR SUFFICIENT FINDINGS.

The appellee, in Argument "C" of her Brief, has stated as follows:

A. "The condominium was used solely by Lea's mother and was never intended to be part of the marital estate; [Appellee's Brief 36] and

B. "The facts adduced at trial show that Lea's mother never intended to give the condominium to Lea during her lifetime and was titled jointly for convenience only".[Appellee's Brief 37]

Consistent with Rule 15, this Honorable Court and the parties have been provided a transcript of all testimony during the trial of the present proceedings. Appellee has provided no transcript reference or exhibit reference in support of these assertions. (See also Rule 16 [9]). Appellant maintains that the record is void of any evidence relative to the appellee's mother's intentions or purpose.

The court made no such finding [Apx. I at 22, 23], nor did the appellee seek any such finding in her "Requests For Findings and Rulings" [Apx. IV at 3-19] . The "Respondent's Requests For Findings of Fact and Rulings of Law", totaling 174 requests, included only the following two relative to 703 Ocean Boulevard: [Apx. IV at 12]

"116. Lea's name was, unknown to her, included on the deed for her mother, Joyce Pinaud's condominium at 703 Ocean Blvd. Hampton, NH.

117. Lea did not attend a closing or make any financial contribution towards her mother's purchase of the condominium at 703 Ocean Blvd, and subsequently re-conveyed the property back to Joyce Pinaud."

Appellee's sole claim at the time of trial related to her alleged knowledge, or lack of knowledge, of her inclusion on the deed. No competent evidence was produced during the trial in support of the above-referenced statements and assertions in her Brief.

III. ARGUMENT "G" OF APPELLEE'S BRIEF FAILS TO ADDRESS THE FAIRNESS OR APPROPRIATENESS OF THE TEMPORARY ORDERS OR APPELLANT'S ABILITY TO COMPLY WITH THE SAME.

The appellee provides no argument in support of the fairness of the temporary orders issued by Judge Stephen or appellant's ability to comply with the same. Rather, she merely relies upon the conclusion that "[s]ometimes temporary orders are harsh, that does not make them erroneous".

The child support order was premised upon the gross income actually available to appellant. However, the court thereafter ordered alimony and numerous identified and unidentified expenses to be paid by appellant. The trial court, erroneously referring to the K-1 passive income as "rental income", noted that although not available to appellant, it will "ultimately inure to his [benefit...]. [Apx. VIII at 15] As referenced in appellant's Brief, it was improper for the court to impose upon appellant additional financial obligations, relying in whole or in part, upon the said K-1 income. The same does not translate to funds available to the appellant to satisfy the financial burden placed upon him.

It should be further be noted that the unavailable K-1 passive income was, in any event, "captured", by both the experts and the court in the valuation of the shares of George E. Merrill and Son, Inc.

The court's order did not properly weigh the appellant's "ability" to make the payments for alimony, etc., while maintaining his reasonable needs for both himself and the child. See RSA 458:19.

The appellant did not seek credit for the payments made under the temporary orders to the time of the trial. Rather, appellant sought relief from claimed arrearages and other financial burdens imposed pursuant to the temporary orders, going forward, and a correction of what was concededly a "harsh" order beyond appellant's capabilities.

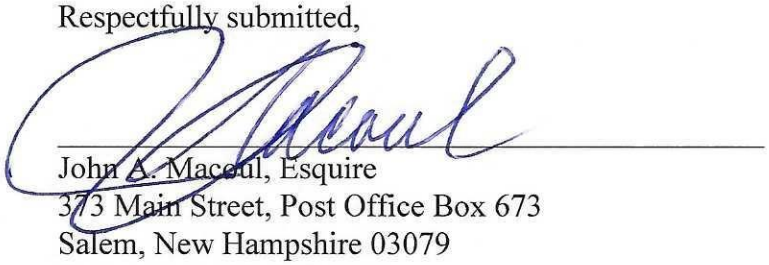
"The Family Division of the Circuit Court has equitable powers...that lie within its subject matter jurisdiction... These equitable powers are "broad and flexible", allowing the Family Division "to shape and adjust the precise relief to the requirements of the particular situation"... A court exercising its equitable powers "will order to be done that which in fairness and good conscience ought to be or should have been done..." In The Matter of St. Pierre and Thatcher, 172 N H 209, 215-216 [2019] [citations omitted] [emphasis added]

Appellant maintains that to continue the financial hardship and burden imposed upon the appellant, and to fail to provide any relief going forward, is contrary to what "in fairness and good conscience" ought to have been done. The court's failure to provide any relief in this regard is contrary to the principles of equity, and an unsustainable exercise of judicial discretion. To allow the same to stand, is to effectively sanction and authorize "harsh" orders, which are not attainable.

CONCLUSION

The appellant, in his principle Brief and in this Reply Brief, has identified reversible errors in the trial court's decree. For the foregoing reasons, and those stated in his principle Brief, the appellant respectfully requests that this Honorable Court reverse the judgment in accordance with the requests for relief in his principle Brief.

Respectfully submitted,



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RULE 16 CERTIFICATION [RE: WORD LIMITATION]

I hereby certify that this Reply Brief does not exceed 3,000 words exclusive of pages containing Table of Contents, Table of Citations, and any addendum containing pertinent texts of constitutions, statutes, rules, regulations, and other such matters.

John A. Macoul, Esquire

CERTIFICATE OF SERVICE

I, John A. Macoul, Esquire, hereby certify that a copy of the within Reply Brief on behalf of the Appellant has been this date e-served upon counsel for Appelle, Thomas K. MacMillan, Esquire, and the guardian ad litem, Timothy S. Wheelock, Esquire, and mailed to the Complex Docket, now sitting at the Brentwood Family Division, this date.

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Dated: August 26, 2020