

State of New Hampshire Supreme Court

IN THE MATTER OF
JUDITH RAYBECK
and
BRUCE RAYBECK

N.H. Sup.Ct. No. 2014-0059

MOTION FOR SUMMARY AFFIRMANCE

NOW COMES Judith Raybeck, by and through her attorney, Joshua L. Gordon, and respectfully requests this honorable court decline acceptance of Bruce Raybeck's appeal, and summarily affirm the judgment of the court below.

As grounds it is stated:

I. Cohabitation

1. As part of their stipulated divorce decree following a 42-year marriage, Bruce Raybeck undertook to pay Judith Raybeck¹ \$25,000 annually for a period of 10 years beginning in January 2006, but would be released from the obligation if Judith "remarries and/or cohabitates with an unrelated adult male."

2. In 2009, because of the performance of the stock market, Bruce threatened to withhold alimony payments beginning with the January 2010 installment. In response Judith, who is 70, reassessed her financial situation and realized that without alimony she could no longer afford to live

¹The parties are referred to herein by their first names to eliminate confusion of their shared last name.

alone in her house in Laconia. At the time her friend, Paul Sansoucie, also in his 70s, was living alone and offered to share the large house he owns in Plymouth, New Hampshire, which Judith accepted. Bruce indeed withheld alimony, prompting Judith to seek enforcement of the decree.

3. The Laconia Family Court held that Judith and Mr. Sansoucie were merely house-mates, not co-habitators, and Bruce appealed. This Court took the opportunity to define cohabitation “as a relationship between persons resembling that of a marriage,” *In re Raybeck*, 163 N.H. 570, 574 (2012), and remanded in light of the new test.

4. The Laconia Family Division held a remand trial over two hearing dates, and heard testimony from Mr. Sansoucie, as well as Judith, Bruce, two of their adult children, and their extended family. After reviewing the evidence it found they have never been intimate with each other; although they share a kitchen and living room they live on separate floors of Mr. Sansoucie’s home each with their own bedroom and bathroom; they maintain their own finances, accounts, estate plans, and insurances, and do not own any real or personal property together; and neither have mutual friends nor hold themselves out as a couple. The Family Court noted that although romance may have been briefly contemplated by one or the other of them, Judith’s relocation to Plymouth was caused by Bruce’s threat to withhold alimony, Judith’s realization that she could not afford to live alone, and Mr. Sansoucie’s generosity in mitigating her predicament. The Family Court had the benefit of immediately observing the parties and their relationship, and on that basis held they have a “joint occupancy,” not a cohabitation. It thus ordered Bruce continue his alimony obligation, and Bruce has again appealed.

5. “In reviewing the trial court’s ruling, we accept its factual findings unless they lack support in the record or are clearly erroneous.” *Raybeck*, 163 N.H. at 572. Judith never had any romantic entanglements with Mr. Sansoucie, either before Bruce’s first appeal nor after, and nothing

in their joint occupancy resembles a marriage. This Court must defer to the Family Court, especially when it had the opportunity to directly observe their relationship. Given the standard of review, Bruce has enunciated no basis on which to attack the trial court's findings.

6. Bruce has tried to leverage this second appeal into an issue of law by claiming the family court relied too much on Judith's advanced age and that her finances are not commingled, NOA ¶ 3, by finding Judith's living arrangement was based on her sudden loss of alimony, NOA ¶ 4, and by finding Judith was generally not cohabitating. NOA ¶¶ 5-6. These are matters of fact, however, to which this Court allows deference. Bruce also suggests this Court should revisit its definition of cohabitation, NOA ¶ 8, which is now both law of the case and law of the land.

7. Accordingly this court should decline this appeal.

II. Payment of Alimony Pending Appeal

8. An unresolved issue in the stipulated decree between Judith and Bruce is the status of Judith's own home in Laconia, which was awarded to her as part of their divorce. But, during their conversation in 2009 when Bruce threatened to stop alimony payments, Judith for the first time realized she did not own the house outright, and that Bruce had a continuing mortgage on it. It was that realization which made her reassess her finances because for the first time she knew she had little equity. Upon moving to Plymouth she now lets the house to renters, giving her a modest income. In ordering Bruce to pay alimony pending this appeal, the Family Court nonetheless gave him a lien against the house for the amount of the annual alimony.

9. In this appeal Bruce complains that alimony pending appeal violates his constitutional rights. NOA ¶ 7. But it doesn't. First, this Court has firmly granted the Family Court authority to order alimony pending appeal. *Nicolazzi v. Nicolazzi*, 131 N.H. 694 (1989). Second, insofar as a *quid pro quo* is necessary, the lien is an adequate *quid pro quo* for the payment of alimony. *Opinion of the*

Justices, 113 N.H. 205 (1973). Third, appeal bonds, or supersedeas bonds, are not uncommon, and the lien the court gave Bruce on Judith's house in Laconia for security can be considered that. *See e.g., Boynton v. Figueroa*, 154 N.H. 592, 608 (2006) (allowing attachment as security for verdict pending appeal); *Realco Equities, Inc. v. John Hancock Mut. Life Ins. Co.*, 130 N.H. 345, 352 (1988) (declining to rule on appeal bond as it became moot upon disposition of appeal); *Global Naps, Inc. v. Verizon New England, Inc.*, 489 F.3d 13, 19 (1st Cir. 2007) (discussing supersedeas bond); FED. R. CIV. P. 62(d) (providing for appeal bond); FED. R. APP. P. 8(b) (same).

10. Fourth, the purpose of article 14 of the New Hampshire Constitution, which Bruce cites, is to ensure that citizens have adequate and expeditious access to the courts and to civil remedies, to guard against arbitrary and discriminatory infringements on that access, *Ocasio v. Federal Exp. Corp.*, 162 N.H. 436 (2011); *Gonya v. Commissioner, New Hampshire Ins. Dept.*, 153 N.H. 521 (2006); *State v. City of Dover*, 153 N.H. 181 (2006); *Trovato v. DeVeau*, 143 N.H. 523 (1999); *Opinion of the Justices*, 137 N.H. 260 (1993); *State v. Myal*, 104 N.H. 188 (1962), and to prevent bribery or the appearance of bribery in the judicial system. *Christy & Tessier, P.A. v. Witte*, 126 N.H. 702 (1985). Nothing Bruce has alleged impinges on his access to the court, the expeditiousness of it, or bribery. Accordingly he has stated no article 14 issue. Rather his allegation reflects what he obviously considers an unfair alimony payment, and his citation to the constitution is an effort to elevate this deference-to-the-factfinder case into something greater. Moreover, the arrangement is overly generous to Bruce; it is *Judith* who should have a lien against Bruce's real estate for the total amount of alimony, both arrearage and into the future.²

11. Finally, if family courts were deprived of the ability to order alimony pending appeal,

²Alimony payments were made for the years 2006, 2007, 2008, and 2009. Bruce did not pay alimony in 2010, 2011, 2012, 2013, or 2014. As of January 2014, the arrearage is \$125,000. There is a \$75,000 bank CD as security for a portion of this, and a request for additional security is pending in the trial court.

it would provide incentive for all alimony obligors to appeal, and would disrupt the authority of family courts to award alimony when, given need and ability to pay, that is their statutory duty.

12. Judith understands that having conditioned alimony on remarriage or cohabitation, there are lines she cannot cross and she has not crossed them. Bruce mistakes cohabitation for joint occupancy, and sees a romance when there is only a housemate. By denying her alimony Bruce has acquired power over Judith's finances and personal decisions, and controlled her life to a degree to which no divorced man should have a right. According, this court should decline his appeal.

WHEREFORE, Judith Raybeck respectfully requests this honorable Court decline Bruce Raybeck's second appeal, and summarily affirm the findings of the Laconia Family Court.

Respectfully submitted
for Judith Raybeck
by her attorney,

Dated: February 17, 2014

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I hereby certify on this 17nd day of February 2014, a copy of the foregoing is being forwarded to Greg Kalpakgian, Esq; and to Quentin Blaine, Esq.

Dated: February 17, 2014

Joshua L. Gordon, Esq.