Case Number: SU-2022-0156-MP
Filed in Supreme Court
Submitted: 5/23/2022 1:17 PM
Envelope: 3634481
Reviewer: Justin Coutu

STATE OF RHODE ISLAND SUPREME COURT

LAURIE A. CRONAN	:
Petitioner	: Case No: SU-2022-
	:
vs.	: Family Court Number F. C. No. P2020-2673
	:
JOHN J. CRONAN	:
Respondent	:

EMERGENCY MISCELLANEOUS PETITION FOR RELIEF AND FOR STAY OF ALL APPELLATE PROCEEDINGS

HISTORY

The Petitioner, Laurie A. Cronan (sometimes, "Laurie", "Petitioner" or "Appellant") files this Emergency Miscellaneous Petition for Relief in this Court to address a quagmire created by the family court in its interpretation and application of the family court rules and statutes of this state. As will be addressed below, Petitioner needs immediate relief from this Court to give her, the Respondent, John J. Cronan ("John" or "Respondent") and, more importantly, the family court proper guidance to allow Petitioner her right to challenge certain final decisions and orders entered in the family court.

A contested divorce trial commenced on October 14, 2021 between Laurie and John which concluded on December 17, 2021. General Magistrate Ballirano

("General Magistrate") presided over the proceedings.[1] After the close of testimony, the parties submitted trial briefs to the General Magistrate advocating their respective client's positions. On May 3, 2022, the General Magistrate rendered a 108-page written decision (the "Decision").

The Decision Pending Entry of Final Judgment ("DPEFJ") entered on May 19, 2022. Aggrieved by the Decision and DPEFJ, Petitioner desires the Rhode Island Supreme Court's appellate review on a host of various issues. To this end, a timely Notice of Appeal was filed in the Family Court on May 19, 2022, to commence appellate review in the Rhode Island Supreme Court.[2] A copy of the Notice of Appeal accompanied by the Request For An Appeal Transcript filed by Appellant in the family court is attached hereto as Exhibit A. Curiously, the Clerk's Office in the family court docketed Exhibit A as an "*Appeal of a Magistrates Decision*". See Exhibit B.[3]

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[1] This case was initially assigned to an associate justice of the family court but was later transferred to the General Magistrate as opposed to a judge empowered under Article X of the Rhode Island Constitution. The propriety of whether a general magistrate is statutorily empowered to hear a contested divorce will be addressed herein.

[2] The Notice of Appeal to this Court was filed on the same day but after the DPEFJ was entered by the family court. For the sake of clarity, this first filed appeal will be referred to as the "Supreme Court Appeal".

[3] Petitioner suggests that the family court is ignoring Laurie's unfettered statutory right to appeal the DPEFJ to this Court and has instead converted her Supreme Court Appeal to an appeal from a magistrate to the Chief Judge of the family court

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In addition, and out of an utmost precautionary position (given the anticipated position of the family court), Appellant filed a separate appeal pursuant to Rule 73. Utilizing the notice of appeal form provided by the family court for such an appeal, Appellant contemporaneously filed with the family court clerk a "*Notice of Appeal From Decision of Magistrate*", a "*Request for an Appeal Transcript*, and a separate pleading labelled "*Notice of Conditional Appeal From Magistrate to the Family Court Chief Judge*". This package of filed documents can be found at Exhibit C.[4]

As the Court will read, Exhibit C consists of **five (5) pages**. Despite this **five (5) page** filing, a review of the family court docket shows that the clerk did not docket the **entire filing**. Instead, the clerk's office only docketed the **fifth page** of Laurie's filing which consists of the "*Notice of Conditional Appeal From Magistrate to Family Court Chief Judge*". See Exhibit D. Moreover, instead of

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pursuant to Rule 73 of the Family Court Rules of Domestic Procedure ("Rule 73") as will be explained more fully below.

[4] This internal family court appellate process is pursuant to Rule 73. This secondary, internal appeal will hereinafter be referred to as the "Family Court Appeal" to distinguish this "conditional appeal" from the Supreme Court Appeal taken by Appellant on May 19, 2022. The Family Court Appeal was intentionally filed one (1) day later to clearly distinguish the conditional appeal from the absolute appeal to this Court and to eliminate any confusion as to which appellate rights she seeks (and sought first). Make no mistake, Appellant posits that she is entitled to a direct review of the Supreme Court appeal without any intermediate review by either the *Chief Judge or his designee*.

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docketing the pleadings as a "*Notice of Appeal from Decision of a Magistrate*" (which is exactly what Laurie filed—although as a conditional appeal), the clerk chose to unilaterally docket the May 20 filing as a "*Miscellaneous Document Filed*". See Exhibit E.

The remainder of this petition will set forth the conflicts that exist between various court rules, statutes and verbal guidance given by the Rhode Island family court staff to Appellants' counsel. In short, the Appellant is mindful of the strict time constraints, sees various conflicts in perfecting her appeal, *which should be clear or clearer*, and simply desires clarity by this Court as to the question, "W*here do I go from here?*".

Issue One Presented

Whether a party to a contested divorce trial presided over by the General Magistrate of the Rhode Island Family Court is entitled to direct appeal to the Rhode Island Supreme Court from the issuance of a Decision Pending Entry of Final Judgment.

Family Court Direction – Rule 73

The Rhode Island family court both through its Rules and through interactions with senior personnel of the court clearly hold the position that the exclusive remedy for review of a litigant claiming error from a contested divorce trial before the General Magistrate is through Rule 73.

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The pertinent part of Rule 73 is as follows:

> a) Referral of Appeal. An appeal from a judgment, order, or decree of a **general magistrate** or a magistrate **shall be referred to the chief judge** or the chief judge's designee. The review shall be appellate in nature and on the record. (emphasis added)

On its face, Rule 73 appears to mandate an appeal from the General Magistrate's Decision to be transferred to the Chief Judge or his designee. Subsection (f) of Rule 73 goes on to provide the Appellant twenty (20) days to order the transcript or the parts of the record necessary to perfect the purported appeal process to the Chief Judge. Following that procedure, Rule 73 procedure provides that once the record is complete a statement of issues and a memorandum of law is due (*presumably to the Chief Judge or his designee*).[5]

Appellant's Statutory Right of Direct Review to this Court – R.I.G.L. § 14-1-52(a)

On the other end of the spectrum, the Appellant suggests that her exclusive

[5] Rule 73 tracks this Court's Rules of Appellate Procedure in some respects. For example, subsection (f) requires the appealing party to "order a transcript of the parts of the proceedings that the appellant deems necessary for inclusion in the record" and the appellee to order a "transcript of other parts of the proceedings to be necessary" (compared to Appellate Procedure Rule 10(b)); and subsection (g) requires the appellant to "submit a statement of the issues on appeal and a memorandum of law in support of the allegations of error. The appellee shall have twenty (20) days to respond" (compared to Appellate Procedure Rule 12(A)). Given the outstanding appellate dispute, Petitioner foresees competing filing deadlines and, more importantly, issues mandating the clerk of the family court to docket the record on appeal to this Court when the record is ready for transmission to the Supreme Court.

path to review of the General Magistrate's Decision and the DPEFJ is direct review by the Supreme Court as provided for by R.I.G.L. § 14-1-52(a). The relevant provisions of this statute provide as follows:

> From any **final decree**, judgment, order, **decision**, or verdict of the family court, except as provided in subsection (b) of this section, **there shall be an appeal to the supreme court**, which appeal, in all civil cases except paternity proceedings under chapter 8 of title 15, shall follow the procedure for appeal in civil actions as provided in chapter 24 of title 9. **A decision granting a divorce shall be appealable upon entry** and, except as otherwise provided by law, the correctness of the decision shall not be reviewable upon an appeal from a final decree for divorce entered in pursuance of § 15-5-23. . . . The provisions of chapter 24 of title 9 and applicable procedural rules relating to the superior court shall apply to the family court in matters appealed from the family court; provided, that on appeal, the supreme court may by rule provide for certain circumstances as it may deem appropriate.
>
> R.I.G.L. § 14-1-52(a) (emphasis added).

There can be no doubt that the DPEFJ entered by the General Magistrate is a "final decree" or "decision" contemplated by R.I.G.L. § 14-1-52(a) which mandates an appeal to the Supreme Court. Craveiro v. Craveiro, 773 A.2d 896, 2001 R.I. LEXIS 171 (R.I. June 22, 2001). The Craveiro Court held:

> A party who contests a divorce must file his or her appeal within twenty days of the decision pending entry of final judgment, which is rendered by the trial justice after a hearing. *See* Sup. Ct. R. App. P. 4(a); *Bina v. Bina, 764 A.2d 191, 192 (R. I. 2000)* (mem.). "Specifically, **[*899]** *G.L. 1956 § 14-1-52(a)* provides that '[a] decision granting a divorce shall be appealable upon, [*sic*] entry.'" *Bina, 764*

> *A.2d at 192* (quoting *Koziol v. Koziol, 720 A.2d 230, 232 (R. I. 1998))*. **[**6]** Therefore, if a party wishes to appeal a divorce, he or she must do so within twenty days of the decision pending entry of final judgment and not from the date the final decree is entered. *See id.* ("'the correctness of the [divorce] decision shall not be reviewable upon an appeal from a final decree for divorce'"). "We have ruled that the time specified in Rule 4(a) is mandatory, and that once the prescribed time has passed there can be no review by way of appeal." Millman v. Millman, 723 A.2d 1118, 1119 (R. I. 1999)(citing Warwick Land Trust, Inc. v. Children's Friend and Inc., 604 A.2d 1266, 1267 (R. I. 1992)).[6]

Appellant is confronted with a rule and a statute which purportedly conflict with one another. According to the representations of counsel to the family court, Rule 73(b) controls the appeal process from the General Magistrate and Appellant's sole right of review is to the Chief Judge of the Family Court pursuant to Rule 73. Appellant disagrees and posits that she has an absolute right to seek direct review by this Court (without any internal review by the Chief Judge or his designee).

Regardless of whose interpretation is the correct one, there is an immediate

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[6] Rule 4(a) of the Supreme Court Rules [**3] of Appellate Procedure requires that a notice of appeal "shall be filed with the clerk of the trial court within twenty (20) days of the date of the entry of the judgment, order or decree appealed from * * *." We have ruled that the time specified in Rule 4(a) is mandatory, and that once the prescribed time has passed there can be no review by way of appeal. See Warwick Land Trust, Inc. v. Children's Friend and Service, Inc., 604 A.2d 1266, 1267 (R.I. 1992) and Millman v. Millman, 723 A.2d 1118 (1999).

controversy between the mandatory language of Rule 73 (a) ("An appeal from a judgment, order, or decree of a **general magistrate** or a magistrate **shall be referred to the chief judge**") compared to the mandatory language of R.I.G.L. § 14-1-52(a) ("From any **final decree**, judgment, order, **decision**, or verdict of the family court, except as provided in subsection (b) of this section, **there shall be an appeal to the supreme court**" . . . **A decision granting a divorce shall be appealable upon entry**") which must be resolved before the Appellant is left to guess and proceed at her own peril on appeal.

It is anticipated that the Family Court, in support of its position that Rule 73(a) controls the immediate controversy, will cite to this Court's holding in State v. Young, 941 A.2d 124 (2008) for the general proposition that "the court rule trumps the statutory provision when in conflict". Id. at 129 fn. 7 (citing Heal v. Heal, 762 A.2d 463, 467 (R.I. 2000).[7] However, Appellant points this Court to a later case decided by this Court in State v. Robinson, 972 A.2d 150 (R.I. 2009) to

[7] Upon filing the conditional appeal (one day after filing the Notice of Appeal to the Supreme Court), counsel for Appellant was unequivocally told that the Notice of Appeal filed the previous day would be treated as a magistrate's appeal to the Chief Judge and not as an appeal to this Court. This position appears to have been formally implemented by the family court with the description it ascribed on the docket to Appellant's Supreme Court Appeal identifying the document as an "*Appeal of Magistrate's Decision*". At the time Laurie's counsel was in the process of filing the conditional appeal, deputy legal counsel to the Rhode Island family court (Susan Famiglietti) appeared on the second floor at the Clerk's counter and provided counsel with a copy of the Young decision.

clarify the family court's misplaced reliance on the dicta language found in State v. Young.[8]

In Robinson, this Court reaffirmed the general proposition that a statute may give way to a conflicting rule, however, it likewise made plain that no such procedural rule shall be construed to expand or limit the jurisdiction of any court. Id. at 158. In so holding, the court pronounced:

> We cannot overlook the well-established principle that procedural rule-making authority may not be used to expand a court's jurisdiction. The United States Supreme Court has said: 972 A.2d 150, *157; 2009 R.I. LEXIS 81, **15 "An authority conferred upon a court to make rules of procedure for the exercise of its jurisdiction is not an authority to enlarge that jurisdiction; and the Act * * * authorizing this Court **[**20]** to prescribe rules of procedure in civil actions gave it no authority to modify, abridge or enlarge the substantive rights of litigants or to enlarge or diminish the jurisdiction of federal courts." *United States v. Sherwood, 312 U.S. 584, 589-90, 61 S. Ct. 767, 85 L. Ed. 1058 (1941)*; *see also Fed. R. Civ. P. 82* (federal rules must not be construed to extend or limit jurisdiction). [footnote omitted]"

The Rhode Island legislature itself codified this obvious legal principle that the courts, through their procedural rule-making authority, have absolutely no legal

[8] In Young, the Court referred to the dichotomy between R.I.G.L. § 12-12-1.7 (providing 10 days to file a 9.1 motion) and Rule 9.1 (providing 30 days to file a motion to dismiss). This language was found in the last footnote of the Court's decision and, as this counsel reads the Young decision, the conflict between the rule and the statute was not central to the Court's holding.

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authority to expand or limit their jurisdiction. See R.I.G.L. § 14-1-61 which states in *toto*:

> The court shall have the power to adopt rules of procedure for the conduct of the court **not inconsistent with the provisions of this chapter**. (emphasis added).

The position expressed by the Family Court (through its deputy legal counsel and the actions of the clerk's office by the erroneous docketing of the Appellant's Supreme Court Appeal) accomplishes exactly what the legislature and this Court in Robinson expressly prohibited *i.e.*, the family court narrowing the Supreme Court's jurisdiction over appeals of a final divorce decree and expanding the jurisdiction of the Chief Judge *or his designee*[9].

Laurie disagrees with the position ostensibly taken by the family court. Appellant posits that she has an absolute right to proceed with the Supreme Court Appeal and have this Court—not Chief Judge Michael B. Forte or his designee—review the Decision and the DPEFJ issued by the General Magistrate. Regardless of whose position ultimately prevails, Appellant finds herself in a legal conundrum. While she has taken all the necessary steps to preserve her appellate rights to this Court (and to the Chief Judge if Rule 73 winds up controlling),

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[9] Interestingly, Rule 73(a) places no limitations on the Chief Judge's designee. According to the four (4) corners of the Rule, the designee could be referral to another magistrate; although that referral would be inappropriate since magistrates have no authority to hear contested divorce cases (whether in the first instance or on appeal) as will be addressed below.

the recent actions taken by the clerk of the family court in miss-docketing (or misnaming) Appellant's Supreme Court Appeal and the subsequent conditional appeal have created significant legal obstacles to Laurie exercising her appellate rights. By way of example, after the requisite transcripts are delivered and filed with the clerk of the family court, will the family court clerk transmit the record to the Supreme Court Clerk as required by Rule 11(b) of the Appellate Rules of Procedure of this Court?[10] Or, alternatively, will the family court clerk decline to transmit the record to this Court and instead refer the record to the Chief Judge for further proceedings under Rule 73?[11] If this happens, Appellant will be facing a deadline to file her so-called Rule 73(g) statement of issues on appeal with the Chief Judge with no legal ability to have the family court clerk comply with this Court's time period to transmit the record to the Clerk of the Supreme Court in conformity of Rule 11(b).

This is just a small sample of procedural hurdles faced by this Appellant on appeal based on the events which have taken place since May 19, 2022 when

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[10] See Rule 11(b) which provides in relevant part:

> (b) Duty of Clerk to Transmit the Record. When the record is complete for purposes of this appeal, the clerk of the trial court **shall transmit it to the Clerk of the Supreme Court**. (emphasis added).

[11] Rule 73(g) requires the appellant to submit a statement of issues on appeal within twenty (20) days after the record on appeal is completed.

Laurie took the necessary steps to preserve her statutory right of appeal of the General Magistrate's Decision and the DPEFJ. Again, regardless of whose position is correct, Petitioner asks this Court to step in at this point to toll any appellate deadlines—whether imposed by this Court or Rule 73—pending a final decision by the Supreme Court on the merits of Petitioner's Emergency Miscellaneous Petition for Relief.

Issue Two Presented

Whether a General Magistrate has authority to preside over a contested divorce trial.

A General Magistrate does not have authority to preside over a Contested Divorce Trial.

The creation and authority of the General Magistrate position derives from R.I.G.L. § 8-10-3.2. The primary powers of this judicial officer can be found in subsection (c) which states:

> (c) **The primary function of the general magistrate shall be the enforcement of child support decrees, orders, and law relative to child support.** The general magistrate shall have all the authority and powers vested **in magistrates** by virtue of §§ 8-10-3, 8-10-3.1, 9-15-19, 9-15-21, 9-14-26, 9-18-8, 9-18-9, and 36-2-3, and any other authority conferred upon magistrates by any general or public law or by any rule of procedure or practice of any court within the state. (emphasis added).

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As set forth above, the general magistrate has those express powers enunciated in R.I.G.L. § 8-10-3.2 as well those powers given to "magistrates" pursuant to R.I.G.L. § 8-10-3.1.[12] It is without question that a "magistrate" has no legal authority to preside over a contested trial.

Without any express delegatory powers from the legislature in creating the position of "general magistrate" or spillover powers conferred upon a "magistrate", Laurie posits that the General Magistrate had no authority to preside over or render the Decision in the underlying divorce case. A review of the 2007 changes to R.I.G.L. §8-10-3.2 supports Petitioner's stance. As reflected in 2007 R.I. HB 5300, the legislature made, in part, the following changes to the general magistrate statute[13]:

> 8-10-3.2. General magistrate of the family court. –
>
> **(a)** There is hereby created within the family court the position of general magistrate of the family court who shall be appointed by the ~~governor~~ CHIEF JUDGE OF THE FAMILY COURT with the advice and consent of the senate for a ~~life~~ term OF TEN (10) YEARS AND UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIED. NOTHING HEREIN SHALL BE CONSTRUED TO PROHIBIT THE ASSIGNMENT OF THE GENERAL MAGISTRATE TO MORE THAN ONE SUCH TERM,

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[12] The authority and powers of magistrates (distinguished from the **general** magistrate) is controlled by R.I.G.L. § 8-10-3.1.

[13] The red line strikes reflect the language removed from the statute. The green highlights reflect statutory additions.

> SUBJECT TO THE ADVICE AND CONSENT OF THE SENATE.
>
> (c) The primary function of the general magistrate shall be the enforcement of child support decrees, orders, and law relative to child support. The general magistrate shall have all the authority and powers vested in magistrates by virtue of sections 8-10-3, 8-10-3.1, 9-15-19, 9- 15-21, 9-14-26, 9-18-8, 9-18-9, and 36-2-3, and any other authority conferred upon magistrates by any general or public law or by any rule of procedure or practice of any court within the state.
>
> (d) The chief justice of the supreme court with the agreement of the chief judge of the family court may specially assign the general magistrate to ~~perform judicial duties within~~ any court of the unified judicial system ~~in the same manner as a judge may be assigned pursuant to chapter 15 of this title~~; provided, however, that the general magistrate may be assigned to the superior court subject to the prior approval of the presiding justice of the superior court. When the general magistrate is so assigned he or she shall be vested, authorized, and empowered with all the powers belonging to the ~~justices~~ MAGISTRATES of the court to which he or she is specially assigned.

As reflected in subsection (d) of the 2007 legislation, the legislature seemingly stripped the general magistrate of the power to perform judicial duties within any court (including the family court) other than those expressly conferred upon the general magistrate. Without an express delegation of additional powers (which none exists), the General Magistrate had no authority to preside over the contested divorce trial between Laurie and John.[14]

[14] Prior to the adoption of the 2007 amendments, a General Magistrate arguably had the power to hear contested divorce cases. With the 2007 changes, no such

The confusion by the family court in applying Rule 73 to the case at bar may stem from the already committed grave error when the contested divorce case was assigned to the General Magistrate for trial as opposed to an associate justice of the family court. This lack of authority issue will likewise need to be resolved by this Court.

WHEREFORE, Petitioner seeks from this Honorable Court the following relief:

1. This Court issue a stay of all appellate proceedings and related time deadlines associated with the Supreme Court Appeal and the Family Court Appeal until further direction and order of this Court;
2. An Order from this Court directing the family court clerk to process the Appellant's Supreme Court Appeal in accordance with the Supreme Court Rules of Appellate Procedure;
3. A declaration by this Court that Appellant's right to appeal from the Decision and DPEFJ is to the Rhode Island Supreme Court and not to the Chief Judge of the family court;
4. A declaration by this Court that Rule 73 is not applicable and does not govern Appellant's right to appeal the DPEFJ and Decision

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power now lies with the General Magistrate and therefore his May 3, 2022 Decision and the resulting DPEFJ is a nullity.

issued by the General Magistrate;

5. A declaration by this Court that the General Magistrate did not have authority to preside over and decide the subject contested divorce case;
6. A declaration by this Court that the Decision and the DPEFJ are a nullity and *void ab initio*;
7. This Court issue a stay of the implementation of the Decision, DPEFJ and interlocutory orders; and
8. Any other relief this Court deems just and equitable.

Respectfully submitted
By plaintiff's attorneys,
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CERTIFICATE OF SERVICE

I hereby certify that, on the 23rd day of May, 2022:

☒ I filed and served this document through the electronic filing system on the following parties: William J. Lynch, Esquire at bill@wjlynchlaw.com and Susan Jeannette Famiglietti, Esquire at sfamiglietti@courts.ri.gov

The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System

/s/ Jennifer L. Dinucci

Table of Authorities Cited in Emergency Petition

1. R.I. Const. Art. X, § 4
2. R.I. Dom. Rel. P. Rule 73
3. R.I. Gen. Laws § 14-1-52
4. Craveiro v. Craveiro, 773 A.2d 896, 2001 R.I. LEXIS 171 (R.I. June 22, 2001).
5. R.I. Sup. Ct. Art. I, Rule 4
6. Millman v. Millman, 723 A.2d 1118, 1999 R.I. LEXIS 11 (R.I. January 13, 1999).
7. State v. Young, 941 A.2d 124, 2008 R.I. LEXIS 1 (R.I. January 7, 2008).
8. State v. Robinson, 972 A.2d 150, 2009 R.I. LEXIS 81 (R.I. June 11, 2009).
9. R.I. Gen. Laws Section 14-1-61 (Lexis Advance through Chapter 18 of the 2022 Session, but not including all corrections and changes by the Director of Law Revision)
10. R.I. Gen. Laws Section 8-10-3.2 (Lexis Advance through Chapter 18 of the 2022 Session, but not including all corrections and changes by the Director of Law Revision)

11. 2007 R.I. ALS 73, 2007 R.I. Pub. Laws 73, 2007 R.I. Pub. Ch. 73, 2007 R.I. HB 5300, 2007 R.I. ALS 73, 2007 R.I. Pub. Laws 73, 2007 R.I. Pub. Ch. 73, 2007 R.I. HB 5300

1

R.I. Const. Art. X, § 4

Current through the November 2021 election

General Laws of Rhode Island > Constitution of the State of Rhode Island > Article X Of the Judicial Power

§ 4. State court judges — Judicial selection.

The governor shall fill any vacancy of any justice of the ***Rhode Island*** Supreme Court by nominating, on the basis of merit, a person from a list submitted by an independent non-partisan judicial nominating commission, and by and with the advice and consent of the senate, and by and with the separate advice and consent of the house of representatives, shall appoint said person as a justice of the ***Rhode Island*** Supreme Court. The governor shall fill any vacancy of any judge of the ***Rhode Island*** Superior Court, Family Court, District, Workers' Compensation Court, Administrative Adjudication Court, or any other state court which the general assembly may from time to time establish by nominating on the basis of merit, a person from a list submitted by the aforesaid judicial nominating commission, and by and with the advice and consent of the senate, shall appoint said person to the court where the vacancy occurs. The powers, duties, and composition of the judicial nominating commission shall be defined by statute.

Annotations

History of Section

A proposed amendment to Article X, Section 4 of the ***R.I. Constitution*** by Joint Resolution 116 of 1994 was approved by a majority of the electorate voting in a statewide election on November 8, 1994.

Law Reviews.

For essay, "***Rhode Island***'s New Judicial Merit Selection Law," see 1 R.W.U.L. Rev. 63 (1996).

For essay, "***Rhode Island***'s Judicial Nominating Commission: Can 'Reform' Become Reality?", see 1 R.W.U.L. Rev. 87 (1996).

Cross References.

Judicial nominating commission, *§ 8-16.1-2*.

NOTES TO DECISIONS

Appointment.

Declaration of Vacancy.

Appointment.

Because justices of the Supreme Court of ***Rhode Island*** were no longer elected, they were no longer subject to the prohibition in *R.I. Const. art. III, § 6* against serving another government; therefore, a private citizen could not proceed with a petition in equity in the nature of quo warranto challenging the chief justice's right to remain in office

after agreeing to serve on a military review panel as part of the federal government's war on terror. *McKenna v. Williams, 874 A.2d 217, 2005 R.I. LEXIS 113 (R.I. 2005)*.

Declaration of Vacancy.

The "annual session for the election of public officers" has been eradicated by constitutional amendment; therefore, the legislature's power to remove justices of the Supreme Court pursuant to this section has been extinguished. *In re Advisory Opinion (Chief Justice), 507 A.2d 1316, 1986 R.I. LEXIS 475 (R.I. 1986)*.

End of Document

2

R.I. Dom. Rel. P. Rule 73

Current with rule changes received through May 19, 2022.

RI - Rhode Island State & Federal Court Rules > State Rules > Family Court > Family Court Rules of Domestic Relations Procedure > IX. Appeals

Rule 73. Appeal from a Judgment, Order, or Decree of a General Magistrate or a Magistrate.

(a) Referral of Appeal. An appeal from a judgment, order, or decree of a general magistrate or a magistrate shall be referred to the chief judge or the chief judge's designee. The review shall be appellate in nature and on the record.

(b) Notice of Appeal. A Notice of Appeal shall be filed in the Domestic Relations Clerk's Office within twenty (20) days of the entry of the judgment, order, or decree being appealed. The chief judge may extend the time for filing the Notice of Appeal for good cause. The Notice of Appeal shall specify the parties taking the appeal and shall designate the judgment, order, or decree being appealed. The most current version of the Notice of Appeal is located on the Judiciary's website at *www.courts.ri.gov* under the heading of Public Resources, Forms.

(d) Orders. The chief judge or the chief judge's designee may make such orders for injunction, stay pending appeal, temporary restraining order, or other orders which may be required for the protection of the rights of the parties until the appeal is heard and decided.

(e) The Record on Appeal. Except where otherwise provided, the filings and exhibits admitted into evidence, the transcript of the proceedings, and the docket entries shall constitute the record on appeal.

(f) Transcripts of Testimony. Within twenty (20) days of filing the Notice of Appeal, the appellant shall order a transcript of the parts of the proceedings that the appellant deems necessary for inclusion in the record. If the appellee deems a transcript of other parts of the proceedings to be necessary, the appellee shall immediately order such parts from the court reporter or seek an order requiring the appellant to do so.

(g) Statement of Issues and Memorandum of Law. Within twenty (20) days after the record on appeal is completed, the appellant shall submit a statement of the issues on appeal and a memorandum of law in support of the allegations of error. The appellee shall have twenty (20) days to respond.

(h) Conferences. The chief judge or the chief judge's designee may schedule a conference to identify and narrow the outstanding appellate issues, to explore possibilities for settlement and, if necessary, to schedule further proceedings.

(i) Power of the Chief Judge or the Chief Judge's Designee Not Limited. Nothing contained in this rule limits the authority of the chief judge or the chief judge's designee to alter the time frames set forth in this rule when the interests of justice and equity so require.

History

As adopted November 5, 2014; amended January 29, 2016.

Annotations

Notes

Compiler's Notes. The 2016 amendment, by the Supreme Court on January 29, 2016, deleted "Providence/Bristol County" preceding "Domestic Relations" in subdivision (b).

End of Document

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R.I. Gen. Laws § 14-1-52

Current through Chapter 18 of the 2022 Session, but not including all corrections and changes by the Director of Law Revision

General Laws of Rhode Island > Title 14 Delinquent and Dependent Children (Chs. 1 — 7) > Chapter 1 Proceedings in Family Court (§§ 14-1-1 — 14-1-71)

14-1-52. Appeals.

(a) From any final decree, judgment, order, decision, or verdict of the family court, except as provided in subsection (b) of this section, there shall be an appeal to the supreme court, which appeal, in all civil cases except paternity proceedings under chapter 8 of title 15, shall follow the procedure for appeal in civil actions as provided in chapter 24 of title 9. A decision granting a divorce shall be appealable upon entry and, except as otherwise provided by law, the correctness of the decision shall not be reviewable upon an appeal from a final decree for divorce entered in pursuance of § 15-5-23. Appeals in criminal cases in which the family court exercises jurisdiction over adults, and in paternity cases under chapter 8 of title 15, shall follow the procedure for appeal as provided in chapter 24 of title 9. The provisions of chapter 24 of title 9 and applicable procedural rules relating to the superior court shall apply to the family court in matters appealed from the family court; provided, that on appeal, the supreme court may by rule provide for certain circumstances as it may deem appropriate.

(b) Every person aggrieved by any decree, judgment, order, decision, or verdict of the family court relating to modification of alimony or of child support, or a finding of contempt for failure to pay alimony or child support, may, within twenty (20) days after entry of the decree, judgment, order, decision, or verdict, seek review of questions of law in the supreme court by petition for writ of certiorari in accordance with the procedure contained in this chapter. The petition for a writ of certiorari shall set forth errors claimed. Upon the filing of a petition with the clerk of the supreme court, the supreme court may, if it sees fit, issue its writ of certiorari to the family court to certify to the supreme court the record of the proceeding under review, or so much of it as was submitted to the family court by the parties, together with any additional record of the proceeding in the family court.

History

P.L. 1944, ch. 1441, § 32; G.L. 1956, § 14-1-52; P.L. 1961, ch. 73, § 6; P.L. 1965, ch. 55, § 59; P.L. 1972, ch. 169, § 28; P.L. 1981, ch. 329, § 1.

Annotations

Cross References.

Appeal from the family court, § 15-7-19.

Law Reviews.

2000 Survey of Rhode Island Law, see 6 Roger Williams U. L. Rev. 593 (2001).

2002 Survey of Rhode Island Law, see 8 Roger Williams U.L. Rev. 421 (2003).

NOTES TO DECISIONS

Appealability.

Certiorari.

Jurisdiction of Family Court During Appeal.

Procedure.

Timeliness.

Appealability.

Where decree requiring wife to turn over certain property was not appealed from and could not be questioned in later appeal from finding of contempt, and where later hearing to determine punishment for contempt was terminated when trial justice learned that appeal had been taken, no appeal could be taken from the latter proceeding since there was nothing from which an appeal could be taken. *Dupras v. Dupras, 103 R.I. 239, 236 A.2d 260, 1967 R.I. LEXIS 605 (1967)*.

A respondent's appeal from the decision of the trial justice granting a divorce is in fact an appeal from the decree entered pursuant to such decision and will be treated as such. *Poirier v. Poirier, 107 R.I. 345, 267 A.2d 390, 1970 R.I. LEXIS 779 (1970)*.

A decree ordering receivers and commissioners to appoint two appraisers for property involved in a divorce action was not reviewable. *Cavanagh v. Cavanagh, 118 R.I. 608, 375 A.2d 911 (1977)*, but family court was without authority to order partition and sale of property while appeal was pending in Supreme Court. *Cavanagh v. Cavanagh, 119 R.I. 479, 380 A.2d 964, 1977 R.I. LEXIS 2054 (1977)*.

Interlocutory decrees ordering the appointment of a receiver and the sale of real property were appealable to the supreme court. (See *§ 9-24-7*). *Cavanagh v. Cavanagh, 119 R.I. 479, 380 A.2d 964, 1977 R.I. LEXIS 2054 (1977)*.

Where a child's foster parents bring an action in the family court seeking injunctive relief to prevent the department of children and their families from reuniting the child with his natural mother until there can be a hearing on their petition for adoption and the court determines that the foster parents lack standing and denies them relief, and the foster parents file an appeal, the Supreme Court will depart from its usual procedure and consider the appeal as a petition for certiorari in order to address the merits of the case, as the action of the court below has an element of finality. *In re Joseph J., 465 A.2d 150, 1983 R.I. LEXIS 1072 (R.I. 1983)*.

Order modifying payments of child support was not appealable as of right. *Cok v. Cok, 558 A.2d 205, 1989 R.I. LEXIS 80 (R.I. 1989)*; *Pontbriand v. Pontbriand, 608 A.2d 658, 1992 R.I. LEXIS 285 (R.I. 1992)*.

The defendant's appeal was without merit since the order appealed from is a consent order that was entered into by agreement of the parties without hearing and the terms of that order cannot be challenged in the absence of fraud, mutual mistake, or actual absence of consent. *Hasman v. Hasman, 655 A.2d 256, 1995 R.I. LEXIS 70 (R.I. 1995)*.

Since subsection (b) clearly provides that review of a Family Court decision is solely by petition for writ of certiorari, an appeal taken from a Family Court judgment is improper. *Bonney v. Bonney, 695 A.2d 508, 1997 R.I. LEXIS 204 (R.I. 1997)*.

A party to a divorce may appeal an interlocutory decision or a decision pending entry of final judgment. *Koziol v. Koziol, 720 A.2d 230, 1998 R.I. LEXIS 303 (R.I. 1998)*.

Certiorari.

Although the way to obtain review of an order granting a preliminary injunction entered in the superior court was by appeal within 20 days following entry, where third-party defendants in a divorce action filed a petition for certiorari to obtain such a review, the petition would be read as if it were a claim of appeal since it was claimed within the 20-day time limit. *Johnson v. Johnson, 111 R.I. 46, 298 A.2d 795, 1973 R.I. LEXIS 1177 (1973)*.

The proper way to seek review of a decree or order of the family court relating to modification of child support is to petition the Supreme Court for writ of certiorari pursuant to subsection (b). *Meehan v. Meehan, 603 A.2d 333, 1992 R.I. LEXIS 39 (R.I. 1992)*.

Since the case should properly have been by petition for writ of certiorari because an order that modifies child support is not appealable, the defendant's appeal was interpreted as a common law writ of certiorari. *Lentz v. Lentz, 651 A.2d 1242, 1994 R.I. LEXIS 310 (R.I. 1994)*.

The issue of whether a party was in contempt of an alimony provision of a final divorce judgment, and whether a court erred in denying a reinstatement of alimony, is reviewable only by certiorari and an appeal will be denied on procedural grounds. *Armentrout v. Armentrout, 675 A.2d 415, 1996 R.I. LEXIS 128 (R.I. 1996)*.

Although this statute does not explicitly state that a denial of a contempt motion falls within the purview of the required procedure under this provision, the words "relating to" modify the words "finding of contempt," irrespective of whether a finding of contempt was actually made, and thus review may be sought only by a petition for certiorari. *Poisson v. Bergeron, 743 A.2d 1037, 2000 R.I. LEXIS 10 (R.I. 2000)*.

The father failed to demonstrate the exigency that qualified as an exception to *R.I. Gen. Laws § 14-1-52(b)* (1956), and his failure to purge the contempt also provides an independent basis for denying review. *Codd v. Barrett, 798 A.2d 954, 2002 R.I. LEXIS 163 (R.I. 2002)*.

Orders modifying child support are reviewed by writ of certiorari, not appeal, even when such orders have been bundled with other issues; only in extreme circumstances will the court depart from this procedure. *Africano v. Castelli, 837 A.2d 721, 2003 R.I. LEXIS 234 (R.I. 2003)*.

Father's pro se, direct appeal filed in the state supreme court of the family court's order denying the father's motion to modify a child support order had to be denied and the family court's order had to be affirmed; the proper procedure for reviewing questions involving the modification of child support were not reviewable by direct appeal, but instead required that a party file, pursuant to *R.I. Gen. Laws § 14-1-52(b)*, a petition for writ of certiorari in the state supreme court and the father's case did not present the rare circumstance where the failure to file the *R.I. Gen. Laws § 14-1-52(b)* petition would be allowed. *Fischer v. Walker, 874 A.2d 737, 2005 R.I. LEXIS 115 (R.I. 2005)*.

Wife's appeal of the trial court's denial of her motion for attorney's fees in her contempt action against her husband was improper because, under *R.I. Gen. Laws § 14-1-52(b)* such orders were reviewable only by a petition for a writ of certiorari, and the wife sought review by appeal; the request for attorney's fees could not have been detached from the denial of her motion to find the husband in contempt. *Kashmanian v. Kashmanian, 924 A.2d 2, 2007 R.I. LEXIS 57 (R.I. 2007)*.

Pursuant to *R.I. Gen. Laws § 14-1-52(b)*, a petition for certiorari was the only proper vehicle for bringing the father's claims where although he was never adjudged in contempt, the father's appeals clearly resulted from the mother's filing for contempt.***14-1-52*** *DeCesare v. Delfarno, 112 A.3d 714, 2015 R.I. LEXIS 52 (R.I. 2015)*.

Even though a father's motion was styled as a motion for credit for the Social Security Disability Insurance benefits received by the mother, it was in fact a motion to modify the amount of child support he was obligated to pay where the father was aware that the mother was receiving those benefits at the time the parties agreed on child support. Since matters related to the modification of child support are not appealable and the father had not filed a petition

for a writ of certiorari as required by R.I. Gen. Laws § 14-1-52(b), the appeal was not properly before the court. Evans v. Evans, 226 A.3d 135, 2020 R.I. LEXIS 22 (R.I. 2020).

Jurisdiction of Family Court During Appeal.

Where the object of the appeal was to secure the real estate, the family court's order to sell the property outright did not constitute administration of the property during the pendency of the appeal and was improper. Cavanagh v. Cavanagh, 119 R.I. 479, 380 A.2d 964, 1977 R.I. LEXIS 2054 (1977).

Where the papers of an action concerning partition of real estate were transmitted to the supreme court and the appeal had been docketed, the family court was without authority to act on motions to sell the real estate and the decrees ordering sale were therefore void. Cavanagh v. Cavanagh, 119 R.I. 479, 380 A.2d 964, 1977 R.I. LEXIS 2054 (1977).

Procedure.

Where there is an appeal under this section from the family court, the appellate procedure for causes in equity must be followed and the supreme court will review the decree appealed from, not the decision of the trial justice; the ultimate findings of fact on which the decree is based should be incorporated therein and in the absence of such findings the supreme court must examine the decision of the family court to determine whether the findings are supported by the evidence and whether the decree is warranted by the facts established and the applicable law. Culpepper v. Martins, 96 R.I. 328, 191 A.2d 285, 1963 R.I. LEXIS 92 (1963).

Alleged error of the family court in adjudicating a respondent a delinquent and wayward child could not be reviewed without a transcript of the evidence adduced at the hearing, which transcript it was incumbent upon the appealing respondent to bring up. State v. Cook, 99 R.I. 710, 210 A.2d 577, 1965 R.I. LEXIS 506 (1965).

The appropriate procedure for review of a decree of a family court is by appeal and not by bill of exceptions. In re Loudin, 101 R.I. 35, 219 A.2d 915, 1966 R.I. LEXIS 347 (1966); Burns v. Burns, 102 R.I. 183, 229 A.2d 294, 1967 R.I. LEXIS 668 (1967).

Father chose the wrong procedural vehicle to bring his claim before the Supreme Court because he did not bring his case by a petition for certiorari as required by subsection (b) of this section but instead chose to seek review by appeal; although the family court's order did not explicitly find the father in willful contempt, the order nevertheless resulted from the mother's motion to adjudicate the father as in contempt. Lahoud v. Carvalho, 143 A.3d 1077, 2016 R.I. LEXIS 44 (R.I. 2016).

Timeliness.

Since the rule requiring the filing of a notice of appeal is mandatory, plaintiff's notice of appeal from a divorce decree was untimely since it was not filed until more than three months after the entry of the decision and since no mention was made of excusable neglect. Bina v. Bina, 764 A.2d 191, 2000 R.I. LEXIS 207 (R.I. 2000).

A notice of appeal was untimely since it was filed more than 30 days after a decision pending entry of final judgment and no request for an extension was made. Craveiro v. Craveiro, 773 A.2d 896, 2001 R.I. LEXIS 171 (R.I. 2001).

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Document (1)

1. *Craveiro v. Craveiro, 773 A.2d 896*
   Client/Matter: -None-
   Search Terms: Craveiro v. Craveiro, 773 A.2d 896
   Search Type: Natural Language

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Craveiro v. Craveiro

Supreme Court of Rhode Island

June 22, 2001, Decided ; June 22, 2001, Opinion Filed

No. 2000-381-Appeal.

Reporter
773 A.2d 896 *; 2001 R.I. LEXIS 171 **

Maria Craveiro v. Aurelio Craveiro v. Dalia Duarte et al.

Prior History: [1]** Appeal from Family Court. Providence County. (P 95-2395). Macktaz, J.

Core Terms

trial justice, rental property, divorce, attorney's fees, parties, marital domicile, final judgment, orders

Case Summary

Procedural Posture
Defendant husband and his relatives appealed Family Court, Providence County (Rhode Island), judgment granting a divorce to plaintiff wife, setting aside the husband's conveyance to the relatives as fraudulent, and awarding attorneys' fees to the wife.

Overview
When a husband and wife divorced, they owned property in the United States and in Portugal. The family court in Rhode Island ordered the husband, who had returned to Portugal, not to dispose of the Portuguese property, as it was to be used in determining equitable distribution. Instead, four days later, he sold the property to relatives, at a fraction of its value. The high court dismissed as untimely the husband's and relatives' appeals of a judgment awarding the wife a divorce, setting aside the conveyance as fraudulent, and awarding statutory attorneys' fees to the wife, but it also reviewed the record for clear error, and found none. The trial court had found from all the circumstances that the husband and his family consistently acted to prevent an equitable distribution from occurring.

Outcome
The court affirmed the trial court's judgment.

LexisNexis® Headnotes

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Timing of Appeals

Family Law > Marital Termination & Spousal Support > General Overview

Governments > Legislation > Statute of Limitations > Time Limitations

***HN1*[↓] Reviewability of Lower Court Decisions, Timing of Appeals**

A party who contests a divorce must file his or her appeal within 20 days of the decision pending entry of final judgment, which is rendered by the trial justice after a hearing. R.I. Sup. Ct. art. I, R. 4(a). Specifically, *R.I. Gen. Laws § 14-1-52(a)* provides that a decision granting a divorce shall be appealable upon entry. Therefore, if a party wishes to appeal a divorce, he or she must do so within 20 days of the decision pending entry of final judgment and not from the date the final decree is entered. The time specified in R.I. Sup. Ct. art. I, R. 4(a) is mandatory, and once the prescribed time has passed, there can be no review by way of appeal. An extension is permitted only upon a showing of excusable neglect.

Civil Procedure > Parties > Pro Se Litigants > Right to Self Representation

Civil Procedure > Parties > Pro Se Litigants > General Overview

***HN2*[↓] Pro Se Litigants, Right to Self**

Representation

Although litigants have the right to represent themselves as pro se litigants, the courts of Rhode Island cannot and will not entirely overlook established rules of procedure, adherence to which is necessary so that parties may know their rights, that the real issues in controversy may be presented and determined, and that the business of the courts may be carried on with reasonable dispatch.

Civil Procedure > Appeals > Standards of Review > Clearly Erroneous Review

Civil Procedure > Trials > Jury Trials > Right to Jury Trial

HN3[] **Standards of Review, Clearly Erroneous Review**

The findings of a trial justice sitting without a jury are entitled to great weight and are not disturbed on appeal unless those findings are clearly wrong or the trial justice overlooked or misconceived material evidence.

Civil Procedure > Remedies > Costs & Attorney Fees > General Overview

Insurance Law > Remedies > Costs & Attorney Fees > General Overview

HN4[] **Remedies, Costs & Attorney Fees**

Attorneys' fees may not be appropriately awarded to the prevailing party absent contractual or statutory authorization.

Civil Procedure > Remedies > Costs & Attorney Fees > General Overview

Family Law > Marital Termination & Spousal Support > Spousal Support > General Overview

HN5[] **Remedies, Costs & Attorney Fees**

Pursuant to *R.I. Gen. Laws § 15-5-16(a)*, a family court justice may award attorneys' fees when it grants a divorce petition.

Civil Procedure > Remedies > Costs & Attorney Fees > General Overview

HN6[] **Remedies, Costs & Attorney Fees**

An award of attorneys' fees by a trial justice is subject to review for abuse of discretion. In conducting such a review, the discretion exercised by the trial justice must be reviewed in the light of reason as applied to all the facts and with a view to the rights of all the parties to the action while having regard for what is right and equitable under the circumstances and the law.

Counsel: Karen Auclair Oliveira, For Plaintiff.

Aurelio Craveiro, Pro se, Joseph A. Capineri, Esq., For Defendant.

Judges: Williams, C. J., Lederberg, Bourcier, Flanders, and Goldberg, JJ.

Opinion

[*897] PER CURIAM. This case came before the Court for oral argument on May 9, 2001, pursuant to an order that directed the parties to appear in order to show cause why the issues raised by this appeal should not be summarily decided. After hearing the arguments of counsel and examining the memoranda filed by the parties, we are of the opinion that cause has not been shown and that the issues raised by this appeal should be decided at this time. The facts insofar as pertinent to this appeal are as follows.

In 1973, plaintiff, Maria Craveiro (plaintiff), and defendant, Aurelio Craveiro (defendant), were married in Portugal. The next year, they immigrated to the United States. The plaintiff and defendant separated in 1993, after defendant moved back to Portugal. In October 1995, plaintiff filed a complaint for absolute divorce against defendant in the Rhode Island Family Court. The defendant filed an answer and counterclaim for **[**2]** absolute divorce in April 1996. At that time, plaintiff and defendant owned three parcels of real estate: the marital domicile at 68 Cottage Street, Central Falls, Rhode Island (marital domicile); a rental property at 64 Cottage Street, Central Falls, Rhode Island (rental property); and a home in Portugal (Portugal property). The controversy in this case centers on the equitable distribution of the real estate.

In January 1996, a Family Court motion justice heard plaintiff's motion for temporary allowances. The defendant was not present at that hearing because he was living in Portugal. After the hearing, the motion justice ordered that defendant be "restrained and enjoined from alienating, diminishing, transferring, conveying and/or hypothecating any and all assets of the parties whether they are located in the United States or in the Country of Portugal and wherever else located and of whatever nature." At the same time, the motion justice awarded plaintiff exclusive possession of both the marital domicile and the rental property.

The defendant appeared and moved for an emergency restraining order in March **[*898]** 1996, to prevent the disposition of the assets in his absence. Both parties **[**3]** were present for an April 1996 hearing, the results of which were memorialized in a consent order. The parties agreed that: (1) plaintiff would have exclusive use and possession of the marital domicile; (2) the rental property would be sold; and (3) plaintiff would have access to the Portugal property for appraisal purposes and defendant shall cooperate with any appraisal.

Two events then made a morass out of a relatively simple divorce. First, four days after the April 1996 hearing, defendant's sister, Dalia Duarte, traveled to Portugal. There, defendant's brother, Horacio Craveiro, acting with defendant's power of attorney, sold the Portugal property to Dalia and her husband, Carlos Duarte (the Duartes). This was done without plaintiff's knowledge and consent, and in contravention of the February 1996 order. In June 1996, it came to the attention of the court that the Duartes had alleged that plaintiff and defendant owed them $ 24,000. The Duartes alleged that they had given plaintiff and defendant $ 20,000 as a deposit on the purchase of the rental property in the spring of 1994. The Duartes alleged that the sale fell through, but that the money was not returned. It was undisputed **[**4]** that defendant had borrowed the $ 20,000 and another $ 4,000 from the Duartes and used the money for both personal items and for the Portugal property. The dispute was whether there was a valid mortgage. Interestingly enough, the Duartes did not record a lien against the rental property until two years after the purported deposit, after the February 1996 order. Upon discovery of these transactions, plaintiff filed a motion to add the Duartes to the complaint as third-party defendants. The court granted plaintiff's request. In July 1996, the court ordered the Duartes to comply with plaintiff's efforts to sell the rental property and to appraise the Portugal property. The court also ordered that, when the rental property was sold, the money be placed in an escrow account pending resolution of the dispute.

On March 14, 2000, after a trial on the merits, the trial justice gave a long oral decision. The trial justice granted plaintiff's complaint for divorce on the grounds of irreconcilable differences. The court awarded both the rental property and the marital domicile to plaintiff. The trial justice ordered the Duartes to discharge the mortgage on the rental property and to execute a **[**5]** deed for the Portugal property back to plaintiff and defendant. The trial justice found that the sale of the Portugal property from Horacio Craveiro to the Duartes was a fraudulent conveyance. Lastly, the court ordered all defendants to contribute to plaintiff's attorney's fees. The decision pending entry of final judgment was issued on May 8, 2000. The final judgment of divorce was rendered on August 8, 2000.

The defendant, acting *pro se*, filed two notices of appeal. One appeal was dismissed by this Court on December 21, 2000. [1] The plaintiff challenges the timeliness of the remaining appeal, which was filed on June 13, 2000.

HN1[↑] A party who contests a divorce must file his or her appeal within twenty days of the decision pending entry of final judgment, which is rendered by the trial justice after a hearing. *See* Sup. Ct. R. App. P. 4(a); *Bina v. Bina, 764 A.2d 191, 192 (R. I. 2000)* (mem.). "Specifically, **[*899]** *G.L. 1956 § 14-1-52(a)* provides that '[a] decision granting a divorce shall be appealable upon, [*sic*] entry. '" *Bina, 764 A.2d at 192* (quoting *Koziol v. Koziol, 720 A.2d 230, 232 (R. I. 1998)*). **[**6]** Therefore, if a party wishes to appeal a divorce, he or she must do so within twenty days of the decision pending entry of final judgment and not from the date the final decree is entered. *See id.* ('" the correctness of the [divorce] decision shall not be reviewable upon an appeal from a final decree for divorce'").

"We have ruled that the time specified in Rule 4(a) is mandatory, and that once the prescribed time has passed there can be no review by way of appeal." *Millman v. Millman, 723 A.2d 1118, 1119 (R. I. 1999)* (citing *Warwick Land Trust, Inc. v. Children's Friend and*

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[1] On December 21, 2000, we dismissed the appeal filed by defendant on September 29, 2000. We subsequently denied defendant's motion to vacate the dismissal of that appeal in March 2001.

Service, Inc., 604 A.2d 1266, 1267 (R. I. 1992)). The defendant recognized May 8, 2000, as the trigger date on the notice of appeal he filed. However, he did not file until June 13, 2000, more than thirty days later. **[**7]** Further, defendant did not request an extension, which is permitted only upon a showing of excusable neglect. [2] See Bina, 764 A.2d at 192 (citing Mitchell v. Mitchell, 522 A.2d 219, 220 (R. I. 1987)). Therefore, defendant's appeal is denied and dismissed and we need only address the merits of the Duartes' appeal.

The Duartes argue that the trial justice made **[**8]** erroneous findings of fact with respect to the distribution of property and the award of attorney's fees. "It is well-settled HN3[↑] that the findings of a trial justice sitting without a jury are entitled to great weight and will not be disturbed on appeal unless those findings are clearly wrong or the trial justice overlooked or misconceived material evidence." DiMattia v. DiMattia, 747 A.2d 1008, 1008 (R. I. 2000) (mem.) (citing Seabra v. Trafford-Seabra, 655 A.2d 250, 252 (R. I. 1995)).

The Duartes contend that the trial justice should have ordered plaintiff to pay them $ 24,000 after the sale of the rental property. We disagree. The trial justice found more than adequate support, as evidenced by the long trial and decision pending entry of final judgment, for her conclusion that the $ 24,000 borrowed by defendant is a debt of defendant and not of plaintiff. The trial justice carefully evaluated the situation and determined that, under the circumstances, plaintiff should not be obliged to satisfy defendant's debt. We will not disturb such a finding.

The Duartes also argue that the purchase of the Portugal property was not a fraudulent conveyance. The **[**9]** trial justice determined that the Portugal property was sold to the Duartes by Horacio Craveiro on behalf of defendant in April 1996, four days after defendant was reminded not to transfer any assets, including that property. More importantly, the trial justice found that the house was not sold for fair and adequate consideration. The price paid by the Duartes was approximately $ 16,000, approximately one-eighth of defendant's purported investment. The Duartes could offer no proof that they had paid any more than $ 16,000.

Further, the trial justice determined that the Duartes told an incredible story. **[*900]** The Duartes alleged that Horacio Craveiro had not received any money from either plaintiff or defendant toward the construction of the house. Therefore, he was forced to sell, despite the fact that his parents were currently living there. The trial justice did not believe this scenario, especially in light of defendant's testimony that he had invested $ 175,000 in the Portugal property. Therefore, the trial justice ordered the Duartes to execute a deed returning the Portugal property to plaintiff and defendant. Upon careful examination of the record, it is clear that the trial justice **[**10]** did not err.

Lastly, the Duartes allege that the trial justice erred by ordering them to pay $ 5,000 toward plaintiff's attorney's fees. The trial justice ordered the award because the Duartes assisted defendant in obstructing plaintiff's ability to sell the rental property by intentionally failing to discharge the mortgage and because they had "consistently and intentionally violated a number of court orders directed at them * * *." The trial justice found the sanction particularly appropriate since defendant's family (including the Duartes) made a concerted effort to remove as many assets from the grasp of the equitable distribution as possible. [3] The Duartes argue that there was no evidence that they had failed to comply with any orders applicable to them.

"It is well settled **[**11]** that HN4[↑] attorneys' fees may not be appropriately awarded to the prevailing party absent contractual or statutory authorization." Insurance Company of North America v. Kayser-Roth Corp., 770 A.2d 403, 419 (R. I. 2001). HN5[↑] Pursuant to G.L. 1956 § 15-5-16(a), a Family Court justice may award attorneys' fees when it grants a divorce petition. "HN6[↑] An award of attorneys' fees by a trial justice is subject to review for abuse of discretion." Rhode Island Insurers' Insolvency Fund v. Leviton Manufacturing, Co., 763 A.2d 590, 598 (R. I. 2000) (citing DiRaimo v. City of Providence, 714 A.2d 554 (R. I. 1998)). "In conducting

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[2] "HN2[↑] Although this Court has recognized that litigants have the right to represent themselves as pro se litigants, 'the courts of this state cannot and will not entirely overlook established rules of procedure, "adherence to which is necessary [so] that parties may know their rights, that the real issues in controversy may be presented and determined, and that the business of the courts may be carried on with reasonable dispatch." '" Berard v. Ryder Student Transportation Services, Inc., 767 A.2d 81, 84 (R. I. 2001) (quoting Gray v. Stillman White, Co., 522 A.2d 737, 741 (R. I. 1987)).

[3] We agree that "there is no grievance that is a fit object of redress by mob law." Speech to the Young Men's Lyceum, Springfield, Illinois, January 27, 1838, in *A Treasury of Lincoln Quotations* 180 (Fred Kerner ed. 1996).

such a review, the discretion exercised by the trial justice must be reviewed 'in the light of reason as applied to all the facts and with a view to the rights of all the parties to the action while having regard for what is right and equitable under the circumstances and the law. '" *Id.* (quoting *Hartman v. Carter, 121 R.I. 1, 5, 393 A.2d 1102, 1105 (1978)).*

In this case, several orders were issued before the Duartes were added as third-party defendants, prohibiting the defendant from **[**12]** transferring any of the marital assets. There was ample evidence to support the trial justice's finding that the Duartes were aware of these orders when they purchased the Portugal property from the defendant. Further, there was also sufficient evidence to support the trial justice's finding that after the Duartes became parties to the divorce in June 1996, they purposefully obstructed the sale of the rental property and did not comply with the July 1996 order to discharge the mortgage. Therefore, the Duartes have failed to demonstrate that the trial justice abused her discretion in awarding the attorney's fees.

Accordingly, the Duartes' appeal is denied and dismissed and the judgment of the Family Court is affirmed. The papers in the case may be remanded to the Family Court.

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R.I. Sup. Ct. Art. I, Rule 4

Current with rule changes received through May 19, 2022.

RI - Rhode Island State & Federal Court Rules > State Rules > Supreme Court > Supreme Court Rules > Article I. Appellate Procedure

Rule 4. Appeal — When taken.

(a) Appeals in Civil Cases. In a civil case the notice of appeal required by Rule 3 shall be filed with the clerk of the trial court within twenty (20) days of the date of the entry of the judgment, order, or decree appealed from together with a filing fee of one hundred fifty dollars ($150). A notice of appeal filed after the judicial officer issues a decision or order but before entry of the judgment or order shall be deemed to have been filed after such entry and on the day the judgment or order was entered. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within twenty (20) days of the date on which the first notice of appeal was filed, or was deemed to have been filed, or within the time otherwise prescribed by this subsection, whichever period last expires.

The running of the time for filing a notice of appeal is terminated as to all parties by a timely motion filed in the Superior Court by any party pursuant to the Rules of Civil Procedure of the Superior Court hereafter enumerated in this sentence, or by a timely motion filed in the Family Court for comparable relief pursuant to the rules of that court, and the full time for appeal fixed by this subsection commences to run and is to be computed from the entry of any of the following orders or comparable orders of the Family Court made upon a timely motion under such rules:

(1) Granting or denying a reserve motion under Rule 50(b);

(2) Granting or denying a motion under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted;

(3) Granting or denying a motion under Rule 59 to alter or amend the judgment; or

(4) Granting or denying a motion for a new trial under Rule 59.

An appeal from a judgment reserves for review any claim of error in the record including any claim of error in any of the orders specified in the preceding sentence. An appeal from such an order shall be treated as an appeal from the judgment. A judgment, order, or decree is entered within the meaning of this subsection when it is set forth and signed by the clerk of the trial court in accordance with the applicable rules of the trial court.

Upon a showing of excusable neglect, the trial court may extend the time for filing the notice of appeal by any party for a period not to exceed thirty (30) days from the expiration of the original time prescribed by this subsection. Such an extension may be granted before or after the time otherwise prescribed by this subsection has expired; but if a request for an extension is made after such time has expired, the request shall be made by motion with such notice as the court shall deem appropriate.

(b) Appeals in Criminal Cases. In a criminal case the notice of appeal by a defendant shall be filed with the clerk of the Superior Court within twenty (20) days after the entry of the judgment or order appealed from. A notice of appeal filed after the announcement of a decision, sentence, or order but before entry of the judgment or order shall be treated as filed after such entry and on the day thereof. If a timely motion in arrest of judgment or for a new trial on any ground other than newly discovered evidence has been made, an appeal from a judgment of conviction may be taken within twenty (20) days after the entry of an order denying the motion. A motion for a new trial based on the ground of newly discovered evidence will similarly extend the time for appeal from a judgment of conviction if the motion is made before or within ten (10)

days after entry of the judgment. A judgment or order is entered within the meaning of this subsection when it is entered in the trial court's docket. Upon a showing of excusable neglect the Superior Court may, before or after the time has expired, with or without motion and notice, extend the time for filing a notice of appeal for a period not to exceed thirty (30) days from the expiration of the time otherwise prescribed by this subsection.

History

As amended by the court on June 19, 2020.

Annotations

Compiler's Notes. The 2020 amendment, in the first paragraph of (a), inserted the second sentence and inserted "or was deemed to have been filed" in the last sentence; substituted "trial court's" for "criminal" in the next-to-last sentence of (b); and made stylistic changes.

The Supreme Court's order dated June 19, 2020, provided that the 2020 amendments relating to electronic filing shall take effect on the date that the Supreme Court converts to the electronic filing system. By order dated December 31, 2020, the June 19, 2020 amendments relating to electronic filing became effective January 29, 2021, which was the date that the electronic filing system was available for filing papers in the Supreme Court.

NOTES TO DECISIONS

Civil Cases.

—Excusable Neglect.

—Filing Appeal Before Entry of Judgment.

—Invalid Motion for New Trial.

—Post-Judgment Motions.

—Time for Appeal.

Criminal Cases.

—Time for Appeal.

Civil Cases.

—Excusable Neglect.

Since the plaintiff did not file a motion for leave to prosecute an appeal out of time on the ground of excusable neglect, the Supreme Court would not consider the question of the ground of excusable neglect under the rule. *Izzo v. Prudential Ins. Co., 114 R.I. 224, 331 A.2d 395, 1975 R.I. LEXIS 1404 (1975)*.

The standard query for granting an extension of the time for appeal is whether there is excusable neglect for failing to appeal in a timely fashion, and the court's excusable-neglect determination will be reviewed on appeal for abuse of discretion. *Friedman v. Lee Pare & Assoc., 593 A.2d 1354, 1991 R.I. LEXIS 138 (1991)*.

The thirty-day extension of time which may be granted upon a showing of excusable neglect begins running at the expiration of the original twenty-day period, and not from the date the motion to extend is granted. *Millman v. Millman, 723 A.2d 1118, 1999 R.I. LEXIS 11 (1999)*.

Defendant's attorney did not demonstrate excusable neglect, pursuant to *R.I. Sup. Ct. art. I, R. 4(a)*, to warrant an extension of time to file a notice of appeal because the attorney's claims that he was very busy and did not know how to file a notice of appeal, so an associate was supposed to file the notice of appeal were insufficient to constitute excusable neglect; the attorney, who was the attorney of record, had a responsibility to ensure that the appeal was filed and to know the rules and procedure. *UAG West Bay AM, LLC v. Cambio, 987 A.2d 873, 2010 R.I. LEXIS 20 (2010)*.

Former employer's appeal was properly before the Supreme Court because the hearing justice did not abuse his discretion in holding that the delay in filing the notice of appeal was the result of excusable neglect; the underlying cause of the delay was counsel's lack of familiarity with the electronic filing system and not with the rules, and the electronic filing system had only recently been implemented in the superior court during the time period at issue. *Family Dollar Stores of R.I., Inc. v. Araujo, 204 A.3d 1089, 2019 R.I. LEXIS 51 (2019)*.

Hearing justice did not abuse his discretion in holding that the delay in filing a notice of appeal was the result of excusable neglect because an employer's counsel acted in good faith; counsel represented that he made an effort to contact the superior court at least twice to inquire about the status of the order and the judgment, and he did not behave in a careless or inattentive manner or willfully disregard the process of the superior court. *Family Dollar Stores of R.I., Inc. v. Araujo, 204 A.3d 1089, 2019 R.I. LEXIS 51 (2019)*.

—Filing Appeal Before Entry of Judgment.

Where appeal was filed before the actual entry of judgment in reliance on a copy of the formal order that had been served on the defendants the day before their appeal was filed, the Supreme Court treated the appeal as if it had been timely filed after the entry of judgment. *Russell v. Kalian, 414 A.2d 462, 1980 R.I. LEXIS 1559 (1980)*.

Although an insured appealed from an oral decision which was rendered before entry of a final judgment, such was treated as timely in the interests of justice and to avoid undue hardship pursuant to R.I. Sup. Ct. art. 1, R. 4(a). *Desjarlais v. USAA Ins. Co., 818 A.2d 645, 2003 R.I. LEXIS 46 (2003)*.

Driver's premature notice of appeal was sufficient, as judgment was, in fact, entered thereafter. *Toegemann v. City of Providence, 21 A.3d 384, 2011 R.I. LEXIS 92 (2011)*.

—Invalid Motion for New Trial.

An invalid motion for new trial did not toll the time limitation in which to perfect an appeal. *Izzo v. Prudential Ins. Co., 114 R.I. 224, 331 A.2d 395, 1975 R.I. LEXIS 1404 (1975)*.

Prior to September 1, 1972, when this rule superseded former *Super. Ct. R. Civ. P. Rule 73*, the provisions of which for the purposes of this note are the same, an invalid motion for new trial did not toll the time limitation in which to perfect an appeal. *Izzo v. Prudential Ins. Co., 114 R.I. 224, 331 A.2d 395, 1975 R.I. LEXIS 1404 (1975)*.

A motion for a new trial which does not comply with the provisions of *Super. Ct. R. Civ. P. Rule 59(a)* does not extend the 20-day appeal period. *Izzo v. Prudential Ins. Co., 116 R.I. 42, 352 A.2d 395, 1976 R.I. LEXIS 1241 (1976)*; *Glocester v. Lucy Corp., 422 A.2d 918, 1980 R.I. LEXIS 1855 (1980)*.

A motion for new trial after a nonjury trial that does not allege either of the grounds upon which a new trial may be granted pursuant to the provisions of *Super. Ct. R. Civ. P. Rule 59(a)* is a nullity and ineffective in tolling the period

within which an appeal should be taken pursuant to subdivision (4) of the first sentence of the second paragraph of subdivision (a) of this rule. *Tillson v. Feingold, 490 A.2d 64, 1985 R.I. LEXIS 475 (1985)*.

—Post-Judgment Motions.

The plaintiff's various motions to reconsider and/or vacate the summary judgment did not serve to extend the 20-day period to file the notice of appeal of the summary judgment; consequently, the appeal is properly dismissed as untimely. *Cok v. Pryor, 685 A.2d 273, 1996 R.I. LEXIS 302 (1996)*.

Defendant's appeal to the state supreme court after the superior court denied his application for postconviction relief was untimely since the superior court had not entered a final judgment. *Carpenter v. State, 796 A.2d 1071, 2002 R.I. LEXIS 100 (2002)*.

—Time for Appeal.

After a judgment dismissing the cause of action, plaintiff's motion under *Super. Ct. R. Civ. P. Rule 60(b)* for leave to reargue the motion to dismiss or, in the alternative, to further amend the complaint did not, without a motion under *Super. Ct. R. Civ. P. Rule 62(b)* to stay the judgment, stay the operation of the judgment nor stop the running of the 20-day period within which to prosecute an appeal from the judgment of dismissal. *Riverhouse Publishing Co. v. Providence Journal Co., 104 R.I. 192, 243 A.2d 90, 1968 R.I. LEXIS 634 (1968)*.

Although defendant contended that plaintiff did not file the appeal from the decision of the trial justice within the 20-day period since there were other matters pending in this action at the time the motion to consolidate the divorce petition and the miscellaneous petition was denied, such a decision was only interlocutory in nature and the time for the running of the appeal period did not commence until the filing of the final decision. *Mendes v. Mendes, 111 R.I. 571, 305 A.2d 97, 1973 R.I. LEXIS 1248 (1973)*.

Where reserved motion for directed verdict was granted and judgment entered for defendant who then conditionally moved for a new trial which was granted ten months later, twenty-day period for appeal by plaintiff commenced to run from the entry of the order granting the reserved motion and not from the date granting the conditional motion for new trial. *James v. Melrose Realty Co., 112 R.I. 586, 313 A.2d 654, 1974 R.I. LEXIS 1473 (1974)*.

Where an appeal came up 46 days after a court order, it was held to have been filed under *Super. Ct. R. Civ. P. Rule 59(e)* rather than *Super. Ct. R. Civ. P. Rule 60(b)* since it was for alteration only, even though labelled to vacate, and it was within the extended time period allowed by this rule. *Armand's Eng'g v. Town & Country Club, 113 R.I. 515, 324 A.2d 334, 1974 R.I. LEXIS 1205 (1974)*.

The provision in subsection (a) of this rule requiring that a notice of appeal be filed within 20 days from the date of the order appealed is mandatory. *Title Inv. Co. v. Fowler, 504 A.2d 1010, 1986 R.I. LEXIS 406 (1986)*.

Subdivision (a) of this rule is mandatory. Only upon a showing and finding of excusable neglect may a trial justice extend the period for up to an additional 30 days. *Mitchell v. Mitchell, 522 A.2d 219, 1987 R.I. LEXIS 429 (1987)*.

The fact that an appeal was prematurely filed in contravention of subdivision (a) is a minor procedural defect and should not be regarded as fatal. *Ruggieri v. East Providence, 593 A.2d 55, 1991 R.I. LEXIS 125 (1991)*.

Where a city's appeal in a tax case was not filed in a timely manner pursuant to this rule, the issue raised in the appeal was examined, in view of the fact that the taxpayers and the city were essentially raising the same issue on appeal and the taxpayers' appeal was timely filed. *Ruggieri v. East Providence, 593 A.2d 55, 1991 R.I. LEXIS 125 (1991)*.

Trial justice had no authority to grant a nunc pro tunc extension of the time for appeal subsequent to the last possible appeal day. *Friedman v. Lee Pare & Assoc., 593 A.2d 1354, 1991 R.I. LEXIS 138 (1991)*.

The period for filing a notice of appeal under subdivision (a) is 20 days. This rule is mandatory. The rule permits an extension of the period for filing the notice of appeal only upon a showing of excusable neglect. *Warwick Land Trust v. Children's Friend & Serv., 604 A.2d 1266, 1992 R.I. LEXIS 68 (1992)*.

There was no appellate jurisdiction because the plaintiff did not file her notice of appeal until 21 days after entry of judgment and also did not file an application for extension based on excusable neglect. *Figuereo v. Diaz, 651 A.2d 1236, 1994 R.I. LEXIS 311 (1994)*.

The time for filing an appeal commences to run from the entry of the order granting or denying the motion to amend judgment; thus, the plaintiff's appeal filed twenty-one days after final judgment had been entered against them was untimely. *Abbatematteo v. State, 694 A.2d 738, 1997 R.I. LEXIS 200 (1997)*.

The time specified for the filing of a notice of appeal is mandatory, and once the prescribed time has passed there can be no review by way of appeal. *Millman v. Millman, 723 A.2d 1118, 1999 R.I. LEXIS 11 (1999)*.

Where a hearing on a motion to extend the time for filing an appeal from a family court decision was not held until fifty days after the appealable decree, and the notice of appeal was not filed until thirty days later, the appeal was untimely. *Millman v. Millman, 723 A.2d 1118, 1999 R.I. LEXIS 11 (1999)*.

Since the rule requiring the filing of a notice of appeal is mandatory, plaintiff's notice of appeal from a divorce decree was untimely since it was not filed until more than three months after the entry of the decision and since no mention was made of excusable neglect. *Bina v. Bina, 764 A.2d 191, 2000 R.I. LEXIS 207 (2000)*.

A notice of appeal was untimely when it was filed more than 30 days after a decision pending entry of final judgment and since no request for an extension was made. *Craveiro v. Craveiro, 773 A.2d 896, 2001 R.I. LEXIS 171 (2001)*.

Attorney's appeal from the denial of declaratory and injunctive relief for the insurer's denial to produce certain records was dismissed; since the attorney filed the appeal 22 days after the judgment was entered, the attorney's appeal was untimely. *Blais v. Beacon Mut. Ins. Co., 812 A.2d 838, 2002 R.I. LEXIS 220 (2002)*.

Plaintiff appeal from summary judgment against her in her automobile accident case was timely filed under *R.I. Gen. Laws § 9-24-1*, and *R.I. Sup. Ct. art. I, R. 4(a)* since it was filed within 20 days after the court entered its final judgment. *Furtado v. Laferriere, 839 A.2d 533, 2004 R.I. LEXIS 7 (2004)*.

Only a separate entry of final judgment in accordance with *R.I. Super. Ct. R. Civ. P. 58(a)* constitutes an appealable judgment for purposes of *R.I. Sup. Ct. art. I, R. 4(a)*. *Furtado v. Laferriere, 839 A.2d 533, 2004 R.I. LEXIS 7 (2004)*.

Where a contemnor filed an appeal on March 19, 2002 from a final contempt order that was entered on February 28, 2002, the appeal was timely, and where the Supreme Court of Rhode Island granted a writ of certiorari to review other issues from prior orders, the appeal was a vehicle for addressing those issues as well. *Bergquist v. Cesario, 844 A.2d 100, 2004 R.I. LEXIS 33*, cert. denied, *542 U.S. 925, 124 S. Ct. 2888, 159 L. Ed. 2d 786, 2004 U.S. LEXIS 4485 (2004)*.

Judgment dismissing a suit for equitable relief was a valid judgment, and an appeal of that judgment was not timely under *R.I. Sup. Ct. art. I, R. 4(a)* and *20(a)* as it was filed more than 20 days after the judgment was entered. *Malinou v. Seattle Sav. Bank, 970 A.2d 6, 2009 R.I. LEXIS 53 (2009)*.

Although a court clerk was required to make an entry on the docket after signing a final judgment, pursuant to *R.I. Super. Ct. R. Civ. P. 79(a)*, the court clerk's erroneous recording of the date of entry of judgment as December 10 rather than December 11 did not toll the running of the appeal period because the deadline for filing a notice of

appeal regardless of whether judgment was entered December 10 or December 11 was December 31; the 20-day deadline for filing a notice of appeal, pursuant to R.I. Sup. Ct. art. I, R. 4(a), from the December 10 date would have fallen on a Sunday and pursuant to R.I. Sup. Ct. art. I, R. 20(a), defendant would have had until the next business day, December 31. *UAG West Bay AM, LLC v. Cambio, 987 A.2d 873, 2010 R.I. LEXIS 20 (2010)*.

Inmate's appeal of a judgment denying him a writ of habeas corpus could not be considered because the inmate had been imprisoned as a result of a final judgment of conviction so that habeas corpus was not available to him and because the appeal was untimely under R.I. Sup. Ct. art. I, R. 4(a) having been filed 22 days after the trial court entered the judgment. *DiLibero v. State, 996 A.2d 599, 2010 R.I. LEXIS 72 (2010)*.

In dissolution proceedings, although a wife did not appeal from a trial court's written decision regarding student loans the wife had taken out for the parties' children, the wife's appeal was timely because the wife filed her appeal within 20 days of the issuance of the amended decision pending entry of final judgment, wherein the trial court found the loans were not marital debt. *Palin v. Palin, 41 A.3d 248, 2012 R.I. LEXIS 44 (2012)*.

Superior court properly denied defendant's motion to dismiss plaintiff's appeal because plaintiff's notice of cross-appeal was timely since it was filed within the twenty-day period triggered by defendant's notice of appeal, which was the first notice in the matter filed by a party adverse to plaintiff's interests; the rule should be interpreted to provide a twenty-day appeal period after the first timely notice of appeal from an adverse party. *Miller v. Metro. Prop. & Cas. Ins. Co., 88 A.3d 1157, 2014 R.I. LEXIS 40 (2014)*.

Supreme court declined to address a lender's appeal of the denial of its motion for judgment as a matter of law because the lender did not timely appeal; the lender's notice of appeal was filed outside of the twenty-day window from the judgment, and there was nothing in the record indicating that the appeal was otherwise timely. *Pawtucket Redevelopment Agency v. Brown, 106 A.3d 893, 2014 R.I. LEXIS 146 (2014)*.

Tax appeal was not properly before the supreme court because the taxpayer filed a notice of appeal from the judgment in that case well after the 20-day deadline. *Morse v. Minardi, 208 A.3d 1151, 2019 R.I. LEXIS 78 (2019)*.

Criminal Cases.

—Time for Appeal.

Although dismissal of a defendant's appeal was mandated by the failure to file a notice of appeal within the 50-day period that was the maximum allowed, including an extension, the court nonetheless considered defendant's contentions on the merits, as it reviewed a simultaneously filed petition for writ of certiorari. *State v. Pena-Rojas, 822 A.2d 921, 2003 R.I. LEXIS 130 (2003)*.

As a trust income beneficiary's appeal from a judgment that resolved disputes regarding the handling of trust assets was filed 23 days after entry of the final judgment in the matter, and the beneficiary had failed to obtain an extension of the time to file an appeal from the trial court justice, the appeal was not timely filed pursuant to R.I. Sup. Ct. art. I, R. 4(a); accordingly, it was denied and dismissed. *Wachovia Bank v. Hershberger, 911 A.2d 278, 2006 R.I. LEXIS 176 (2006)*.

Defendant's 2018 appeal of his 1993 conviction was not timely because, under R.I. Sup. Ct. art. I, R. 4(b), a notice of appeal must be filed within 20 days after the entry of the judgment appealed from, and the appeal clock here began running from the date the judgment was entered in the trial court's docket. *State v. Bienaime, 263 A.3d 77, 2021 R.I. LEXIS 98 (2021)*.

Defendant's 2018 appeal of his 1993 conviction was not timely because, under R.I. Sup. Ct. art. I, R. 4(b), a notice of appeal must be filed within 20 days after the entry of the judgment appealed from, and the appeal clock here

began running from the date the judgment was entered in the trial court's docket. *State v. Bienaime, 263 A.3d 77, 2021 R.I. LEXIS 98 (2021)*.

Collateral References.

Time for appeal, amendment of judgment as affecting for taking or prosecuting appellate review proceedings. *21 A.L.R.2d 285*.

Time for appeal, computing, exclusion or inclusion of terminal Sunday or holiday in computing time for taking or perfecting appellate review. *61 A.L.R.2d 482*.

Time for appeal, extension of, by permitting amendment of assignment of error. *30 A.L.R.3d 797*.

Time for appeal, formal requirements of judgment or order as regards time for taking appeal. *73 A.L.R.2d 250*.

Time for appeal, motion or petition for rehearing to court below as affecting time within which appellate proceedings must be taken or instituted. *10 A.L.R.2d 1075*.

When is office of clerk of court inaccessible due to weather or other conditions for purpose of computing time period for filing papers under *Rule 6(a) of Federal Rules of Civil Procedure*. *135 A.L.R. Fed. 259*.

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6

Millman v. Millman

Supreme Court of Rhode Island

January 13, 1999, Decided ; January 13, 1999, Opinion Filed

No. 97-430 - Appeal

Reporter
723 A.2d 1118 *; 1999 R.I. LEXIS 11 **

Carole A. Millman v. Harvey Millman

Prior History: [1]** Appeal from Family Court. Bedrosian, J. (P 94-2415).

Core Terms

entry of final judgment, appeals, extension of time, notice of appeal, appeal period, trial court, expired, file a notice of appeal, thirty days, twenty-day, decree, entry of judgment, grant a motion, marital assets, time to appeal, trial justice, thirty-day, deadline, divorce, parties, merits

Case Summary

Procedural Posture
Defendant husband appealed a decision from the Family Court (Rhode Island), determining the division of marital assets. Plaintiff wife appealed from an order granting defendant an extension of time to file his appeal.

Overview
Before entry of a final decree, the Family Court determined the division of marital assets belonging to defendant husband and plaintiff wife. The Family Court also granted defendant an extension of time to file his appeal. Defendant appealed the division of assets and plaintiff appealed the time extension. On appeal, the court held that the trial court could not extend defendant's time to appeal beyond the additional 30 days allowed by R.I. Sup. Ct. R. App. P. 4(a). The court dismissed defendant's appeal, which had been filed 81 days after the entry of the appealable decree and thus, after the additional 30-day time period allowed by Rule 4(a). Due to the dismissal of defendant's appeal on procedural grounds, the court declined to reach the merits of defendant's appeal.

Outcome
The court vacated the order extending the time to appeal, because the trial court could not extend defendant husband's time to appeal beyond the additional 30 days allowed by statute. The court affirmed the determination of the division of assets, sustained plaintiff wife's appeal, and dismissed defendant's appeal.

LexisNexis® Headnotes

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Timing of Appeals

Governments > Courts > Clerks of Court

HN1 **Reviewability of Lower Court Decisions, Timing of Appeals**

R.I. Sup. Ct. R. App. P. 4(a) requires that a notice of appeal shall be filed with the clerk of the trial court within 20 days of the date of the entry of the judgment, order, or decree appealed from. The time specified in Rule 4(a) is mandatory, and once the prescribed time has passed there can be no review by way of appeal.

Civil Procedure > ... > Pleadings > Time Limitations > Extension of Time

Governments > Legislation > Statute of Limitations > Time Limitations

Civil Procedure > ... > Pleadings > Time Limitations > General Overview

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Timing of Appeals

HN2[] **Time Limitations, Extension of Time**

Before or after the 20 period to file an appeal has expired, R.I. Sup. Ct. R. App. P. 4(a) contains a provision which allows for an extension of the time to appeal for up to an additional 30 days upon a showing of excusable neglect. This additional 30 days begins running at the expiration of the original 20-day period, and not from the date the motion to extend is granted. Therefore, the trial court must grant a motion for an extension of time to file an appeal within 50 days of the judgment or decree appealed from, and the appellant must file the notice of appeal within that same time.

Counsel: Carolyn R. Barone, For Plaintiff.

Joseph E. Marran, Jr., For Defendant.

Judges: Lederberg, Bourcier, Flanders, JJ, Concurring. Chief Justice Weisberger and Justice Goldberg did not participate.

Opinion

[*1118] OPINION

Present: Lederberg, Bourcier, and Flanders, JJ.

PER CURIAM. Pursuant to Rule 4(a) of the Supreme Court Rules of Appellate Procedure, can a trial court extend a party's time to appeal beyond the additional thirty days allowed by this rule? Because we answer this question in the negative, we affirm the Family Court's order dividing the parties' marital assets, sustain the plaintiff's appeal, and deny and dismiss the defendant's appeal. After we ordered the parties to show cause why we should not decide these appeals summarily, a panel of this Court heard argument on the parties' respective appeals following their divorce proceedings in the Family Court. Concluding that no such cause has been shown, we proceed to decide the appeals at this time.

The defendant, Harvey Millman (Harvey), is appealing from a decision pending entry of final judgment, claiming that the trial justice erred in determining the division **[**2]** of marital assets. The plaintiff, Carole A. Millman (Carole), appeals from an order of the Family Court granting Harvey an extension of **[*1119]** time during which he may file his appeal. Because Harvey filed his notice of appeal after the additional thirty-day time period allowed by Rule 4(a) had already expired, we must deny and dismiss his appeal without reaching the merits of his arguments.

The parties married on September 30, 1956. On June 29, 1994, Carole filed for divorce. Following a seven-day hearing before the Family Court, a decision pending entry of final judgment entered on May 9, 1997. Apparently, at or about this time, Harvey's attorney suffered a serious illness. Thereafter, on June 17, 1997, Harvey's attorney filed a motion to extend the time for appeal, and a hearing thereon occurred on June 30, 1997. On July 2, 1997, the Family Court entered an order purporting to grant Harvey until August 1, 1997 to file his notice of appeal. On July 22, 1997, Carole filed a notice of appeal from the order granting an extension of time. Finally, on July 29, 1997, Harvey filed a notice of appeal from the May 9th decision pending entry of final judgment.

HN1[] Rule 4(a) of the Supreme Court Rules **[**3]** of Appellate Procedure requires that a notice of appeal "shall be filed with the clerk of the trial court within twenty (20) days of the date of the entry of the judgment, order or decree appealed from * * *." We have ruled that the time specified in Rule 4(a) is mandatory, and that once the prescribed time has passed there can be no review by way of appeal. *See Warwick Land Trust, Inc. v. Children's Friend and Service, Inc., 604 A.2d 1266, 1267 (R.I. 1992)*.

HN2[] Before or after the twenty-day period has expired, Rule 4(a) contains a provision which allows for an extension of the time to appeal for up to an additional thirty days upon a showing of excusable neglect. This additional thirty days begins running at the expiration of the original twenty-day period, and *not* from the date the motion to extend is granted. *See Mitchell v. Mitchell, 522 A.2d 219, 220 (R.I. 1987)* (holding that a two-week extension granted by the trial justice several months after entry of judgment was invalid). Therefore, the trial court must grant a motion for an extension of time to file an appeal within fifty days of the judgment or decree appealed from, and the appellant must file the notice of appeal **[**4]** within that same time. *See Samuelian v. Town of Coventry, 701 A.2d 814 (R.I. 1997)* (upholding the dismissal of an appeal where a pro se litigant filed a timely motion for an extension forty-six days after entry of judgment, but the hearing at which the trial court granted the motion took place past the fifty-day deadline); *Friedman v. Lee Pare & Associates, Inc., 593 A.2d 1354, 1355 (R.I. 1991)* (holding that a Superior

Court justice has no authority either to extend the appeal deadline past fifty days or to circumvent the jurisdictional appeal period through entry of a *nunc pro tunc* order).

In this case, the decision pending entry of final judgment entered on May 9, 1997. The normal twenty-day appeal period expired on May 29, 1997. A thirty-day extension pursuant to Rule 4(a) would have extended the appeal period to a date no later than June 30, 1997. On June 17, 1997, Harvey filed his motion to extend the appeal period, but the hearing on the motion did not occur until June 30, 1997, the very last day on which he could have filed the appeal notice. But Harvey did not file his notice of appeal until July 29, 1997, which was eighty-one days after entry of the appealable **[**5]** decree. As a result, defendant's appeal is untimely and must be dismissed.

In any event, even if we were able to reach the merits of the defendant's appeal, we would still come to the same result. The Family Court based its decision largely upon credibility and factual determinations that we conclude were not clearly erroneous.

For these reasons, we vacate the July 2, 1996 order extending the time to appeal, affirm the decision pending entry of final judgment, sustain the plaintiff's appeal, and deny and dismiss the defendant's appeal.

Chief Justice Weisberger and Justice Goldberg did not participate.

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1. *R.I. Sup. Ct. Art. I, Rule 4*
Client/Matter: -None-
Search Terms: supreme court appeal rules
Search Type: Natural Language
Narrowed by:

Content Type	Narrowed by
US Statutes and Legislation	Jurisdiction: Rhode Island

7

State v. Young

Supreme Court of Rhode Island

January 7, 2008, Filed

No. 2007-23-C.A.

Reporter
941 A.2d 124 *; 2008 R.I. LEXIS 1 **

State v. Marshane Young.

Prior History: [**1] Appeal from Family Court. Providence County. (P05-120CR). Chief Judge Jeremiah Jeremiah.

Core Terms

trial justice, motion to dismiss, criminal information, probable cause, parties, felony, pretrial conference, summarily, vested

Case Summary

Procedural Posture
The State appealed an order of the Family Court, Providence County (Rhode Island), which dismissing the criminal information that charged defendant with the second-degree child abuse of her then 17-year-old daughter. The State contended that the trial court exceeded its authority and clearly was wrong when, at the pretrial conference, upon defendant's oral request, it summarily dismissed the case.

Overview
Defendant's daughter told the police that her mother had physically assaulted her. After an investigation and after undergoing substance abuse counseling, defendant was reunited with her other children. In a letter addressed to the trial court, the daughter declared that the incident was her fault and that defendant was free of blame. The trial court dismissed the case, despite the fact that defendant failed to file a motion to dismiss in accordance with R.I. Super. Ct. R. Crim. P. 9.1. The trial court failed to make any findings, conduct a hearing, or afford the State an opportunity to be heard on the issue of probable cause that defendant committed the offense. The appellate court noted that the State appeared for the pretrial conference without notice that it faced a potential dismissal of a felony information. The appellate court held that defendant waived her right to dismissal based on a purported lack of probable cause. Even if defendant had moved to dismiss, the motion would fail because the existence of probable cause was manifest within the four corners of the information package. Thus, the trial court deprived the State of a fair proceeding.

Outcome
The appellate court vacated the judgment of the trial court and remanded the case to the trial court for trial.

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Children & Minors > Child Abuse > Elements

Family Law > Family Protection & Welfare > Children > Abuse, Endangerment & Neglect

HN1[] **Child Abuse, Elements**

See *R.I. Gen. Laws § 11-9-5.3* (1956).

Criminal Law & Procedure > Appeals > Right to Appeal > Government

HN2[] **Right to Appeal, Government**

See *R.I. Gen. Laws § 9-24-32* (1956).

Criminal Law & Procedure > Preliminary Proceedings > Pretrial Motions & Procedures > Dismissal

HN3[] Pretrial Motions & Procedures, Dismissal

See R.I. Super. Ct. R. Crim. P. 9.1.

Criminal Law & Procedure > Jurisdiction & Venue > Jurisdiction

Family Law > General Overview

HN4[] Jurisdiction & Venue, Jurisdiction

See R.I. R. Juv. P. 37.

Criminal Law & Procedure > ... > Reviewability > Preservation for Review > Requirements

HN5[] Preservation for Review, Requirements

The appellate court will not consider an issue raised on appeal that was not presented to the trial court unless it involves an alleged violation of an accused's basic constitutional rights and unless the alleged error would be more than harmless and the exception implicates an issue of constitutional dimension derived from a novel rule of law that could not reasonably have been known to counsel at the time of trial.

Criminal Law & Procedure > Preliminary Proceedings > Pretrial Motions & Procedures > Dismissal

Criminal Law & Procedure > ... > Accusatory Instruments > Dismissal > General Overview

HN6[] Pretrial Motions & Procedures, Dismissal

When addressing a motion to dismiss a criminal information, a Family Court justice is required to examine the information and any attached exhibits to determine whether the State has satisfied its burden to establish probable cause to believe that the offense charged was committed and that the defendant committed it. In performing this function, the trial justice should grant the State the benefit of every reasonable inference in favor of a finding of probable cause.

Criminal Law & Procedure > Preliminary Proceedings > Pretrial Motions & Procedures > Dismissal

Criminal Law & Procedure > ... > Accusatory Instruments > Informations > General Overview

HN7[] Pretrial Motions & Procedures, Dismissal

The Attorney General is the only state official vested with prosecutorial discretion. Therefore, the trial justice cannot dismiss an information in the absence of a proper motion and without making appropriate findings.

Criminal Law & Procedure > Jurisdiction & Venue > Jurisdiction

HN8[] Jurisdiction & Venue, Jurisdiction

The Legislature has seen fit to vest the Family Court with exclusive jurisdiction over a limited class of felony crimes. In exercising that jurisdiction, the Family Court is obliged to comply with the state's substantive and procedural law.

Counsel: For Plaintiff: Aaron L. Weisman, Esq.

For Defendant: Marie Roebuck, Esq.

Judges: Present: Williams, C.J., Goldberg, Flaherty, Suttell, and Robinson, JJ. JUSTICES: Williams, CJ., Goldberg, Flaherty, Suttell, and Robinson, JJ. WRITTEN BY: Justice Maureen McKenna Goldberg, for the Court.

Opinion by: Goldberg

Opinion

[*125] Justice Goldberg, for the Court. This case came before the Supreme Court on November 7, 2007, pursuant to an order directing the parties to appear and show cause why the issues raised in this appeal should not summarily be decided. After hearing the arguments of counsel and examining the memoranda submitted by the parties, we are of the opinion that cause has not been shown. Accordingly, we shall decide the appeal without further briefing or argument. For the reasons set forth in this opinion, we vacate the Family Court

judgment dismissing this case. [1]

Facts and Travel

The State of Rhode Island (state) appeals from a Family Court order dismissing the criminal information that charged Marshane Young (Marshane or defendant) with the second-degree child abuse of her then seventeen-year-old daughter, in violation of G.L. 1956 § 11-9-5.3(b)(2), (d), and (e). [2] The state contends that the Family Court trial justice exceeded his authority and clearly was wrong when, at the pretrial conference, upon defendant's oral request, he summarily dismissed this case. We agree.

The facts underlying the criminal information essentially are undisputed. On August 23, 2005, the Providence police were informed by V'Ria Young (V'Ria or complainant), who then was seventeen years old, that she had been physically assaulted by defendant, her mother. V'Ria told the police that they had been arguing about a missing bag of marijuana, and when she denied taking it, defendant began to hit her. V'Ria also said that she left the home and defendant followed her to another house, where defendant grabbed a speaker wire and began to strike her in the face with it.

On August 21, 2006, a criminal information was **[**4]** filed in the Family Court; defendant was arraigned and pled not guilty on September 29, 2006. The case was continued for a pretrial conference with a justice of the Family Court on October 26, 2006. Even though defendant chose not to file a timely motion to dismiss the information and never questioned the sufficiency of the probable cause to support the charge, defense counsel argued at the pretrial conference **[*126]** that the case should be dismissed. He based his argument on the fact that V'Ria, who by then had turned nineteen, wanted to be reunited with her mother and that defendant was doing "extremely well." After an investigation by the Department of Children, Youth and Families (DCYF) and after undergoing substance abuse counseling, defendant had been reunited with her other children. In a letter addressed to a Family Court trial justice, V'Ria declared that the incident was her fault and that defendant was free of blame. The state objected to the proposed dismissal and argued that the case could not be dismissed at the pretrial stage. The trial justice disagreed and summarily dismissed the case; he failed to make any findings, conduct a hearing, or afford the state an opportunity to **[**5]** be heard on the issue of probable cause that defendant committed the offense. [3]

The state, under G.L. 1956 § 9-24-32, [4] filed an appeal

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[1] This Court today has issued its decision in the case of State v. Strom, No. 2007-24-C.A., 941 A.2d 837, 2008 R.I. LEXIS 3 (R.I., filed Jan. 7, 2008), in which it determined that the trial justice improperly dismissed a criminal information against the defendant in that case. As in this case, the trial **[**2]** justice in *Strom* did not have before him a proper motion to dismiss nor did he make any reference to the issue of probable cause.

[2] General Laws 1956 § 11-9-5.3, "**Child abuse - Brendan's Law**," provides in pertinent part:

> HN1[↑] "(b) Whenever a person having care of a child, as defined by § 40-11-2(2), whether assumed voluntarily or because of a legal obligation, including any instance where a child has been placed by his or her parents, caretaker, or licensed or governmental child placement agency for care or treatment, knowingly or intentionally:
>
> "***
>
> "(2) Inflicts upon a child any other serious physical injury, shall be guilty of second degree child abuse.
>
> "***
>
> "(d) For the purpose **[**3]** of this section, 'other physical injury' is defined as any injury, other than a serious bodily injury, which arises other than from the imposition of nonexcessive corporal punishment.
>
> "(e) Any person who commits first degree child abuse shall be imprisoned for not more than twenty (20) years, nor less than ten (10) years and fined not more than ten thousand dollars ($ 10,000). Any person who is convicted of second degree child abuse shall be imprisoned for not more than ten (10) years, nor less than five (5) years and fined not more than five thousand dollars ($ 5,000)."

[3] The trial justice further ordered DCYF to provide defendant with the first month's rent and security deposit so that she could secure housing.

[4] General Laws 1956 § 9-24-32 provides:

> HN2[↑] "In any criminal proceeding, the attorney general shall have the right to object to any finding, ruling, decision, order, or judgment of the superior court or family court, and the attorney general may appeal the findings, rulings, decisions, orders, or judgments to the supreme court at any time before the defendant has been placed in jeopardy; the defendant in any criminal proceeding may also appeal any findings, rulings, decision, order, or judgment of the superior or family court; and the attorney general may appeal thereafter, if,

and argues to this Court that the trial justice erred when he failed to follow the procedural rules governing criminal matters in the Family Court. The state further contends that defendant's post-dismissal reliance on Rule 9.1 of the Superior Court Rules of Criminal Procedure [5] is misplaced because defendant never moved to dismiss the information in accordance with Rule 9.1 and the record is devoid of any suggestion that the trial justice based his decision on Rule 9.1 or that he considered the question of probable cause. The state also argues that the information package sets forth a prima facie case that defendant committed the charged offense, such that a dismissal under Rule 9.1 would be improper. Additionally, the state contends that although an important function of the Family Court is to "seek to reconcile the parties and to re-establish friendly family relations," G.L. 1956 § 8-10-5, the Family Court **[**6]** is not vested with the authority to ignore the dictates of its own rules. In accordance with Rule 37 of the Family Court Rules of Juvenile Proceedings, adult felony crimes that are prosecuted in Family Court are governed by the Superior Court Rules of Criminal Procedure. [6]

[*127] On appeal, defendant argues that the trial justice was vested with the requisite authority to hear and dismiss the case in two ways: first, in accordance with Rule 9.1, and second, under the broad authority granted to the trial justice by the Family Court Act, specifically, §§ 8-10-4 and 8-10-5. The defendant further contends that the Family Court's "unique character and purpose" is "to protect and assist the well-being and integrity of the family unit and to seek reconciliation if at all possible." Therefore, defendant argues, the trial justice was justified in dismissing the case because he did so to reunify defendant and her daughter and thus preserve the family unit.

Issue Presented

In this case, we are called upon to decide whether the Family Court may dismiss a criminal information at the pretrial conference, over the objection of the prosecution, and in the absence of a motion to dismiss. For the reasons set forth in this opinion, we hold that the Family Court has no authority to dismiss a criminal information under these circumstances and must comply with its own rules of procedure.

Analysis

Before we **[**9]** address the substantive arguments in this case, we note that because defendant did not file a motion to dismiss in the Family Court, the state appeared for the pretrial conference without notice that it faced a potential dismissal of a felony information. The trial justice summarily dismissed the information notwithstanding the fact that there was no motion to act upon and counsel for defendant merely said, "I'm going to ask that the case be dismissed." Counsel failed to provide any basis for this request, and although defendant, before this Court, points to Rule 9.1 as support for dismissal, a motion to dismiss under that rule was neither filed nor argued in the Family Court. Moreover, there was no hearing scheduled on any motion to dismiss in conformity with Rule 9.1 and G.L. 1956 §§ 12-12-1.7 and 12-12-1.8. [7] Indeed, on the

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after trial, the defendant appeals. If the attorney general appeals the findings, rulings, decisions, orders, or judgments of the superior or family court before the defendant is placed in jeopardy and the defendant prevails in the supreme court, the attorney for the defendant shall be entitled to a reasonable attorney's fee and costs, payable **[**7]** by the state, to be set by the supreme court, incurred in representing the defendant in the prosecution of the attorney general's appeal before the supreme court."

[5] Rule 9.1 of the Superior Court Rules of Criminal Procedure provides:

> HN3[↑] "A defendant who has been charged by information may, within thirty (30) days after he or she has been served with a copy of the information, or at such later time as the court may permit, move to dismiss on the ground that the information and exhibits appended thereto do not demonstrate the existence of probable cause to believe that the offense charged has been committed or that the defendant committed it. The motion shall be scheduled to be heard within a reasonable time."

[6] According to Rule 37 of the Family Court Rules of Juvenile Proceedings, the Family Court applies the Superior Court Rules of Criminal Procedure for adult criminal cases. Rule 37 provides:

> HN4[↑] "In the conduct of criminal cases involving adults charged with crimes within the jurisdiction of the family court, the procedure shall follow that set forth in the Rules of Criminal Procedure for the Superior Court of Rhode Island to the extent that the same are appropriate for use in this court." **[**8]**

Unfortunately, the Family Court trial justice failed to comply with this rule.

[7] We note that an apparent dichotomy exists between G.L.

record before us, there is no suggestion that the trial justice even was aware of Rule 9.1 or the findings that are required to grant a dismissal.

Based on our well settled raise-or-waive rule, we deem this issue waived. *HN5*[↑] "This Court will not consider an issue raised on appeal that was not presented to the trial court," unless it involves an alleged **[*128]** violation of an accused's "'basic constitutional rights,'" *State v. Russell, 890 A.2d 453, 462 (R.I. 2006)*, and unless the alleged error would be more than harmless and the exception implicates an issue of constitutional dimension derived from a novel rule of law that could not reasonably have **[**11]** been known to counsel at the time of trial. *State v. Gomes, 690 A.2d 310, 319 (R.I. 1997)*; *see also Pollard v. Acer Group, 870 A.2d 429, 432 n.10 (R.I. 2005)*. None of these circumstances is present in this case. The defendant failed to file a motion to dismiss in accordance with Rule 9.1 and has not identified any of the narrow exceptions to the raise-or-waive rule as applying to her claim; thus, she waived her right to dismissal of this case based on a purported lack of probable cause. Moreover, the time for filing a motion to dismiss long since has passed.

Furthermore, even if defendant had moved to dismiss, the motion would fail because the existence of probable cause is manifest within the four corners of the information package. This Court has ruled that *HN6*[↑] "[w]hen addressing a motion to dismiss a criminal information, a Family Court justice is required to examine the information and any attached exhibits to determine whether the state has satisfied its burden to establish probable cause to believe that the offense charged was committed and that the defendant committed it." *State v. Fritz, 801 A.2d 679, 682 (R.I. 2002)* (citing *State v. Aponte, 649 A.2d 219, 222 (R.I. 1994)*). In performing **[**12]** this function, the trial justice should grant the state "'the benefit of every reasonable inference'" in favor of a finding of probable cause. *State v. Jenison, 442 A.2d 866, 875-76 (R.I. 1982)*.

It is the function of this Court on appeal to examine the record to determine "whether the justice's findings are supported by the evidence or whether, in making those findings, the justice misconceived or overlooked material evidence." *Fritz, 801 A.2d at 683* (citing *State v. Quimette, 415 A.2d 1052, 1053 (R.I. 1980)*).

Although we recognize that the mission of the Family Court is to reconcile the parties and reestablish family relations, we are also mindful that there are two parties to a felony prosecution: the defendant and the State of Rhode Island. Both those parties are entitled to a fair hearing. By prohibiting the Attorney General from fully prosecuting a felony information, because of a dismissal in violation of the Court's own rules, the trial justice deprived the state of a fair proceeding. Moreover, "[i]t is well settled in this state that *HN7*[↑] the Attorney General is the only state official vested with prosecutorial discretion." *State v. Rollins, 116 R.I. 528, 533, 359 A.2d 315, 318 (1976)* **[**13]** (citing *Rogers v. Hill, 22 R.I. 496, 48 A. 670 (1901)*). Therefore, the trial justice could not dismiss the information in the absence of a proper motion and without making appropriate findings.

This is not the first occasion in which this Court has been called upon to address the Family Court's failure to comply with its own rules. *See Fritz, 801 A.2d at 687-89* (vacating the dismissal of a criminal information and remanding the case to the Family Court for a hearing to determine whether probable cause existed to support the allegations). As a matter of law, a proper dismissal of this information would bar any future proceedings against defendant for the alleged offense. *Section 12-12-1.10*. For the Family Court to undertake a final dismissal, without notice that affords the state an opportunity to be heard, and in the absence of findings, is clear error. *HN8*[↑] The Legislature has seen fit to vest the Family Court with exclusive jurisdiction over a limited class of felony crimes. In exercising that jurisdiction, the **[*129]** Family Court is obliged to comply with the state's substantive and procedural law. *See Fritz, 801 A.2d at 689* (Goldberg, J., dissenting) ("It goes without saying that the courts **[**14]** of this state that are vested with felony criminal jurisdiction have concomitant constitutional responsibilities * * *."). Here, the trial justice summarily dismissed the information and failed to make any findings or set forth his reasons for

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1956 § 12-12-1.7, which provides that the defendant has ten days to file a motion to dismiss the Information, and Rule 9.1, which provides for thirty days. This **[**10]** disparity was discussed in the Advisory Committee Notes for the 2002 Amendment to Rule 9.1, which explained that "[t]he ten (10) day period specified by *Section 12-12-1.7* of the Rhode Island Code provides too little time for defense counsel to prepare the motion. A change in the statutory time provision is intended and it is anticipated that the legislature will amend the statute accordingly." Although the General Assembly has not amended the statute, the court rule trumps the statutory provision when in conflict. *Heal v. Heal, 762 A.2d 463, 467 (R.I. 2000)*. Of course, the time frame is of no moment to this appeal because a motion to dismiss based on an absence of probable cause was not filed.

doing so. We deem this reversible error.

Conclusion

For the reasons stated in this opinion, we vacate the judgment and remand this case to the Family Court for trial.

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1. *State v. Robinson, 972 A.2d 150*
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Cases	Court: State Courts > Rhode Island

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State v. Robinson

Supreme Court of Rhode Island

June 11, 2009, Filed

No. 2007-197-M.P., No. 2007-198-M.P., No. 2007-204-M.P., No. 2007-296-M.P., No. 2008-28-M.P., No. 2008-116-M.P.

Reporter
972 A.2d 150 *; 2009 R.I. LEXIS 81 **

State v. David Robinson. State v. Robert Palmer, Jr. State v. Christine Cabral. State v. Marcos Garden. State v. John Barboza. State v. Armando Furlano.

Prior History: [**1] District Court, Providence County. (A.A. 07-38), (A.A. 07-42), (A.A. 07-27), (A.A. 07-43), (A.A. 07-37), (A.A. 07-90). Chief Judge Albert E. DeRobbio.

Core Terms

motorist, Tribunal, Traffic, appeals, refuse to submit, general assembly, chemical test, courts, subject-matter, registration, suspension, aggrieved, suspended, arrested, mandatory penalty, charges, notice, hear

Case Summary

Procedural Posture

Petitioner motorists sought review of an order of the District Court, Providence County (Rhode Island), which ruled in favor of respondent State and reversed a decision of the appeals panel of the Traffic Tribunal that had affirmed a magistrate judge's dismissal of charges against the motorists for refusing to submit to a chemical test under R.I. Gen. Laws § 31-27-2.1 (1956)

Overview

The motorists were cited for refusing to submit to a chemical test. The magistrate judge dismissed the charges because they had not been fully apprised of the penalties. The State sought review, and the appeals panel affirmed the decision. The supreme court held that the district court lacked jurisdiction to hear the State's appeal. The General Assembly did not vest the district court with jurisdiction to hear an appeal by the State from a decision by the appeals panel. Section 31-27-2.1 did not provide the State with a vehicle to appeal to the district court. The definition of a "person" within Title 31 did not include the State. In the case of the Traffic Tribunal, the General Assembly provided that the chief magistrate could enact rules to regulate the practice, procedure, and business within that tribunal, R.I. Gen. Laws §§ 8-6-2 and 8-8.2-1. If the Traffic Tribunal could not use its rules to expand its own jurisdiction, it could not use them to expand the district court's jurisdiction. The magistrate did not have the authority to promulgate a rule that expanded the jurisdiction of the district court. That was a right that was solely within the province of the General Assembly.

Outcome

The supreme court quashed the district court's order.

LexisNexis® Headnotes

Criminal Law & Procedure > ... > Vehicular Crimes > Driving Under the Influence > Penalties

Transportation Law > Private Vehicles > Operator Licenses > Revocation & Suspension

Criminal Law & Procedure > ... > Blood Alcohol & Field Sobriety Testing > Implied Consent > Refusals to Submit

HN1[] **Driving Under the Influence, Penalties**

R.I. Gen. Laws § 31-27-2.1(a) (1956) provides that operators of motor vehicles within the State are presumed to have consented to chemical tests of their blood, breath, and/or urine to determine whether they are under the influence of alcohol or a controlled substance. Section 31-27-2.1(b) empowers law-

enforcement officers to prepare a sworn report and submit it to a judge of the Traffic Tribunal or District Court whenever a motorist, arrested on suspicion of driving while intoxicated, refuses to submit to such a test. If the report satisfies the requirements set forth in § 31-27-2.1(b), the judge must immediately suspend the license of the driver to whom reference is made in the report.

Criminal Law & Procedure > ... > Vehicular Crimes > Driving Under the Influence > Penalties

Criminal Law & Procedure > ... > Blood Alcohol & Field Sobriety Testing > Implied Consent > Refusals to Submit

HN2[] Driving Under the Influence, Penalties

Under R.I. Gen. Laws § 31-27-2.1(c) (1956), a hearing is available to determine whether a refusal charge should be sustained or dismissed. If the judge of the Traffic Tribunal or District Court finds after the hearing that: (1) the law enforcement officer making the sworn report had reasonable grounds to believe that the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor, toluene, or any controlled substance, (2) the person while under arrest refused to submit to the tests upon the request of a law enforcement officer, (3) the person had been informed of his or her rights in accordance with R.I. Gen. Laws § 31-27-3 (1956), and (4) the person had been informed of the penalties incurred as a result of noncompliance with § 31-27-2.1, the judge shall sustain the violation. R.I. Gen. Laws § 31-27-2.1(c) (1956). In such a case, the judge shall then impose the penalties set forth in § 31-27-2.1(b).

Criminal Law & Procedure > ... > Vehicular Crimes > Driving Under the Influence > Penalties

Criminal Law & Procedure > ... > Blood Alcohol & Field Sobriety Testing > Implied Consent > Refusals to Submit

HN3[] Driving Under the Influence, Penalties

See R.I. Gen. Laws § 31-27-2.1(b)(6) (1956).

Civil Procedure > Appeals > Appellate Jurisdiction > State Court Review

HN4[] Appellate Jurisdiction, State Court Review

The supreme court's review on writ of certiorari is limited to examining the record to determine if an error of law has been committed. Questions of law are not binding upon the court and may be reviewed to determine what the law is and its applicability to the facts. The supreme court reverses only when it finds pursuant to the petition that the lower-court judge committed an error of law.

Civil Procedure > Appeals > Standards of Review > De Novo Review

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview

HN5[] Standards of Review, De Novo Review

Subject-matter jurisdiction is an indispensable requisite in any judicial proceeding. The supreme court reviews de novo whether a court has subject-matter jurisdiction over a particular controversy.

Governments > Courts > Creation & Organization

HN6[] Courts, Creation & Organization

See R.I. Const. art. 10, § 1.

Civil Procedure > ... > Jurisdiction > Jurisdictional Sources > Constitutional Sources

HN7[] Jurisdictional Sources, Constitutional Sources

See R.I. Const. art. 10, § 2.

Civil Procedure > ... > Jurisdiction > Jurisdictional Sources > Constitutional Sources

Governments > Courts > Creation & Organization

Governments > State & Territorial Governments > Legislatures

HN8[] Jurisdictional Sources, Constitutional Sources

The authority of the General Assembly under R.I. Const. art. 10 is broadly construed to enact legislation dictating the jurisdiction of the lower courts. The State constitution grants to the Legislature the authority to establish and prescribe the jurisdiction of any inferior courts. The General Assembly has the power to confer jurisdiction upon the courts under the constitution.

Governments > Legislation > Interpretation

HN9[] Legislation, Interpretation

When construing statutes, the supreme court's role is to determine and effectuate the Legislature's intent and to attribute to the enactment the meaning most consistent with its policies or obvious purposes. When the language of a statute is clear and unambiguous, the supreme court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.

Governments > Courts > Rule Application & Interpretation

HN10[] Courts, Rule Application & Interpretation

In situations in which a statute and a rule approved by the Rhode Island Supreme Court are in conflict, the court rule prevails.

Governments > Courts > Rule Application & Interpretation

HN11[] Courts, Rule Application & Interpretation

See R.I. Gen. Laws § 8-6-2(a) (1956).

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview

Governments > Courts > Rule Application & Interpretation

HN12[] Subject Matter Jurisdiction, Jurisdiction Over Actions

Procedural rule-making authority may not be used to expand a court's jurisdiction. An authority conferred upon a court to make rules of procedure for the exercise of its jurisdiction is not an authority to enlarge that jurisdiction.

Administrative Law > Agency Rulemaking > Rule Application & Interpretation > General Overview

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview

Governments > Courts > Rule Application & Interpretation

HN13[] Agency Rulemaking, Rule Application & Interpretation

R.I. Gen. Laws § 8-6-2(a) (1956) enables the various courts of the State to promulgate rules regulating the practice, procedure, and business therein. The statute provides that the rules shall have as their goal a simplified system of pleading, practice, and procedure that will promote a speedy determination of litigation on the merits. R.I. Gen. Laws § 8-6-2(b) (1956). In the case of the Traffic Tribunal, the General Assembly clearly has provided that the chief magistrate can enact rules to regulate the practice, procedure, and business within that tribunal. R.I. Gen. Laws § 8-6-2, 8-8.2-1 (1956). If the Traffic Tribunal cannot use its rules to expand its own jurisdiction, it certainly cannot use them to expand the district court's jurisdiction.

Civil Procedure > ... > Subject Matter Jurisdiction > Jurisdiction Over Actions > General Overview

Governments > Courts > Rule Application & Interpretation

HN14[] Subject Matter Jurisdiction, Jurisdiction Over Actions

R.I. Super. Ct. R. Civ. P. 82 provides that the civil rules shall not be construed to extend or limit jurisdiction of the superior court.

Governments > Courts > Rule Application & Interpretation

HN15[] Courts, Rule Application & Interpretation

Rule-making power must be confined to regulating the pleading, practice and procedure therein, and it cannot be extended to categories not reasonably comprehended by those terms.

Governments > Courts > Rule Application & Interpretation

HN16[] Courts, Rule Application & Interpretation

Rule-making power allows courts to govern their internal matters; it does not allow a court to promulgate a rule that intrudes upon substantive legislative matters such as the expansion of the jurisdiction of the district court.

Counsel: For Plaintiff: John E. Sullivan, III, Department of Attorney General.

For Defendant: Richard S. Humphrey, Esq., Andrew Horwitz, Esq., Steven G. Wright, Esq., Russell Bramley, Esq., B. Jean Rosiello, Esq.

Judges: Present: Goldberg, Acting C.J., Flaherty, Suttell, and Williams, C.J.

Opinion by: Francis X. Flaherty

Opinion

[*152] Justice Flaherty, for the Court. The facts before us are straightforward and uncomplicated. These companion cases are before the Supreme Court on writs of certiorari. The petitioners are six motorists who are seeking review of a District Court order. That order reversed a decision of the appeals panel of the Traffic Tribunal that had affirmed a magistrate judge's dismissal of charges for refusing to submit to a chemical test. This Court issued the writs and consolidated the cases for briefing and argument because of the parallel issues presented. The petitioners have diverse backgrounds, come from different communities across our state, are of various ages and ethnicities, and in all likelihood have never met each other. [1] They do, however, share certain **[**2]** common denominators; all six were suspected of operating motor vehicles while under the influence of alcohol or a controlled substance, all six were advised of the penalties for refusing to submit to a chemical test save one--a $ 200 assessment fee to support the Department of Health's chemical testing programs--and, all six declined to have the test administered to them. What we are called upon to resolve is the impact of that single omission. Because we conclude that the District Court lacked jurisdiction to hear the state's appeal from the decision of the appeals panel, we quash the order of the District Court.

I

The Refusal Statute, G.L. 1956 § 31-27-2.1

HN1[] *General Laws 1956 § 31-27-2.1(a)* provides that operators of motor vehicles within the state are presumed to have consented to chemical tests of their blood, breath, and/or urine to determine whether they are under the influence of alcohol or a controlled substance. *Section 31-27-2.1(b)* empowers law-enforcement officers to prepare a sworn report and submit it to a judge of the Traffic Tribunal or District Court **[**3]** whenever a motorist, arrested on suspicion of driving while intoxicated, refuses to submit to such a test. If the report satisfies the requirements set forth in *subsection (b) of § 31-27-2.1*, [2] the judge **[*153]** must immediately suspend the license of the driver to whom reference is made in the report. Thereafter, *HN2*[] under *subsection (c) of § 31-27-2.1*, a hearing is available to determine whether a refusal charge should be sustained or dismissed. If the judge finds after the hearing that:

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[1] Thirty-two motorists were named in the District Court action; however, only six of those motorists are before this Court.

[2] The report must indicate that:

> "[The] law enforcement officer * * * had reasonable grounds to believe the arrested person had been driving a motor vehicle within this state under the influence of intoxicating liquor, toluene, or any controlled substance, as defined in *chapter 28 of title 21*, or any combination of these; that the person had been informed of his or her rights in accordance with *§ 31-27-3*; that the person had been informed of the penalties incurred as a result of noncompliance with this section; and that the person had refused to submit to the tests upon the request of a law enforcement officer * * *." *G.L. 1956 § 31-27-2.1(b)*.

> "(1) the law enforcement officer making the sworn report had reasonable grounds to believe that the arrested person had been driving a motor vehicle within this state while under the influence of intoxicating liquor, toluene, or any controlled substance, * * * (2) the person while under arrest refused to submit to the tests upon the request of a law enforcement officer; (3) the person had been informed of his or her rights in accordance with § 31-27-3; and (4) *the person had been informed of the penalties incurred as a result of noncompliance with this section; the judge shall sustain the violation.*" Section 31-27-2.1(c) (emphasis added).

In such a case, the judge "shall then impose the penalties set forth in subsection (b)." **[**4]** *Id.* One such penalty is the $ 200 assessment of which petitioners were not informed and which is the focus of our attention in this case. [3]

II

Facts and Travel

A Warwick police officer arrested **[**5]** Christine Cabral, [4] on September 10, 2006, because he suspected that she was operating a motor vehicle while intoxicated. At the police station, an officer asked her to submit to a chemical test, and read to her from a form entitled "Rights for Use at the Station/Hospital." That form indicated that the motorist had the option to refuse the test and notified her about the penalties she would incur in the event she refused. [5] The state concedes that the form used by law enforcement in Ms. Cabral's case, and in the cases of the other petitioners, did not include any information about the $ 200 assessment that recently had been enacted, and that the motorists were not informed of this penalty. [6] Cabral refused to submit to the test, and, as a result, she was cited for her refusal pursuant to § 31-27-2.1.

[*154] On September 22, 2006, Cabral appeared *pro se* in the Traffic Tribunal and denied the charge. A judge then issued a preliminary suspension of her driver's license and scheduled a trial. On October 19, 2006, however, a magistrate judge of the Traffic Tribunal dismissed the refusal charge after he found that Cabral had not been fully apprised of the penalties that she would incur as a consequence of her refusal to submit to the chemical test.

The state appealed the magistrate judge's decision to the appeals panel of the Traffic Tribunal. On January 29, 2007, the panel issued a consolidated decision that affirmed the magistrate's decision to dismiss the charges against Cabral and the other motorists. It found that the $ 200 assessment was a penalty within the meaning of the **[**7]** refusal statute and that the imposition of this penalty was mandatory. The panel said that it lacked the statutory authority to impose some of the mandatory penalties, but not others, and that if it decided "to avoid the $ 200 statutory penalty and impose the other sanctions, [its] action would be *void ab initio*." The panel concluded that:

> "Appellees were not informed of all the penalties under Sec. 31-27-2.1 before refusing to submit to a chemical test, and the failure to inform them of a mandatory penalty is a violation of the statute. Without knowledge of all mandatory penalties before them, this motorist could not knowingly refuse within the meaning of Sec. 31-27-2.1. This Panel finds that the failure to inform motorists of a mandatory assessment effectively repudiates the validity of the motorists' refusal."

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[3] Section 31-27-2.1(b)(6) provides that:

> HN3[↑] "In addition to any other fines and highway safety assessments, a two hundred dollar ($ 200) assessment shall be paid by any person found in violation of this section to support the department of health's chemical testing programs outlined in § 31-27-2(4), which shall be deposited as general revenues, not restricted receipts."

[4] Because the circumstances of each of the six consolidated cases before us are similar, we will recite the facts and travel of one case, *State v. Cabral*, No. 2007-204-M.P., for the purpose of illustration.

[5] The form is distributed to all local police departments throughout the state, and originally was "designed through a combined effort of the Department of Health, the Department of Transportation **[**6]** (DOT), and the Attorney General's office." Levesque v. Rhode Island Department of Transportation, 626 A.2d 1286, 1288 (R.I. 1993).

[6] The refusal statute was amended effective July 1, 2006, to include the $ 200 assessment. P.L. 2006, ch. 246, art. 10, § 1. The law-enforcement community had not yet updated its forms to reflect the new law at the time that the police arrested Ms. Cabral and the other motorists in this case.

On February 7, 2007, the state filed a document entitled "Complaint" in the Traffic Tribunal that purported to give notice that it was seeking review of the appeals panel's decision in the District Court. Noticeably absent from that document was any reference to statutory authority providing the District Court with jurisdiction to hear the state's appeal. In Cabral's answer **[**8]** to the state's complaint, she contended that the District Court did not have subject-matter jurisdiction because G.L. 1956 § 31-41.1-9(a) only authorizes "[a] person who is aggrieved" by a decision of the appeals panel to appeal to the District Court. She asserted that the state is not a "person" within the definition of the statute. In a consolidated decision issued on May 23, 2007, a District Court judge reversed the decision of the appeals panel. He did not specifically rule on the jurisdictional issue, but simply cited § 31-41.1-9 as the vehicle for the state's appeal and as the basis for the court's jurisdiction. The judge reviewed the refusal statute and relied on this Court's decision in Levesque v. Rhode Island Department of Transportation, 626 A.2d 1286 (R.I. 1993), to reach his decision.

In Levesque, 626 A.2d at 1288, the police arrested a motorist and charged him with refusing to submit to a chemical test after he was suspected of driving while intoxicated. Consequently, the Administrative Adjudication Division (AAD) of the Rhode Island Department of Transportation (DOT) issued an order suspending both his license and automobile registrations. *Id.* An AAD judge sustained the **[**9]** violation, and the motorist appealed to the AAD appeals board, which denied his appeal. [7] *Id.* Levesque appealed to the District Court. *Id.* **[*155]** After a hearing, the District Court judge dismissed the violation against the motorist, finding that the suspension of his registration was a penalty about which the motorist must be informed pursuant to § 31-27-2.1. Levesque, 626 A.2d at 1288. We granted the DOT's petition for a writ of certiorari. *Id.* Before this Court, the motorist contended that he had not been warned that his registrations might be suspended before he refused to take the test. *Id.* at 1288-89. We held that "the police are required to inform motorists who have been arrested for driving under the influence of alcohol or controlled substances of all the penalties they could incur if they refuse to submit to breathalyzer tests * * *." *Id.* at 1290. The Court went on to say that although the suspension of the motorist's registration without first providing him the opportunity for a hearing was a denial of his due process rights, vacating the violation was too broad a remedy. *Id.* at 1290-91. The Court reasoned that the "District Court was correct in voiding the registration suspension **[**10]** because it is a consequence of which Levesque was not informed." *Id.* at 1291. "But since the driver was adequately informed of the other penalties he could incur because of his failure to submit to the breathalyzer test, those penalties and the violation should have been affirmed." *Id.*

The District Court judge in the instant matter found that *Levesque* controlled the outcome of this case. He concluded that, similar to the motorist in *Levesque*, petitioners' "statutory right to be notified of all refusal penalties was violated." The judge, however, did not agree with the appeals panel's decision that the violation must be dismissed. Instead, he said that:

> "[T]he panel's concern that to eliminate the $ 200 assessment would run afoul of the mandatory penalty provision is fundamentally misguided. The panel's decision has the following anomalous result: concluding that one penalty cannot be waived, they **[**11]** would in essence, waive all--the fine, the license suspension, the infirmities that result from the enhancement of a future conviction. This is killing a statute with kindness. It is throwing out the baby with the bath water. It deems one provision so inviolate that all others are negated. Accordingly, this Court cannot agree with the panel's reasoning."

As a result, the judge remanded the case to the Traffic Tribunal with instructions to reinstate the charges against Ms. Cabral and the other motorists. He said that if the motorists later were adjudicated to have refused to submit to a chemical test, the $ 200 penalty could not be imposed. An order was entered on May 23, 2007; on September 10, 2007, we granted Ms. Cabral's petition for certiorari and her petition for a stay of all the Traffic Tribunal proceedings.

III

Issues Presented

The petitioners raise two arguments before this Court. First, they assert that because the state concedes that the $ 200 assessment is a penalty about which

[7] In 1992, the General Assembly replaced the AAD with the Administrative Adjudication Court (AAC). *See* P.L. 1992, ch. 453, §§ 1, 3. Seven years later, the Traffic Tribunal succeeded the AAC. *See* G.L. 1956 § 8-8.2-1, as enacted by P.L. 1999, ch. 218, art. 4, § 1 (establishing Traffic Tribunal).

petitioners were required to be informed, the state's inability to prove that each of these motorists was so informed requires that the charges be dismissed. They argue that the penalties set forth in **[**12]** the statute are mandatory and that none can be suspended. The petitioners contend that dismissal is the only option when a law-enforcement officer fails to inform a motorist of all the consequences of refusal. In an attempt to distinguish the instant case from *Levesque,* petitioners maintain that in that case, the penalty about which the motorist was not informed--the potential loss of his automobile registrations--did **[*156]** not arise from the refusal statute, but instead was found in another statute, G.L. 1956 § 31-32-4. Therefore, they argue, the Court had the discretion to suspend the penalty. More specifically, petitioners assert that *Levesque* does not address whether a mandatory penalty such as the one contained in the refusal statute can be suspended.

The state responds that the District Court properly reversed the appeals panel's decision. It asks this Court to affirm the District Court decision because, it argues, *Levesque* is controlling of the issues in this case. It is the state's contention that the fact that the registration suspension under § 31-32-4 was only a possible consequence of the motorist's refusal in *Levesque* is irrelevant. Instead, the state suggests that when one penalty **[**13]** cannot be imposed because of a failure to notify, the charge should not be dismissed, but rather the remaining penalties, when notice is not an issue, should be imposed and the charge sustained.

The petitioners' second argument is that the District Court lacked subject-matter jurisdiction over the case. That court presumed to have jurisdiction to entertain the state's appeal under § 31-41.1-9(a), which provides that "[a]ny *person* who is aggrieved by a determination of an appeals panel may appeal the determination" to the District Court. (Emphasis added.) We note that "person" is a defined term for purposes of title 31 of the General Laws, encompassing "every individual, firm, partnership, corporation, or association." G.L. 1956 § 31-1-17(g). The petitioners point out that terms such as the "state," the "government," a "public body," or a "state or governmental agency" are "conspicuously absent from that definition." [8] They argue that because the state is not a "person" as that term is defined in the statute and because no other statutory provisions establish jurisdiction in the District Court to hear the state's appeal, the District Court acted without subject-matter jurisdiction.

The state counters by pointing out that the General Assembly has provided the chief magistrate of the Traffic Tribunal with "the power to make rules for regulating practice, procedure and business within the [T]raffic [T]ribunal." G.L. 1956 § 8-8.2-1(a). The state contends that one such rule--Rule 21 of the Traffic Tribunal Rules of Procedure, entitled "Appeals from decisions in civil traffic violations"-- provides the District Court with subject-matter jurisdiction to entertain the state's appeal. Subsection (b) of Rule 21 provides in pertinent part that:

> "Any *party* aggrieved **[**15]** by a decision of the appeals panel may appeal therefrom to the [S]ixth [D]ivision [D]istrict [C]ourt. Appeal may be claimed by filing a written notice of appeal on a form prescribed by the chief judge and, in the case of a defendant, by submitting the appeal filing fee of twenty-five dollars ($ 25.00). The filing fee is waived when an appeal is taken by the state, the municipality or other prosecuting authority." (Emphasis added.)

[*157] The state also points out that the General Assembly recently amended § 8-8.2-2 by adding subsection (d), which provides that "[a] party aggrieved by a final order of the [T]raffic [T]ribunal appeals panel shall be entitled to a review of the order by a judge of the [D]istrict [C]ourt." P.L. 2008, ch. 1, § 4. The state argues that the codification of this amendment is further evidence of the General Assembly's intent to preserve the state's right of appeal. Therefore, the state urges us to hold that the District Court was vested with the authority to rule on its appeal.

IV

Standard of Review

[8] The **[**14]** petitioners also point out that there are at least two dozen statutes in which the General Assembly has expressly included the state within the definition of a "person." *See, e.g.,* G.L. 1956 §§ 4-3-1(3); 5-37-1(12); 21-4.1-2(8). Furthermore, there are a number of other statutes in which while the state has not been included in the definition of a person, but in which the terms "government," "governmental unit," "governmental body," "government agency," or "state agency" have been included within the definition of a "person." *See, e.g.,* G.L. 1956 §§ 5-19.1-2(p), 17-25.2-3(8), 3-14-3(g), § 23-19.6-4(2), 23-23-3(7).

HN4[↑] "[T]his Court's review on writ of certiorari is limited 'to examining the record to determine if an error of law has been committed.'" Crowe Countryside Realty Associates Co., LLC v. Novare Engineers, Inc., 891 A.2d 838, 840 (R.I. 2006) **[**16]** (quoting State v. Santiago, 799 A.2d 285, 287 (R.I. 2002)). "Questions of law * * * are not binding upon the court and may be reviewed to determine what the law is and its applicability to the facts." State v. Faria, 947 A.2d 863, 867 (R.I. 2008) (quoting Hometown Properties, Inc. v. Rhode Island Department of Environmental Management, 592 A.2d 841, 843 (R.I. 1991)). "We reverse only when we find pursuant to the petition that the lower-court judge committed an error of law." *Id.* (quoting Boucher v. McGovern, 639 A.2d 1369, 1373 (R.I. 1994)).

V

Analysis

Before we reach the merits of petitioners' first argument--that the charges must be dismissed because they were not informed of a penalty incurred as a result of refusal--the basis of the District Court's jurisdiction must be at the forefront of our consideration. This is so because HN5[↑] "subject-matter jurisdiction is 'an indispensable requisite in any judicial proceeding.'" Newman v. Valleywood Associates, Inc., 874 A.2d 1286, 1288 (R.I. 2005) (quoting Zarrella v. Minnesota Mutual Life Insurance Co., 824 A.2d 1249, 1256 (R.I. 2003)). "This Court reviews *de novo* whether a court has subject-matter jurisdiction over a particular controversy." **[**17]** Tyre v. Swain, 946 A.2d 1189, 1197 (R.I. 2008) (citing Newman, 874 A.2d at 1288).

HN6[↑] Article 10, section 1, of the Rhode Island Constitution provides that "[t]he judicial power of this state shall be vested in one supreme court, and in such inferior courts as the general assembly may, from time to time, ordain and establish." Section 2 of article 10 provides that HN7[↑] "[t]he inferior courts shall have such jurisdiction as may, from time to time, be prescribed by law." HN8[↑] "We have broadly construed the authority of the General Assembly under this article of our constitution to enact legislation dictating the jurisdiction of the lower courts." State v. Byrnes, 456 A.2d 742, 744 (R.I. 1983); see, e.g., State v. Almonte, 644 A.2d 295, 300 (R.I. 1994) (state constitution "grants to the Legislature the authority to establish and prescribe the jurisdiction of any inferior courts"); McCarthy v. Johnson, 574 A.2d 1229, 1232 (R.I. 1990) ("It cannot be disputed that the General Assembly has the power to confer jurisdiction upon the courts under our constitution."). Therefore, the fundamental question that we first must resolve is whether the General Assembly vested the District Court with jurisdiction to **[**18]** hear an appeal by the state from a decision by the appeals panel of the Traffic Tribunal.

We conclude that such jurisdiction does not spring from the language of § 31-41.1-9. HN9[↑] "When construing statutes, this Court's role is 'to determine and effectuate **[*158]** the Legislature's intent and to attribute to the enactment the meaning most consistent with its policies or obvious purposes.'" Such v. State, 950 A.2d 1150, 1155-56 (R.I. 2008) (quoting Brennan v. Kirby, 529 A.2d 633, 637 (R.I. 1987)). "It is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." *Id.* (quoting Moore v. Ballard, 914 A.2d 487, 490 (R.I. 2007)). Applying this principle to the case *sub judice*, it is clear that the statute in force at the applicable time did not provide the state with a vehicle to appeal to the District Court because the definition of a "person" within title 31 does not include the state.

Having so held, we now turn our attention to the state's argument that the District Court had jurisdiction under Rule 21(b). "It is well established that HN10[↑] in situations in which a statute **[**19]** and a rule approved by the Rhode Island Supreme Court are in conflict, the court rule prevails." Tonetti Enterprises, LLC v. Mendon Road Leasing Corp., 943 A.2d 1063, 1071 (R.I. 2008) (quoting Heal v. Heal, 762 A.2d 463, 467 (R.I. 2000)); see G.L. 1956 § 8-6-2(a) (HN11[↑] "The rules of the [S]uperior, [F]amily, [D]istrict [C]ourt and the [T]raffic [T]ribunal shall be subject to the approval of the [S]upreme [C]ourt. Such rules, when effective, shall supersede any statutory regulation in conflict therewith."). In this case, we are faced with a clear conflict: Rule 21(b) provides that "[a]ny *party* aggrieved by a decision of the appeals panel may appeal," to the District Court, while § 31-41.1-9(a) provides that "any *person* who is aggrieved by a determination of an appeals panel may appeal" to the District Court. (Emphases added.)

We cannot overlook the well-established principle that HN12[↑] procedural rule-making authority may not be used to expand a court's jurisdiction. The United States Supreme Court has said:

> "An authority conferred upon a court to make rules of procedure for the exercise of its jurisdiction is not an authority to enlarge that jurisdiction; and the Act * * * authorizing this Court **[**20]** to prescribe rules of procedure in civil actions gave it no authority to modify, abridge or enlarge the substantive rights of litigants or to enlarge or diminish the jurisdiction of federal courts." *United States v. Sherwood, 312 U.S. 584, 589-90, 61 S. Ct. 767, 85 L. Ed. 1058 (1941)*; *see also* *Fed. R. Civ. P. 82* (federal rules must not be construed to extend or limit jurisdiction). [9]

There is no dispute that *HN13*[↑] *§ 8-6-2(a)* enables the various courts of this state to promulgate rules regulating the "practice, procedure, and business therein." The statute provides that the rules shall have as their goal a simplified system of "pleading, practice, and procedure" that will promote a "speedy determination of litigation on the merits." *Section 8-6-2(b)*. In the case of the Traffic Tribunal, the General Assembly clearly has provided that the chief magistrate can enact rules to regulate the practice, procedure, and business within that tribunal. *Sections 8-6-2*, *8-8.2-1*. But that does not end our inquiry. If the Traffic Tribunal cannot use its rules to expand its own jurisdiction, it certainly cannot use them to expand the District Court's jurisdiction.

In *Dyer v. Keefe, 97 R.I. 418, 423, 198 A.2d 159, 162 (1964)*, this Court said that *HN15*[↑] rule-making power "must be confined to regulating the pleading, practice and **[*159]** procedure therein" and that it could not "be extended to categories not reasonably comprehended by those terms." *But see* *Letendre v. Rhode Island Hospital Trust Co., 74 R.I. 276, 281-82, 60 A.2d 471, 474 (1948)*. A rule of the Traffic Tribunal that creates jurisdiction in the District Court to entertain an appeal, in the absence of statutory authorization, is precisely the type of expansion of power that this Court held to be improper in *Dyer*. *See* *Dyer, 97 R.I. at 423, 198 A.2d at 162* (holding that rule requiring a party filing a pleading, motion, or any other paper, to furnish a copy to other party did not require a defendant to provide the plaintiff with a notice of her claim of a jury trial because such a right is not related to pleading, practice, and procedure, and is outside the scope of the Superior Court's rule-making power). The chief magistrate simply does not have the authority to promulgate a rule that expands the jurisdiction **[**22]** of the District Court because that is a right that lies solely within the province of the General Assembly. [10] *HN16*[↑] Rule-making power allows courts to govern their internal matters; it does not allow a court to promulgate a rule that intrudes upon substantive legislative matters such as the expansion of the jurisdiction of the District Court.

V

Conclusion

Therefore, we hold that the District Court did not have subject-matter jurisdiction to hear the state's appeal. [11] Consequently, we quash the order entered by the **[**23]** District Court, to which we return the record.

Justice Robinson did not participate.

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[9] Similarly, *HN14*[↑] *Rule 82 of the Superior Court Rules of Civil Procedure* provides **[**21]** that such rules "shall not be construed to extend or limit jurisdiction of the Superior Court."

[10] We note that the General Assembly subsequently conferred such jurisdiction through the addition of *§ 8-8.2-2(d)*, which provides that a party aggrieved by a final order of the appeals panel may appeal to the District Court. However, at the time that the District Court heard this case, that provision had not been enacted. We are not persuaded by the state's argument that this new provision evidenced a prior intent on behalf of the General Assembly to provide the state with a vehicle to appeal an adverse decision from the appeals panel to the District Court. The simple fact of the matter is that when the court heard the state's appeal, it lacked subject-matter jurisdiction to do so.

[11] Because we have decided this case on jurisdictional grounds, we need not, and we do not, reach the other issues raised by the parties.

9

R.I. Gen. Laws § 14-1-61

Current through Chapter 18 of the 2022 Session, but not including all corrections and changes by the Director of Law Revision

General Laws of Rhode Island > Title 14 Delinquent and Dependent Children (Chs. 1 — 7) > Chapter 1 Proceedings in Family Court (§§ 14-1-1 — 14-1-71)

14-1-61. Rules of court.

The court shall have the power to adopt rules of procedure for the conduct of the court not inconsistent with the provisions of this chapter.

History

P.L. 1944, ch. 1441, § 34; G.L. 1956, § 14-1-61.

Annotations

Research References & Practice Aids

Collateral References.

Applicability of rules of evidence to juvenile court proceedings. 43 A.L.R.2d 1128.

End of Document

10

R.I. Gen. Laws § 8-10-3.2

Current through Chapter 18 of the 2022 Session, but not including all corrections and changes by the Director of Law Revision

General Laws of Rhode Island > Title 8 Courts and Civil Procedure — Courts (Chs. 1 — 19) > Chapter 10 Family Court (§§ 8-10-1 — 8-10-45)

8-10-3.2. General magistrate of the family court.

(a) There is hereby created within the family court the position of general magistrate of the family court who shall be appointed by the chief judge of the family court with the advice and consent of the senate for a term of ten (10) years and until a successor is appointed and qualified. Nothing herein shall be construed to prohibit the assignment of the general magistrate to more than one such term, subject to the advice and consent of the senate.

(b) The general magistrate shall be an attorney at law and a member in good standing of the Rhode Island bar.

(c) The primary function of the general magistrate shall be the enforcement of child support decrees, orders, and law relative to child support. The general magistrate shall have all the authority and powers vested in magistrates by virtue of §§ 8-10-3, 8-10-3.1, 9-15-19, 9-15-21, 9-14-26, 9-18-8, 9-18-9, and 36-2-3, and any other authority conferred upon magistrates by any general or public law or by any rule of procedure or practice of any court within the state.

(d) The chief justice of the supreme court with the agreement of the chief judge of the family court may specially assign the general magistrate to any court of the unified judicial system; provided, however, that the general magistrate may be assigned to the superior court subject to the prior approval of the presiding justice of the superior court. When the general magistrate is so assigned he or she shall be vested, authorized, and empowered with all the powers belonging to the magistrates of the court to which he or she is specially assigned.

(e) The general magistrate shall:

(1) Receive all credits and retirement allowances as afforded justices under chapter 3 of this title and any other applicable law;

(2) Be governed by the commission on judicial tenure and discipline, chapter 16 of this title, in the same manner as justices and workers' compensation judges;

(3) Be entitled to a special license plate under § 31-3-47;

(4) Receive a salary equivalent to that of a district court judge;

(5) Be subject to all the provisions of the canons of judicial ethics; and

(6) Be subject to all criminal laws relative to judges by virtue of §§ 11-7-1 and 11-7-2.

(f) The general magistrate of the family court who shall at the time of passage of this section hold the position of general magistrate, shall upon retirement, at his or her own request and at the direction of the chief justice of the supreme court, subject to the retiree's physical and mental competence, be assigned to perform such services as general magistrate of the family court, as the chief judge of the family court shall prescribe. When so assigned and performing such service, the general magistrate shall have all the powers and authority of general magistrate of the family court, but otherwise shall have no powers nor be authorized to perform any judicial duties. For any such service or assignments performed after retirement, the general magistrate shall receive no compensation whatsoever, either monetary or in kind. Such a

retired general magistrate shall not be counted in the number of judicial officers provided by law for the family court.

(g) The provisions of this section shall be afforded liberal construction.

History

P.L. 1987, ch. 52, § 1; P.L. 1998, ch. 442, § 2; P.L. 2003, ch. 198, § 1; P.L. 2003, ch. 201, § 1; P.L. 2007, ch. 73, art. 3, § 9; P.L. 2012, ch. 207, § 1; P.L. 2012, ch. 236, § 1.

Annotations

Notes

Compiler's Notes.

P.L. 2007, ch. 73, art. 3, § 4, provided: "It is the intent of the General Assembly to reform and make uniform the process of the selection of magistrates and the terms and conditions under which they shall serve. The provisions in this Act which establish a ten (10) year term, shall apply to any vacancy which occurs after the date of passage [July 1, 2007] and shall also apply to any magistrate position which completes its statutory term after the date of passage of this Act. Any magistrate in service as of the effective date of this Act who was appointed to his or her position with life tenure or for a term of years shall continue to serve in accordance with the terms of that appointment. It is the intent of the General Assembly that this Act shall determine the rights and duties of court magistrates superseding any act or rule in conflict with the provisions of this Act."

P.L. 2012, ch. 207, § 1, and P.L. 2012, ch. 236, § 1 enacted identical amendments to this section.

End of Document

2007 R.I. HB 5300

Copy Citation

Enacted, June 21, 2007

Reporter
2007 R.I. ALS 73 | 2007 R.I. Pub. Laws 73 | 2007 R.I. Pub. Ch. 73 | 2007 R.I. HB 5300

RHODE ISLAND ADVANCE LEGISLATIVE SERVICE > RHODE ISLAND 2007-2008 LEGISLATIVE SESSION > PUBLIC LAWS CHAPTER 73 > HOUSE BILL 5300 (SUBSTITUTE A AS AMENDED)

Notice

Added: Text highlighted in green
Deleted: ~~Red text with a strikethrough~~

Synopsis

AN ACT MAKING APPROPRIATIONS FOR THE SUPPORT OF THE STATE FOR THE FISCAL YEAR ENDING JUNE 30, 2008

8-10-3.2. General magistrate of the family court. --

- **(a)** There is hereby created within the family court the position of general magistrate of the family court who shall be appointed by the ~~governor~~ CHIEF JUDGE OF THE FAMILY COURT with the advice and consent of the senate for a ~~life~~ term OF TEN (10) YEARS AND UNTIL A SUCCESSOR IS APPOINTED AND QUALIFIED. NOTHING HEREIN SHALL BE CONSTRUED TO PROHIBIT THE ASSIGNMENT OF THE GENERAL MAGISTRATE TO MORE THAN ONE SUCH TERM, SUBJECT TO THE ADVICE AND CONSENT OF THE SENATE.
- **(b)** The general magistrate shall be an attorney at law and a member in good standing of the Rhode Island bar ~~, with a minimum of ten (10) years experience as a general magistrate in the Rhode Island family court.~~
- **(c)** The primary function of the general magistrate shall be the enforcement of child support decrees, orders, and law relative to child support. The general magistrate shall have all the authority and powers vested in magistrates by virtue of sections 8-10-3, 8-10-3.1, 9-15-19, 9- 15-21, 9-14-26, 9-18-8, 9-18-9, and 36-2-3, and any other authority conferred upon magistrates by any general or public law or by any rule of procedure or practice of any court within the state.
- **(d)** The chief justice of the supreme court with the agreement of the chief judge of the family court may specially assign the general magistrate to ~~perform judicial duties within~~ any court of the unified judicial system ~~in the same manner as a judge may be assigned pursuant to chapter 15 of this title~~ ; provided, however, that the general magistrate may be assigned to the superior court subject to the prior approval of the presiding justice of the superior court. When the general magistrate is so

assigned he or she shall be vested, authorized, and empowered with all the powers belonging to the ~~justices~~ MAGISTRATES of the court to which he or she is specially assigned.

- (e) The general magistrate shall:
  - (1) Receive all credits and retirement allowances as afforded justices under chapter 3 of this title and any other applicable law;
  - (2) Be governed by the commission on judicial tenure and discipline, chapter 16 of this title, in the same manner as justices and workers' compensation judges;
  - (3) Be entitled to a special license plate under section 31-3-47;
  - (4) Receive a salary equivalent to that of a district court judge ~~and shall be subject to the unclassified pay plan board~~ ;
  - (5) Be subject to all the provisions of the canons of judicial ethics; and
  - (6) Be subject to all criminal laws relative to judges by virtue of sections 11-7-1 and 11- 7-2.
- (f) The provisions of this section shall be afforded liberal construction.

2007 R.I. ALS 73, 2007 R.I. Pub. Laws 73, 2007 R.I. Pub. Ch. 73, 2007 R.I. HB 5300, 2007 R.I. ALS 73, 2007 R.I. Pub. Laws 73, 2007 R.I. Pub. Ch. 73, 2007 R.I. HB 5300

Index of Exhibits

A. Petitioner's Appeal to Rhode Island Supreme Court as handed to the Clerk's office filed 5/19/2022.

B. Petitioner's Appeal as modified from an appeal to the Supreme Court by the Family Court Clerk's Office to read in the docket Appeal of Magistrate's Decision.

C. Petitioner's Conditional Appeal filed to protect Petitioner's Appellate Rights due to the within controversy (five pages).

D. Petitioner's Conditional Appeal as it appears on the portal (one page)

E. Docket sheet showing the mislabeling of both, the appeal to Supreme Court and The Conditional Appeal of the Magistrate's Decision.

A

Case Number: SU-2022-0156-MP
Filed in Supreme Court
Submitted: 5/23/2022 1:17 PM
Envelope: 3634481
Reviewer: Justin Coutu

STATE OF RHODE ISLAND

FAMILY COURT

NOTICE OF APPEAL

Plaintiff/Petitioner	Civil Action File Number
John Cronan	F.C. No. P2020-2673
Defendant/Respondent	
Laurie Cronan	

Name of Each Party and Attorney Filing Appeal	
Laurie Cronan	Evan M. Kirshenbaum
	Kirshenbaum Law Associates, Inc.

Date Case First Filed in the Family Court	Date of Judgment or Order Appealed From
July 8, 2020	May 19, 2022
Party Filing Appeal ☐ Plaintiff(s) ☐ Petitioner(s) ☑ Defendant(s) ☐ Respondent(s) ☐ Other: _____	**Trial Court Judge** General Magistrate Daniel V. Ballirano

TRIAL COURT ACTION APPEALED

- ☐ IPR Preliminary Injunction
- ☐ CON Conviction
- ☐ IPT Permanent Injunction
- ☐ CJD Default Judgment
- ☐ CDS Dismissal/Jurisdiction
- ☐ CDM Dismissal Merits
- ☐ CTD New Trial Motion Denied
- ☐ CTG New Trial Motion Granted
- ☐ CJJ Judgment/Judge
- ☐ CDV Directed Verdict
- ☑ CJU Judgment/Jury
- ☐ DAL Alimony
- ☐ PRO Probation Violation
- ☐ PTM Pretrial Motion
- ☐ FCJ Juvenile
- ☐ PCR Grant Post Conviction
- ☐ DPC Denial Post Conviction
- ☐ MTR Denial Sentence Reduction
- ☐ DCF Dependency/Termination
- ☐ DSJ Summary Judgment
- ☐ ASF Agreed Statement of Facts
- ☐ DRP Original Divorce Petition
- ☐ CUS Custody

JUDGMENT FOR:

- ☐ Plaintiff(s)
- ☐ Defendant(s)
- ☐ Other

SENTENCES:

- ☐ Confinement
- ☐ Special Program
- ☐ Fine/Restitution
- ☐ Suspended
- ☐ Probation
- ☐ Deferred

BAIL/RELEASE STATUS

- ☐ Personal Recognizance
- ☐ Held Without Bail
- ☐ Surety Bond
- ☐ Cash Bond
- ☐ Held In Lieu Of Bail
- ☐ Other _____

TRANSCRIPT STATUS

- ☐ Transcript Will Not Be Ordered
- ☑ Transcript Will Be Ordered

Filing Fee Required: ☐ Yes ☐ No

Trial Court Receipt Number _____

Appeal Filing Fee for Each Appellant or Petitioner: $150.00

/s/ Evan M. Kirshenbaum	Rhode Island Bar Number: 5207
Attorney for ☐ the Plaintiff /Petitioner ☑ the Defendant/Respondent or ☐ the Plaintiff /Petitioner ☐ the Defendant/Respondent	Date: May 19, 2022
Telephone Number:401-467-5300	

Case Number: SU-2022-0156-MP
Filed in Supreme Court
Submitted: 5/23/2022 1:17 PM
Envelope: 3634481
Reviewer: Justin Coutu

STATE OF RHODE ISLAND

REQUEST FOR AN APPEAL TRANSCRIPT

☐ SUPERIOR COURT ☑ FAMILY COURT ☐ WORKERS' COMPENSATION COURT

☑ Providence/Bristol County ☐ Kent County ☐ Washington County ☐ Newport County

Plaintiff/Petitioner	**Case Number**
John Cronan	F.C. NO. P2020-2673
v.	
Defendant/Respondent	
Laurie Cronan	

Requesting Party (Check One)

☑ Attorney ☐ State of Rhode Island Agency Request ☐ Self-represented Litigant

	Appeals Only	Date(s) Heard	Name of Judicial Officer	Court Reporter (If Known)
1	Entire Trial Proceedings, Excluding Jury Impaneling Where Applicable	See Attached		
2	Motion for New Trial			
3	Sentencing			
4	Motion for Directed Verdict			
5	Other (Please Specify): _____ _____ _____ _____			

If the fee for the transcript is waived, please check the appropriate box:

☐ In Forma Pauperis (attach signed court order)

☐ Court appointed attorney (attach signed court order)

STATE OF RHODE ISLAND

Please indicate where we can send you a Transcript Estimate and Transcript Invoice:

☐ Mail to the address listed below:

☑ Email to the following address:

emk@kirshenbaumlaw.com

☐ Pick up at the clerk's office

Once the appeal transcript is completed and payment is made, the appeal transcript will be docketed on the lower court case and will be accessible on the Rhode Island Judiciary Public Portal.

/s/ Evan M. Kirshenbaum
Name of Requesting Party

401-467-5300
Telephone Number

1000 Chapel View Boulevard, Suite 270, Cranston, Rhode Island 02921
Address

5207
Bar Number if Applicable

Date: May 12, 2022

For State of Rhode Island Agency Requests Only

/s/ _____
Name of Chief Financial Officer

_____
RIFAN Account Number to be Charged

Date: _____

Case Number: SU-2022-0156-MP
Filed in Supreme Court
Submitted: 5/23/2022 1:17 PM
Envelope: 3634481
Reviewer: Justin Coutu

CRONAN V CRONAN P2020-2673 TRIAL and OTHER RELEVANT DATES FOR APPEAL

10/21/2020	Justice Gill	unknown
10/21/2020	Justice Gill	unknown
5/19/2021	General Magistrate Ballirano	unknown
06/21/2021	General Magistrate Ballirano	unknown
07/01/2021	General Magistrate Ballirano	unknown
9/16/2021	General Magistrate Ballirano	Barbara Montijo
9/23/2021	General Magistrate Ballirano	Barbara Montijo
10/06/2021	General Magistrate Ballirano	Barbara Montijo
10/14/2021	General Magistrate Ballirano	Barbara Montijo
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11/12/2021	General Magistrate Ballirano	Barbara Montijo
12/17/2021	General Magistrate Ballirano	Barbara Montijo
03/30/2022	General Magistrate Ballirano	Barbara Montijo

B

View Document - P20202673 - Appeal of Magistrates Decision

Pages: 4

STATE OF RHODE ISLAND

FAMILY COURT

NOTICE OF APPEAL

Plaintiff/Petitioner	Civil Action File Number
John Cronan	F.C. No. P2020-2673
Defendant/Respondent	
Laurie Cronan	

Name of Each Party and Attorney Filing Appeal	
Laurie Cronan	Evan M. Kirshenbaum
	Kirshenbaum Law Associates, Inc.

Date Case First Filed in the Family Court	Date of Judgment or Order Appealed From
July 8, 2020	May 19, 2022
Party Filing Appeal ☐ Plaintiff(s) ☐ Petitioner(s) ☑ Defendant(s) ☐ Respondent(s) ☐ Other: _____	**Trial Court Judge** General Magistrate Daniel V. Ballirano

TRIAL COURT ACTION APPEALED

☐ IPR	Preliminary Injunction	☐ CJJ	Judgment/Judge	☐ DPC	Denial Post Conviction
☐ CON	Conviction	☐ CDV	Directed Verdict	☐ MTR	Denial Sentence Reduction
☐ IPT	Permanent Injunction	☑ CJU	Judgment/Jury	☐ DCF	Dependency/Termination
☐ CJD	Default Judgment	☐ DAL	Alimony	☐ DSJ	Summary Judgment
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☐ CDM	Dismissal Merits	☐ PTM	Pretrial Motion	☐ DRP	Original Divorce Petition
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☐ CTG	New Trial Motion Granted	☐ PCR	Grant Post Conviction		

JUDGMENT FOR:

☐ Plaintiff(s)
☐ Defendant(s)
☐ Other

SENTENCES:

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☐ Personal Recognizance
☐ Held Without Bail
☐ Surety Bond
☐ Cash Bond
☐ Held In Lieu Of Bail
☐ Other _____

TRANSCRIPT STATUS

☐ Transcript Will Not Be Ordered
☑ Transcript Will Be Ordered

Filing Fee Required: ☐ Yes ☐ No
Appeal Filing Fee for Each Appellant or Petitioner: $150.00

Trial Court Receipt Number _____

/s/ Evan M. Kirshenbaum	Rhode Island Bar Number: 5207
Attorney for ☐ the Plaintiff /Petitioner ☑ the Defendant/Respondent or ☐ the Plaintiff /Petitioner ☐ the Defendant/Respondent	Date: May 19, 2022
Telephone Number: 401-467-5300	

FC-67 (revised March 2022)

Pages: 4

Download Document

C

Case Number: SU-2022-0156-MP
Filed in Supreme Court
Submitted: 5/23/2022 1:17 PM
Envelope: 3634481
Reviewer: Justin Coutu

STATE OF RHODE ISLAND

FAMILY COURT

NOTICE OF APPEAL FROM DECISION OF MAGISTRATE

Plaintiff John Cronan	**Civil Action File Number** P2020-2673
Defendant Laurie Cronan	

Now comes Laurie Cronan, ☐ the Plaintiff ☑ the Defendant, in the above-entitled cases and files this Notice of Appeal from the ☐ judgment, ☐ order, or ☑ decree of ☑ General Magistrate or ☐ Magistrate Daniel V. Ballirano, entered on the 3rd day of May, 2022.

A copy of the judgment, order, or decree is attached.

/s/ Evan M. Kirshenbaum ☐ Attorney for the Plaintiff ☐ Attorney for the Defendant ☐ Plaintiff ☒ Defendant	Rhode Island Bar Number: 5207 Date: May 20, 2022
Telephone Number:	

CERTIFICATE OF SERVICE

I hereby certify that, on the 20th day of May, 2022:

☑ I filed and served this document through the electronic filing system on the following: William J. Lynch, Esquire @bill@wjlynchlaw.com.
The document electronically filed and served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

☐ I served this document through the electronic filing system on the following: _____.
The document electronically served is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

☐ I mailed or ☐ hand-delivered this document to the attorney for the opposing party and/or the opposing party if self-represented, whose name is _____ at the following address _____.

/s/ Deana M. Guglielmo
Name

Case Number: SU-2022-0156-MP
Filed in Supreme Court
Submitted: 5/23/2022 1:17 PM
Envelope: 3634481
Reviewer: Justin Coutu

STATE OF RHODE ISLAND

REQUEST FOR AN APPEAL TRANSCRIPT

☐ SUPERIOR COURT ☑ FAMILY COURT ☐ WORKERS' COMPENSATION COURT

☑ Providence/Bristol County ☐ Kent County ☐ Washington County ☐ Newport County

Plaintiff/Petitioner	**Case Number**
John Cronan	F.C. NO. P2020-2673
v.	
Defendant/Respondent	
Laurie Cronan	

Requesting Party (Check One)

☑ Attorney ☐ State of Rhode Island Agency Request ☐ Self-represented Litigant

	Appeals Only	Date(s) Heard	Name of Judicial Officer	Court Reporter (If Known)
1	Entire Trial Proceedings, Excluding Jury Impaneling Where Applicable	See Attached		
2	Motion for New Trial			
3	Sentencing			
4	Motion for Directed Verdict			
5	Other (Please Specify): _____ _____ _____ _____			

If the fee for the transcript is waived, please check the appropriate box:

☐ In Forma Pauperis (attach signed court order)

☐ Court appointed attorney (attach signed court order)

Case Number: SU-2022-0156-MP
Filed in Supreme Court
Submitted: 5/23/2022 1:17 PM
Envelope: 3634481
Reviewer: Justin Coutu

STATE OF RHODE ISLAND

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☐ Mail to the address listed below:

☑ Email to the following address:

emk@kirshenbaumlaw.com

☐ Pick up at the clerk's office

Once the appeal transcript is completed and payment is made, the appeal transcript will be docketed on the lower court case and will be accessible on the Rhode Island Judiciary Public Portal.

/s/ Evan M. Kirshenbaum
Name of Requesting Party

401-467-5300
Telephone Number

1000 Chapel View Boulevard, Suite 270, Cranston, Rhode Island 02921
Address

5207
Bar Number if Applicable

Date: May 12, 2022

For State of Rhode Island Agency Requests Only

/s/ _____
Name of Chief Financial Officer

_____
RIFAN Account Number to be Charged

Date: _____

CRONAN V CRONAN P2020-2673 TRIAL and OTHER RELEVANT DATES FOR APPEAL

10/21/2020	Justice Gill	unknown
10/21/2020	Justice Gill	unknown
5/19/2021	General Magistrate Ballirano	unknown
06/21/2021	General Magistrate Ballirano	unknown
07/01/2021	General Magistrate Ballirano	unknown
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11/12/2021	General Magistrate Ballirano	Barbara Montijo
12/17/2021	General Magistrate Ballirano	Barbara Montijo
03/30/2022	General Magistrate Ballirano	Barbara Montijo

STATE OF RHODE ISLAND
PROVIDENCE, Sc.

FAMILY COURT

JOHN J. CRONAN :
:
VS. : F. C. No. P2020-2673
:
LAURIE A. CRONAN :

NOTICE OF CONDITINIONAL APPEAL FROM MAGISTRATE TO FAMILY COURT CHIEF JUDGE

This appeal is being filed as a protection for the Defendant's appellate rights as there appears to be potentially conflicting language between the statutory scheme governing the rights of an Appellant, the Rhode Island Supreme Court Rules governing the taking of an appeal and the Rhode Island Family Court Rules. Specifically Rule 73 of the Rhode Island Family Court Rules mandates said appeal to be transferred to the Chief Judge or his designee. Rhode Island General Laws Section 14-1-52 describes a procedure mandating an appeal to the Rhode Island Supreme Court from any final decree of the Family Court. A final decree of a divorce has been interpreted as a decision pending entry of final judgment. Rhode Island Supreme Court Rule 4 designates an appeal from a final order be filed for review of the Rhode Island Supreme Court within 20 days.

Defendant shall seek to clarify the same through a petition to the Rhode Island Supreme Court for direction and input as to whether the seemingly mandatory language in Family Court Rule 73 can modify established statutory appellate rules as well as the Supreme Court's own rules.

D

View Document - P20202673 - Miscellaneous Document Filed

Pages: 1

STATE OF RHODE ISLAND
PROVIDENCE, Sc.

FAMILY COURT

JOHN J. CRONAN :
:
VS. : F. C. No. P2020-2673
:
LAURIE A. CRONAN :

NOTICE OF CONDITINIONAL APPEAL FROM MAGISTRATE TO FAMILY COURT CHIEF JUDGE

This appeal is being filed as a protection for the Defendant's appellate rights as there appears to be potentially conflicting language between the statutory scheme governing the rights of an Appellant, the Rhode Island Supreme Court Rules governing the taking of an appeal and the Rhode Island Family Court Rules. Specifically Rule 73 of the Rhode Island Family Court Rules mandates said appeal to be transferred to the Chief Judge or his designee. Rhode Island General Laws Section 14-1-52 describes a procedure mandating an appeal to the Rhode Island Supreme Court from any final decree of the Family Court. A final decree of a divorce has been interpreted as a decision pending entry of final judgment. Rhode Island Supreme Court Rule 4 designates an appeal from a final order be filed for review of the Rhode Island Supreme Court within 20 days.

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Pages: 1

E

Providence/Bristol County Family Court

Case Summary

Case No. P20202673

John Cronan v. Laurie Cronan

§
§
§

Location: **Providence/Bristol County Family Court**
Judicial Officer: **Ballirano, Daniel V.**
Filed on: **07/08/2020**

Case Information

Case Type: Nominal Divorce Complaint
Case Status: **05/09/2022 Heard and Decision**

Party Information

Plaintiff	**Cronan, John J.** DOB: 09/02/1950	**LYNCH, WILLIAM J** ***Retained***
Defendant	**Cronan, Laurie A.** DOB: 06/07/1960	**LANDI, ANGELINA HELEN** ***Retained*** **CONLON, TIMOTHY J** ***Retained*** **KIRSHENBAUM, EVAN M.** ***Retained***
Interested Party	**Judicial Officer**	

Case Events

02/22/2022	Objection to Miscellaneous Motion Filed Party: Plaintiff Cronan, John J.
03/23/2022	Miscellaneous Motion Filed Party: Defendant Cronan, Laurie A.
03/29/2022	Objection to Miscellaneous Motion Filed Party: Plaintiff Cronan, John J.
03/29/2022	Objection to Miscellaneous Motion Filed Party: Plaintiff Cronan, John J.
03/29/2022	Motion to Modify Party: Plaintiff Cronan, John J.
03/29/2022	Miscellaneous Motion Filed Party: Plaintiff Cronan, John J.
03/30/2022	Terms of Decree Read into the Record
03/30/2022	Order to Enter
04/20/2022	Order Entered
05/03/2022	Decision Entered

Case Summary

Case No. P20202673

05/03/2022 Heard and Decision for Plaintiff and Defendant at Trial

05/03/2022 Grounds - Irreconcilable Differences

05/19/2022 Decision Pending Entry of Final Judgment Entered

05/19/2022 Appeal of Magistrate's Decision

05/20/2022 Miscellaneous Document Filed

151-165 of 165

Hearings

10/21/2020 **Motion for Ex Parte** (11:00 AM) (Judicial Officer: Gill, Felix E.)
Heard and Continued

10/23/2020 **Motion** (9:00 AM) (Judicial Officer: Gill, Felix E.)
Heard and Continued

11/06/2020 *CANCELED* **Nominal Track Merits** (2:30 PM) (Judicial Officer: Gill, Felix E.)
Date Vacated Per Judge

02/12/2021 **Case Status Conference** (11:30 AM) (Judicial Officer: Gill, Felix E.)
Heard and Continued

05/05/2021 **Case Status Conference** (2:00 PM) (Judicial Officer: Ballirano, Daniel V.)
Passed

05/19/2021 **Case Status Conference** (11:00 AM) (Judicial Officer: Ballirano, Daniel V.)
Heard and Continued

06/21/2021 **Contested Track Pre-Trial** (2:30 PM) (Judicial Officer: Ballirano, Daniel V.)
Passed

07/01/2021 **Control Date** (11:00 AM) (Judicial Officer: Ballirano, Daniel V.)
Heard and Continued

07/27/2021 **Control Date** (10:00 AM) (Judicial Officer: Ballirano, Daniel V.)
Passed

08/30/2021 *CANCELED* **Contested Track Trial** (10:30 AM) (Judicial Officer: Ballirano, Daniel V.)
Date Vacated Per Judge

09/16/2021 **Contested Track Trial** (9:00 AM) (Judicial Officer: Ballirano, Daniel V.)
Heard and Continued

09/23/2021 **Contested Track Trial** (9:00 AM) (Judicial Officer: Ballirano, Daniel V.)
Heard and Continued

10/06/2021 **Contested Track Trial** (12:15 PM) (Judicial Officer: Ballirano, Daniel V.)
Heard and Continued

10/14/2021 **Contested Track Trial** (9:00 AM) (Judicial Officer: Ballirano, Daniel V.)
08/31/2021 Reset by Court to 10/14/2021
Heard and Continued

10/15/2021 **Contested Track Trial** (9:00 AM) (Judicial Officer: Ballirano, Daniel V.)
09/01/2021 Reset by Court to 10/15/2021
Heard and Continued

10/18/2021 **Contested Track Trial** (12:00 PM) (Judicial Officer: Ballirano, Daniel V.)
Passed

11/09/2021 **Contested Track Trial** (9:00 AM) (Judicial Officer: Ballirano, Daniel V.)
Heard and Continued

11/12/2021 **Contested Track Trial** (9:00 AM) (Judicial Officer: Ballirano, Daniel V.)
Heard and Continued

Supreme Court

No. 2022-156-M.P.

John Cronan :

v. :

Laurie Cronan :

O R D E R

This matter came before a single justice of this Court, sitting as Duty Justice, on an "Emergency Miscellaneous Petition for Relief and Stay of All Appellate Proceedings." Upon consideration of the petition, the following is ordered:

All proceedings in Family Court are hereby stayed pending the full Court's review of this matter at its conference on June 9, 2022.

The respondent shall file an opposition to the emergency petition with ***ten (10) days*** of the date of this Order.

Entered as an Order of this Court this ***24th*** day of ***May 2022.***

By Order,

/s/ *Debra A. Saunders*
Clerk

Supreme Court

No. 2022-156-M.P.

John Cronan :

v. :

Laurie Cronan :

O R D E R

The "Emergency Miscellaneous Petition for Relief and for Stay of All Appellate Proceedings," as prayed, is denied.

The stay previously granted by an Order of this Court dated May 24, 2022 is vacated.

This matter shall be closed.

Entered as an Order of this Court this ***10th*** day of ***June 2022.***

By Order,

/s/ *Debra A. Saunders*
Clerk