

Superior Court of New Jersey - Appellate Division

Letter Brief

Appellate Division Docket Number: A-002611-23

Sharon Livingstone

Appellant

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August 23, 2024

Letter Brief on behalf of: Sharon Livingstone

James Neve

Plaintiff

VS

Sharon Livingstone (f/k/a Neve), Pro Se

Defendant

Case Type: Family

County/Agency: Morris

Trial Court/Agency Docket No: FM-14-1364-06

Trial Court Judge/Agency Name: Hon. Vijayant Pawar, J.S.C.

Dear Judges:

Pursuant to R. 2:6-2(b), please accept this letter brief in support of my appeal in this matter.

TABLE OF CONTENTS

PRELIMINARY STATEMENT	A1
PROCEDURAL HISTORY	A3
STATEMENT OF FACTS	A4
LEGAL ARGUMENT	A5
<u>POINT1</u>	A5
THE TRIAL COURT ERRED IN FAILING TO SET APPROPRIATE CHILD SUPPORT AMOUNTS FROM 2017 THROUGH 2022.	
Raised below (A5), Indicated in Order (A12-A17)	
<u>POINT2</u>	A6
THE TRIAL COURT ERRED FAILING TO CONSIDER THAT THE FIXED AMOUNT FROM THE 401K WOULD BE WITHHELD FROM THE PLAINTIFF FOR 15 YEARS.	
Raised below (A6), Indicated in Order (A12-A17)	
<u>POINT 3</u>	A8
THE TRIAL COURT ERRED IN FAILING TO ADDRESS THE GAINS THAT THE DEFENDANT WOULD HAVE EARNED FROM EXERCISED ADP STOCK OPTIONS HAD THE PLAINTIFF NOT WITHHELD THESE MONIES.	
Raised below (A8), Indicated in Order (A12-A17)	
<u>POINT 4</u>	A9
THE TRIAL COURT ERRED IN FAILING TO FULLY CONSIDER AWARDING THE DEFENDANT A PAYBACK OF THE LEGAL FEES AND ATTORNEY COSTS REQUESTED.	
Raised below (A9), Indicated in Order (A12-A17)	
CONCLUSION	A10

**TABLE OF JUDGMENT(S), ORDER(S), RULING(S), AND DECISION(S)
ON APPEAL**

Document Name	Date	Page No. or Transcript
<u>Order and Statement of Reasons; Pawar J.S.C</u>	<u>03/14/2024</u>	<u>A12-A17</u>
<u>Case Management Order; Pawar J.S.C</u>	<u>03/08/2022</u>	<u>A18-A19</u>
<u>Order of Mediation; Pawar J.S.C</u>	<u>10/08/2021</u>	<u>A20</u>
<u>Order of Mediation; Amirata J.S.C</u>	<u>06/21/2021</u>	<u>A21</u>
<u>Order; Amirata J.S.C</u>	<u>08/28/2019</u>	<u>A22-A23</u>
<u>Dual Final Judgement of Divorce; Hansbury J.S.C</u>	<u>10/17/2007</u>	<u>A24-A51</u>

INDEX TO APPENDIX

Document/Exhibit Title or Description	Date	Page No.
<u>Final Order and Statement of Reasons; Pawar J.S.C</u>	<u>03/14/2024</u>	<u>A12-A17</u>
<u>Case Management Order; Pawar J.S.C.</u>	<u>03/08/2022</u>	<u>A18-A19</u>
<u>Order of Mediation; Pawar J.S.C.</u>	<u>10/08/2021</u>	<u>A20</u>
<u>Order of Mediation; Amirata J.S.C.</u>	<u>06/21/2021</u>	<u>A21</u>
<u>Order; Amirata J.S.C.</u>	<u>08/28/2019</u>	<u>A22-A23</u>
<u>Dual Final Judgment of Divorce; Hansbury J.S.C.</u>	<u>10/17/2007</u>	<u>A24-A51</u>
<u>Emails bet. Livingstone and Neve regarding 401K</u>		<u>A52-A54</u>
<u>ADP Stock Options Distribution Details</u>		<u>A55-A66</u>
<u>Livingstone Attorney Fees</u>		<u>A67-A79</u>
<u>401K and ADP Option Gains Analysis</u>		<u>A80</u>
<u>Defendant's Certification to Court</u>	<u>09/01/2021</u>	<u>A81-A89</u>
<u>Plaintiff's Response to The Certification</u>	<u>09/14/2021</u>	<u>A90-A108</u>
<u>Plaintiff's Original Complaint</u>	<u>02/05/2018</u>	<u>A109-A113</u>
<u>Defendant's Response to Complaint</u>	<u>04/08/2018</u>	<u>A114-A121</u>
<u>Defendant's Request for Settlement Negotiations</u>	<u>05/09/2018</u>	<u>A122-A123</u>

TABLE OF AUTHORITIES

Case/Other Authority	Category	Page No.
<u>Rule 5:3-5 (c)</u>	<u>Court Rules</u>	<u>A1: A9</u>

LIST OF PARTIES

Party Name	Appellate Party Designation	Trial Court/Agency Party Role	Trial Court/Agency Party Status
<u>Sharon Livingstone</u>	<u>Appellant</u>	<u>Defendant</u>	<u>Participated</u>
<u>James Neve</u>	<u>Respondent</u>	<u>Plaintiff</u>	<u>Participated</u>

**TABLE OF
TRANSCRIPTS**

Proceeding Type	Date	Transcript/Page No.
<u>Transcript of Hearing</u>	<u>04/07/2022</u>	<u>1T; A124-A125</u>
<u>Transcript of Hearing</u>	<u>02/29/2024</u>	<u>2T; A126-A127</u>

PRELIMINARY STATEMENT

The Defendant believes that the 4/19/2024 Order from Judge Pawar failed to:

- Properly consider the assessment of child support from 2017-2022.
- Properly order the distribution on the gains of the 401K funds as directed in the PSA from 10/17/2007.
- Address gains of the stock options which have been withheld from the Defendant since 2011. This was a key portion of the motion in front of the judge.
- Properly apply the factors enumerated in R.5:3-5(c), particularly as it relates to number 8 “the degree to which fees were incurred to enforce existing orders and compel discovery”.

Specifically, the Defendant is requesting that the Appellate Court review:

- Calculate the appropriate child support to be given to the Defendant using tax return data from 2017, 2019 and 2021, and award the difference between the appropriate amount, and what was paid by the Plaintiff.
- Order a QDRO of the Plaintiff's 401K for the original amount of the PSA from 2007 through 2022, less than \$17,000 plus interest that was the result of the agreement related to a car purchase. At a minimum, there should be gains awarded since these funds were requested in actions beginning in 2017, either market gains, or gains that can be demonstrated by a detailed review of the Plaintiff's accounts

for the period.

- Award a market rate of return as gains from the Plaintiff withholding the \$111,000 in ADP stock option proceeds. At a minimum, there should be gains awarded since these funds were requested in actions beginning in 2017, either market gains, or gains that can be demonstrated by a detailed review of the Plaintiff's accounts for the period.
- Award requested attorney fees, since Judge Pawar agreed to award items originally defined in the PSA to Defendant, meaning the attorney fees were needed to enforce an existing order.

TABLE OF PROCEDURAL HISTORY

Date	Event	Filed By	Result	Page No.
03/14/2024	Hearing	Defendant	Denied in Part/Granted in Part	A12-A17

STATEMENT OF FACTS

Background:

The Defendant was granted a divorce from the Plaintiff on 10/17/2007 (A24-A51). Among the issues decided in their Property Settlement Agreement, the PSA defined:

- Initial child support guidance, including initial support payments until the children's emancipations.
- Distribution of 401K going on gains through 2007-2023.
- Distribution of ADP Stock Options.

In 2008, the Defendant requested the 401K distributions, and the Plaintiff balked, indicating that the amount due would need to be recalculated based on gains or losses in the account (A52-A54). After further verbal discussions, the Defendant agreed to leave the 401K in the Plaintiff's account because the Plaintiff indicated to the Defendant that they were "making good gains" and it could be divided up at any time based on the original PSA (A QDRO can be executed at any time after the PSA and is ordered based on the original award amount and any gains/losses that may have occurred subsequently). In 2010, the Defendant and Plaintiff reconciled and entered a cohabitation romantic relationship. From 2010-2015, the Defendant and Plaintiff agreed to suspend child support, as they were cohabitating. In 2011, the Plaintiff exercised his ADP options as he terminated his employment at ADP. The value of the options due to the

Defendant per the PSA at that time was \$111,000 (A55-A66). Since the Plaintiff and Defendant were in a relationship, the Defendant agreed to keep the money in the Plaintiff's account again because the Plaintiff indicated to the Defendant that they were "making good gains". In 2015, the relationship ended again, and the Defendant moved into a townhouse owned by the Plaintiff (the suspension of child support remained suspended in lieu of the rent). In 2017, the Plaintiff attempted to evict the Defendant and children from the townhouse. At this time, recognizing that the relationship had turned hostile, the Defendant asked for child support recalculation, distribution of the 401K (including gains), and distribution of the ADP options proceeds (including gains). Child support was temporarily addressed in the order from Ralph E. Amirata J.S.C. on 8/28/2019 (A22-A23). The parties were then sent to mediate all items for a final resolution. Mediation efforts were routinely unsuccessful in resolving the issue (A20, A21, A22-A23), causing the Defendant to request a trial, which took place on March 14, 2024 (A12-A17).

LEGAL ARGUMENT

POINT 1

THE TRIAL COURT ERRED IN FAILING TO SET APPROPRIET CHILD SUPPORT AMOUNTS FROM 2017 THROUGH 2022.

Raised below (A5), Indicated in Order (A12-A17)

In the decision, Judge Pawar adjusted the current child support amount considering the emancipation of Kyle and support needs of Christian. In doing so,

Judge Pawar set the appropriate direction for the future, but did not address the failure of the court to set appropriate child support amounts (with the exception of temporary adjustments from Judge Amirata – 8/28/2019 A22-A23) from 2017 through 2022. The court repeatedly sent the Defendant to mediation including child support, which was never successful. The Defendant requests the court consider the appropriate monthly amounts that would have been awarded from biennial review for the support in 2017, 2019, 2021 and compare that with the amounts paid by the Plaintiff.

POINT 2

**THE TRIAL COURT ERRED IN FAILING TO
CONSIDER THAT THE FIXED AMOUNT FROM
THE 401K WOULD BE WITHHELD FROM THE
PLAINTIFF FOR 15 YEARS.**

Raised below (A6), Indicated in Order (A12-A17)

The PSA (A24-A51) awarded the Defendant \$90,150 in 401K value from the Plaintiff. The Defendant requested the funds in 2008, and an email thread indicated that the Plaintiff did not feel distributing the funds would be urgent, writing that any gains or losses would be properly addressed through a QDRO (A52). In court transcripts (T1 page 102), the Plaintiff indicates that there was never a request for the distribution, contradicting his own emails. While Judge Pawar considers paragraph 11.1 a fixed amount – he failed to consider that the fixed amount would be withheld from the Plaintiff for 15 years. Clearly that was not in the spirit of the

MSA. With the Plaintiff's acknowledgment that gains (or losses) would be calculated with the QDRO, the Defendant expected that a good faith calculation would include gains. The Defendant requests that an independent financial analyst calculate the appropriate value that a proper QDRO would be worth on the date of judgment. Since the loan from the Plaintiff (discussed in the Order summary) cannot actually be associated with a 401K distribution without violating SEC rules (which a highly credentialed member of the finance community such as the Plaintiff should know), the Defendant would prefer the court to consider having the \$17,000 plus appropriate interest deducted from the QDRO valuation.

In the event that the Appellate review agrees with the Plaintiff that the gains were not included in the original PSA, it is reasonable to argue that if the Plaintiff had executed a QDRO in 2017 instead of withholding the money through an extended mediation, the Defendant would have to this point had gains managing the 401K on her own. Instead, the Defendant was repeatedly sent to the mediation process and feared that she would lose the ability to argue if she agreed to the \$73,150 amount the Plaintiff was offering. As such, the Defendant would expect a minimum 57% award of gains from this portion of the judgment to address the matter (which can be confirmed by an independent financial analyst).

POINT 3

**THE TRIAL COURT ERRED IN FAILING TO
ADDRESS THE GAINS THAT THE DEFENDANT
WOULD HAVE EARNED FROM EXERCISED
ADP STOCK OPTIONS HAD THE PLAINTIFF
NOT WITHHELD THESE MONIES.**

Raised below (A8), Indicated in Order (A12-A17)

The Defendant's motion included a request that she receive \$111,000 from exercised ADP stock options in 2011 along with the market gains from those options that have been withheld from her for 11 years. In Judge Pawar's Order, he awarded the stock options appropriately, but did not address the gains that the Defendant would have earned had the Plaintiff not withheld these monies.

In mediation, the Plaintiff made indications that he had already given the options, that the options had been under water, and that the Defendant forfeited them for living arrangements. Eventually, under risk of an extensive financial discovery, the details about the options were made available to the mediator and the Defendant, and the discussion then shifted to the gains associated with these monies. In trial transcript T1 (102-105), the Plaintiff is unable to explain why his story changed several times but then he was able to produce the appropriate evidence. The Plaintiff further alleged that there were no gains and interest made on that \$111,000 in the trial transcript T2 (35-36) from the Hearing on February 29, 2024.

The Defendant requests that the Appellate Court review and consider the gains on these options and award a market rate of return (calculated in A80). At a

minimum, there should be gains awarded since these funds were requested in actions beginning in 2017, either market gains, or gains that can be demonstrated by a detailed review of the Plaintiff's accounts for the period.

POINT 4

**THE TRIAL COURT ERRED IN FAILING
TO FULLY CONSIDER AWARDING THE
DEFENDANT A PAYBACK OF THE LEGAL
FEES AND ATTORNEY COSTS REQUESTED.**

Raised below (A9), Indicated in Order A12-A17)

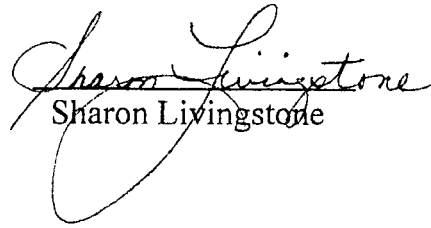
In Judge Pawar's Statement of Reasons (A12-A17), he cited R.5:3-5(c) appropriately, but then focuses his attention on "the reasonableness and good faith of the parties", finding that he did not see bad faith on the part of the Plaintiff. However, in ignoring two of the Defendant's motion requests, he awarded all but one of the Defendant's requests that he addressed. Since the items were clearly awarded in the PSA and there was significant court expense on behalf of the Defendant to recover these monies in the existing order (the Plaintiff incurred no expense as he represented himself), it is clear that "the degree to which fees were incurred to enforce existing orders would apply. The Defendant requests that the Appellate Court review and award these attorney fees (indicated in motion – A67-A79).

CONCLUSION

The Defendant is requesting that the Appellate Court review:

- Calculate the appropriate child support to be given to the Plaintiff using tax return data from 2017, 2019 and 2021, and award the difference between the appropriate amount, and what was paid by the Plaintiff.
- Order a QDRO of the Plaintiff's 401K for the original amount of the PSA from 2007 through 2022, less \$17,000 plus interest that was the result of the agreement related to the car purchase. At a minimum, there should be gains awarded since these funds were requested in actions beginning in 2017, either market gains, or gains that can be demonstrated by a detailed review of the Plaintiff's accounts for that period.
- Award a market rate of return as gains from the Plaintiff withholding the \$111,000 in ADP stock option proceeds. At a minimum, there should be gains awarded since these funds were requested in actions beginning in 2017, either market gains, or gains that can be demonstrated by a detailed review of the Plaintiff's accounts for that period.
- Award requested attorney fees, since Judge Pawar agrees to award items originally defined in the PSA in the PSA to the Defendant, meaning the court fees were needed to enforce an existing order.

Respectfully submitted,


Sharon Livingstone

Dated: August 23, 2024