SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO.: ***A-4003-23T4***

In The Matter Of The Estate

Of

Geraldine Franklin, Deceased.

CIVIL ACTION

ON APPEAL FROM A ORDER OF THE SUPERIOR COURT, OCEAN COUNTY CHANCERY DIVISION - PROBATE PART

SAT BELOW: Hon. Theresa Cunningham, J.S.C.

BRIEF AND APPENDIX IN SUPPORT OF APPEAL ON BEHALF OF PLAINTIFF-APPELLANT

Anthony DeFazio
302985 / 573351B
168 Frontage Road
P.O. Box 2300
Newark, New Jersey 07114
Plaintiff -Appellant
On the brief, *Pro-Se*

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PRELIMINARY STATEMENT

The plaintiff-appellant comes before the Court on appeal from a probate matter in the Surrogate's Court regarding the Estate of the plaintiff's mother, Geraldine Franklin, whom passed away on August 5, 2015, from lung cancer. She had three children, Louise Soden, Anthony DeFazio and Kelly Ann Bell.

This matter has been litigated extensively, on a prior appeal before this Court it was remanded. On remand, the plaintiff sought mediation and through an appointed mediator settlement was reached between the parties.

The parties came to a settlement agreement, which was reduced to writing and a stipulated order was issued July 26, 2024.

The Judge added language to the stipulated order that was not part of the agreement signed by the parties, wherein the Court noted that Paragraph 7 of the Settlement Agreement could not be honored by the Administrator unless Kelly Ann Bell satisfied her outstanding child support pursuant to **N.J.S.A.** 2A:17-56.23b, which substantially changed the settlement agreement terms.

This appeal is being taken to have the issue decided whether an heir can make a settlement agreement and alter their shares of the estate, pursuant to **N.J.S.A.** 3B-23-9, and not be subject to the lien priority established in **N.J.S.A.** 2A:17-56.23b that requires an administrator of an estate to run a child support search prior to distribution of the net proceeds.

In this case the shares of the estate are being transferred at the gross proceed stage and prior to distribution and for the purposes of settling the outstanding disputes among the parties to settle this matter.

If the transfer of shares is subject to the lien of a child support judgment this would substantially affect and change the terms of the settlement of the estate to end the disputes.

Moreover, the lower Court made a determination with no supporting authority as noted in the Court's statement of reasoning.

Since shares of the estate are being divided prior to distribution the administrator is not obligated by law to run any child support judgment search on an heir that has transferred their shares of the estate to another heir pursuant to a valid statute that permits such a transfer by law. The beneficiary that transferred their shares of the estate to settle the probate dispute is not receiving any "net proceeds" thus they are not subject to the lien statute that only requires a judgment search be conducted prior to distribution of any "net proceeds" to the beneficiary.

The parties should be permitted to resolve their dispute by making a settlement agreement pursuant to a valid statute and not be encumbered by a possible lien that may exist when the agreement is being made based on the transfer of shares of the estate to settle disputes of the estate, if the shares are subject to the heirs creditors they are not free to even negotiate such a settlement.

Here a settlement was reached to resolve the matter and to stop further litigation, which is encouraged by Courts, however, the Court below disagrees and added language to the stipulated settlement that was not agreed upon by the parties and there is no supporting case law that supports the Court's reasoning for interfering with a settlement by imposing such a condition upon the matter.

For the reasons discussed herein the appellant requests that this Court up hold the statute that permits these parties to alter their personal shares of the estate –before distribution, so that the settlement agreement can be upheld and so the settlement agreement is not dissolved forcing the parties to continue litigation. The law and common sense requires such a result.

PROCEDURAL HISTORY / STATEMENT OF FACTS[1]

On August 5, 2015, Geraldine Franklin died due to lung cancer. Ms. Franklin had three children, Louise Soden, Anthony DeFazio and Kelly Ann Bell.

After extensive litigation including an appeal the matter was remanded by this Court for further litigation to resolve issues in dispute.[2]

Upon remand the parties entered mediation and came to a good faith settlement that resolved all issues to all parties.[3]

The plaintiff then filed a motion to compel the estate administrator to distribute the estate funds in accordance with the agreement made between the plaintiff and Kelly Bell, pursuant to ***N.J.S.A.*** **3B:23-9**, which the court denied.

Plaintiff thereafter filed an appeal from the order, which this court determined was not a final order and dismissed appeal.

A timely motion for leave to appeal was filed, which was subsequently denied and the matter was returned to the Probate Court for the original settlement to be reduced to writing.

A settlement agreement was then drafted and signed by all parties and submitted to the Court along with a stipulated order.(Pa1)[4]

The Court modified the Order adding language that changed the agreement

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1 The Procedural History and Statement of Facts are being combined for the convenience of the Court and all parties as they are so closely interwoven.

2 In the interest of brevity only facts germane to the issue presented in this appeal are being presented.

3 The settlement agreement was never reduced to writing but was acknowledged under oath by all parties.

4 "Pa" refers to Plaintiff's Appendix attached hereto in support of plaintiff's appeal.

and the terms of the agreement that were not agreed upon and the language added by the Court to the stipulated order is the only issue raised on this appeal.(Pa5)

The Court issued a statement of reasons and made a finding that a successor's ability to make an agreement to alter their shares of an estate pursuant to the statute is subject to the satisfaction of any outstanding child support lien.(Pa6)

The Court acknowledged that there was no supporting case law on point with the Court's determination but surmised that a child support obligation cannot be evaded by an agreement between successors and that the obligation or judgment should be satisfied before an agreement can be recognized by the court.(Pa6-7)

This appeal followed.

POINT I

THE TRIAL COURT ERRED FINDING THE PARTIES ANTHONY DEFAZIO AND HIS SISTER KELLY ANN BELL COULD NOT ENTER A SETTLEMENT AGREEMENT PURSUANT TO *N.J.S.A.* 3B:23-9 WITHOUT BEING SUBJECT TO *N.J.S.A.* 2A:17-56.23b. (Pa5-7)

It is submitted that the trial Court erred in not allowing the plaintiff to make an agreement with his sister pursuant to ***N.J.S.A.*** **3B:23-9** to alter their shares of the estate without being subject to ***N.J.S.A.*** **2A:17-56.23b**.

Here the trial Court made a finding, without any supporting authority, that to distribute the estate shares of the plaintiff's sister to the plaintiff pursuant to ***N.J.S.A.*** **3B:23-9**, would be evading the legislative effect and directive of ***N.J.S.A.*** **2A:17-56.23b**.**(Pa6-7)**

To be sure ***N.J.S.A.*** **2A:17-56.23b**, states:

> ***(a)*** A judgment for child support entered pursuant to P.L. 1988, c. 111 (C. 2A:17-56.23a) and docketed with the Clerk of the Superior Court shall be a lien against the ***net proceeds of any*** . . . ***inheritance*** . . . . The lien shall have priority over all other levies and garnishments against the **net proceeds** ***of any*** . . . ***inheritance*** . . . unless otherwise provided by the Superior Court, Chancery Division, Family Part. The lien shall not have priority over levies to recover unpaid income taxes owed to the State. ***The lien shall stay the distribution of the net proceeds to the*** . . . ***beneficiary until the child support judgment is satisfied***.
>
> As used in this act **net proceeds** means any amount of money, in excess of $2,000, **payable to the . . . beneficiary** after attorney fees, witness fees, court costs, fees for health care providers, payments to the Medicaid

> program under section 6 of P.L. 1979, c. 365 (C. 30:4D-7.1), reimbursement to the Division of Employment Security in the Department of Labor, the employer or employers insurance carrier for temporary disability benefits that may have been paid pending the outcome of a workers compensation claim as provided by section 1 of P.L. 1950, c. 174 (C. 34:15-57.1), reimbursement to an employer or the employers workers compensation insurance carrier as provided in R.S. 34:15-40, and other costs related to the . . . ***inheritance*** . . . *or estate*; . . . ***beneficiary*** shall not include a partnership, corporation, limited liability partnership, financial institution, government entity or minor child; and agent means an authorized representative of the prevailing party or beneficiary, a union representative, an executor or administrator of a decedents estate, an arbitrator or any other person or entity if such person or entity is responsible for the distribution of net proceeds to a prevailing party or beneficiary.
>
> **b. Before distributing any net proceeds** ***of a*** . . . , **inheritance** . . . to the . . . ***beneficiary***:
>
> **(1)** the . . . ***beneficiary*** shall provide the attorney, insurance company or agent responsible ***for the final distribution of such funds with a certification that includes the . . . beneficiarys full name, mailing address, date of birth and Social Security number***; and
>
> [. . .]

The language in the statute clearly states that a search is only required "***before*** **distributing any net proceeds** ***of a*** . . . **inheritance** . . . to the . . . ***beneficiary***." ***See*** ***N.J.S.A.*** **2A:17-56.23b(b)**

The Court is alleging that there is a child support judgment against Kelly Ann Bell, whom the Court says is "***entitled***" to real or personal property and that

the child support judgment acts as a lien on the "***entitlement***" to an inheritance. (Emphasis supplied)(**Pa6-7**) The Court's use of the language "***entitlement***" and "***entitled***," is not language in the statute and it changes the actual meaning of the statute to say something it doesn't say as any child support lien is only enforceable upon the "net proceeds" *payable* to a beneficiary. ***See*** ***N.J.S.A.*** **2A:17-56.23b(b)**

N.J.S.A. **2A:17-56.23b(a)** unequivocally states the lien is upon the "net proceeds" and in this matter the heir with the alleged judgment is not receiving any distribution of any "net proceeds" as there were no proceeds leftover after the negotiated settlement between the parties. Thus no child support search needs to be conducted and no judgments if any have any priority as there are no proceeds being distributed to Kelly Ann Bell.

An "entitlement" to an inheritance does not make any difference in this matter as it is the "net proceeds" that are subject to any lien prior to distribution. Here the heir with a suggested alleged child support judgment negotiated her shares of the estate in an effort to settle the dispute thus this Court should remand this matter and instruct the Estate Administrator to distribute the estate pursuant to the settlement agreement as ***N.J.S.A.*** **2A:17-56.23b** does not apply in this situation as the beneficiary is not receiving any proceeds from the estate.

Moreover, the Court's attempt to explain why it believed its interpretation was correct was misplaced as the cases the Court cited stated that support "belongs

to the child and may not be waived by a custodial parent," and that "even two parents cannot waive or terminate their duty to support obligations." (Pa6)

However, the cases cited by the Court have no authority here as this is a probate matter and support is not being waived as any alleged child support judgment pertains to arrears and would continue to be paid. Simply put there is no supporting authority for the Court's ruling because there is no basis in law or fact for the Court's erroneous decision.

CONCLUSION

For all the reasons argued herein and for judicial economy, plaintiff respectfully requests that the Court remand this matter directing the Estate Administrator to distribute the estate pursuant to the settlement agreement and not in accordance with the Judge's added language in the stipulated order as no judgment, if any, should be paid for a beneficiary that is not receiving any proceeds from the estate.

Respectfully submitted,

Dated: January 16, 2025

Anthony DeFazio
Plaintiff-Appellant, ***Pro-se***

c: Joel A. Davies, Esq. (w/appendix / via eCourts)
Louise Soden (w/appendix / via U.S. mail)
Kelly Ann Bell (w/appendix / via U.S. mail)

Superior Court of New Jersey

Appellate Division

Docket No. A-4003-23T4

IN THE MATTER OF THE ESTATE OF GERALDINE FRANKLIN, DECEASED	:	CIVIL ACTION
	:	ON APPEAL FROM
	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION OCEAN COUNTY
	:	DOCKET NO. 211575
	:	Sat Below:
	:	HON. THERESE A. CUNNINGHAM, J.S.C.

BRIEF ON BEHALF OF RESPONDENT JOEL A. DAVIES, ESQ.

Law Offices of TAFF, DAVIES & KALWINSKY
Attorneys for Respondent
143 Route 70
Toms River, New Jersey 08755
(732) 901-5797
jdavies@taffanddavies.com

Joel A. Davies, Esq.
Attorney ID# 030311990
Of counsel & on the brief

Taff, Davies & Kalwinsky, LLC

ROBERT H. TAFF, ESQ.+
JOEL A. DAVIES, ESQ.+
MATTHEW K. KALWINSKY, ESQ.*
ZOE M. YAFFE, ESQ.^
+MEMBER, NAELA
* ADMITTED IN NJ AND PA
^ADMITTED IN NJ AND OH

Attorneys at Law

March 13, 2025

Clerk, Appellate Division
Richard J. Hughes Justice Complex
Trenton, New Jersey

Re: In the Matter of the Estate of Geraldine Franklin, Deceased
Docket No. A-4003-23T4

Dear Sir/Madam:

With regard to the above captioned matter, in which the undersigned is the Respondent, Court Appointed Administrator of the Estate of Geraldine Franklin, I respectfully request that the Court accept this Letter Brief pursuant to R. 2:6-2(6) in lieu of a more formal memorandum in response/opposition to the Appellant's Brief.

jdavies@taffanddavies.com
www.taffanddavies.com
143 Route 70
Toms River, New Jersey 08755
phone: (732) 901-5797
fax: (732) 901-5799

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Preliminary Statement

The Plaintiff's appeal arises from the Plaintiff's mistaken belief that beneficiaries to an estate can craft a settlement agreement pursuant to N.J.S.A. 3B: 23-9 thereby superseding and avoiding a beneficiary's child support judgment obligation pursuant to N.J.S.A. 2A:17-56.23b.

Statement of Facts

For purposes of this appeal, the Appellant's statement of facts is satisfactory as this appeal centers on, and is limited to, the Settlement Agreement and Stipulation for Dismissal prepared by the Appellant and signed by the three (3) pro se beneficiaries on June 24, 2024, June 28, 2024, and July 3, 2024. (Pa4).

Procedural History

The trial court conducted a hearing on July 23, 2024 (for which the Appellant does not provide a transcript) as to the settlement agreement between the litigants. The trial court, after adding handwritten language to the

form, then filed the Stipulated Order prepared by the Appellant. (Pa5). The trial court also provided a two page Statement of Reasons explaining the decision. (Pa6)

It is noted that Ms. Kelly Ann Bell, a one-third intestate heir of the Geraldine Franklin Estate, has an outstanding child support obligation of $13,342.44 under FD-13-862-96 in Monmouth County. (Pa7)

This appeal follows.

POINT I

N.J.S.A. 3B:23-9 does not allow beneficiaries to avoid child support obligations identified under N.J.S.A. 2A:17-56.23b.

The Appellant is correct in his reading of N.J.S.A. 3B:23-9, in that the beneficiaries or heirs of an estate may alter their respective distributions in a written contract executed by all who are affected. However, that is not the real issue on appeal. The real issue is whether N.J.S.A. 3B:23-9 supersedes N.J.S.A. 2A:17-56.23b and permits, allows, and authorizes a fiduciary

to ignore a child support judgment of one beneficiary and pay that debtor/beneficiary's share to another beneficiary without satisfying the child support judgment.

It is the position of the Respondent, as the court appointed fiduciary, that the child support judgment search requirement of N.J.S.A. 2A:17-56.23b is a paramount responsibility of a fiduciary that cannot be circumvented by the agreement of beneficiaries to an estate.

The Appellant inexplicably states "Here the trial Court made a finding, without any supporting authority, that to distribute the estate shares of the plaintiff's sister to the plaintiff pursuant to N.J.S.A. 3B:23-9, would be evading the legislative effect and directive of N.J.S.A. 2A:17-56.23b." (Pb6) While citing to the trial court's Statement of Reasons (Pa6), the Appellant outright ignores the trial court's reliance upon Gotlib v. Gotlib, 399 N.J. Super. 295, 305 (App. Div. 2008) and

Patetta v. Patetta, 358 N.J. Super. 90. 95 (App. Div. 2003) to hold "that a child support obligation cannot be evaded by an agreement between successors of an intestate estate to alter the interests to which they are entitled when a judgment is in place." (Pa6)

While not cited by the trial court, Smiley v. Thomas, 448 N.J. Super. 624, 633 (Law Div. 2016), offers an analysis insightful to the present case in concluding, "judicial policy of encouraging the settlement of litigation is trumped by the legislative intent in adopting N.J.S.A 2A:17-56.23b. The court will not approve of an arrangement to increase the recovery to plaintiff via a reduction in the fee due to plaintiff's counsel to facilitate the settlement of the litigation in a situation where the net proceeds of the settlement is less than the plaintiff's arrearages in his child support obligation."

In essence, what the Appellant is arguing (on behalf of his sister, Ms. Kelly Ann Bell who has refused to

appear, participate, and/or speak for herself) is that Ms. Bell wants to gift her complete inheritance to Mr. Defazio and thus, Ms. Bell is not previously or presently obligated to provide her social security number in order to effectuate the child support judgment search as contemplated by N.J.S.A. 2A:17-56.23(b).

Despite more than eight (8) years of litigation conducted by the beneficiaries, following the death of their mother in August of 2015, Ms. Bell never advised of her desire to NOT receive her inheritance. The Settlement Agreement and Stipulation of Dismissal signed by the three (3) beneficiaries is the first written document declaring Ms. Bell's intentions signed by her. (Pa1)

Finally, while N.J.S.A. 3B:23-9 allows for beneficiaries to agree amongst themselves as to distribution of estate proceeds, any such agreement is limited and qualified by the first nine (9) words in the statute: "Subject to the rights of creditors and taxing

authorities…".

The child support obligation and priority established under N.J.S.A. 2A:17-56.23(b) is the creditor/taxing authority contemplated and identified by N.J.S.A.3B:23-9. Therefore, the Appellant's argument that the agreement between the beneficiaries wherein Ms. Bell transfers her complete inheritance to Mr. Defazio thereby relieving the fiduciary of the obligation to conduct a child support judgment search pursuant to N.J.S.A. 2A:17-56.23b must fail. As such, the trial court's July 26, 2024 Order should be affirmed.

CONCLUSION

For the reasons and arguments set forth above, the trial court's July 26, 2024 Order should be affirmed.

Respectfully submitted,

JOEL A. DAVIES, ESQ.
Attorney ID # 030311990

JAD/zmy
Cc: Mr. Anthony DeFazio
Mrs. Louise Soden
Ms. Kelly Ann Bell

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO.: *A-4003-23T2*

In The Matter Of The Estate

Of

Geraldine Franklin, Deceased.

CIVIL ACTION

ON APPEAL FROM A ORDER OF THE SUPERIOR COURT, OCEAN COUNTY CHANCERY DIVISION - PROBATE PART

SAT BELOW:
Hon. Theresa Cunningham, J.S.C.

REPLY-BRIEF IN SUPPORT OF APPEAL ON BEHALF OF PLAINTIFF-APPELLANT

Anthony DeFazio
302985 / 573351B
168 Frontage Road
P.O. Box 2300
Newark, New Jersey 07114
Plaintiff -Appellant
On the brief, *Pro-Se*

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See Plaintiff's Merits Brief, dated January 16, 2025.

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PRELIMINARY STATEMENT

The appellant comes before the Court on appeal from a probate matter in the Surrogate's Court regarding the Estate of the plaintiff's mother, Geraldine Franklin, whom passed away on August 5, 2015, from lung cancer. She had three children, Louise Soden, Anthony DeFazio and Kelly Ann Bell.

This matter has been litigated extensively, on a prior appeal before this Court it was remanded. On remand, the plaintiff sought mediation and through an appointed mediator settlement was reached between the parties.

The parties came to a settlement agreement, which was reduced to writing and a stipulated order was issued July 26, 2024.

The Judge added language to the stipulated order that was not part of the agreement signed by the parties, wherein the Court noted that Paragraph 7 of the Settlement Agreement could not be honored by the Administrator unless Kelly Ann Bell satisfied her outstanding child support pursuant to **N.J.S.A.** 2A:17-56.23b, which substantially changed the settlement agreement terms.

This appeal is being taken to have the issue decided whether an heir can make a settlement agreement and alter their shares of the estate, pursuant to **N.J.S.A.** 3B-23-9, and not be subject to the lien priority established in **N.J.S.A.** 2A:17-56.23b that requires an administrator of an estate to run a child support search prior to distribution of the net proceeds.

In this case the shares of the estate are being transferred at the gross proceed stage and prior to distribution and for the purposes of settling the outstanding disputes among the parties to settle this matter.

If the transfer of shares is subject to the lien of a child support judgment this would substantially affect and change the terms of the settlement of the estate to end the disputes.

Moreover, the lower Court made a determination with no supporting authority as noted in the Court's statement of reasoning.

Since shares of the estate are being divided prior to distribution the administrator is not obligated by law to run any child support judgment search on an heir that has transferred their shares of the estate to another heir pursuant to a valid statute that permits such a transfer by law. The beneficiary that transferred their shares of the estate to settle the probate dispute is not receiving any "net proceeds" thus they are not subject to the lien statute that only requires a judgment search be conducted prior to distribution of any "net proceeds" to the beneficiary.

The parties should be permitted to resolve their dispute by making a settlement agreement pursuant to a valid statute and not be encumbered by a possible lien that may exist when the agreement is being made based on the transfer of shares of the estate to settle disputes of the estate, if the shares are subject to the heirs creditors they are not free to even negotiate such a settlement.

Here a settlement was reached to resolve the matter and to stop further litigation, which is encouraged by Courts, however, the Court below disagrees and added language to the stipulated settlement that was not agreed upon by the parties and there is no supporting case law that supports the Court's reasoning for interfering with a settlement by imposing such a condition upon the matter.

The Court-Appointed Estate Administrator in this matter, who has no standing to argue in this Court as his name was never even mentioned in the appeal and he is just a blood-sucking cave dweller trying to drain the Estate of more Money where he has no business on this appeal, takes a position that does not advance any estate interest and he has no supporting authority as with the Judge because he so incompetent that he has no concept of the law and/or statute in this matter. The Estate Administrator took NO POSITION in the Court Below. **(Pra3-17)**

For the reasons discussed herein the appellant requests that this Court up hold the statute that permits these parties to alter their personal shares of the estate –before distribution, so that the settlement agreement can be upheld and so the settlement agreement is not dissolved forcing the parties to continue litigation. The law and common sense requires such a result.

PROCEDURAL HISTORY / STATEMENT OF FACTS[1]

Plaintiff relies on the procedural history and statement of facts as outlined in his merits brief, dated January 16, 2025. Plaintiff only adds the following in reply to the February 26, 2025, brief submitted by Joel Davies, Esq.

On July 23, 2024, there was no court hearing as described by the unethical attorney, Joel Davies, in this matter (JDb at 3[2]) and no transcripts were required to be presented on this appeal as there were no arguments made and no findings of fact, determinations or rulings made by the court placed on the record. **(Pra1 at ¶2)[3](T3-17)[4]** The July 23, 2024, court date was a **status conference** where the was Court to enter the stipulated order and settlement agreement and the Court provided the statement of reasons specifically at the plaintiff's request to avoid additional costs to the plaintiff as he is an indigent plaintiff. **(Pra1 at ¶¶2-3)(T6-2 to 3, "So, the reason I set this matter down for a conference")**(Judge Cunningham, emphasis added)

More importantly the appellant is appealing the July 26, 2024, order, not the July 23, 2024, conference which is not appealable as no decision or ruling was made by the court at the conference.

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[1] The Procedural History and Statement of Facts are being combined for the convenience of the Court and all parties as they are so closely interwoven.

[2] "**JDb**" Refers to **J**oel **D**avies brief, dated February 26, 2025.

[3] "**Pra**" refers to **P**laintiff's **R**eply **A**ppendix attached hereto in support of plaintiff's appeal and Reply brief.

[4] "**T**" refers to the July 23, 2024, status conference transcript, which Joel Davies graciously wasted his money ordering these transcripts which support plaintiff's position that he is a liar and there was no hearing on July 23, 2024, where any rulings or determinations were made.

POINT I

THE TRIAL COURT ERRED FINDING THE PARTIES ANTHONY DEFAZIO AND HIS SISTER KELLY ANN BELL COULD NOT ENTER A SETTLEMENT AGREEMENT PURSUANT TO *N.J.S.A.* 3B:23-9 WITHOUT BEING SUBJECT TO *N.J.S.A.* 2A:17-56.23b. (Pa5-7)[5]

In support of this point, plaintiff relies on the legal arguments in Point I of his Appellate Division merits brief, dated January 16, 2025 and incorporates the same as if set forth at length herein, except to add the following in reply to the letter submitted by attorney Joel Davies, herein after referred to as "Davies."

Davies attempts to bamboozle this Court when he asserts that the plaintiff made reference to the trial court's finding "without any supporting authority" and that the "[a]ppellant outright ignores the court's reliance upon . . . ." (JDb at 5) (citing to the Court's statement of Reasons) (**Pa6**) Contrary to Davies false assertion the reality is that the Court itself indicated in it's statement of reasons "[a]lthough this court did not find a case on point relative to agreements under 3B:23-9 . . . ," thus the lower court did in fact make a determination in this matter without any precedent authority on point. (**Pa6**).

While it is true that the Court cited ***Gotlib v. Gotlib***, 399 ***N.J. Super.*** 295, 305 (App. Div. 2008) and ***Patetta v. Patetta***, 358 ***N.J. Super.*** 90, 95 (App. Div. 2003), these cases have no support in this matter as this is not a family court matter where

[5] "Pa" refers to Plaintiff's Appendix submitted in his merits brief dated, January 16, 2025.

two parents are trying to make an agreement or waive child support, thus they have no authority or relevancy in this matter where an agreement is being made pursuant to a valid statute that permits such an agreement. For these reasons these cited cases were not discussed and plaintiff still stands on the Court's own acknowledgement that it could not find any supporting case on point to the matter at hand.(**Pa6**)

However, since Davies referred to these cases the plaintiff will expand on why they are irrelevant in this matter.

First, in ***Patetta, supra***, the father had a property settlement agreement with his ex-wife, which emancipated and reduced the support of his children by $50 at the age of eighteen, however, the child in ***Patetta***, was in college and support was still enforced and the Court declined to reduce the support. The Court held that support "may not be waived or terminated by a property settlement agreement." Id. at 95. There is no marriage here, there is no property settlement agreement and the court's reasoning does not have any rational basis in this matter whatsoever, child support is not continuing here as the children of Kelly Ann Bell are all grown and out of the house with families of their own.

In regards to ***Gotlib v. Gotlib***, 399 ***N.J. Super.*** 295, 305 (App. Div. 2008), the defendant argued that plaintiff waived her right to enforce the JOD's clear provisions requiring each party to pay one-half of the children's un-reimbursed medical expenses because she did not consult with him before the children visited

certain physicians, and did not bill him on a monthly basis, as required by the JOD and the Court disagreed and indicated that child support "belongs to the child and may not be waived by a custodial parent." Id. (citing ***L.V. v. R.S.***, 347 ***N.J. Super.*** 33, 41 (App.Div.2002)) No one is attempting to waive support in this matter, and this is not a family Court matter with a JOD. The Court has no authority to support its determination, therefore, the Court attempted to stretch the bounds of one's imagination and cited these two irrelevant cases, which neither of them support the Court's proposition or determination. (**Pa6**)

Moreover, Davies also attempts to find support for the Judge, even though the Court below did not cite this case, Davies thinks he is up to the task to do the Judge's job for her and he submitted to this Court a case that he says offers "an analysis insightful" in this matter, citing ***Smiley v. Thompson***, 448 ***N.J. Super.*** 624 (Law Div. 2016), in support of his position. (JDb at 6) First the obvious must be pointed out, which is that ***Smiley v. Thompson***, ***supra***, that Davies cites to this Court with such excitement is a Law Division case and has no binding authority in this Court, notwithstanding the same it also has little persuasive value but to further support the plaintiff's position. ***Thompson***, ***supra***, which Davies relies on is distinguishable because the attorney in ***Thompson***, ***supra***, was asking the Court to permit him to alter his contract with his client to lower the contingency rate so that he could then provide the additional money to his client

that owed child a support judgment and there was no basis in the law that allowed the attorney to do what he wanted to do and it was an end around the statute that is why he sought permission from the Court. ***Ibid.*** The Court rightfully said no, anyone with common sense would know that would be fraudulent and the client was receiving funds in that case.

To put it another way, there was no statutory relief available to the attorney in ***Thompson***, ***supra***, to permit the altering of the contingency fee agreement, unlike the matter before the Court where ***N.J.S.A.*** 3B:23-9 provides the statutory relief the plaintiff is seeking to alter the shares of the estate ***without court approval*** as Davies is bound to abide by the agreement pursuant to the statute. Additionally, unlike the client in ***Thompson***, ***supra***, no one here that is alleged to owe child support is receiving any funds and no money is being given back to Ms. Bell.

The statute permits such alterations despite Davies' protestations to the contrary and the statute does so without request for reasoning. Davies position is that under no circumstances can Kelly Ann Bell refuse to accept her shares and she is bound by law to accept the distribution.

In ***Aragon v. Estate of Snyder***, 314 ***N.J. Super.*** 635 (Ch. Div. 1998), a creditor filed suit to recover a money judgment by exercising the defendant surviving spouse's elective share against his deceased wife's will, pursuant to NJ's

elective share law, *N.J.S.A.* 3B:8-1. The Court determined that the creditor had no right or standing and could not exercise the right that was only the right of the surviving spouse. ***Ibid.***

Plaintiff understands that ***Aragon***, ***supra***, is not analogous to this situation and only refers the Court to it because it supports the proposition that a creditor cannot force a person to exercise a right that is a personal and individual right under a statute. Although there is no creditor in this matter attempting to do this, Davies is acting as the creditor in ***Aragon***, ***supra***, by telling the Court that he has to distribute Kelly Ann Bell's share of the estate to her and that they cannot agree amongst themselves to alter the distributives shares as the statue permits.

In re Estate of Branigan, 129 ***N.J.*** 324 (1992), was a case that the court was confronted with litigants attempting to change the terms in a will in an effort to avoid paying federal estate taxes, but, if the Court permitted the changes there was a possible disinheritance of some of the heirs down the line of succession so the Court did not permit the alterations. However, the Court stated that if the beneficiaries wanted to alter their shares they could pursue statutory relief under ***N.J.S.A.*** 3B:23-9. ***Id.*** at 337.

So Davies' argument on behalf of the Court below also holds no water.

Davies goes on to make false allegations in his brief, without any reference to the record or evidence to which his speaks about Ms. Bell, refusing to appear,

participate, and that she never once advised of her desire to not receive her inheritance. (JDb at 7) This information is a bold face lie, as the unethical attorney Joel Davies has been aware of this fact for years now and he has been fighting against this for his own financial gains. (**Pra2**) Kelly Ann Bell appeared at a hearing wherein she herself told the Court on the record, under oath. (**Pra2**) Moreover, she signed the settlement agreement and provided the same to her sister, Louise Soden, settling this matter. This is also not the first appeal in this matter so the record of the past will bite Davies in his behind when this matter is provided to the ethics committee after these proceedings. While it is true that my sister has missed prior Court dates due to not receiving notice and work she never refused to participate in these proceedings and Davies account is nothing more than an intentional mischaracterization of the facts to malign the parties.

Moreover, Ms. Bell never indicated she did not want her inheritance, she instead negotiated her shares to settle this matter and avoid future litigation which she is entitled to do under the laws of New Jersey that Davies would be wise to educate himself on some day.

While Davies is correct in the 9 words contained in the statute, he is incorrect to whom they apply, which is shameful as he is an estate attorney but he is an incompetent attorney so it not surprising. (JDb at 7-8)

In reply to Davies' argument, it is submitted that in accordance with

N.J.S.A. 3B:23-9, an agreement among successors is binding and must be complied with as indicated in the statute:

> Subject to the rights of creditors and taxing authorities, ***competent successors may agree among themselves to alter the interests, shares, or amounts to which they are entitled*** under the will of the decedent, or ***under the laws of intestacy***, *in any way that they provide in a written contract executed by all who are affected by its provisions*. **The personal representative shall abide by the terms of the agreement** ***subject to*** his ***obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties.*** Personal representatives of decedents estates are not required to see to the performance of trusts if the trustee thereof is another person who is willing to accept the trust. Accordingly, trustees of a testamentary trust are successors for the purposes of this section. Nothing herein relieves trustees of any duties owed to beneficiaries of trusts.
>
> [***N.J.S.A.*** 3B:23-9]

Davies indicated that the plaintiff had failed to acknowledge the first line of the statute that states "'Subject to the rights of creditors and taxing authorities... .'" (JDb at 7-8) However, Davies fails to comprehend that the statute must be read as a whole in context to fully understand that the line he refers to "Subject to the rights of creditors and taxing authorities," only pertains to his obligation as the executor to protect the rights of creditors and taxing authorities **of the estate**. ***N.J.S.A.*** 3B:23-9 If Davies was not trying to deceive the Court or he is just that

incompetent, he would have gleaned this information from the next sentence in the statute which states "The personal representative shall abide by the terms of the agreement *subject to* **his** *obligation to administer the estate for the benefit of creditors, to pay all taxes and costs of administration, and to carry out the responsibilities of his office for the benefit of any successors of the decedent who are not parties*." *Ibid.*

The statute is clearly stating that an agreement can be made, but not at the expense of creditors, taxing authorities or even remainderman and that he, as the executor, has the obligation to carry out the agreement as long as it does not infringe on the rights of creditors, taxing authorities or remainderman **of the estate**. ***N.J.S.A.*** 3B:23-9

In support of plaintiff's position he asks the Court to look to ***In the Matter of the Probate of the Alleged Will of Fannie Liss, Deceased***, 184 ***N.J. Super.*** 184 (Law Div. 1981) In ***Liss*** the Court was confronted with something similar to this situation where the plaintiffs sought an order from the court directing the executor to abide by the terms of a written agreement "altering their interest under her alleged will." ***Id.*** at 186. The only objector in that case was the executor of the ***Liss*** estate and the successors' argued that the executor lacks standing to oppose their amicable resolution of this case. ***Id.*** at 187-89

In coming to a decision the Court discussed ***In re Seabrook***, 90 *N.J. Super.*

553 (Ch. Div. 1966), which held that a court may approve a compromise over the objection of executors and trustees, however, ***Seabrook***, was decided prior to amendments to the probate Code which the ***Liss*** Court noted the amendments clarified and strengthened the position of successors that wanted to settle. ***Id.*** at 189. Due to the recent legislation at that time, which is now ***N.J.S.A.*** 3B:23-9, the Court considered the executor's standing and noted that:

> "[i]t is evident that he may appear to protect the interest of creditors, taxing authorities and successors who are not parties to the agreement, and to insure that the costs of administration are paid. However, since there is no suggestion that the proposed agreement fails to protect those interests and since in fact all such interests are fully protected, it is equally evident that the executor is not an aggrieved party[.]
>
> [***Id.*** at 189.]

The ***Liss*** Court made it clear that the successors could agree amongst themselves to alter the shares of the estate as long as the agreement did not run afoul of the rights of *creditors or taxing authorities* **of the estate**, which is his obligation. ***Ibid.***

Davies' position as well as the Court below are incorrect, creditors of the heirs are not the obligation of the Estate Administrator and this Court should remand this matter to enter the Stipulated order without the added language and instruct Davies that he must abide by the agreement as written and provide the Plaintiff with the shares of Kelly Ann Bell.

N.J.S.A. **2A:17-56.23b(a)** unequivocally states the lien is upon the "net proceeds" and in this matter the heir with the alleged judgment is not receiving any distribution of any "net proceeds" as there were no proceeds leftover after the negotiated settlement between the parties. Thus no child support search needs to be conducted and no judgments if any have any priority as there are no proceeds being distributed to Kelly Ann Bell.

An "entitlement" to an inheritance does not make any difference in this matter as it is the "net proceeds" that are subject to any lien prior to distribution. Here the heir with a suggested alleged child support judgment negotiated her shares of the estate in an effort to settle the dispute thus this Court should remand this matter and instruct the Estate Administrator to distribute the estate pursuant to the settlement agreement as ***N.J.S.A.*** **2A:17-56.23b** does not apply in this situation as the beneficiary is not receiving any proceeds from the estate.

Davies is simply an incompetent attorney that is fighting the Judge's fight without any standing in an attempt to drain the estate of more money because that's the blood sucking cave dweller that he is and his argument is erroneous and has no merit whatsoever. Davies took no position below, at the 15 minute status conference of July 23, 2024, Davies said "[g[ood morning, your honor . . ."(Stating his name and title); "I received a copy from Ms. Richardson. Yes, Your Honor."; "No, Your Honor." and "Thank you."(T3-21 to 24; 6-21 to 22; 12-15;14)

CONCLUSION

For all the reasons argued herein plaintiff respectfully requests that the Court vacate the trial Court's added language to the Order and remand for distribution in accordance with the parties settlement agreement.

Respectfully submitted,

Dated: April 4, 2025

Anthony DeFazio
Plaintiff-Appellant, Pro-se

c: Joel A. Davies, Esq. (w/appendix)
Louise Soden (w/appendix)
Kelly Ann Bell (w/appendix)