

**In the Matter of Jennifer Johnson, Petitioner and David W. Johnson,
Respondent**

March 6, 2007 decision

Docket No. 00-M-0407

Introduction by NH State Rep. Timothy Horrigan; August 31, 2011:

This is a ruling handed down by the Derry (NH) family court on March 6, 2007, during the long-running child custody battle between David Johnson and his ex-wife Jennifer Johnson. This battle has been the subject of (amongst other proceedings in various venues) three House Petitions before the New Hampshire General Court. In 2010, one of these petitions led to Bill of Address proceedings against the two officials who issued the May 2007 ruling, i.e., Marital Master Philip Cross and Judge Lucinda Sadler. The House refused by a large bipartisan margin to remove either Cross or Sadler from office after the 2010 Bill of Address hearings, but more proceedings will be forthcoming.

This document was provided to the New Hampshire House by David Johnson's former attorney, Paula Werme, who redacted the dollar amounts. Those dollar amounts are basically the sales price of Mr. Johnson's house and the amount of child support which he was failing to pay. The sales price of the house is an easily available piece of public information. Mr. Johnson had a lot of bad luck over the years, but he had good luck selling the house: he sold it in April 2006 at the top of the market for \$375,000. There was a mortgage, which was one of many bones of contention during the divorce proceedings, but he appears to have made a significant profit, which he used to pay down some debts. He did not pay down his child support arrearage, however. His buyer sold the house at a \$60,000 loss a year later. The house's current owner bought it from an out-of-state bank in December 2007 for just \$212,500.

**The State of New Hampshire
Derry Family Division**

10 Manning St.
Derry, NH 03038
603 421-0088

NOTICE OF DECISION

ATTORNEY PAULA J WERME
83 N MAIN STREET
BOSCAWEN NH 03303

2000-M-0407 In the Matter of Jennifer L. Johnson and David W. Johnson

Enclosed please find a copy of the Court's Order dated 03/07/2007
relative to:

Court Order

03/07/2007
Date

Sherry L. Bisson
Regional Clerk

cc: Family Division at Derry
NH Division of Health and Human Services
Timothy M. Cunningham
NH Division of Human Services
Elaine Dolph
Jonathan L. Ross, Esq.

The State of New Hampshire

COUNTY OF ROCKINGHAM

FAMILY DIVISION AT DERRY

Docket No. 00-M-0407

In the Matter of:

Jennifer Johnson, Petitioner and David W. Johnson, Respondent

ORDER

On March 5, 2007, the matter came forward for a hearing on the Petitioner's Motion for Summary Contempt and the Respondent's Motion to Reduce Child Support, at which both parties appeared with counsel. After consideration of the offers of proof, pleadings and the file, the court orders:

1. The Respondent is found in contempt for failing to comply with his child support obligation. By Order dated March 2, 2006, the court found that the Respondent had a child support arrearage of \$[REDACTED]00 as of January 12, 2006. The arrearage, and any which accrued since January 12th, was to be paid to the Petitioner from the proceeds of the sale of the former marital home.

The Respondent subsequently sold the home and received approximately \$[REDACTED] in net proceeds. He did not pay the child support arrearage, however; instead, he paid his attorney, his own moving and rental expenses, and repaid his brother-in-law and a friend (for loans they extended to him over the last several years).

Since the Order dated March 2, 2006, the Respondent has accrued an additional child support arrearage of \$[REDACTED]00 (see the Division for Child Support Services' calculation), resulting in a total arrearage of \$[REDACTED]00 as of March 5, 2007.

The Respondent has an ongoing child support obligation of \$[REDACTED]00 per month.

Since the court issued the Order dated March 2, 2006, the Respondent had paid nothing toward the arrearage nor has he paid any ongoing support. He excuses his failure to do so upon his belief that he should not be obligated to pay child support because: a). he has primary residential responsibility for the parties' minor child and therefore should not pay support; b). the Petitioner owes him a debt for credit card

debt she has refused to pay; c). he needed the proceeds to pay his own bills and "feed" the parties' minor child; and d). the Petitioner is voluntarily underemployed.

The court notes that the Respondent's justifications for failing to comply with the Order are not legally defensible. First, which parent has more parenting time is not determinative of whether the parent is obligated to pay child support. See Wheaton-Dunberger v. Dunberger, 137 N.H. 504 (1993). Second, the Petitioner's obligation for credit card debt was long-ago adjudicated and the court will not revisit it. Third, when the Respondent sold the former marital home he had ample funds to pay the Petitioner, his own moving and rental expenses, and to "feed" the child. Finally, the Petitioner's income has little effect on the child support calculations (pursuant to the Guidelines formula) and, notably, the Respondent concedes that he works only two to three days per week—he should hardly complain that the Petitioner is underemployed.

There can be no dispute that the Respondent knew about the terms of the Order dated March 2, 2006, and that he had the ability to comply with it. His failure to comply was therefore intentional.

In fact, the Respondent's actions make it abundantly clear that he will not voluntarily comply with the Order—he will not accept its legitimacy and resorts to self-help, as he has done when he disagrees with other Orders. The authority of the court must be vindicated lest Orders be rendered meaningless; if the Respondent is permitted to disobey Orders as he chooses and suffers no consequence, the Orders have no practical effect. Sadly, the person who suffers most from the Respondent's conduct is the child, who is entitled to his financial support.

2. No later than March 19, 2007, the Respondent shall pay [REDACTED].00 towards the arrearage of \$ [REDACTED].00 or a capias shall issue for his arrest with bail set in the amount of cash only of \$ [REDACTED].00. Any bail posted shall be turned over to the Division for Child Support Services for payment to the Petitioner.

3. The Respondent shall pay the remaining [REDACTED].00 in arrearage at the rate of \$ [REDACTED].00 per month beginning April 1, 2007. He shall also pay his ongoing child support obligation of \$ [REDACTED].00 per month.

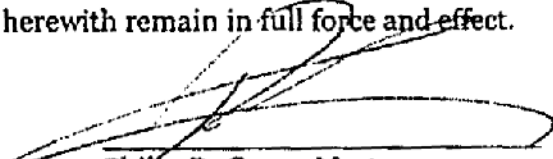
4. Upon written notice from the Petitioner that the Respondent has failed to comply with his payment of the ongoing child support or arrearage after April 1, 2007,

the court will schedule an immediate Show Cause Hearing.

5. The court recognizes that the Respondent has appealed the Order to the New Hampshire Supreme Court. The Order is temporary pending appeal and this court has the authority to enforce compliance with it until resolution of the appeal.

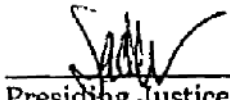
6. All prior Orders not inconsistent herewith remain in full force and effect.

3/6/07
Date


Philip D. Cross, Master

Master's recommendation approved. Order entered in accordance therewith.

3/6/07
Date


Presiding Justice