

DISTRICT COURT, JEFFERSON COUNTY, COLORADO 100 Jefferson County Parkway Golden, Colorado 80401 Telephone: (303) 271-6130	FILED IN THE District Court Jefferson County MAY 11 2007 Division _____ Enter _____ File _____ ▲ COURT USE ONLY ▲
In re the Marriage of: Petitioner: CHRISTY RYAN and Respondent: SEAN L. HARRINGTON	
Sean L Harrington P.O. Box 351855 Westminster, CO 80035	trial court case No. 99 DR 3717 Court of Appeals No. 07CA0379 Division P – Hon. Babette Norton
FATHER’S SPECIAL APPEARANCE OBJECTING TO EXERCISE OF JURISDICTION (REGARDING ENFORCEMENT OF MARCH 22ND 2007 ORDER)	

INTRODUCTION

The Chief Judge of the First Judicial District has determined that the Court presently lacks jurisdiction to reconsider the district Court’s **March 22nd Order** because an **appeal concerning those same issues** is now pending. Because that Appeal was filed one month before the March 22nd Order, if the district Court lacks jurisdiction to reconsider the March 22nd Order because of the appeal, then it also lacked jurisdiction to enter the March 22nd Order. It therefore follows that, if the Court lacked jurisdiction to enter the March 22nd Order, it lacks jurisdiction to enforce the March 22nd Order.

1. On **March 22nd 2007**, the Division 3 trial judge issued an order denying father’s February 6th 2007 Motion for reconsideration of her **January 9th 2007 Order**. The March 22nd Order included a requirement that father pay attorneys fees in the amount of \$330 to Madeline Elizabeth Wilson, atty. reg. No. 24060, on or before April 23rd 2007.
2. One month earlier, on **February 26, 2007**, father filed a **Notice of Appeal** with the Colorado Appeals Court, appealing the January 9, 2007 order.¹

¹ Father acknowledges that a trial court retains jurisdiction to determine attorney fee issues after a notice of appeal is filed to review the merits judgment. *See A. Tenenbaum & Co. v. Colantuno*, 3 P.3d 456, 458 (Colo. App. 1999) (citing *Koontz v. Rosener*, 787 P.2d 192 (Colo.App. 1989)). A trial court also retains jurisdiction to consider a contempt motion brought after the filing of a notice of appeal. *Schnier v. District Court*, 696 P.2d 264 (Colo. 1985) (*see also Battle v. Anderson*, 708 F.2d 1523, 1538-39 n. 4 (10th Cir. 1983) (“If an injunction is to be effective, a court must retain continuing jurisdiction to enforce ... the terms of its orders”).

3. The Notice of Appeal, however, also challenged the propriety of the continuing involvement of the Division 3 trial judge.² When the substance of an appellant’s appeal challenges the authority that trial judge has over the case (as opposed to only the merits of some particular judgment), any order issued during appellate pendency falls outside of the limited circumstances where the trial court retains jurisdiction. *Cf. Anstin v. Churchman*, 74 P.3d 451 (Colo.App. 2003) (“Here, the issue of personal jurisdiction over [Appellant] pending in the first appeal directly affected the default judgment entered by the trial court. If the trial court lacked personal jurisdiction over Churchman, it had no authority to enter a default judgment against him . . . Further, because [Appellant]’s appeal challenged the trial court’s authority over him, this default judgment did not fall within the limited circumstances where the trial court retained jurisdiction”). (citing *Colo. State Bd. of Med. Exam’rs v. Lopez-Samayo*a, 887 P.2d 8, 15 (Colo. 1994)). Therefore, the district court lacked jurisdiction to enter the March 22nd 2007 Order.

This reasoning is logical because, if the Court of Appeals does conclude that the district judge was obligated to recuse, then her orders issued after the recusal motion was timely filed are void *ab initio*. See *People v. Distr. Ct.*, 560 P.2d 828, 833 (Colo. 1977) (*en banc*) (“Since we have held that the motion to disqualify was timely and was supported by legally sufficient affidavits, the respondent judge should have granted the motion. Had he done so, he would have been immediately deprived of jurisdiction to act further in either case. It follows that the respondent judge had no jurisdiction to decide the defendants’ motion. . .”) Thus, when a trial judge continues to enter orders after her authority over a case has been appealed, the Court of Appeals must deal with a “moving target.” See *Britton v. Co-op Banking Group*, 916 F.2d 1405, 1412 (9th Cir. 1990) (permitting district courts to modify orders while on appeal would lead to an untenable state of affairs—the appeals court would be dealing with a moving target if it ruled on the revised order or, alternatively, its ruling would be obsolete if it ruled on the ‘old’ order”).

4. Father filed a [March 27th 2007 Rule 59 Motion](#) regarding the March 22nd Order, which Motion he filed with Chief Judge Jackson.³ On April 10th, the Chief Judge ruled:

Denied for lack of jurisdiction An appeal from an order of a district judge (here, Judge Tidball) goes to the Court of Appeals under C.A.R. 4 or to the Supreme Court under Rule 21 (special writ). Not to the Chief Judge of the district.

Although father’s March 27th Motion was denominated, “Rule 59 Motion (re: March 22nd Order) and was not denominated an “appeal,” the Chief Judge concluded that the trial court lacks jurisdiction to reconsider the merits of the March 22nd Order. Because the Notice of Appeal, which created this divestiture of jurisdiction, was filed **before** the March 22nd Order, it follows, therefore, that the trial court could not have had jurisdiction to enter the March 22nd Order.

² The challenge was raised in light of the peremptory recusal doctrine and “reasonable person standard” as these doctrines pertain to father’s pending federal lawsuit, implicating the district judge (though she was not a defendant) and implicating her division clerk (who was a defendant) and also in light of a recusal motion that had been pending since August of 2004, in contravention of C.R.C.P. 97 and C.R.S. § 13-5-135.

³ Father also filed his February 6th 2007 Rule 59 Motion and his January 26th 2007 Special Appearance objecting to the exercise of jurisdiction by the Division 3 trial judge with the Chief Judge. Father was informed by one of the clerks who answer the domestic relations line (303-271-6149) that these two motions had been directed to the Chief Judge’s division. Despite this, the Division 3 trial judge ruled on them.

5. For the reasons more fully set forth hereinabove, if the trial court does not have jurisdiction to reconsider the March 22nd Order and, therefore, did not have jurisdiction to enter the March 22nd Order (or, alternatively, because the Division 3 trial judge lacked jurisdiction to enter the March 22nd Order because her authority over the case had already been challenged on appeal), then this Court must also lack jurisdiction to enforce the March 22nd Order through contempt proceedings or any other manner.⁴

WHEREFORE, father respectfully objects to the exercise of jurisdiction by the Division 3 trial judge and to the enforcement of any order[s] that was entered in the absence of or in excess of jurisdiction, including the March 22nd 2007 order.

Respectfully submitted on May 3rd 2007.



Sean L. Harrington

CERTIFICATE OF MAILING

I hereby certify that on the 3rd day of May, 2007, I served a true and accurate copy of the foregoing Designation of Record by placing the same in the U.S. Mail, postage prepaid, and affixed hereto or by faxing to the following:

Jefferson County District Court
Attn: Division P, Hon. Babette Norton
100 Jefferson County Parkway
Golden, CO 80401

and by facsimile to: Law Office of Madeline Wilson at: 303-321-3196



⁴ Upon information and belief, an *ex parte* Motion for Contempt may have been filed in Division P against father on or about May 1st 2007, possibly concerning enforcement of the attorney fees provision of the March 22nd order. Father has not been served with a motion or citation, if any.