

=====

**THE STATE OF NEW HAMPSHIRE  
SUPREME COURT**

NO. 2009-0257

**IN THE MATTER OF:**

**KELSI DETERS  
AND  
JOHN DETERS**

---

**BRIEF OF JOHN DETERS**

---

Attorney: Timothy C. Coughlin, Esquire  
Coughlin, Rainboth, Murphy  
& Lown, P.A.  
439 Middle Street  
Portsmouth, NH 03801  
(603) 431-1993

=====

**TABLE OF CONTENTS**

	<u>Page</u>
TABLE OF AUTHORITIES.....	i
QUESTION PRESENTED.....	1
STATEMENT OF FACTS AND STATEMENT OF THE CASE.....	2
ARGUMENT.....	3
CONCLUSION .....	5
REQUEST FOR ORAL ARGUMENT AND CERTIFICATION.....	5

**TABLE OF AUTHORITIES**

**CASES**

	<u>Page</u>
<i>DeMauro v. DeMauro</i> 142 N.H. 879 (1998).....	4

QUESTION PRESENTED

Whether the trial court erred in finding that the Petitioner failed to meet her burden of proof in requesting a modification of the child support order in this matter, considering her contention that allegedly unfulfilled discovery requests remained unsatisfied.

## STATEMENT OF FACTS AND STATEMENT OF THE CASE

The Petitioner appeals the Family Division decision rendered relative to her second child support modification request since the parties were divorced approximately ten (10) years ago. The discovery requests propounded by the Petitioner, and answered by Mr. Deters, were detailed, onerous and frequent. Thousands of pages of documents as well as computer discs were provided which answered questions as to the income Mr. Deters generated in his mortgage brokerage business as well as his other real-estate related business ventures. A detailed analysis of his spending habits, his credit card use, and even his vacation activities was provided to the Court at several hearings held herein. In the end, the Court did not find that there was enough evidence to establish that Mr. Deters' income had risen entitling the Petitioner to increased child support. The Petitioner claims now that had she been provided with Mr. Deters' supposedly unproduced loan applications, the Court would have found that Mr. Deters' income was higher, and that therefore the Petitioner should be provided more child support.

Mr. Deters does not substantially disagree with the long statement of facts contained within the Petitioner's Brief - - especially the more than thirteen (13) pages detailing the extensive discovery conducted and homework performed by the Petitioner in diagnosing Mr. Deters' financial dealings. In fact, more discovery provided to the Petitioner by Mr. Deters is not even detailed within the Brief. Suffice it to say, as the lower court found, that discovery was extensive and ongoing since 2006, and the case needed to end. Moreover, because no default request was made prior to the last hearing in this matter, the lower court denied a last minute motion for supplemental discovery. Lastly, Mr. Deters testified as to the fact that he produced all loan applications in his possession, and that many were not requested by lenders relative to the other borrowings. Mr. Deters also testified, apparently convincingly, that such loan

applications, even if they existed, would not change the hard and true facts of his financial condition, discussed *ad nauseam* in Court, establishing that his income and financial health had actually suffered a decline since child support was last modified.

#### ARGUMENT

The Petitioner avers that the trial court did not accept the Respondent's tax returns as credible evidence. *Petitioner's Brief at p. 16-17*. Nowhere in the record could this representation be found. Instead, although the Court did acknowledge that Mrs. Deters' financial picture was complex, it "carefully reviewed the financial documents," and did not find "changed circumstances warranting a child support modification." *Rule 7 Notice of Appeal at p. 11*. Such a careful review involved analyzing the following information:

- Personal and corporate tax returns for all of Mr. Deters associated business entities.
- Both individual and corporate bank account records and statements.
- Records detailing various business transactions which the Petitioner discussed fully and documented to the Court at the two (2) most recent hearings.
- Credit card statements which were detailed and dissected by the Petitioner at the hearings.
- Documentation verifying the amounts the Respondent spent on the various items of expense detailed on his Financial Affidavit which were also the subject of testimony at both hearings.
- Ample opportunity to cross-examine the Respondent regarding all such documentation which certainly occurred at the hearings held in this matter.

See generally Transcripts of Hearings.

The Petitioner's Brief itself exemplifies the extent of the discovery engaged in throughout this matter and details the personal, corporate, and other financial documentation provided to the Petitioner.

Clearly the case law cited by the Petitioner is unrelated to the instant matter. The DeMauro case, in particular, is inopposite, as the obligor therein, Mr. DeMauro, was an infamously uncooperative, obfuscatory and objectionable individual, wholly unlike Mr. Deters herein, who has provided documentation, information, testimony, and a considerable amount of patience in settling this matter at times, providing discovery, and appearing at Court from California to testify relative to the Petitioner's relentless litigation tactics.

The Petitioner's Brief, as convoluted and lengthy as it is, nevertheless establishes two things: that Mr. Deters' financial situation is not easily understood, and that the discovery in this matter was extensive. To suggest that discovery, however, was forestalled, or that the Petitioner did not have enough information to provide the Court relative to Mr. Deters' finances, is ludicrous.

When boiled down, the Petitioner's real argument is that had Mr. Deters provided loan applications relative to his various borrowings, his financial situation would be clarified and his "true income" would be established. First, Mr. Deters has testified as to the whereabouts of any such loan applications.<sup>1</sup> Second, were there such a loan application in existence, the information would solely be Mr. Deter's opinion of his financial situation. It would clearly not be as comprehensive and accurate as the documentation discussed at the hearings herein. Loan applications are usually requested by lenders to determine a potential borrower's net worth - -

---

<sup>1</sup> See Transcript of January 20, 2009 Hearing at p. 50-51 where Mr. Deters testified: "Keri Marshall is ranting against, oh, he's got all these loan applications you don't give them to us, but that's ridiculous. She has had them from the previous files and then the plain truth of the matter is there are no new loan applications since March, 2007, the only - - on the primary residence so there aren't any."

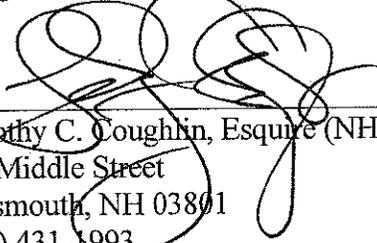
something tax returns fail to document. In this case, counsel for the Petitioner was actually provided both - - tax returns detailing the earnings of Mr. Deters and the entities he has invested in, as well as documents giving evaluations of the worth of assets, documenting transactions regarding properties, and otherwise shedding light on his financial situation. A characteristically self-serving loan application, had one been provided, would have been much less comprehensive and much less reliable.

### CONCLUSION

For the foregoing reasons, the relief requested by the Petitioner via this appeal should be denied.

Respectfully submitted,  
**John Deters,**  
By His Attorneys:  
**Coughlin, Rainboth, Murphy & Lown, P.A.**

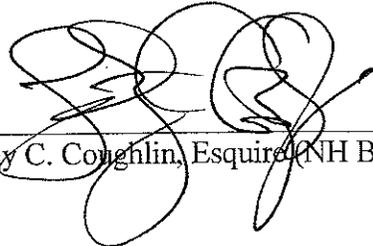
Date: October 26, 2009

By:   
\_\_\_\_\_  
Timothy C. Coughlin, Esquire (NH Bar #8527)  
439 Middle Street  
Portsmouth, NH 03801  
(603) 431-1993  
e-mail: [tcoughlin@nhtrialattorneys.com](mailto:tcoughlin@nhtrialattorneys.com)

### REQUEST FOR ORAL ARGUMENT AND CERTIFICATION

John Deters requests that his counsel, Timothy C. Coughlin, be allowed 15 minutes for oral argument.

I hereby certify two (2) copies of the within Brief have this day been forwarded to Keri Marshall, Esquire, opposing counsel, and that three (3) copies of same have been forwarded to the Portsmouth Family Division.

  
\_\_\_\_\_  
Timothy C. Coughlin, Esquire (NH Bar #8527)