

THE STATE OF NEW HAMPSHIRE

SUPERIOR COURT

STRAFFORD COUNTY

OCTOBER TERM 2003

NO. 03-C-207

COURT ()

JURY (X)

JEFFREY MARSHALL v. CHAD EVANS

DEFENDANT'S OBJECTION TO PLAINTIFF'S
PETITION TO ATTACH WITH NOTICE

NOW COMES, the Defendant, Chad Evans, pro se, objecting to Plaintiff's petition to attach and requesting a hearing thereon. The Defendant states the following in support of his objection:

1. The Petitioner has moved to attach the assets of the Defendant in the above entitled case.

2. The Defendant received notice of the Plaintiff's intent to attach his property informing him that he must object and request a hearing no later than October 8, 2003 in order to preserve those rights.

3. The Defendant has since filed a timely Appearance with this Court.

4. In support of his Petition To Attach, the Plaintiff has certified that "there is a reasonable liklihood that [he] will recover judgment, including interests and costs, in the amount of \$200,000.00."

5. The Defendant's sole asset is his home in Rochester, New Hampshire which has a tax assessment value of \$103,700.00 for the house, and \$40,500.00 for the land; the total value being \$144,200.00 before adjusting for mortgage outstanding, liens, and other obligations.

6. The mortgage outstanding is \$46,500.00. The lien held by Emery and Marge Evans amounts to \$85,000.00. These two figures added together reduce the value of the above asset to a mere \$2,700.00 (well below the \$200,000.00 that the Plaintiff certifies that he is reasonably likely to recover).

7. In addition, there exists a promissory note in the amount of \$38,400.00 owed to Pam and Chet Evans which predates the Plaintiff's Petition by at least two years; a fact that the the Defendant is prepared to demonstrate through documents and testimony.

8. Although possibly unsecured, this loan, which was intended to be placed on record, was made in good faith with the Defendant's house agreed to as collateral.

9. Thus, there are at least two, and possibly three, other claims to the Defendant's sole asset before the Plaintiff can attempt recovery should this Court grant him judgment in this case.

10. Moreover, the Defendant, who is serving 28 years to life in the New Hampshire State Prison, is indigent and has no expectation of receiving an inheritance of any kind during his lifetime.

11. In addition to objecting to the Plaintiff's Petition To Attach, the Defendant also seeks leave from this Court to allow the holders of the note referenced in paragraph 7 to make it a lien of record as was intended.

12. At no time during the period of November 9, 2000 and December 19, 2001, for which the Plaintiff complains in his Writ, did the Defendant ever accuse the Plaintiff of the murder of Kassidy Bortner, "in public and to the print and electronic media, both in the State of New Hampshire and elsewhere."

13. Upon information and belief, the Defendant is unaware of any such statements being made by his attorneys, either unilaterally or on his behalf, under the circumstances complained of.

14. However, to the extent that the statements complained of by the Plaintiff, or any portion thereof, were made, they were made in the course of judicial proceedings as part of Mr. Evans' defense during his criminal trial.

15. Having been made in the course of judicial proceedings, the statements for which the Plaintiff complains of, if made, are absolutely privileged and therefore immune from civil suit.

16. "It is well settled in New Hampshire that certain communications are absolutely privileged and therefore immune from civil suit. Statements made in the course of judicial proceedings constitute one class of communications that is privileged from liability in civil actions if the statements

are pertinent or relevant to the proceedings." Provencher v. Buzzell-Plourde Associates, 142 N.H. 848,853 (1998)(internal citations omitted).

17. Advancing that the Plaintiff, Jeffrey Marshall, was the person actually responsible for the murder of Cassidy Bortner, "in the course of judicial proceedings," and in the context of presenting a defense, was certainly "pertinent" to the proceedings.

18. "New Hampshire law provides very broad protection to statements made in the course of judicial proceedings. A statement falls outside the privilege only if it is so palpably irrelevant to the subject matter of the controversy that no reasonable man can doubt its irrelevancy or impropriety, and all doubts are to be resolved in favor of pertinency and application of the privilege." Hugel v. Milberg, Weiss, Bershad, Hynes, & Lerach, 175 F.3d 14,16 (1st Cir. 1999)(quoting McGranahan v. Dahar, 119 N.H. 758,766 (1979)(emphasis added)).

19. The very fact that the victim, Cassidy Bortner, died while in the custody of the Plaintiff and under his care can hardly be deemed "palpably irrleevant."

20. Therefore, given the Respondent's defense of Absolute Immunity and the "very broad protection" provided by New Hampshire law, the Plaintiff is unlikely to be successful. Yet, even if the Plaintiff does prevail, there is no liklihood whatsoever that he will ever recover judgment from the Defendant.

WHEREFORE, for the reasons stated above, the Defendant, Chad Evans, pro se, respectfully requests that this Honorable Court:

- a. Deny Plaintiff's Petition To Attach;
- b. Grant the Defendant leave to allow Pam and Chet Evans to make their Note a lien of record;
- c. Grant a hearing on this matter; and
- d. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

By _____
Chad Evans, pro se,
P.O. Box 14
Concord, New Hampshire
03302

Dated: October 3, 2003

Certification

I hereby certify that a copy of the foregoing objection has been mailed, postage prepaid, on this 3rd day of October, 2003 to Plaintiff's Attorney, Stephen C. Brown, at 21 South Main Street Rochester, New Hampshire 03820

Chad Evans, pro se