

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-485

MARCH TERM, 2004

	} APPEALED FROM:
	} }
David Judd, Rich Murgolo, et al.	} Orleans Superior Court
	} }
v.	} DOCKET NO. 113-5-00 Osecv
	} }
Shawn and Stephanie Lynch	} Trial Judge: Dennis R. Pearson
	} }
	} }

In the above-entitled cause, the Clerk will enter:

In this collateral order appeal, defendant Shawn Lynch seeks review of the superior court's denial of his motion to discharge a writ of attachment on his personal property. We affirm.

As best as we can tell from the parties' briefs and the limited record before us, this is a breach-of-contract action in which plaintiffs were granted a writ of attachment in May 2000 with respect to computer equipment and lumber owned by defendant. In July 2000, the superior court granted defendant's motion to dissolve the writ of attachment, but required defendant to place \$45,000 in an escrow account before the property would be released. Defendant never paid the required bonds, and the property was not released. On October 20, 2003, defendant filed an ex-parte motion for release of his property, stating that he needed the attached assets to hire counsel to defend himself. Defendant noted that the superior court had previously released part of the attached assets owned by his daughter, apparently a co-defendant, to allow her to secure counsel. In an October 22, 2003 motion-reaction form, the superior court denied defendant's motion, stating that defendant A should file proper motion under V.R.C.P. 4.1(e) if there is any basis to consider discharge and/or reduction of any attachment(s) previously granted.@ Defendant appealed, and this Court allowed the appeal in a February 25, 2004 entry order.

On appeal, defendant renews his argument that his assets should be released so that he can hire an attorney to defend himself in the underlying suit. He contends that the superior court abused its discretion by denying his motion simply because it was not in the correct form. It does not appear to us, however, that the superior court denied defendant's motion for being in the wrong form. Rather, we read the court's ruling to mean that defendant failed to address the criteria stated in V.R.C.P. 4.1(e)(2) for discharging or modifying a writ of attachment. Under Rule 4(e)(2), a judge may, after notice and hearing, modify or discharge any attachment on such terms as are just if certain criteria are met, one of which is that deprivation of the property would cause significant hardship to defendant. The rule also states that, upon discharge of the attachment, the judge may require the defendant to post bond in such sum as the judge directs. Because defendant's arguments have not addressed the criteria set forth in Rule 4(e)(2), we uphold the superior court's denial of his motion. As the superior court suggested, however, defendant may renew his motion to address the criteria set forth in Rule 4(e)(2), at which point the court should review whether defendant has demonstrated a significant hardship or has met other criteria stated in the rule. As for defendant's requests that we dismiss one of the counts against him and stay the superior court proceedings until he can secure an attorney, we leave those questions for the superior court. Finally, we deny defendant's request to have five justices consider this appeal.

Affirmed; the stay granted by this Court on February 25, 2004 is lifted and the matter is remanded for further proceedings in the superior court.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Paul L. Reiber, Associate Justice