

## Judge Stays Soldier's Divorce Action But Orders Compliance With Court Orders

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In an unusual application of state and federal laws designed to temporarily shield military personnel from court actions, an upstate judge stayed a divorce proceeding but ordered a soldier to comply with return-of-property and disclosure orders.

Acting Supreme Court Justice Richard Dollinger in Monroe County (See Profile) said in *Lawry v. Lawry*

, 12/2413, that while the soldier cannot leave the base, he must hand over the keys to a truck if his wife makes the 300-mile round trip to get them. The judge acknowledged that he could find no legal precedent supporting his approach.

"The court has extensively researched the issues related to the stay under state and federal law," Dollinger said in a footnote. "Most of the cases are 'all-or-nothing' decisions: the stay of all proceedings is either granted or denied. This court cannot find any cases granting a stay of proceedings, but requiring the service member to comply with disclosure and return of property orders."

Regardless, Dollinger said, the facts of this case call out for a decision that does not compromise the interests of either party.

The action stems from the brief marriage of Otchara and Jason Lawry, who were together for less than two years.

Otchara is living in the Rochester area while Jason is a soldier stationed 150 miles away at Fort Drum, a military base in northern New York close to the Canadian border. At issue in an ongoing divorce proceeding are a truck the wife bought at the start of the marriage and \$36,000 in credit card bills.

In August, Dollinger directed Jason to take over all payments for the truck, which he possesses, or return it to his wife so she can sell it. About \$23,000 is owed on the vehicle and Otchara has been paying down the loan with money borrowed from her pre-marriage Individual Retirement Account.

Dollinger also ordered Jason to disclose credit card statements so it can be determined which charges were made by him and which by Otchara.

Jason did not comply with the order and instead requested a stay of all proceedings under the federal Service Members Civil Relief Act. He submitted a letter from his commanding officer asserting that he is undergoing training for which leave cannot be granted.

Dollinger looked to both the federal act and New York Military Law to determine if either

statute would bar repossession and disclosure orders, "questions [that] appear to be without precedents in any other federal or state court."

Both laws stay legal proceedings in cases where military personnel cannot appear and take part. Neither statute addresses divorce/ equitable distribution of marital property disputes, but courts have applied them to prevent the issuance of default divorces against service members. See *Roslyn B. v. Alfred G*

, 222 AD2d 581 (2nd Dept. 1995).

Despite the lack of specific authority, Dollinger said he has an "obligation to balance the substantial and respected rights of a member of the military services under state and federal law with the right of his wife to reclaim her property and avoid substantial additional costs."

He noted that a stay in the repossession would unfairly compromise the wife who owns the vehicle and is responsible for monthly installments and insurance, as well as potential liability arising from her husband's operation of the truck. On the other hand, Dollinger said, Jason would not be compromised if a stay were denied, so long as he does not have to leave Fort Drum.

"If the wife is willing to drive to pick up the truck and her other property, the husband, who admits he has no interest in those properties, should be required to turn them over now," Dollinger said.

Additionally, the judge said the soldier would not be adversely impacted by disclosing records of credit card purchases he made on his estranged wife's account.

"This court accords the husband admiration and respect for his contribution to the nation's defense, but it cannot overlook his wife's right to minimize costs and her potential exposure with respect to the truck and her personal property," Dollinger said.

Sara Ashcraft of Ashcraft Franklin Young & Peters in Rochester, who represents Otchara Lawry, declined comment.

Jason Lawry was not represented by counsel.

Michael Macomber, who has a military law practice with the Albany firm of Tully Rinckey, said the potential impact of the ruling is limited since it is a fact-specific issue involving a soldier who is at a base reasonably close to his wife's residence.

"Typically, what we see are service members in Afghanistan, and the court is not going to say, 'Get back here,'" Macomber said. "This is rather unique in that [Lawry] is stationed up at Fort Drum while performing active duty. I don't think this, by any means, opens the doors to a flood of litigation."

Macomber noted that Dollinger's stay in the divorce proceedings is effective only until Nov. 14, when the training that restricts Lawry's movement is expected to end.