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COURT OF APPEALS

STATE OF NEW YORK

MATTER OF ODUNBAKU,

Appellant,

-against-

No. 183

ODUNBAKU,

Respondent.

20 Eagle Street
Albany, New York
October 20, 2016

Before:

ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA

Appearances:

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Sara Winkeljohn
Official Court Transcriber

1 JUDGE PIGOTT: Our last case this afternoon is
2 the Matter of Odunbaku [O dun' bach u] - - - am I
3 pronouncing that right, counselor?

4 MR. PALMORE: Odunbaku, yes, Your Honor.

5 JUDGE PIGOTT: Odunbaku, thank you.

6 Mr. Palmore.

7 MR. PALMORE: Thank you, Your Honor. I'm Joseph
8 Palmore here on behalf of Ms. Odunbaku. With the court's
9 permission, I'd like to reserve two minutes for rebuttal.

10 JUDGE PIGOTT: You have it, sir.

11 MR. PALMORE: The result in this case is dictated
12 by this court's decision in Bianca v. Frank. Bianca held
13 that when a time period for challenging a decision is
14 measured from service of that decision on a party and that
15 party is represented, that the time period begins when
16 service occurs on counsel. In this case, Ms. Odunbaku's
17 counsel never was served with a copy of the order.
18 Therefore, her objections were timely.

19 The statute here is identical in all material
20 respects to the statute in Bianca. In Bianca, which - - -
21 which involved challenges to a personnel action taken
22 against a police officer. The statute required challenges
23 or objections to that decision to be filed within thirty
24 days of service of the order on the member of the force.
25 Bianca, citing universal consistent practice and basic

1 procedural norms in court litigation where lawyers work as
2 the agent for their - - - for their clients, held that this
3 generic phrase member of the force like the generic phrase
4 party meant counsel for the party and held that that's when
5 the clock started running, not when the order in that case
6 was served on the police officer himself.

7 JUDGE ABDUS-SALAAM: Is the family court exempt
8 from this particular case? There are - - - you know, there
9 are certain different rules for family court than there are
10 under the C.P.L.R. in other rules, so is - - - are your - -
11 - your position is that the family court misread the
12 statute. Is that it?

13 MR. PALMORE: Yes, Your Honor. So what Bianca
14 embodies is a rule of construction. It instructs courts
15 and litigants how to interpret timing statutes. And the
16 timing statute here, which is Section 439(e) of the Family
17 Court Act is - - -

18 JUDGE FAHEY: Of course, Bianca doesn't address
19 439(b), right?

20 MR. PALMORE: You mean - - - I'm sorry. You mean
21 the court rule?

22 JUDGE FAHEY: Right.

23 MR. PALMORE: 205.36(b)? No. It doesn't, and I
24 think that's an important question because that goes to the
25 heart of what respondent argues. So to take a step back

1 and provide the legal framing, what Bianca says is there's
2 a general rule that time periods run from service on
3 counsel. That's why litigants have lawyers and the lawyer
4 works as the agent for the party. Bianca went on to say
5 there may be circumstances, for some idiosyncratic reason,
6 why the legislature wants to override that normal rule but
7 when it wants to do so it must do so with unmistakable
8 clarity. Bianca adopted a clear statement test.

9 So when we look at Section 439(e), nothing in
10 Section 439(e), which is the timing statute at issue here,
11 even remotely satisfies that clear statement test. In
12 fact, it's written in exactly the same way that the timing
13 statute in Bianca itself was written. It measures the time
14 period from service on the party. And in fact, I would
15 suggest that the application of Bianca here is even - - -
16 the case for application of Bianca here is even more
17 powerful than it was in Bianca itself because this statute
18 was adopted after Bianca. So the court - - - the
19 legislature can be charged with knowledge of the Bianca
20 rule, charged with knowledge of that when it uses the word
21 party generically that is going to mean counsel for a
22 represented party.

23 Now couns - - - now respondent argues, let me
24 just get to Your Honor's question, that this Family Court
25 Rule which directs a - - - the clerk of court to provide a

1 copy of a decision to a party or counsel somehow overrides
 2 the plain reading of 439(e) in light of Bianca. And I
 3 think that argument fails for multiple independent reasons.
 4 First of all, this is a timing case. The timing rules are
 5 provided by Section 439(e). That's really the beginning
 6 and the end of the inquiry. Bianca tells us how to read
 7 439(e) and Bianca says that the generic reference to party
 8 in 439(e) means a represented party's counsel. This rule
 9 is - - - is not - - - it has nothing to do with the filing
 10 of objections or the timing for the filing of objections or
 11 when the clock runs. It's simply a directive to the clerk.
 12 So it exists for a different purpose. I don't think it's
 13 relevant to the inquiry.

14 JUDGE FAHEY: Let me ask this. Do we need to
 15 address - - - I think in your second point was a due
 16 process point. Can't the court address this under Bianca
 17 without addressing the due process point?

18 MR. PALMORE: Absolutely. And I think that - - -
 19 that you - - -

20 JUDGE FAHEY: How - - - how so?

21 MR. PALMORE: Because Bianca adopts as a matter
 22 of New York Law - - - putting aside the Constitution,
 23 adopts a rule of construction for timing statutes like this
 24 one.

25 JUDGE FAHEY: So - - - so we don't need to engage

1 in a due process analysis to get there.

2 MR. PALMORE: You don't. We think the due
3 process point is additive and gets you to the same place.

4 JUDGE FAHEY: I understand that.

5 MR. PALMORE: But you don't need to address it.
6 The second reason why the Family Court Rule is in opposite
7 here is because even if it were somehow relevant to the
8 inquiry or were incorporated by reference, it itself would
9 have to satisfy the Bianca clear statement standard and - -
10 - and it doesn't. That rule is best read to mean that when
11 a party is pro se an order will be sent to the pro se
12 party. When a party has counsel, the order will be sent to
13 counsel. That is the most natural reading. That's the one
14 that's consistent with way - - - the way that courts and
15 litigants in court typically act, which is that official
16 communications go through counsel for a represented party.
17 And to the extent there were any ambiguity on that reading,
18 Bianca would require that the ambiguity be resolved in
19 favor of the reading that requires service on counsel.

20 Finally, a mere court rule can't trump the
21 statute. The statute, again, is 439(e). It was adopted by
22 the legislature. It was adopted by the legislature after
23 Bianca. And it provides the timing rule here. So nothing
24 in this court rule, even if it were relevant and even if it
25 were contradictory, which it isn't, could trump the clear

1 intent of the legislature to require service on counsel in
2 order to start the clock running. There - - -

3 JUDGE FAHEY: You - - - you had made reference,
4 also, I thought, to 213(b) of the C.P.L.R.?

5 MR. PALMORE: 2103(b).

6 JUDGE FAHEY: I'm sorry. My mistake.

7 MR. PALMORE: Right. It's - - -

8 JUDGE FAHEY: 2103.

9 MR. PALMORE: Yes. And that was cited in Bianca
10 as an example. So what Bianca said was that this practice
11 of serving the lawyers "is not simply a matter of courtesy
12 and fairness. It is the traditional and accepted practice
13 which has been all but universally codified." And the
14 court cited 2013(b) which, of course, requires service on
15 counsel when we file a motion in - - - in court. And
16 that's just a normal rule. Bianca didn't come out of the
17 blue. I don't read it as an innovation. It's consistent
18 with the settled practice that lawyers follow all the time
19 and that courts follow all the time but wasn't followed
20 here. And there are really powerful policy reasons, as
21 well, for applying and - - - and reaffirming the rule of
22 Bianca.

23 JUDGE FAHEY: There - - - there was a Fourth
24 Department case, wasn't there, that - - - from Oneida
25 County. Are you familiar with that?

1 MR. PALMORE: Well, there was some discussion of
2 this in the - - - in the Appellate Division's decision. Is
3 this what you're referring to?

4 JUDGE FAHEY: Yes.

5 MR. PALMORE: Yeah. So the - - - or the family
6 court's decision. But what's remarkable, of course, is
7 that this - - - this - - - it's Bianca that controls here.
8 It's a decision of this court, the - - - we briefed it
9 extensively before the Appellate Division and the Appellate
10 Division didn't cite it, much less explain - - -

11 JUDGE FAHEY: Well, I'm thinking of it's Oneida
12 Department of Social Services v. Hern (phonetic), it's a
13 Fourth Department case from 2002, and the eminent Justice
14 Pigott was a presiding justice in the panel then. And that
15 case, I think, addressed this issue directly. It's the
16 only case I was able to find on 439, and it seemed to favor
17 your position that 2103 applies here and when we say party
18 we mean represented by counsel. I just bring the attention
19 to everybody so - - - so that you know about it.

20 MR. PALMORE: Right. Well, - - - and 2103, of
21 course, is directed to counsel and service of - - - of
22 papers that counsel files and it requires, of course, those
23 papers to go to counsel for the adversary - - - adversarial
24 party. And then the rule we're advocating for and that
25 Bianca adopted would require the same thing of the courts.

1 And when a decision is issued, it should go to the lawyer,
2 not - - - not just to the represented party. And the - - -
3 as the amicus brief explains, and if I have time in
4 rebuttal I'll discuss, there are really powerful policy
5 reasons for adhering to that rule. People have lawyers for
6 a reason, to safeguard their interests, to monitor court
7 proceedings and inform them of what's going on. And the
8 rule of the lower courts really flips that dynamic and
9 requires the client to inform the lawyer of what's going on
10 in court.

11 JUDGE ABDUS-SALAAM: Just one other question,
12 counsel. Was family court required to reject these
13 objections? It could have granted the - - - what was it, a
14 de minimis extension six days? Was it six days?

15 MR. PALMORE: Absolutely. And that's our back-up
16 argument that even if the - - - if the objections were
17 untimely, which we don't think they were, the - - - the
18 family court clearly had authority to allow the untimely
19 filing.

20 JUDGE STEIN: Did you raise that in the C.P.L.R.,
21 I think, 2004, down in the lower - - - in the family court?

22 MR. PALMORE: We didn't file a motion, Your
23 Honor. But the family court addressed the issue because
24 the family court said there is no authority to extend this
25 deadline. So it was decided by the family court, then we

1 briefed - - -

2 JUDGE STEIN: But you didn't bring 2004 - - -

3 MR. PALMORE: No. We did an opposition there was
4 - - - the same as principle submission here was that it
5 wasn't untimely. And then we did brief it in the Appellate
6 Division and respondent didn't object to it as waived in
7 the Appellate Division.

8 JUDGE PIGOTT: Thank you, sir.

9 MR. PALMORE: Thank you.

10 JUDGE PIGOTT: Ms. Singh, welcome.

11 MS. SINGH: May it please the court. Good
12 afternoon. My name is Cindy Singh and with me as co-
13 counsel Philip Segal. We're here representing Mr. Ganiyu
14 Odunbaku. Your Honors - - -

15 JUDGE RIVERA: So what - - - what's the goal
16 that's served by - - - sorry about that. What's the goal
17 that's furthered, let's put it that way, by agreeing with
18 this argument that service can be on the party as opposed
19 to on a represented party's lawyer in accordance with - - -
20 with the rule?

21 MS. SINGH: Okay. I'd like to say three things
22 in response. First and foremost, reading the rule and the
23 - - - the court rule and the statute at issue here in
24 accordance with their plain meaning is compelled.

25 JUDGE PIGOTT: Let's forget that. You - - -

1 you're saying that this court could have served your client
2 and not you and that would have been perfectly fine with
3 you?

4 MS. SINGH: That's correct. Because - - -

5 JUDGE PIGOTT: Are you serious?

6 MS. SINGH: Yes.

7 JUDGE PIGOTT: You - - - you representing
8 somebody wants the court to have an ex parte communication
9 with your client without you knowing it saying this is what
10 the order reads?

11 MS. SINGH: Well, Your Honor, respectfully, I do
12 believe that that is correct because the court rule here at
13 issue - - -

14 JUDGE PIGOTT: So why should - - - why would they
15 serve one lawyer and not another lawyer or say we're not -
16 - - we don't like lawyer - - - you know, look, these
17 lawyers get in the way. All we've got to do is serve the
18 parties and then whatever happens after that, you know, we
19 can save a lot of time because half of them may not, you
20 know, get to their lawyer in time to - - - to file
21 objections and that takes care of that case. And this is
22 great. If this had happened the other way, if your client
23 had not been served and she had been, wouldn't you be
24 wanting to make the argument over here that, you know,
25 Judge, you gave - - - you gave the - - - or you gave the

1 order to my client. He was out of town. He - - - he
2 wasn't even around for a month. He comes back. Here's
3 this order he's got to comply with, and I didn't know
4 anything about it. So I want you to give me a break and
5 let me - - - and they say no. You know, we have a right to
6 serve your client without you knowing it. Does that make
7 sense to you?

8 MS. SINGH: Respectfully, Your Honor, I'd like to
9 say two things in response. The first is that the statute
10 and the court rule - - -

11 JUDGE PIGOTT: Does that make sense to you?

12 MS. SINGH: Well, you're - - - well in the
13 example that you're providing, right.

14 JUDGE PIGOTT: Yeah.

15 MS. SINGH: You're providing that party is served
16 - - - one party is served or - - - and the attorney is
17 served in the other or both parties are served?

18 JUDGE PIGOTT: Pick your poison. What I'm saying
19 - - -

20 MS. SINGH: Well - - -

21 JUDGE PIGOTT: - - - is that the lawyer is not
22 served and the party who is purported to be served by mail
23 or whatever is out of town. Is - - -

24 MS. SINGH: It - - - it is acceptable, Your
25 Honor, because the court rule - - -

1 JUDGE PIGOTT: It's what?

2 MS. SINGH: It is acceptable, Your Honor, because
3 the court - - -

4 JUDGE PIGOTT: That's fine with you?

5 MS. SINGH: Because the court rule and the
6 statute imposed an obligation on the litigant to transmit
7 the order to his or her attorney.

8 JUDGE PIGOTT: I - - - I don't know how your
9 practice has been. I've had some pretty - - - you know,
10 some clients that just aren't that swift. I've had clients
11 that don't speak the language that I speak. I'm
12 representing them in let's say family court, and they want
13 to know what's going on through me. And so - - - and so I
14 - - - you know, I try to tell them. They then go home - -
15 - they go wherever they go, and I'm waiting for the court
16 to make a decision and then I find out the decision was
17 thirty days ago and it was given to my client who was out
18 of town or didn't - - - you know, didn't understand it.
19 And - - - and we're out of court?

20 MS. SINGH: Well, Your Honor, I'd like to say
21 first of all, that the - - - this case has to be decided on
22 the facts at hand. In the hypothetical that you present,
23 nothing prevents the attorney from following up with the
24 court directly. But I'd like to take a minute - - -

25 JUDGE PIGOTT: From doing what?

1 MS. SINGH: From following up with the court
2 directly on the status of the decision. But I'd like to
3 call the court's attention right now because - - -

4 JUDGE STEIN: The attorney know when to do that,
5 every day, every week, every month - - - you know, how - -
6 - because in some courts, decisions come out right away.
7 Other courts, it may be two, three, four, five, six months
8 or - - - or longer. So for every client that the attorney
9 has, the attorney has to make sure that he or she knows
10 exactly what's going on from the court in - - - in every
11 single case. Do you think that that's what family courts
12 wants is to be inundated with those phone calls every day?

13 MS. SINGH: Well, Your Honor, respectfully, there
14 are compelling countervailing policy considerations that
15 support the statute and court rule as written. And to - -
16 -

17 JUDGE RIVERA: Okay. Well, that's what I was
18 asking about.

19 JUDGE PIGOTT: Okay.

20 JUDGE RIVERA: That's where I started. What is
21 the goal that's - - -

22 MS. SINGH: Well, the first is the efficient
23 processing of cases. Family court is overwhelmed by the
24 number of support cases that come in.

25 JUDGE PIGOTT: Lawyers get in the way, don't

1 they?

2 MS. SINGH: They do.

3 JUDGE ABDUS-SALAAM: How's that? Don't - - -
4 don't you have to - - - doesn't the family court have to
5 keep track of who's appeared in a case?

6 MS. SINGH: Absolutely. But - - -

7 JUDGE ABDUS-SALAAM: Sometimes the family court
8 judge is assigning the lawyer, right?

9 MS. SINGH: Yes. But, Your Honor, you have to
10 consider the reality. And the statistics show that the
11 majority - - - overwhelming majority of litigants in
12 support cases are unrepresented.

13 JUDGE FAHEY: Yeah. But this is contrary to - -
14 -

15 JUDGE STEIN: That makes no sense. Why is it
16 more difficult to send a letter to the attorney than it is
17 to the client? The court record tells you who everybody is
18 and who's appeared. So when they go to send an order, they
19 have to say, okay, who should I send this order to? Oh,
20 she's represented by X. The order has to go to X. It
21 seems pretty simple.

22 MS. SINGH: It's not as simple - - - it's not as
23 simple as - - - as it may appear because as the statistics
24 indicate, of the minority who are represented, counsel only
25 represent them for a part of the proceeding. So at the

1 time the final - - -

2 JUDGE STEIN: But if the records indicate - - - I
3 mean if there's an attorney of record and - - - and that
4 attorney is no longer representing the client, then it's
5 the client's obligation - - - or the attorney's obligation
6 to notify the court that that attorney is no longer repre -
7 - - so if - - - if the court mistakenly sends it to the
8 client because the attorney's no longer representing, well,
9 that's - - - you know, that's not the court's fault. But
10 if the record shows an attorney is representing the client,
11 what is so difficult?

12 MS. SINGH: The record may not always show that.
13 There may be multiple notices - - -

14 JUDGE PIGOTT: That's - - - that's true. But
15 what you're saying is even though we know there's a lawyer
16 in this case, we can decide we're not sending that lawyer
17 the order that - - - that affects his or her client. Bec -
18 - -

19 MS. SINGH: Yes. Under the plain meaning of
20 the statute.

21 JUDGE PIGOTT: Because we don't like that lawyer.
22 That lawyer's obnoxious. We - - - we don't like Legal Aid
23 so we're not going to send any orders to Legal Aid. We're
24 going to send them to their clients.

25 MS. SINGH: You know, I just would like to point

1 out the countervailing reason - - - the countervailing
2 policy consideration here, and the countervailing policy is
3 you have to consider that because the reality is that
4 counsel are cycling in and out of cases, serving an
5 attorney may not actually yield notice to the client.

6 JUDGE ABDUS-SALAAM: What about the reality,
7 counsel, of people - - - people who are victims of domestic
8 violence having to move a lot and they may have one address
9 when they appeared in a proceeding and then two or three
10 addresses by the time they get that order, and it never
11 gets to them, or it gets to them forty days after it was
12 originally sent? What about that reality?

13 MS. SINGH: Okay. To - - - to address Your
14 Honor's question I'd like to really say two things in
15 response. First, the first thing is if there is an
16 incident of domestic violence, okay, and the counsel is
17 aware of that, a request can be made that service be made
18 specifically onto counsel. That can be made. But that
19 requires an application and both sides need to be heard.
20 And the second - - - the second thing - - -

21 JUDGE PIGOTT: Wait a minute. If - - - hold it,
22 hold it, hold it. You're saying if I represent somebody
23 who's a victim of domestic violence, I have to make an
24 application to the court on notice to you that I want to be
25 served with - - - with whatever process the court has?

1 MS. SINGH: Under the existing statute and court
2 rule. Yes.

3 JUDGE PIGOTT: Oh, okay.

4 MS. SINGH: However - - -

5 JUDGE PIGOTT: That's clear.

6 MS. SINGH: - - - this court may not override the
7 legislature and the administrative board via their
8 decision. This court can invite - - -

9 JUDGE STEIN: Well, how is this different from -
10 - - how is this different from Bianca? You're saying that
11 what - - - what we held in Bianca - - -

12 MS. SINGH: Absolutely. It's not applicable
13 here. Absolutely.

14 JUDGE STEIN: It's not applicable to any case
15 because the legislature said otherwise?

16 MS. SINGH: No. It - - - when the legislature
17 says otherwise, yes, then the - - -

18 JUDGE STEIN: Well, how is this different from
19 the language in Bianca?

20 MS. SINGH: Because, Your Honor, you have to
21 remember that Family Court 439(e) sits in a distinct
22 statutory scheme, the Family Court Act. The Family Court
23 Act - - -

24 JUDGE PIGOTT: Well, you said - - - you said in -
25 - - you say in your brief the Family Court service doesn't

1 support the magistrate's final orders directly and - - -
2 and Ms. Odunbaku complied with this court's decision in
3 Bianca.

4 MS. SINGH: Yes. Because it falls under the
5 excep - - -

6 JUDGE PIGOTT: You said it doesn't apply.

7 MS. SINGH: No. Well, it falls under the
8 exception. The holding in Bianca specifically - - - if we
9 - - - if we want to parse out the Bianca decision, the
10 holding - - - the statute interpreted there required
11 service. Bianca's exception, which you can argue is - - -
12 says that service is not required where the legislature
13 directs otherwise. Here the legislature - - -

14 JUDGE FAHEY: See, can I - - - can I just stop
15 you now just for one second. Because it seems to me
16 there's a fundamental misunderstanding about what the
17 purpose of the legal profession is in this context. You
18 have people that, I'd say, generally, they have a lack of
19 education, many times they're illiterate, some of them
20 can't read at all, they - - - they don't understanding the
21 meaning of any legal documents. And - - - and you're
22 asking us to promulgate a rule that says that you have this
23 person who tell - - - who knows how to do all these things
24 for you but we're not going to tell that person. We're
25 going to tell you. And it's your responsibility then to

1 make sure that that person meets every obligation that they
2 have to.

3 This policy makes no sense that you're
4 advocating, from a counting point of view. I don't see a
5 burden because we're only talking, at the most - - - the
6 most number I've seen are, maybe seventeen percent of the
7 family court cases are actually people that are represented
8 by counsel. And where they are, they probably get a more
9 accurate outcome in terms of justiciability. On - - - on a
10 fundamental level, this makes absolutely no sense.

11 MS. SINGH: You know, Your Honor, I'd like to
12 call the court's attention to page 80 of the record,
13 footnote 1.

14 JUDGE FAHEY: Um-hum.

15 MS. SINGH: And in addition, page 108 of the
16 record paragraphs 1 and 2. I'd like to remind the court
17 that this case must be decided on the facts presently at
18 hand.

19 JUDGE FAHEY: Absolutely.

20 MS. SINGH: Here - - -

21 JUDGE FAHEY: And I think we totally agree with
22 you there. But still, we make law for the whole state and
23 - - - and so it - - - naturally, we're concerned about
24 these things and that's why I want you to address them.

25 MS. SINGH: I do. And I would like to point out,

1 again, on page 80 of the record, Ms. Odunbaku concedes that
2 she timely received the orders in question. She then
3 timely communicated her receipt of these orders to her
4 attorneys on or before August 5th, 2013, weeks before the
5 statutory deadline. So the procedure of serving either the
6 parties to the proceeding or their attorneys works in this
7 case. If there - - -

8 JUDGE PIGOTT: Well, see, I get your argument as
9 an alternative argument saying, you know, even if they
10 should have served the lawyer, in this case it doesn't - -
11 - it doesn't make any difference. But to say that lawyers
12 don't count, to say you can hire a lawyer, you can pay a
13 lawyer, you can have a lawyer assigned to you, you can meet
14 with that lawyer, you can prepare, you can go to a trial,
15 and that lawyer doesn't count in the eyes of the court is
16 just antithetical to anybody that's been admitted to the
17 Bar.

18 MS. SINGH: Your Honor, that's not what the
19 statute is saying. Simply by imposing an obligation on the
20 litigant that he or she has to transmit the final orders to
21 her attorney doesn't discount or somehow devalue the
22 services of an attorney.

23 JUDGE PIGOTT: It says they have the choice.
24 They can either serve the party or the lawyer.

25 MS. SINGH: Yes.

1 JUDGE PIGOTT: But what that means is if there's
2 a lawyer, you serve the lawyer. If there isn't, you serve
3 the party. It's not - - -

4 MS. SINGH: Well, that's not what the rule says.

5 JUDGE PIGOTT: I suggest to you that maybe that's
6 the definition that it ought to be. I mean to - - - to - -
7 -

8 MS. SINGH: That's for the legislature or the
9 administrative board to change prospectively.

10 JUDGE PIGOTT: Or anyone who interprets it with
11 any - - -

12 MS. SINGH: Well, this court may not override the
13 legislature via judicial legislation.

14 JUDGE PIGOTT: Well, thank you. I appreciate
15 that thought.

16 JUDGE RIVERA: Counsel, as a - - - as a matter of
17 practice, how widespread is the following of this rule?

18 MS. SINGH: The - - -

19 JUDGE RIVERA: The service on - - - on the client
20 regardless of the fact that they may be represented? How
21 widespread is that?

22 MS. SINGH: I don't have any statistics on that.
23 But I would submit that this procedure works. It works in
24 this case. That Ms. Odunbaku's objections were filed
25 untimely has nothing to do with a faulty interpretation of

1 the statute. And again, the - - - there are two compelling
2 countervailing policy reasons here. One, to lessen the
3 financial and administrative burden on the family courts,
4 which are already overwhelmed by the number of support
5 cases - - -

6 JUDGE PIGOTT: Can we just - - - can we just ban
7 lawyers? Would that be a better way of doing it? Then we
8 don't have to worry about them at all?

9 MS. SINGH: No.

10 JUDGE PIGOTT: Why?

11 MS. SINGH: There should - - - there should be
12 lawyers. I mean provide representation.

13 JUDGE PIGOTT: Let's - - - let's suggest this.
14 You say it's an - - - it's an either or thing, can the - -
15 - can the administrative judge of the family court say you
16 - - - to the clerk you know where it says either or? That
17 means to the - - - to the party, never, never to the
18 lawyer?

19 MS. SINGH: Yes.

20 JUDGE PIGOTT: They would have that opportunity
21 and option, right?

22 MS. SINGH: Yes. And I would suggest that if you
23 take a look at the statute and court rule which must be
24 read in conjunction pursuant to Family Court 165(a), you'll
25 see that it's not an generic direction. The court rule

1 says that the final order shall be served on either the
2 parties to the proceeding or their attorneys. So yes, the
3 legislature has contemplated and - - - and in no way is
4 devaluing it - - -

5 JUDGE PIGOTT: Can't that - - - can't that be
6 read to mean, you know, served on the party or in the event
7 that they have a lawyer on the lawyer?

8 MS. SINGH: No. Because that's not the plain
9 language interpretation of the rule.

10 JUDGE ABDUS-SALAAM: Counsel, I - - - I just
11 would - - - I know you've been trying to explain to us what
12 the burden is on the family court - - -

13 MS. SINGH: Yes.

14 JUDGE ABDUS-SALAAM: - - - of serving the lawyer
15 instead of the party. And then frankly, I just have to
16 admit, I'm not getting it. So could you just tell us again
17 what the burden is?

18 MS. SINGH: Thank you. Thank you, Judge Abdus-
19 Salaam. First, there's two main - - - there's two main
20 compelling countervailing policy reasons, first, the burden
21 on the family court. You have to understand that when
22 we're looking at the litigants who are represented, the
23 majority only have counsel for a part of the proceeding.
24 Thus, when the clerk is ready to mail out the final orders,
25 they may not know if the litigant's actually still

1 represented. Just allow me to finish. Additionally, when
2 you think about the fact that these - - - these cases takes
3 years to try to completion, there may be multiple attorneys
4 in the file and not every attorney in family court files a
5 notice of substitution. Sometimes, they withdraw on the
6 record. And so there may not even be a notice of
7 substitution in the file. There may be multiple notices of
8 substitution. Cumulative - - - cumulatively, this poses an
9 administrative and financial burden on family courts which
10 are already overwhelmed. Second - - -

11 JUDGE ABDUS-SALAAM: Well, they only send out one
12 letter, don't they? I mean if they send it to the attorney
13 that's no longer on the file or - - -

14 MS. SINGH: Addition - - - Judge Abdus-Salaam,
15 what if there's seven attorneys in the file?

16 JUDGE ABDUS-SALAAM: Well, wouldn't it be the
17 last one?

18 MS. SINGH: What if it's - - - an attorney has
19 withdrawn on the record and it's not properly noted?

20 JUDGE STEIN: Well, then if the letter goes to
21 that attorney, then that attorney - - - wouldn't that
22 attorney then go to the court and say I'm sorry, you're
23 mistaken, I withdrew on the record and your - - - your file
24 obviously doesn't reflect that, this needs to go either to
25 the - - - the next attorney, if there is one, and if you

1 don't have - - - don't know that there is one, then it goes
2 to the client.

3 MS. SINGH: But, Judge Stein, I would ask you to
4 consider the implications of what you've just said. Think
5 about it. If the - - - all the while, the thirty-five days
6 are running and the litigant is being prejudiced because he
7 or she doesn't know that she's received an order.

8 JUDGE FAHEY: Well, not if it's required to be
9 served on the attorney.

10 MS. SINGH: Well, but in Judge Stein's - - -

11 JUDGE FAHEY: If you served it on the wrong
12 attorney - - - let me finish, you haven't served it. And
13 this is a problem that criminal courts deal with all the
14 time. There are many substitution of counsel. It happens
15 all the time and they've worked out systems to deal with
16 them. The systems haven't ground to a - - - and they've
17 met all their deadlines. So it's - - - I'm having a hard
18 time understanding the argument too. But thank you.

19 MS. SINGH: Thank you, Your Honor.

20 JUDGE PIGOTT: Thank you, Ms. Singh.

21 Mr. Palmore.

22 JUDGE FAHEY: Opposing counsel I thought had a
23 good point on - - - on the facts of the record. Want to
24 address them?

25 MR. PALMORE: I'd love to. I'd love to address

1 that, Your Honor. First of all, this is a - - - a
2 statutory construction case so the meaning of the statute
3 doesn't vary depending on the circumstances of any
4 individual litigant.

5 JUDGE FAHEY: Um-hum.

6 MR. PALMORE: So that's point one. Point two, is
7 that if you look at A-108, counsel says that after finding
8 out about the orders, counsel had to make repeated trips to
9 the clerk's office just to try to get copies of them. On
10 August 5th, counsel went; on August 6th, counsel went;
11 wasn't able to get all the orders until December, months
12 after all of this happened.

13 JUDGE STEIN: And were the correct findings of
14 fact and orders all sent to the - - - the litigant?

15 MR. PALMORE: Yes.

16 JUDGE STEIN: To your client?

17 MR. PALMORE: Yes. I believe they were all sent
18 - - - all sent to her. But as the court has recognized,
19 there are really powerful policy reasons for reaffirming -
20 - -

21 JUDGE RIVERA: Is this a - - - is this a
22 widespread practice?

23 MR. PALMORE: If you - - - no. I don't think it
24 is, Your Honor. If you look at the amicus brief, which is
25 filed by - - - on behalf of a number of legal services

1 organizations, they say that the family courts in the other
2 boroughs of New York City send these orders to attorneys.
3 They may send them to both, if there's - - - if there's
4 some confusion or question but they send them to attorneys.
5 So this is not burdensome. This is the way that courts in
6 other boroughs do this. And it doesn't impose any added
7 burden to follow the normal rule of just sending court
8 orders to attorneys.

9 And as the court has recognized, it's - - -
10 particularly in family court, this is very important and
11 this court has made - - - and the State has made access to
12 justice a critical priority. And we're talking about a
13 largely low-income client base. There may - - - they may
14 not have a fixed address. They may have fled a home
15 because of abuse. They may, like Ms. Odunbaku use a post
16 office box because they don't want to disclose their
17 physical address in court, yet they may not be able to
18 check the post office box very frequently. They may not -
19 - - they may have literacy challenges. They may not speak
20 English or speak it only as a second language. They may
21 not be able to understand the significance of a document
22 that comes. And all of those problems are avoided if the
23 courts were to just follow the normal rule and if they
24 followed the normal rule here of filing - - - sending these
25 orders to Ms. Odunbaku's counsel. And here, this case

1 there was no cycling in and out. She was represented by
2 Staten Island Legal Services the entire time.

3 JUDGE PIGOTT: Thank you. Thank you.

4 MR. PALMORE: Thank you.

5 (Court is adjourned)

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C E R T I F I C A T I O N

I, Sara Winkeljohn, certify that the foregoing transcript of proceedings in the Court of Appeals of People v. Odunbaku, No. 183 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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