DOCKET NO.: FBT FA19 6088163 S SUPERIOR COURT

CHRISTOPHER AMBROSE REGIONAL FAMILY TRIAL COURT

v. AT MEDDLETOWN

KAREN AMBROSE JULY 23, 2021

TRIAL BRIEF RE: ISSUE OF COURT'S DUTY TO ACT

I BRIEF HISTORY OF FACTS:

This dissolution of marriage action was filed on July 22, 2019, with a return date of August 13, 2019 and a case management date of November 12, 2019. The parties were married in Narragansett, Rhode Island on June 5, 2004. The plaintiff took a job in California as a writer for a crime television series, requiring that he immediately leave for California following the wedding ceremony. The defendant relocated to California to be with the plaintiff. In 2007 the parties adopted two children as babies from Guatemala, M. A. and M. A. Shortly following the adoption of M. A. and M.A. by agreement of the parties, the defendant moved back to the state of Connecticut to be closer to parties' family. In 2010 the parties adopted their third child, S. A.

At the request of the plaintiff, the defendant, mother stopped working to stay home full time to care for the children. The plaintiff, father worked out of

state throughout the majority of the marriage and the children's lives as of the filing of this matter. The plaintiff, father would travel back to Connecticut on weekends as often as possible, for holidays and during the off season. Based on the evidence before the court thus far during this trial, it is unclear as to when the plaintiff commenced residing in Connecticut full time with his wife and children. What is clear is that when the plaintiff was reengaged in full time work while residing in Connecticut fulltime, he continued to work out of State for extended hours daily that limited the plaintiff's interactions with his wife and children.

What also is clear from the evidence thus far in this trial is that the plaintiff has struggled with his relationship and interactions with all three children historically and presently to this day. Plaintiff essentially is of the belief that he must continue to maintain "sole legal and physical custody" absent contact between the defendant and the children, then supervised access until some unknown future date when the defendant meet some unidentified criteria. The plaintiff's belief is unsupported by the evidence presented to this court thus far and further the record cannot support this belief. All three children have been held captive and isolated from what they knew and understood life to be, since April 24, 2020.

The undisputable facts support that all three children are in crisis presently in crisis and said crisis for each child occurred while the children have been in the plaintiff's sole care and custody. This is supported by the evidence that two of the children have in engaged in self harming behavior that includes cutting to the extent by one of the children that it necessitated immediate medical intervention. One of the children experienced flareups of uncontrollable tics due to failure to ensure that child was receiving medication that he had been prescribed by a provider discharged immediately upon the transfer of custody from mother to father. The discharged provider had been the child's provider for a significant period, was familiar with the child's needs and the child was comfortable with the provider. To date in direct derogation to the recommendations of a treatment worker from the Department of Children and Families, the provider has not been replaced with a provider within same medical specialty. Since September 3, 2020 the Department of Children and Families has implemented four (4) ninety-six (96) holds prohibiting the minor children from being in the plaintiff's care and custody. The minor children were released early from all four (4) holds in complete contradiction to their safety due to the influences of the guardian ad litem. This is factually supported by the guardian ad litem's actions and statements to the court thus far. One of the minor children has not been to school for a

significant period of time, based on the evidence thus far, it is clear that this particular child is in major crisis. In addition to school truancy, she has suffered major weight gain, has no social interaction outside of possible remote therapy. The frequency of therapy cannot be verified, due to the therapist failure to respond to numerous requests for records. However, evidence offered supports that the therapist has raised concerns with her patient wellbeing. Another one of the children's therapist has made a report to the Department of Children and Families due to the serious nature of the disclosure of information the child provided in therapeutic session. Said disclosure was consistent with statements the child has made to other providers. The evidence presented thus far further reflects that the legal department for the Department of Children and Families of this state has recommended that DCF move for Orders to Take Custody based on all the mandating reports filed on behalf of the minor children, naming father as the alleged perpetrator and the existence of the present custody orders prohibiting contact between mother, the defendant and the children.

The undersigned received recordings, from an undisclosed entity during the course of this litigation that support, father's support team, professional engaged by father are further causing direct trauma to these children:

Recorded statements: Deborah Gruen, Phd, the psychologist engaged by the father in violation state law, acquaintance of the guardian ad litem, tells the minor child:

Speaker: Deborah Gruen, Phd: If she has a court order, why wouldn't she take that to the court, so that, cause you know there are always people working with your father, why not try to get a court order so you could be with your mom while this is being resolved, you know some proof that your mom is correct, instead of meeting at Walmart and going off with your mother, why not have your mom fight for the truth?

Child: She is

The above noted colloquy is of not therapeutic value. The above colloquy is manipulative and abusive. Further recordings support that this psychologist has received direct disclosures of child abuse and neglect that this child has been subjected to by her father and his supports. One professional is mocking the child when inquiring about whether the child has been cutting. The conduct in this case is unconscionable.

Noteworthy is that plaintiff has admittedly blocked the children's providers from providing the defendant information she entitled.

The plaintiff further engaged new providers for two of the minor children immediately following the transfer of custody to him in direct violation of G.S. §46b-6 and has admitted under oath to this court that he has not complied with court's order, entry #196.00, paragraph four (4) that clearly sets forth "The father will provide the mother with daily updates regarding the children via Our Family Wizard."

II. **PROCEDURAL HISTORY:**

This dissolution of marriage action was filed on July 22, 2019, with a return date of August 13, 2019 and a case management date of November 12, 2019. Following a pendente lite hearing before Judge Rodriquez wherein both parties were represented and presented evidence to the court on August 22nd and on August 23, 2019, the court entered orders, entry# 105.10. Less than a month later, the plaintiff filed six (6) additional motions. Notable are plaintiff's motions dated September 12, 2019, Motion to Modify Custody, entry #121.00, motion to list the marital residence, entry #119.00, motion regarding children's extra-curricular activities, entry #122 and motion for contempt, entry #123. Counsel for the defendant objected to all six motions. Between September 12, 2019 and March 20, 2020 the plaintiff filed five additional motions.

The motion that is most relevant to this brief was filed by plaintiff on March 20, 2020, entry #167, entitled Pendente Lite Emergency Ex-Parte Motion to Modify Custody. The defendant filed objections on March 23, 2020, entry #169.00, and on April 16, 2020, entry #175.00. Judge Grossman directed the Guardian Ad Litem to file an affidavit in relation to the claims for relief requested by the plaintiff in his motion filed on March 20, 2020. On April 17, 2020, entry#193.00 an affidavit was filed by the Guardian Ad Litem. Notable on April 16, 2020, Judge Grossman granted ex-parte relief, order entry #167.10. The matter was assigned to a hearing for April 24, 2020 and following limited evidence by the custody evaluator only, Judge Grossman entered order entry# 192.00. The hearing was then scheduled to continue in the afternoon of April 27, 2020. Limited time was available on April 27, 2020 limiting cross examination of the custody evaluator. The hearing was then continued to May 1, 2020.

The plaintiff seeks to have this court somehow validate the nonexistence of an alleged agreement for supervised parenting time. On August 11, 2020 plaintiff's counsel filed a request to accept what was represented to be an agreement of the parties. The request to accept the purported agreement was not signed by the parties and the alleged agreement was not signed by the parties. The court did not act on the request or the agreement. See court

entry #202.00. The plaintiff seeks to rely on entry #202.00 to satisfy Judge Grossman's order entered on June 10, 2020, entry #196.00 as a resolution to the issues raised in the plaintiff's motion for emergency orders, entry #167.00.

The only clarity that flows from the continued issuance of orders relating to the custody and access of all three minor children by Judge Grossman, is the intent to "isolate" all three children from their mother for the sole purpose of attempting to force a relationship between the children and the plaintiff by silences all three children. The evidence before this court supports a finding that the orders entered on April 24, 2020 and all subsequent custody/access orders are not in the children's best interest and have resulted in direct harm to all three children.

III. LAW AND ARGUMENT:

The issue before this trial court regarding the request to take immediate action to correct the present court orders relating to custody and access is an issue relating to a substantial public interest. The substantial public interest is the interest in ensuring the safety and wellbeing of children. "[T]he continuing welfare of the child is a matter of legitimate state interest." In re Juvenile Appeal (85-3), 3 Conn.App. 194, 198, 485 A.2d 1369, cert. denied, 196 Conn. 801, 491 A.2d 1105 (1985). The protection of children from harm, the underlying public policy in this case, is well settled and dominates our

jurisprudence.", *State v. AFSCME, Council 4, Local 2663, AFL-CIO, 59 Conn.App. 793, 758 A.2d 387 (Conn.App. 2000).* In State v. AFSCME, Counsel 4, Local 2663, AFl-CIO the issue before the court was the firing of a driver whose employment was to transport children in the care of the Department of Children and Families. The driver was arrested and plead guilty to various drug related crimes and received a suspended sentence. He was fired, there was an arbitration award reinstating his employment and. the matter was appealed and tried de novo. The trial court vacated the arbitration award reinstating the driver's employment. The Connecticut Supreme ultimately weighed the state's interest based on the public policy to ensure the protection of children with the defendant's private interest. It was clear that the public policy to ensure children's protection outweighed the private interest to any protections that are afforded in the private interest to an arbitration award reinstating employment. "The department has special statutory duties that must be fulfilled. For example, General Statutes § 17a-98 requires that the commissioner of children and families (commissioner) "exercise careful supervision of each child under [her] guardianship or care ... as is necessary to promote the child's safety and his physical, educational, moral and emotional development...." Department employees are responsible for the health, welfare and care of children under their supervision. General Statutes

§ 17a-93 (l).” *State v. AFSCME*, supra 59 Conn.App. 793, 800, 758 A.2d 387, 391.

See G.S. § 46b-1 FAMILY RELATIONS MATTERS DEFINED

…(b) As used in this title, "domestic violence" means:

(1) A continuous threat of present physical pain or physical injury against a family or household member, as defined in section 46b-38a ;

(2) stalking, including but not limited to, stalking as described in section 53a-181d, of such family or household member;

(3) a pattern of threatening, including but not limited to, a pattern of threatening as described in section 53a-62, of such family or household member or a third party that intimidates such family or household member; or

(4) coercive control of such family or household member, which is a pattern of behavior that in purpose or effect unreasonably interferes with a person's free will and personal liberty.

"Coercive control" includes, but is not limited to, unreasonably engaging in any of the following:

(A) Isolating the family or household member from friends, relatives or other sources of support;

(B) Depriving the family or household member of basic necessities;

(C) Controlling, regulating or monitoring the family or household member's movements, communications, daily behavior, finances, economic resources or access to services;

(D) Compelling the family or household member by force, threat or intimidation, including, but not limited to, threats based on actual or suspected immigration status, to

(i) engage in conduct from which such family or household member has a right to abstain, or

(ii) abstain from conduct that such family or household member has a right to pursue;

(E) Committing or threatening to commit cruelty to animals that intimidates the family or household member; or

(F) Forced sex acts, or threats of a sexual nature, including, but not limited to, threatened acts of sexual conduct, threats based on a person's sexuality or threats to release sexual images.

The evidence offered to this trial court thus far supports the immediate relief that the defendant has requested November, 2, 2020 and on December 1, 2020. In support the following proposed findings of fact are offered:

a. The plaintiff orchestrated a plan to have the defendant deemed to have been the cause of the plaintiff's poor relationship with the minor children.

b. Immediately following the entering orders by Judge Rodriquez, multiple motions were filed seeking to change the orders.

c. The plaintiff blocked the defendant from access to the joint marital assets, in direct violation of the automatic court orders.

d. The plaintiff made frivolous financial decisions, that included renting a home in Madison Connecticut after receiving exclusive use of the martial home, engaging in abusive litigation practices, the defendantput a plan in place and implemented

The matter before this court directly relates to the procedural mandates set forth by multiple state statutes and rules of practice, G.S. §§46b-56f, 46b-6, 46b-7, 46b-15, 46b-54 and Rules of Practice §§4-5, 25-57, 25-60, 25-60a, 25-62 et seq.

G.S. 46b-56f(c) sets forth the clear procedural steps that must be adhered to by a party for a court to have the subject matter jurisdiction to act on the requested relief. In this matter, the plaintiff filed a motion entitled "Emergency Ex-Parte Motion To Modify Custody of the Minor Children and Request Temporary Sole Legal and Physical Custody." Rules of Court §25-57 require an Affidavit Regarding the Children be filed before a court enters orders regarding custody, visitation, or support of a minor child and further requires that said affidavit complies with the requirements of the Uniform Child Custody Jurisdiction and Enforcement Act, General Statutes § 46b-115. The plaintiff did not file the necessary affidavit concerning the children with his motion seeking emergency ex parte relief and the court entered orders ignoring this mandatory procedure. Approximately six months after acting on the procedurally defective motion for emergency relief the court directed the plaintiff to file an affidavit concerning the children.

Noteworthy in this matter is that Judge Grossman issued an order on April 15, 2020, court entry #173.00 directing the guardian ad litem to file an

affidavit regarding issues raised in the plaintiff's motion, entry #167.00. The guardian ad litem filed an affidavit on April 17, 2020, entry #193.00; yet Judge Grossman had already acted on the plaintiff's motion entering an order on April 16, 2020, entry #167.10, awarding sole custody to the plaintiff ex parte and scheduled the matter to be heard on April 24, 2020. Judge Grossman's order, entry #167.10 was entered twenty-seven (27) days after the plaintiff sought ex parte relief and one day prior to the guardian ad litem filing an affidavit.

As of April 16, 2020, counsel for the defendant had not received a copy of the custody evaluation report, which report was clearly relied upon by the plaintiff, the guardian ad litem, and the court. Further the custody evaluation had not been filed under seal with the clerk of the court prior to the hearing that commenced on April 24, 2020. Also, the report was not filed within thirty (30) days of completion. The above noted procedural violations amount to direct "due process" infringements guaranteed to the defendant. See G.S. §§46b-6a, 46b-7 and P.B. §25-60 and §25-60a.

G.S. §46b-6a grant the court the authority to order an investigation in Family Relations. This matter is a Family Relation's Matter as defined in G.S. §46b-1. G.S. §46b-7 sets forth a specific mandatory procedure once an investigation has been ordered. In this case, the court accepted an

agreement of the parties and entered said agreement as an order on October 3, 2019, entry #133.00 and 133.10 for an investigation to take place by engaging the services of Dr. Jessica Biren-Caverly. The guardian ad litem was appointed first by Judge Rodriguez absent an agreement entry # 115.00 and 115.10 and then subsequently again by Judge Grossman, entry # 141.00 and 142.00, absent a motion or order vacating the prior orders. The authority of a guardian ad litem is granted by statute. A guardian ad litem is not a party to the action and does have the authority outside of the scope of the statutory duties set forth in G.S. §46b-54 and 46b-12. Judge Grossman acted outside of the authority granted to the court to appoint a guardian ad litem and enter orders setting forth the duties of the appointed guardian ad litem when she entered an order, entry #167.10 directing the guardian ad litem to file an affidavit in relation to the plaintiff's emergency to modify, entry #167.00. Again noteworthy, is on August 22, 2019, Judge Rodriquez granted plaintiff's motion 108.00 requesting a referral to Family Relations, see entry #109.00, order referring this matter to Family Relations. To date, this matter has not been to Family Relations pursuant to Judge Rodriguez's orders.

The defendant has made multiple attempts to immediately remedy the violations of her "Due Process" and the harm that has occurred in this matter. See motion to vacate and dismiss filed on November 2, 2020, entry #225.00

and application for emergency ex party orders, order to show cause and affidavit, also filed on November 2, 2020, entry #s 227.00, 227.10 and 228.00. The undersigned even filed a neglect petition to try and get these children the emergency relief they are entitled. Then on December 1, 2020 an application for protection was filed with the New Haven Superior court in accordance with venue requirements based on the residence of the parties as of the date of filing, pursuant to G.S. 46b-15. There a multiple highly qualified Psychiatrists, Psychologists and other professionals that cannot understand why these children remain in the plaintiff's care.

It is well settled that a parent has a liberty interest in the custody, care, and control of his child and that parent is entitled to due process of law before he can be deprived of this liberty interest. Nevertheless " [a] due process violation exists only when a claimant is able to establish that he or she was denied a specific procedural protection to which he or she was entitled.", *Barros v. Barros, 309 Conn. 499, 554, 72 A.3d 367 (Conn. 2013)*

There has been absolutely no evidence pendente lite or thus far during the course of this trial that the defendant is an unfit parent or made parenting decisions that jeopardized the safety or health of the children. In the absence of an evidentiary finding that a parent is unfit or making parenting decisions that jeopardize the safety or health of the child, or the parent's decisions will

impose a significant social burden, a parent's protected rights to custody, care and control of the child cannot be overriding by a state interest. The weighing of this state's interest to protect a child compared to a parent's constitutional protections to raise a child absent interference from the state was analyzed by United States Supreme Court when the Court was asked to consider the constitutionality of a state statute that allowed the court to order a third party, non-parent access to a child over the objection of the parent. The Court determined that the state statute violated a fit parent's rights to make decisions for their child un-interfered with by the state. "In Roth v. Weston, supra, 259 Conn. at 228-29, 789 A.2d 431, we relied on United States Supreme Court precedent to conclude that government interference with a parent's right to raise his or her child is justified only when it can be demonstrated that there is a compelling need to protect the child from harm.", *Dutkiewicz v. Dutkiewicz, 289 Conn. 362, 957 A.2d 821 (Conn. 2008)*

However, unlike the Court in Roth v. Weston, 259 Conn. 202, 216, 789 A.2d 431 (2002), this state's Supreme Court in *Dutkiewicz v. Dutkiewicz, 289 Conn. 362, 957 A.2d 821 (Conn. 2008),* agreed with the trial court's analysis of G.S. 46b-69b(a) that mandates litigants in custody and access disputes attend a parenting education program before the matter can go to judgment. The court found that the state statute mandating "parenting education" program

attendance on its face did not infringe upon a parent's constitutional protection to the custody, care and control over their child., *Dutkiewicz v. Dutkiewicz*, 289 Conn. 362, 380, 957 A.2d 821, 834

From a procedural due process standpoint, the defendant's custody interest is legitimate only to the extent that those procedures facilitate an accurate custody determination, that is, a custody determination consistent with the child's best interest. See Schult v. Schult, 241 Conn. 767, 777, 699 A.2d 134 (1997), supra *Barros v. Barros, 309 Conn. 499, 72 A.3d 367 (Conn. 2013).* The failures to adhere to mandatory statutory procedure and the rules of practice in this matter have resulted in The appellate court considered similar issues in Lineberry v. Estevam, 151 Conn. App. 264, July 1, 2014 wherein the trial court's orders were reversed and the matter was remanded for a new hearing. The present custody determinations made by Judge Grossman pendente lite cannot on support an accurate custody determination that is in the best interest of the minor children. The defendant was allowed limited cross examination of the only two witnesses heard by the court, she further was barred from offering any evidence, call any witness and hasn't even testified herself.

This case is akin to Lineberry v. Estevam in that both matters directly involve the failure of the trial judge to ensure that the substantive rights given

to a litigants in “Family Relations’ Matters” are followed. The main difference between the Lineberry v. Estevam case and this case are what the trial judge knew at the time of entering orders. In Lineberry v. Estevam the Guardian Ad Litem gave misleading testimony regarding the procedure of the status of the family relations’ investigation and report. In this case, it was clear that “substantive rights” of the defendant were being violated. The Guardian Ad Litem and the Custody Evaluator blatantly refused to release the custody evaluation to the defendant’s attorney resulting in the need to file a motion for the release of the report. Counsel for the defendant, had only received the report a few days prior to the commencement of Dr. Biren-Caverly’s testimony and it does not appear from the record that the report had actually been filed with the court to date. The custody and access order in this case as in the Lineberry v. Esevam matter is a direct violation of the defendant’s “substantive rights” resulting in an incorrect order(s) regarding custody and access.

The touch-stone for the court's custody determination is “the best interests of the child....” General Statutes § 46b–56 (c); see also Schult v. Schult, 241 Conn. at 777, 699 A.2d 134 (“The guiding principle in determining custody is the best interests of the child.... The trial court is vested with broad discretion in determining what is in the child's best interests.”); Gallo v. Gallo, 184 Conn. 36, 43, 440 A.2d 782 (1981) (“the court must ultimately be

controlled by the welfare of the particular child"). Because the trial court is mandated by statute to make custody determinations "that serve the best interests of the child and provide the child **with the active and consistent involvement of both parents** commensurate with their abilities and interests"; General Statutes § 46b–56 (b); the government has a vital interest in procedures that facilitate an accurate determination of the child's best interest. These children need immediate access to their mother, whom they are psychologically connected and have relied upon throughout the majority of their lives to be their care provider.

WHEREFORE, the undersigned moves that this court immediately vacate all custody and access orders entered by Judge Grossman.

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Certification

This is to certify that a copy of the pleading has been emailed to all appearing parties this 23rd day of July, 2021.

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