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¹ Transcripts from oral argument on July 11 and July 13 have been ordered but not yet received.

PROCEDURAL HISTORY

A complaint for divorce was filed November 27, 2012. A motion seeking *pendente lite* relief was filed in December, 2012.

Orders were entered by the trial court on January 15, 2013 (Da 15-17), June 7 (Da 12-14), and June 27 (Da 10-11).

A disposition on application for permission to file emergent motion, denying permission to proceed on emergent basis, was entered by the Appellate Division on July 1 (Da 9).

A Single-Justice Disposition on application for emergent motion relief, staying trial court's June 28 order, was entered by the Supreme Court of New Jersey on July 2 (Da 8).

Orders were entered by the trial court on July 9 (Da 7) and July 11 (Da 5-6).

A disposition on application for permission to file emergent motion, granting permission to proceed on emergent basis, was entered by the Appellate Division on July 11 (Da 4).

An order transferring residential custody was entered by the trial court on July 12 (Da 2-3).

An Order on emergent application granting a stay of July 12 order was entered by the Appellate Division on July 13 (Da 1).

STATEMENT OF FACTS²

A complaint for divorce was filed November 27, 2012.

Defendant filed an answer and counterclaim, along with a motion seeking (in relevant part) supervised visitation pending an evaluation of plaintiff. Defendant alleged that she had discovered that plaintiff was obsessively accessing disturbing, violent pornography which focused exclusively on rape incest.

On the return date, in light of the allegations involved, Judge Adam E. Jacobs swore the parties and conducted a brief plenary hearing (2T). Following the hearing, having viewed the demeanor of the witnesses and having made credibility determinations, the Court entered an Order on January 15, 2013 (Da 15-17). That order required, in relevant part, that an expedited psychological evaluation and home inspection would be conducted, that the Division of Child Protection and Permanency would conduct a brief investigation, and that a plenary hearing would be scheduled as soon as practical upon receipt of the expert report. Counsel were ordered to select a mutually acceptable psychological evaluator within five days.

For reasons unknown, neither party complied with the terms of the court's order requiring that counsel³ choose an evaluator.

² Other issues of a financial nature have been addressed below. While defendant believes that these decisions are also erroneous, they do not warrant emergent intervention by this Court and are not further addressed herein.

³ Defendant is no longer represented by the same attorney.

The home inspection never took place. Although plaintiff had insisted (2T) that he would have no contact with the child if it had to be supervised, he took no steps to get the evaluation underway.

In April, 2013, Judge Mirtha Ospina was assigned to the case following the reassignment of Judge Jacobs from the Family Part.

In May, 2013, DCP&P issued a brief opinion finding no basis for further Division action.⁴

A motion was filed by plaintiff seeking (*inter alia*) to lift all restraints on his parenting time and ordering overnight visitation as a result of the DCP&P report.

On June 7, 2013, Judge Ospina entered an order stating that she would address plaintiff's request to vacate the restrictions on his visitation pursuant to the motion calendar (Da 12-14). In her "Facts and Conclusions of Law", Judge Ospina held:

The Division report revealed no evidence of sexual misconduct and concluded that substance abuse treatment was unnecessary for the Plaintiff. Given the conclusions of the report, the Court finds that the Defendant acted in bad faith for making false allegations in open court, requiring the Court to order the Division to conduct a risk assessment, all the while instigating and exacerbating **what has been determined** to be a non-issue... (Da 14) (Emphasis added).

⁴ Although requested several times, the DCP&P report has never been provided to counsel.

On Friday, June 28, 2013, oral argument on plaintiff's motion to lift the visitation restrictions was held. During the course of oral argument, the trial court found that the DCP&P report alone constituted an absolute adjudication as to defendant's claims and as to whether she was acting in good faith:

THE COURT: It was ordered when there were some allegations that were made against plaintiff, husband, Mr. Salama, that ended up being unfounded allegations at least that were unfounded by the Division of Child Protection and Permanency. And then based upon that discovery, counsel has made this appropriate motion that's before us today to lift the restrictions of supervision; is that correct, Mr. Bendush? 1T 13-17 to 13-25

. . . .

THE COURT: And that's one of the matters that I'm hearing today, which so far the Court is willing to do based upon the submission and what it's known from the previous hearing, what it discovered from the DCP&P unfounded allegations, and the history of this case including the transcripts that were submitted by counsel from the previous hearing that was held before Judge Jacobs. 1T 14-2 to 14-9

. . . .

THE COURT: With regards to -- the main issue is in this motion that the Court is going to be hearing with regard to lifting the restraints of the parenting time as has been opposed on the plaintiff, and those restraints were imposed by Judge Jacobs because of allegations -- some DCP&P allegations that were made against him by the defendant, spouse, that were ultimately unfounded by DCP&P, that's the Division of Child and Protection and Permanency -- or Permanency and Protection, which ever it may be -- formally known as DYFS. Since those allegations were unfounded the Court finds -- strike that, the Court is granting Mr. Bendush's request.

MS. [REDACTED] Your Honor, can I just please, please, make a comment --

THE COURT: No. The Court is granting Mr. Bendush's request. I am lifting any restriction as to his parenting time. A parent has a right to parenting time, but this right may be restricting and in fact, was restricted by Judge Jacobs because of allegations that were made involving DCP&P. **Once DCP&P resolved their issue, investigated, and determined that those facts were unfounded** Mr. Bendush made a prompt application with the Court, this motion, and I find that parenting is a right. 1T 25-5 to 26-6 (Emphasis added). The Court indicated that it accepted plaintiff's counsel's argument that a DCP&P report not only established the falsity of the allegations defendant had made, but that it proved defendant

had lied, planted evidence, and perjured herself:

MR. BENDUSH: My response, Judge, is I wonder who's observing the woman who made all the false allegations about him, who has had 24 access to his child? The hoe is officially on the other foot. DYFS found nothing wrong. If DYFS found nothing wrong that means Lobna and her sister lied and planted evidence on my client's computer, and perjured themselves before this Court.

. . . .

THE COURT: I understand. 1T 18-25 to 20-3

In contrast to Judge Jacobs, Judge Ospina took no testimony from the parties. Yet the Court again affirmed that it was basing its decision on credibility determinations:

THE COURT: You want to appeal me? You can do so, sir, but right now I ruling in favor of the plaintiff, father, because I found that I -- I -- credibility is key in this court, and I don't find your client credible. The defendant, spouse, Lobna Salama, is not credible to this court with regards to any of the motions and allegations. 1T 27-14 to 28-3

Defendant argued that, even if there was a modification to the supervision provisions, it would be contrary to the best interests of a breast-feeding nine month old who had never been away from his mother to suddenly order visitation for an entire weekend:

MR. CAPORRINO: If the Court is inclined to lift supervision that there not be overnights at this time that there be extended blocks of visitation, hours of daytime, still on Saturdays and Sundays, and not overnights until the child become a little bit older. I think there is case law to the effect that it would justify the Court awarding no overnights with such a young child who has grown attached to her mother, and I -- I won't go into the reasons why because again, I believe that Dr. [REDACTED] could have exercised his supervised visitation and become acquainted with the child, but we're talking about a fact that regardless how that fact came about that he hasn't seen the child in months and months, and I would ask that the Court limit parenting time for the time being until there can be a full custody evaluation to daytime visitation.

THE COURT: Okay.

MR. BENDUSH: My answer to that, Judge, is I find it fascinating that frequently families in the United States parents will go on vacation and they'll leave a stay over babysitter for three or four days with the kid who doesn't know the kids. They can be eight, six, four, two, and an infant, and magically they survive the weekend with Helen or whatever her name is, the old lady with the wart on her chin.

THE COURT: Understood. 30-20 to 31-22
There was absolutely nothing in the record to support the

court's understanding that defendant had ever been away from [REDACTED] for six hours, never mind "three of four days."

Judge Ospina's order immediately lifted all restrictions on plaintiff's contact with [REDACTED], ordered Defendant to turn her over at the Bayonne Police Station later that same evening, ordered that plaintiff would keep her until Sunday (Da 10-11), and scheduling a plenary hearing for July 13 (Da 11). This decision, based solely on an untested DCP&P report, effectively vacated Judge Jacobs' January 15 order, which was made in open court following a plenary hearing wherein he had the opportunity to view the credibility and demeanor of the parties.

On June 30, defendant, through this office, filed a formal request for a stay from the trial court, and an application with the Appellate Division for a stay and to proceed on an emergent basis.

On the morning of July 1, the Appellate Division denied defendant's stay application, noting that no signed order granting or denying a stay had been obtained from the trial court. The disposition further noted that since a plenary hearing was scheduled for July 13, there was no emergent need for the Appellate Division to intervene. (Da 9).

On the morning of July 2, defendant sought review by the Supreme Court of New Jersey of the Appellate Division's decision. On July 2, Justice Anne M. Patterson issued a Single-Justice Disposition granting a stay of the trial court's order pending an evaluation of defendant's motion for a stay.

Defendant renewed the request for a stay in the trial court, providing more detailed reasons for the request and setting out the relative harms to the parties by issuing or denying a stay (Da 18-21).

On July 9, Judge Ospina denied without explanation defendant's motion for a stay (Da 7).⁵

On July 9, defendant filed an order to show cause seeking, in relevant part, for Judge Ospina to recuse from this matter (Da 23-36).

On July 10, 2013, Judge Ospina entered an order denying as non-emergent the request for recusal and ordering that defendant produce Hana in court the next day.⁶ During the course of oral argument, Judge Ospina indicated that she "mis-spoke" when ordering that a plenary hearing would occur on July-12 (Da 40), indicating that, instead, the court would only hear oral argument. Rather than the plenary hearing previously referenced, the order now made reference to oral argument on a motion being

⁵ In spite of a specific request, both before and after the entry of the order denying a stay, no findings of fact, conclusions of law, nor statement of reasons of any type were issued with the order, in violation of Rule 1:7-4.

⁶ The order implies that there was consent to this relief, stating that "both parties agreed that Defendant was ordered to produce the minor child for parenting time to occur." (Da 6). The implication that any portion of this Order was by consent was absolutely incorrect.

scheduled for July 12 (Da 6).

Defendant immediately applied to the Appellate Division for leave to file an emergent application and for a stay of the order requiring defendant to produce the child. On July 10, the Appellate Division granted the application and set a schedule for the submission of a motion for emergent relief (Da 4).

On July 12, notwithstanding the Appellate Division order from the previous day, which even plaintiff's counsel had acknowledged served as a stay (Da 37-38), the trial court ordered defendant to be incarcerated for not producing her daughter in court. Defendant was taken into custody following the hearing with no written order for this relief being provided to counsel.

An emergent telephone application was made to the Appellate Division. Defendant's counsel provided a letter outlining the situation and the trial court's apparent non-compliance with the *de facto* stay issued by the Appellate Division (Da 39-42). A telephone conference between the Appellate Division and Judge Ospina's chambers occurred, resulting in defendant's release. No written order was entered by the Appellate Division as no one was informed that a written order had been entered by the trial court.

On Saturday, July 13, the police appeared at defendant's door, seeking to remove the child pursuant to an order⁷ that

⁷ This Order was not provided to Allison Williams, defendant's trial counsel. It was not served on James Capporrio, Esq., Ms. Williams' co-counsel. It was not served on this

granted sole physical custody to plaintiff and specifically instructed that "local law enforcement shall enforce the Order."

Pursuant to the procedure to contact an emergent duty Appellate Division Judge on a weekend via the State Police, an emergent telephone application was made. At 6:45 p.m. on Saturday, July 13, 2013, the Appellate Division entered an order on emergent application staying the trial court's July 12 Order transferring residential custody (Da 1).

Defendant now moves before this court for an order summarily reversing or staying those portions of the trial court's June 7, June 28, July 9, and July 12 orders insofar as they change residential custody, order immediate overnight parenting time, and remove the previously established supervision of plaintiff's visitation.

office. It was not served on Ms. [REDACTED], although she was then physically in the courthouse (in custody awaiting transport to the jail). It was not served on Ms. [REDACTED]'s sister, who was also physically present in the courthouse. It appears that the order was provided only to plaintiff's counsel.

LEGAL ARGUMENT

I. THE TRIAL COURT'S JUNE 7, JUNE 28, JULY 9, AND JULY 12 ORDERS AND FINDINGS SHOULD BE SUMMARILY REVERSED OR STAYED PENDING RECEIPT OF THE PREVIOUSLY ORDERED EXPERT REPORT AND A PLENARY HEARING.

Judge Jacobs' January 15, 2013 order, entered following a brief evidentiary hearing, found that there was a sufficient basis to be concerned about defendant's allegations to warrant a psychological evaluation, home inspection, DCP&P investigation, and plenary hearing.

Findings of a trial Court are binding on appeal when supported by adequate, substantial and credible evidence. Pascale v. Pascale, 113 N.J. 20, 33, (1988) (quoting Gallo v. Gallo, 66 N.J.Super. 1, 5, (App.Div.1961)), Cesare v. Cesare, 154 N.J. 394 (1998), Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974). Judge Jacobs' findings, made after a plenary hearing, constituted precisely the type of ruling that the Appellate Division should not disturb.

In May, a brief report was issued by the DCP&P opining that defendant's allegations were unfounded. Judge Mirtha Ospina, recently assigned to the case, ignored the provisions of Judge Jacobs' order that the receipt of the report would trigger only an in-chambers status conference to review its terms and a further plenary hearing.

Instead, Judge Ospina accepted the brief DCP&P opinion as Gospel, ruling (based solely on the report) that "DCP&P resolved their issue, investigated, and **determined** that those facts were

unfounded." 1T 25-5 to 25-11 (Emphasis added). It found as fact that defendant had acted in bad faith, that her allegations were knowingly false, and that all restrictions on visitation should therefore be lifted (Da 10-11, 12-14).

The duty to determine facts rests solely with a trial court. This duty cannot be delegated to any third party agency or party under any circumstances. P.T. A.T. and H.T. v. M.S., 325 N.J.Super. 193 (App.Div.1999). Neither a DCP&P report nor even the findings of a *Guardian Ad Litem* (GAL) can substitute for the testing of evidence and adjudication of facts through a proper adversarial proceeding. A trial judge ... must never cede ... responsibility and authority, nor abdicate the decision-making role to an expert. P.T. v. M.S., 325 N.J.Super. 193, 216 (App.Div.1999). The posture of an evidentiary hearing may not necessarily be limited solely to the GAL's testimony and evidence.

When a material fact question exists, the court must conduct an evidentiary hearing, not rely on an untested, terse report from a third party. See, e.g., Tancredi v. Tancredi, 101 N.J.Super. 259 (App. Div. 1968), Shaw v. Shaw, 138 N.J.Super. 436 (App.Div.1976). See also Brill v. The Guardian Life Ins. Co. of America, 142 N.J. 520 (1995), Mackowski v. Mackowski, 317 N.J.Super. 8 (App. Div.1998).

In this matter, Judge Jacobs determined, following a plenary hearing, that an evaluation and further hearing was required (Da 15-17). While a trial court can modify a *pendente lite* order if

"good cause" exists to do so, Mallamo v. Mallamo, 280 N.J. Super. 8 (App. Div. 1995), the facts of this matter convincingly demonstrate that the trial court erred in accepted an untested DCP&P note as sufficient grounds to vacate an order reached after a plenary hearing.

While the Appellate Division generally applies a deferential approach to a trial court's decision to admit expert testimony, reviewing it against an abuse of discretion standard, an abuse of discretion arises when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis. Milne v. Goldenberg, 428 N.J. Super. 184, 197 (App. Div. 2012). Experts must "give the why and wherefore" that supports an opinion, rather than a mere conclusion. Polzo v. Cnty. of Essex, 196 N.J. 569, 583 (2008). A trial court may not rely on expert testimony that lacks an appropriate factual foundation. Id. at 373.

It is respectfully argued that Judge Ospina's decision was in contravention to all case law on this vitally important area of the law and constituted manifest error warranting the intervention of the Appellate Division.

II. THE TRIAL COURT'S JULY 10, 2013 ORDER VACATING THE PREVIOUSLY ENTERED ORDERS REQUIRING A PLENARY HEARING SHOULD BE REVERSED.

In denying defendant's initial application to the Appellate Division for a stay and permission to proceed on an emergent basis, Judge Sabatino specifically noted that Appellate

intervention was not then warranted "as a plenary hearing is scheduled for July 12." (Da 9).

In spite of her receipt of this order (and the subsequent Supreme Court order imposing a stay), Judge Ospina inexplicably ordered on July 10 that no plenary hearing would be held, stating on the record that she had "mis-spoken" when ordering a plenary and that only oral argument on the financial issues of the motion would proceed on July 12 (Da 6, 40).

Again, while a trial court may modify a *pendente lite* order, it must based its decision on a demonstration of "good cause." Judge Ospina offered no cause for the dramatic relief of declaring void the previous orders for a hearing and the record is bereft of any justification for this ruling.

III. THE TRIAL COURT'S JULY 12, 2013 ORDER TRANSFERRING RESIDENTIAL CUSTODY WITHOUT A HEARING SHOULD BE REVERSED.

Findings of a trial Court are binding on appeal when supported by adequate, substantial and credible evidence. Cesare v. Cesare, 154 N.J. 394 (1998), Pascale v. Pascale, 113 N.J. 20, 33, (1988) (quoting Gallo v. Gallo, 66 N.J. Super. 1, 5, (App.Div.1961)), Rova Farms Resort, Inc. v. Investors Ins. Co., 65 N.J. 474, 484 (1974). "A trial court's rulings in such matters are discretionary and not overturned unless the court abused its discretion, failed to consider controlling legal principles or made findings inconsistent with or unsupported by competent evidence." Gordon v. Rozenwald, 380 N.J. Super. 55, 76-77 (App. Div. 2005).

However, the Supreme Court has clarified that, when there has been no hearing, the Appellate Division is not required to defer to the conclusions of the trial court. See N.J. Div. of Youth & Family Servs. v. G.M., 198 N.J. 382, 396 (2009), P.B. v. T.H., 370 N.J. Super. 586, 601 (App.Div. 2004).

A trial court's determinations as to matters of law are not entitled to deference and are reviewed de novo. Manalapan Realty v. Township Comm., 140 N.J. 366, 378 (1995).

The decision in this matter was rendered without a plenary hearing and was based on a brief, untested report by the DCP&P, not a factual determination that comports with the requirements of Due Process.

IV. FURTHER PROCEEDINGS IN THIS MATTER SHOULD BE CONDUCTED BY A DIFFERENT JUDGE.

On July 9, defendant moved for an order for recusal. The arguments raised should have persuaded the trial court that further proceedings should be assigned to a different judge. Rather than restating them at length herein, defendant incorporates those arguments herein and respectfully requests that this court review them (Da 23-36).

Even if, *arguendo*, the trial court made no error in declining to recuse itself at that juncture, the subsequent procedural history of this matter should persuade the court that any neutral observer would reasonably be convinced that the trial court has formed an immutable opinion on this matter and that assignment to a new fact-finder is warranted.

Specifically, even after receiving an order from the Appellate Division granting defendant leave to file an emergency application -- an order that even plaintiff's counsel agreed served as a stay (Da 37-38) -- the trial court took the highly unusual step of continuing to exercise jurisdiction and jailing defendant when, in reliance on this court's implied stay, defendant did not produce the child in court. This action resulted in a verbal order from the Appellate Division that defendant be released. No written appellate order was entered as the Appellate Division was not informed that a written order had been generated by the trial court.

A day later - on a Saturday - plaintiff appeared at

defendant's home with a court order signed the previous day that not only addressed visitation issues, but transferred residential custody to plaintiff "until further order of the court" and ordered the police to directly enforce the order. (Da 2-3).⁸

Apparently, the trial court either entered this extreme order after defendant was released from jail, or its existence was not disclosed when defendant was ordered released. This even more highly unusual step evidences an unusual commitment by the trial court to an opinion and findings impermissibly based on a DCP&P report.

The facts of this matter, both prior to counsel's application for recusal and since that time, should satisfy this court that, in the circumstances of this case, the matter should be remanded to another judge.

The threshold for this court to order a new judge be assigned is properly a high one. But it is not an impossible one. Where, as here, a judge resolves disputed issues of fact without an evidentiary hearing and expresses firm opinions

⁸ This Order was not provided to Allison Williams, defendant's trial counsel. It was not served on James Capporrio, Esq., Ms. Williams' co-counsel. It was not served on this office. It was not served on Ms. [REDACTED], although she was then physically in the courthouse (in custody awaiting transport to the jail). It was not served on Ms. [REDACTED]'s sister, who was also physically present in the courthouse. It appears that the order was provided only to plaintiff's counsel.

respecting credibility, the matter should be remanded to another fact-finder. Leang v. Jersey City Bd. of Educ., 399 N.J.Super. 329, (App.Div. 2008); Johnson v. Johnson, 390 N.J.Super. 269, 275-76, (App.Div.2007). Here, the motion judge resolved factual disputes against defendant without a hearing, and also expressed a firm and fixed belief in the credibility of the parties.

CONCLUSION

All of the opposition that plaintiff has submitted throughout the emergent proceedings in this matter (Da 37-38, 43-46, 47-51) have operated under the repeatedly stated, but never justified, assumption that the record supports a conclusion that defendant was acting in bad faith. It states these assumptions as if they were proven facts. Defendant does not presume that the facts she alleged were proved. Neither plaintiff nor defendant can properly make that claim at this juncture.

All the record reveals is that the allegations were determined, following a plenary hearing in January, to be sufficiently credible so as to justify a DCP&P investigation, a never-completed expert report, and a follow-up plenary hearing.

The record conclusively demonstrates that the subsequent contrary orders were improperly based on a misreading of the weight to be given an untested DCP&P report, and that the trial court has expressed a clear, fixed, and immutable commitment to the resulting findings.

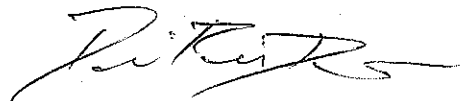
Granting the relief defendant seeks would not leave

plaintiff unable to see his child should he agree to abandon his refusal to do so without appropriate supervision until an evaluation and plenary hearing are conducted. If the allegations plaintiff makes as to defendant's bad-faith are true, they will come out in the process of a proper evaluation and discovery and the day of reckoning for defendant would properly be harsh. However, if defendant's claims (found after a hearing to be sufficiently credible to warrant further proceedings) are true, they may well indicate a compulsive behavior that would endanger the child. The adversarial process is the greatest truth-finding devise ever invented - but its procedures must be adhered to in order to reach a reliable result.

Separately, the trial court erred in ordering that a breastfed infant be thrust from zero time with a parent to a complete weekend, rather than (should an evaluation and hearing indicate unsupervised parenting time poses no danger) building to this schedule on an escalating schedule.

It is respectfully submitted that a weighing of relative harms and equities should persuade this court to grant defendant's requested relief. Crowe v. De Gioia, 90 N.J. 126 (1982).

Respectfully Submitted,



David Perry Davis, Esq.

ORDER ON EMERGENT APPLICATION

[REDACTED]
v.
[REDACTED]

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
HUDSON CNTY DKT NO. FM-09-920-13
DOCKET NO. A-
MOTION NO.
BEFORE PART: M
JUDGE(S): VICTOR ASHRAFI

EMERGENT APPLICATION

FILED: 7/12/2013

BY: [REDACTED]

ANSWER(S) FILED: 7/12/2013

BY: [REDACTED]

APPEARANCE ONLY:

ORDER

THIS MATTER HAVING BEEN PRESENTED TO THE COURT ON THE EMERGENT APPLICATION OF DEFENDANT [REDACTED] IT IS ON THIS 13th DAY OF JULY, 2013, HEREBY ORDERED AS FOLLOWS:

EMERGENT APPLICATION
FOR

STAY OF ORDER OF CONTEMPT AND
CUSTODY ORDER OF JULY 12, 2013


GRANTED DENIED OTHER
() () ()

SUPPLEMENTAL:

The motion for a stay of the order holding defendant in contempt is GRANTED pending further order of this Court. Defendant is to be released from custody immediately.

The order granting temporary sole physical custody of the parties' daughter to plaintiff [REDACTED] is also stayed pending further order of this court or the Supreme Court. The parties may brief the issues pertinent to the stay within the briefing schedule already provided on defendant's emergent motion for a stay of the change of visitation order.

FOR THE COURT:


VICTOR ASHRAFI, J.A.P.

Da 1

FILED

JUL 12 2013

MILITIA OSPINA
J.S.C.

ORDER PREPARED BY THE COURT

[REDACTED]
Plaintiff
v.
[REDACTED]
Defendant.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION - FAMILY PART
HUDSON COUNTY
CIVIL ACTION

DOCKET NO. FM-09-920-13

ORDER

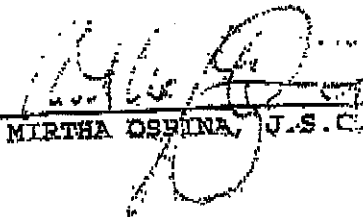
THIS MATTER having been opened to the Court on a Notice of Motion filed by Plaintiff, represented by David C. Bandman, Esq. and with opposition having been filed by Defendant, [REDACTED] by Allison C. Williams, Esq., and the Court having considered submissions and arguments of counsel, and for reasons set forth on the record and for good cause shown;

It is on this 12th day of July, 2013, HEREBY

1. ORDERED, that Plaintiff is granted temporary sole physical custody of the parties' daughter, [REDACTED], until further Order from the Court, effective July 12, 2013, pursuant to R. 5:3-7; it is further

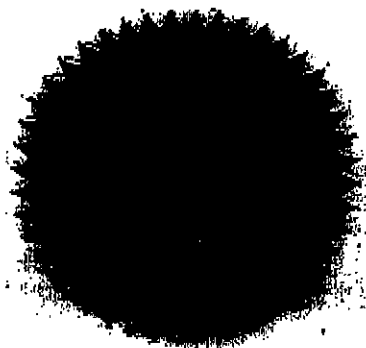
DA 2

ORDERED, that local law enforcement shall enforce this Order
for the safety and well-being of the child; it is further



HON. MIRTHA OSPINA, J.S.C.

Opposed
 Unopposed
By: Parties



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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DISPOSITION ON APPLICATION FOR PERMISSION TO FILE EMERGENT MOTION

Case Name: _____

Trial Court or Agency Below: Mon. Mirha Ospina, J.S.C., Hudson County Family Court

DO NOT FILL IN THIS SECTION - FOR COURT USE ONLY

I. The application for leave to file an emergent motion on short notice is Denied for the following reasons:

The application does not concern a genuine emergency or otherwise does not warrant adjudication on short notice. Counsel may file a motion with the Clerk's Office in the ordinary course.

The applicant did not apply to the trial court or agency for a stay, and obtain a signed order, before seeking a stay from the Appellate Division.

The application concerns an order entered during trial as to which there is no prima facie showing that immediate interlocutory intervention is warranted.

Other reasons: _____

II. The application for leave to file an emergent motion on short notice is Granted on the following terms:

A. The applicant must file an original and two copies of the motion for emergent relief and a notice of appeal or motion for leave to appeal (plus all required fees or an indigency motion) with Judge Ashraf in Morristown by no later than Mon., 7/15/13 2:00 p.m. On that same date, copies must be delivered to all counsel/pro se parties and to Judge St. John in Newark. A copy must also be sent to the trial judge or agency whose decision is being appealed.

B. Opposition must be served and filed by no later than Wed., 7/17/13 2:00 p.m.

C. Other terms: _____

Victor Ashraf

J.A.D.

July 11, 2013 4:55 p.m.

Date

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