

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

SCOTT EDELGLASS, WERNER GRAF,)
for himself and as parent of A.G. and A.G.,)
SAMIR JOSHI, for himself and as parent)
of J.J., J.J. and J.J., YEHUDA BEN)
LITTON, SURENDER MALHAN, for)
himself and as parent of E.M and V.M.,)
ANTONIO QUINLAN for himself and as)
parent of K.Q., for themselves and on)
behalf of all others similarly situated,)

No. 3:14-cv-00760-FLW-DEA

Plaintiffs,)

v.)

STATE OF NEW JERSEY, MICHELLE)
M. SMITH (in her official capacity as)
Clerk Superior Court of New Jersey) JOHN)
L. CALL, JR (in his official capacity as)
Presiding Judge Chancery Div., Family)
Part, Burlington County), MAUREEN)
SOGLUIZZO (in her official capacity as)
Presiding Judge, Chancery Div., Family)
Part, Hudson County), CATHERINE)
FITZPATRICK (in her official capacity as)
Presiding Judge, Chancery Div., Family)
Part, Mercer County), LISA THORNTON)
(in her official capacity as Presiding Judge,)
Chancery Div., Family Part, Monmouth)
County), PATRICIA B. ROE (in her)
official capacity as Presiding Judge,)
Chancery Div., Family Part, Ocean County,)

Defendants.)

MOTION FOR LEAVE TO FILE AN
AMENDED COMPLAINT

Pursuant to Rules 15(a) and 19(a), Fed. R. Civ. P., Plaintiffs requests leave to file an amended complaint substituting parties, and alleging additional facts to cure the statute of limitations and jurisdictional issues discussed in this Court’s January 16, 2015

Decision. Further, by dismissing many of the claims “without prejudice” this Court implicitly recognized that amendment would be proper.

BACKGROUND

1. Plaintiffs seek declaratory and injunctive relief under against Defendants who under color of law deprived Plaintiffs of custody without a prompt and full hearing, and in violation of the Fourteenth Amendment. Although the second amended complaint stated Plaintiffs were seeking Declaratory Relief, the Complaint did not explicitly cite the Declaratory Judgment Act. The Second Amended Complaint will do so.

2. The Court did not rule on whether a statute of limitations would preclude Declaratory Relief, at least for the Plaintiffs other than Edelglass who have minor children still in the family court system. The Court’s decision on page 30 of the Opinion (which reads “See *Swan v. Bd. of Higher Ed.*, 319 F.2d 56, 60 n.5 (2d Cir. 1963) (concluding in § 1983 case asking only for declaratory injunctive relief, ‘that since plaintiff could also have sought Civil Rights Act relief by way of damages, he is not here asserting a federal right for which the sole remedy is in equity, and hence the situation is one of ‘concurrent’ legal and equitable jurisdiction, in which case the statute of limitations does apply.’ ”) suggests that Declaratory relief could still be available.

3.

4. The named judicial Defendants in the Original Complaint were the presiding judges of the courts which deprived Plaintiffs of their fundamental parental rights without

due process. In some instances the presiding judges were also the same judge who conducted the unconstitutional proceedings but in others not.

5. Plaintiffs Quinlan and Malhan, and their minor children, had their fundamental constitutional rights violated by the Hon. Maureen Sogluizzo, who is also presiding judge of the family division of the Hudson County Superior Court. Plaintiff Joshi and his children had their fundamental rights violated by the Hon. John Call, who is also presiding judge.

6. With respect to Plaintiffs Edelglass, Graf and Litton, however, their fundamental rights, and those of their children were violated under color of law by family court judges who were not presiding judges and are not currently named as Defendants in the instant suit. Moreover, while this Court's decision ruled that these claims were barred by the Statute of Limitations, their stories are relevant to establishing a widespread policy of the New Jersey Courts.

7. This Court's decision ruled that the specific individual judges who violated Plaintiff's rights must be named as Defendants, the Second Amended Complaint will allege specific facts to bring the Complaint into line with this Court's decision.

8. A parallel proceeding to the instant one resulted from a "Gag Order" entered by the Essex County Superior Court, per Judge Sivilli, against one of the plaintiffs in the instant action.

9. After the Gag Order was entered against Plaintiff Surender Malhan, and this Court denied Malhan's request for a TRO, Paul Nichols, a reporter for the Bergen Dispatch brought suit in federal district court challenging said Gag Order.

10. Mr. Nichols was represented by the undersigned, the same counsel representing the Plaintiffs in the instant case.

11. Mr. Nichols case was assigned to the Hon. Judge William J. Martini.

12. Defendants raised most of the same jurisdictional arguments raised by Defendants in the instant case. In the course deciding Defendants' Motion to Dismiss, Judge Martini ruled that the proper defendant was the individual judge who issued the gag order, rather than the presiding judge.

13. Judge Martini's Order and Decision permitted the suit for Declaratory Judgment against Defendant Judge Sivilli to continue.

14. In light of this Court's and also Judge Martini's ruling in *Edelglass v. Sivilli*, Plaintiffs in the instant suit now seek to specify the individual judges as defendants.

15. A copy of the proposed Amended Complaint is attached.

ARGUMENT

16. This Court should grant leave freely to amend a complaint. *Foman v. Davis*, 371 U.S. 178, 182 (1962).

17. No party is prejudiced by this request. Defendants have not Answered the Complaint. The amendment does not change the essential nature of the Complaint but simply adds additional New Jersey officials who are arguably more responsible for the violations of rights described in the Complaint.

18. Accordingly, the proposed Amendment is largely procedural and intended to bring the Complaint in line with recent rulings of the District Court of New Jersey.

Statute of Limitations Issues

19. The Complaint was based in part on the doctrine of a continuing violation because the denial of fundamental rights was ongoing. Based on this theory the Complaint did not allege facts showing additional actions that violated the fundamental rights of Plaintiffs. However, with respect to many of the Plaintiffs there are additional acts depriving them of fundamental rights under color of law that do fall within the two-year statute of limitations adopted by this Court.

The Complaint Can be Amended with respect to Malhan to fix the Statute of Limitations Issues

20. On March 30, 2012 Malhan filed a motion with the Hudson County Court pointing out that the parenting time was divided between him and his wife with his wife receiving 85% of the parenting time and him receiving a mere 15% of parenting time. Malhan demanded that parenting time be split 50/50 between the two parents.

21. On May 4, 2012 Malhan appeared in Court to argue for 50% parenting time. At this point in time, Malhan had been denied equal parenting time for fifteen months without a plenary hearing. Judge Sogluizzo gave lip service to the idea of equal parenting time but dismissed Malhan's demand out of hand. The transcript of that proceeding reads as follows:

MR. MALHAN: Okay, let's move on the parenting time then. Now, as you say that the law assumes-that both parents are equal in their parenting ability --

THE COURT: Correct.

MR. MALHAN: That would naturally lead to the consequence that both are given equal parenting time then, unless there are some real - -

THE COURT: And that's the presumption of the law --

MR. MALHAN: Yes.

THE COURT: -- which is changed in colors by the facts of each individual case.

MR. MALHAN: Exactly.

THE COURT: The facts as they initially developed and as we are still under the umbrella --

MR. MALHAN: Right.

THE CoURT: -- thereof, pointed this Court to send the matter to a Dr. Pasternak - -

MR. MALHAN: Right.

THE COURT: -- to do a custody evaluation

MR. MAIHAN: Right -

THE COURT: I'm comfortable with the parenting time as it is now until I have the Evaluation from the custody expert, at which point we can begin to talk about any enlargement, because nothing new has occurred. . . . And it will not be proven, it will not be proven as false until the trial takes place and until the factors by examination and cross-examination are fleshed out.

MR. MALHAN: Please help me understand, how was I proven false without a trial then?

THE COURT: There was documents and there

MR. MALHAN: There was nothing.

THE COURT: -- were certifications that were presented to the Court . . . -- that lead the Court to its initial conclusion, which the Court still stands on. . . . I am satisfied that . . . what is happening now is reasonable until I get all the remainder of the facts from the experts. And if at that point in time parenting time can be readdressed, I certainly will do so. I have nothing new that changes my inital mindset. So --

MR. MALHAN:

MR. MALHAN: Dr. Pasternak's report is three months away. So, that means that I and my children should go through the emotional torture and emotional distress for three more months? . . .

THE COURT: Thank you. Now, moving on . . .

22. A copy of the relevant pages of the transcript is attached hereto.

23. The above is cited at length because it emphasizes several important points both with regard to Malhan's case and with regard to New Jersey family court proceedings in general. First, for the prior fifteen months, and expected for months more to come in the future, Malhan's fundamental right to the care, custody and control of his children was denied without a plenary hearing. Fifteen months after Judge Sogluizzo stripped Malhan of all custody (although later permitting him only a small amount of parenting time) Judge Sogluizzo was still relying on certifications that were never subject to cross-examination or refutation.

24. Further, as the above quote shows, once a family judge makes an initial determination of custody, frequently (as in this case) stripping one parent entirely of custody) that determination continues to effect the parties' parental rights for months or years to come. Because family courts demand that the parent demonstrate "changed circumstances" before even considering an alteration of a custody schedule, the initial denial of custody can prevent a parent from even attempting to get the order changed.

25. June 12, 2012 Judge Maureen Sogluizzo issued an Order stating: “The current parenting time and custody plan in place shall remain in place as previously ordered.”

26. Thus Judge Sogluizzo denied Malhan the equal parenting time he sought in May and June 2012. Accordingly, these actions fall well within the two-year limitation period this Court has ruled to be effective. Moreover, these are not entirely new facts. The continuing denial of custody without due process for Malhan and his children was asserted in the initial Complaint. The Amendment would only further specify dates of later Orders.

CONCLUSION

For the above reasons, Plaintiffs request the Court grant the motion to Amend.

Respectfully Submitted,



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behalf of all others similarly situated,)

No. 3:14-cv-00760-FLW-DEA

Plaintiffs,)

v.)

LAWRENCE DE BELLO, ANTHONY)
MASSI, JOHN L. CALL, JR , NANCY)
SIVILLI, MAUREEN SOGLUIZZO,)
Defendants.)

SECOND AMENDED COMPLAINT

Jurisdiction

1. This Court has jurisdiction over this matter under 28 U.S.C. §1331. Plaintiffs maintain this action, inter alia, under 42 U.S.C. §1983, and the Declaratory Judgment Act, 28 U.S.C. § 2201, on their own behalf and on behalf of all others similarly situated. The State Court System and individual defendants, in their official capacity deprived Plaintiffs of liberty under color of law by depriving parents of the fundamental right to the care, custody and control of their minor children without affording them even minimal procedural protections guaranteed by the United States Constitution.

Summary

2. Plaintiffs seek declaratory and injunctive relief under Federal Rule of Civil Procedure 23(a) and (b)(2) on behalf of all persons who have been or in the future will be deprived of child custody by Defendants without a prompt and full hearing; against appropriate defendants who under color of law deprived Plaintiffs of custody without a prompt and full hearing, and in violation of the Fourteenth Amendment.

Parties

3. Werner Graf is an adult residing in Mercer County. He is father of minor children A.G. and A.G.
4. Yehuda Ben Litton is an adult residing in Ocean County. He is father of L.L, now 16-years-old.
5. Samir Joshi is an adult residing in Pennsylvania. He is father of the minor children J.J. (age 14), J.J. (age 12). and J.J. (age 10). Joshi brings this suit on behalf of himself and his minor children.
6. Surrender Malhan is an adult residing in Hudson County, Jersey City, New Jersey. He is father of the minor children E.M. and V.M., ages 7 and 4. Malhan brings this suit on behalf of himself and his minor children.
7. Antonio Quinlan is an adult residing in Hudson County, New Jersey. He is father of the minor child K.Q. Quinlan brings this suit on behalf of himself and K.Q.
8. All of the above Plaintiffs (parents and children) remain subject to the jurisdiction of the New Jersey Family Courts and could lose custody at any time without due process
9. Defendants CALL, DE BELLO, MASSI, SIVILLI, and SOGLUIZZO, are sued in their official and individual capacities; by their actions they denied particular plaintiffs constitutional rights under color of law; they are persons within the meaning of 42 U.S.C. §1983 with respect to declarative and injunctive relief sought in this case.
10. Defendants personally violated Plaintiffs' fundamental rights under color of law by stripping them of parental rights without Due Process.
11. New Jersey State and County agencies participate fully in enforcing superior court orders through a variety of state and county agencies including law enforcement agencies, county prosecutors, county jail, child welfare agencies and social services offices.

Statement of Facts

12. Defendants have established policies, procedures, and precedents denying parents a full and prompt hearing when stripping one parent of physical and legal custody and giving full physical and legal custody to another parent. This is a clear violation of the Fourteenth Amendment to the United States' Constitution under color of law. Each of the Plaintiffs have had their parental rights and other fundamental rights restricted under color of law.

Facts Establishing a Widespread Policy of Denying Due Process and Fundamental Rights

Facts Relevant Edelglass

13. Plaintiff Scott Edelglass's son, Z.E. was born in the Spring of 1994. The mother of the child was Erin Fisher. Within a few months of the birth of Z.E., Edelglass discovered there were serious threats to Z.E.'s safety in the home of Erin and he petitioned Monmouth County Court for custody. This was the start of a prolonged custody dispute that would last for the next eighteen years.

14. In December of 1997, Erin filed a motion in Monmouth County Family Court seeking sole custody of Z.E. As a result of this motion Erin was granted "sole custody" of Z.E. Moreover, Edelglass was only permitted to have supervised visitation with Z.E. for the next two years.

15. Although there were numerous and extremely serious allegations regarding the safety of Z.E. in Erin's custody, Erin was granted full custody and Edelglass's custody severely restricted by the Monmouth County Superior Court per Judge Raymond A Hayser, without a plenary hearing. Edelglass was not permitted a full opportunity to present evidence or challenge the evidence against him.

16. Judge Hayser's Order of December 12, 1997 granted "sole custody" of Z.D. to Erin, provided that "[a]ll future visitation . . . shall be supervised," and that visitation would occur only with the agreement of Erin.

17. In April 1998, Edelglass petitioned the court to permit him unsupervised visitation, but this request was denied. Again the Court, per Judge Hayser refused to afford Edelglass a plenary hearing. Judge Hayser in an Order dated April 3, 1998 continued to deny Edelglass any unsupervised visitation with his child. Judge Hayser does not appear to have made any finding to justify this continued denial of parental rights. The court did not explain the basis for continuing to deny Edelglass unsupervised visitation, but presumably credited the unsubstantiated allegations made against him which he was not permitted to refute.

18. For the next ten years, until Z.E. was old enough to decide to see his father on his own, Edelglass's parenting time with his child was severely restricted due to the actions and willful inactions of the Monmouth County Family courts and Monmouth counties agencies. For example, in the Fall and Winter of 2005 to 2006, Edelglass was permitted only a few hours every few weeks with Z.E., with the exception of a few additional hours the night before Thanksgiving.

19. In March 2006, Edelglass asked the Court, per Judge Terence Flynn, to schedule a hearing to resolve this problem, but Edelglass's parenting time remained severely restricted based

on unsubstantiated allegations and the stipulation that he not use his last name, talk about his religion, or ask his son about his grades if he were to continue to see his son even on a limited basis. Judge Flynn's order therefore violated not only the parental rights of Edelglass but also his First Amendment Rights (as incorporated through the Fourteenth).

20. These severe restrictions on Edelglass's ability to interact with his son brought about by the actions of Judges Thornton, Flynn and Hayser likely have caused significant and long-lasting damage to father-child relationship, and severe mental anguish.

Facts Relevant to Plaintiff Graf

21. Werner Graf was married to Lisa McComb (Graf) in 1998. They had two children, daughters, A.G. and A.G., born in 2004 and 2008.

22. On January 9, 2012 McComb filed for an ex parte domestic violence temporary restraining order (TRO) in Mercer County Court. During the TRO interview on January 9, McComb also stated that she would be filing for divorce.

23. The TRO was largely based on an predicate incident 10 days earlier when, in reaction to McComb's insistence to discuss divorce in front of their traumatized children, McComb was evicted from an immobile car near the marital home.

24. McComb's exaggerated version of the incident was actually supplemented by the TRO officer during the interview, who added facts and conjecture not offered by McComb such as being thrown to the ground. The Officer then prompted McComb to upgrade the complaint to an assault and proclaimed that McComb was, as a victim of violence, the "more appropriate parent."

25. This original interview for the TRO also contained a singular, exaggerated allegation against Graf of corporal punishment (spanking) of the oldest daughter two months earlier. McComb clearly stated it was a single incident, and did not allege any other physical abuse nor neglect of the children.

26. Importantly, although this testimony involving the child warranted no mention in the Order itself, the TRO Officer still granted full temporary custody of the two children to McComb and denied any and all parenting time, visitations or contact for Graf or anyone in his family "until further ordered."

27. Judge Lawrence De Bello, Superior Court Judge Mercer County, signed a TRO dated January 9, 2012 which granted temporary custody of both children to McComb, and further rdered "No parenting time/visitation until further ordered."

28. Judge De Bello stripped Graf of legal custody and ordered no parenting time without making any findings as to any harm to the children and without a plenary hearing.

29. After being notified of the TRO at work on the evening of January 9th, Graf had to find alternative living arrangements and was required to work a full day on the 10th. This left no time to prepare or obtain counsel for hearing for a permanent, final restraining order (FRO) scheduled for January 11, 2012.

30. Further proceedings were not scheduled until the next month, during which time Graf was ordered not to have any contact whatsoever, (including indirect communications as well as phone or email) with his two daughters. Grandparents and friends of Graf were also restricted from all contact with the girls.

31. Although Graf wanted to resolve the issue on the 11th, the Court correctly cited the lack of time to prepare and opposing counsel agreed that additional time should be granted. Several weeks later (February 1, 2012), the complaint was amended with other allegations including two alleged incidents involving the children in an attempt to prohibit all visitation rights.

32. On February 10, 2012, the Court per Judge Anthony Massi issued a Consent Order permitting ten hours of Supervised parenting time for Graf on February 12, but otherwise ordering that all other terms of the January 9 Order remained in effect, including denial of any “parenting time/visitation” with his children.

33. Judge Massi thus without a plenary hearing and without making any finding with respect to the children turned a “temporary” denial of parental rights, into an indefinite denial of parental rights. Graf consented to this Order in order to see his children, who he had not seen in a month.

34. The FRO hearing date, delayed again by opposing counsel and the Court schedule, eventually was set a full four months later on May 3rd and 10th. In the meantime, Graf was forced to pursue costly motions and certifications just to establish minimal and supervised parenting time.

35. On March 22, after repetitive appeals to Judge Massi, the court finally allowed Graf to have custody/ parenting time every other weekend (from Friday evening to Sunday at 1 p.m.), but subject only to the availability of supervisors approved by the Court. Judge Massi continued to deny Graf his fundamental parental rights without a plenary hearing.

36. Graf was permitted periodic phone contact and only supervised visitation the weekends of March 30, April 13, and April 27, 2012.

37. Essentially for four months, until May 2012, Judges De Bello and Massi denied Graf almost all contact with his daughters, including a prohibition on phone and email contact. During this time, Judge Massi made no inquiry as to the fitness of McComb, even though she admitted on the record that she had once slapped Graf without provocation.

38. No offers of settlement were made during the 4 months of separation by opposing counsel. Finally, on the morning of the hearing date of May 3rd, opposing counsel made an offer of continued home restraints and anger management counseling as a condition to settle the matter and grant eventual parenting time. This is a common ploy when misusing the Domestic Violence statute to gain leverage in divorce. Despite Graf's emotional trauma of separation from his girls, the prospect of losing custody, and the threat of criminal sanctions associated with an FRO, Graf refused to settle.

39. Eventually, the TRO was dismissed with prejudice in August, several months after a court-appointed Psychiatrist determined that no basis for restrictions existed and that the domestic violence allegations were inconsistent.

40. Still, not until September was a 50-50 custody agreement finally struck. For nine long months Graf's parental rights were significantly restricted without basis by Judges De Bello and Massi.

41. Graf was initially denied any contact with his daughters for over 30 days. He literally disappeared from their lives from January 9th through February 12th, 2012 with no explanation. Then for over four months without a full hearing, he was denied almost all contact with his children. Supervised contact was finally lifted a full 5 months later and only after the Court doctor's report. In the meantime, the children were subject to a potentially volatile and unstable parent, and in the absence of the protection and counterbalance that Graf had previously provided.

42. The Defendants stripped Graf of contact with his children on the basis of McComb's unchallenged (and in some cases prompted) allegations for the TRO on January 9th. Graf was not allowed to refute these allegations, and only because he had the means, family support, and drive was he able to minimally reinsert himself into their lives during the extensive hearing delay.

43. The Judge De Bello and Massi's presumptuous dissolution of Graf's parenting rights (and free speech rights) has likely damaged the father-child relationship and mental anguish for Graf who worried that the children were at risk during the prolonged period of his absence. The severe restrictions on Graf's ability to be with his children caused severe mental anguish to both parent and children.

Facts Relevant to Plaintiff Joshi

44. Joshi was married to Christine Joshi in Pennsylvania. The children of the marriage were born in Pennsylvania and Christine filed for divorce in Pennsylvania. In or around 2012 Christine asked New Jersey to take jurisdiction.

45. On or about June 22, 2012 Christine filed an Order to Show Cause in New Jersey Superior Court, Burlington County. Joshi was not properly served and did not appear for this proceeding. At the proceeding, Christine gave testimony, but her testimony was based largely on hearsay evidence, alleging what a police officer supposedly told Christine. The Court set a return date on the Order to Show Cause for July 12, 2012.

46. Joshi did not have notice of the July 12 proceeding until a few days before the hearing. Joshi contacted the Court and requested a continuance due to the fact that Joshi's father had just passed away a few days earlier and Joshi was in the midst of funeral arrangements for his father.

47. Joshi appeared telephonically in Court July 12, 2012 and reiterated his need for a continuance as he was in the middle of funeral arrangements and religious services for his father. Joshi also objected to New Jersey asserting jurisdiction pointing out that the Order from Pennsylvania transferring jurisdiction was on appeal.

48. At this July 12 proceeding, conducted by Judge John Cull, Jr., Joshi was not allowed to cross examine Christine. Due to the short notice and death in the family, Joshi did not have time to prepare evidence to submit, nor obtain counsel.

49. The Court told Joshi to hand over physical custody of the children later that day. By written Order dated July 12, 2012, the Court "suspended parenting time until [Joshi] provides assurance that he will return the parties' children, and the Court issues another order."

50. Joshi requested that this Order be revised to give him full and equal custody. In response in an Order dated December 4, 2012 Judge Call slightly modified the earlier Order but only permitted "supervised visitation through the Burlington County Supervised Visitation Program." December 4, 2012, Order. No plenary hearing was held prior to entry of this Order.

51. During the summer of 2013, Joshi again demanded full and equal custody of this custody, and requested a full plenary hearing. In an Order dated July 26, 2013 Joshi's request for a plenary hearing was denied, by Judge Call. The Court Order granted limited parenting time to Joshi of 14 hours a week--four hours on Wednesday evenings and ten hours on Saturday.

52. As of the filing of this Compliant, Joshi has been permitted little or no visitation with his children for more than a year without a plenary hearing. Joshi currently has joint legal custody of the children.

53. The severe restrictions on Joshi's parent rights by Judge Cull likely have caused significant and long-lasting damage to father-child relationships, and caused severe mental anguish to both parent and children.

Facts Relevant to Litton

54. Litton was married to Linda Litton in 1982. They had one child, a son, L.L., born in 1998. The parties separated in 2004 but Litton and his wife agreed to a 50/50 custody arrangement.

55. On January 10, 2008 a Judgment of Divorce was granted in Monmouth County Superior Court, Family Division. Custody was divided 50/50 between them, however, Linda denied Litton any time with his son. Immediately following the judgment, jurisdiction in the case was transferred to Ocean County. On May 7, 2008, Litton asked the Ocean County Court to enforce the 50/50 custody arrangement to which the parties had previously agreed.

56. Litton's son was 10-years-old at this time and the court conducted an in camera interview of the child without the parties present. After the in camera interview the Court, per Judge Sheldon R. Franklin, ruled that Litton's parenting time should be suspended indefinitely.

57. The Court mentioned some of the allegations but did not make known to Litton all of the allegations made in camera. *See Uherek v. Sathe*, 391 N.J. Super. 164, 167-68, (App. Div. 2007) ("The divulging of information ascertained from the in camera interview, when relied upon by the judge in rendering a decision, is required by due process principles.")

58. In an Order dated May 8, 2008 Judge Franklin directed that Litton's visitation "is suspended pending further order of court."

59. Litton's right to be with his son was suspended indefinitely without a plenary hearing. Litton had no opportunity to challenge whatever allegation had been made against him, or to call witnesses or refute whatever allegations had been made that concerned the judge.

60. This Order remained in effect until March 2010 when the Court conducted a full hearing and issued a new Order which allowed Litton to see his son a few hours each week.

61. The Order issued by the court on March 24, 2010 concluded that "Linda has substantially poisoned L[]'s perception of [Litton], thereby causing L[] to reject his father. . . . I find that she has manipulated L[] to make the implementation of parenting time with [Litton] almost impossible."

62. The March 24, 2010 Order was "too little, too late." Had the Court convened a plenary hearing back in 2008 these facts would have been uncovered then.

63. For nearly two years, from May 2008 until March 2010 Litton only saw his son once. As it was, the State stripped Litton of contact with his son based on unsubstantiated allegations that Litton was not permitted to refute.

64. Litigation was protracted unnecessarily due to Judge Franklin ignoring six years of documented information, via court orders and transcripts, all of which were made available to the Court), thus, in effect, allowing Linda to completely block all access to L. This situation virtually bankrupted Litton due to his attempt to gain access to his child.

65. These severe restrictions on Litton's ability to see his son by Judge Franklin likely have caused significant and long-lasting damage to father-child relationship and caused severe mental anguish to both parent and child.

Facts Relevant to Plaintiff Malhan

66. On February 24, 2011, Alina Myronova, mother of Malhan's minor children filed an Order to Show Cause in Hudson County Family Court asking that full physical and legal custody of the children be given to her. Myronova claimed that Malhan was an unfit parent who could not take care of children. Myronova made these allegations in an affidavit.

67. Malhan had less than two hours' notice of a legal proceeding and had no time to seek legal advice or obtain counsel.

68. Malhan, appearing before the family part judge, Maureen Sogluizzo, contested all of Myronova's allegations about his alleged unfitness as a parent. Malhan stated that Myronova was lying. Malhan was not permitted to cross examine Myronova.

69. Malhan told the court that he wished to present evidence to refute the allegations made by Myronova, specifically he stated that he had audio recordings, photographs and videos which could document his ability to parent and would show that Myronova was lying. The court did not permit Malhan to present any evidence at this proceeding.

70. Malhan told the Court that Myronova had in her possession documents, including bank records, which would prove that she was lying about some of her allegations and asked the Court to require Myronova to produce these records; the court refused to order the production of said documents.

71. On February 24, 2011, Judge Sogluizzo stripped Malhan of physical and legal custody ordering Myronova to assume full legal and physical custody of the two children.

72. Judge Sogluizzo permitted Malhan only one hour a week of supervised visitation at Hudson County Courthouse.

73. Although the Court in Malhan's case did not explain the basis for the decision, counties throughout New Jersey apply a preponderance of the evidence standard, and thus strip parents of custody based on no more than a showing of "best interests of the child" by a mere preponderance of evidence when custody is transferred to another parent.

74. The Judge Sogluizzo set a further return date of April 1, 2011. On April 1, the court still did not permit Malhan to cross examine Myronova and there was no plenary hearing. The Court continued to deny Malhan legal and physical custody of the two children keeping Myronova as sole legal and physical custodian. Malhan was permitted several hours a week of unsupervised visitation with his children.

75. Myronova kept sole legal and physical custody of the two children for sixteen months, until June 2012 when she agreed to permit joint custody. During this sixteen month period Malhan was never granted a plenary hearing.

76. Malhan ultimately prevailed in obtaining joint physical and legal custody, with the Court ruling that Myronova's previous objections to Malhan taking care of the children had been without basis.

77. On March 30, 2012 Malhan filed a motion with the Hudson County Court pointing out that the parenting time was divided between him and his wife with his wife receiving 85% of the parenting time and him receiving a mer 15% of parenting time. Malhan demanded that parenting time be split 50/50 between the two parents.

78. On May 4, 2012 Malhan appeared in Court to argue for 50% parenting time. At this point in time, Malhan had been denied equal parenting time for fifteen months without a plenary hearing.

79. In response to Malhan's assertion that he should not be denied 50% parenting time without a plenary hearing or trial, Judge Sogluizzo merely stated: "I am satisfied that ... what is happening now is reasonable until I get all the remainder of the facts from the experts."

80. Judge Sogluizzo then signed an Order continuing to restrict Malhan to 15% parenting time indefinitely.

81.

82. These severe restrictions on Malhan's ability to see his children likely damaged the parent-child relationships and caused severe mental anguish to both Malhan and his children.

83. On or about February 18, 2014, a television news reporter for channel nine (WWOR), the local NBC affiliate in New Jersey, interviewed Malhan and two other plaintiffs in the instant suit about their experience in family court and their complaints about constitutional deprivations.

84. On February 4, 2014, Judge Nanci Sivilli of the the Essex County Superior Court, Family Part issued a "gag order" retraining Malhan from discussing any issues surrounding the divorce or custody proceedings with any employee of any media and further restrained Malhan for posting anything on the internet discussing these issues.

85. The "gag order" further restrained Malhan from discussing any aspect of the divorce litigation with his children.

86. The Court did not hold a plenary hearing and made no findings whatsoever specific to Malhan or his children. The Court "found" that publicity about divorce proceedings was not in the best interests of the children.

87. Once again Malhan's fundamental rights to raise his children were violated but reference to an amorphous "best interests" standard. His First Amendment rights were also, and continue to be, violated without specific finding and reference to "best interests."

88. Upon information and belief, imposition of gag orders in family matters based on alleged "best interest" is common in New Jersey. *Borra v. Borra*, 333 N.J. Super. 607, 614, 756 A.2d 647, 651 (Ch. Div. 2000) (ruling that "when presented with a choice between parent's rights and children's rights, children's welfare and best interests will always be paramount"); Kelly Kanavy, The State and the "psycho Ex-Wife": Parents' Rights, Children's Interests, and the First Amendment, 161 U. Pa. L. Rev. 1081, 1083-84 (2013) ("These types of [gag] orders, however, are actually quite common in family court proceedings.")

89. This is but one more example of how New Jersey family courts regularly deny parents fundamental rights by reference to nothing more than an ambiguous "best interests" standard without a plenary hear and presumably using a "preponderance of the evidence standard" when any standard is used at all.

90. This denial of fundamental rights based on mere "best interest" is contrary to well established constitutional law. *Troxell v. Granville*, 120 S. Ct. 2054 (2002) (holding that "best interest of the children" could not trump fundamental constitutional rights).

Facts Relevant to Plaintiff Quinlan

91. In December, 2010 Quinlan was stripped of legal custody of his minor child, K.Q., who was 13-years-old at the time. This was a result of a motion filed by Quinlan's ex-wife Kayoi Quinlan Hasabe.

92. In an order dated December 16, 2010, the Hudson County Superior Court, Family Division, per Judge Sogluizzo, stripped Quinlan of legal custody without a full hearing and in violation of due process. Although there was a court proceeding on December 3, 2010 before the

Court terminated Quinlan's legal custody of his child, Quinlan was not permitted to testify or present evidence in his own defense at this hearing. For example, Judge Sogluizzo relied on hearsay emails written by Quinlan's father, Robert Quinlan, who never testified.

93. The Court relied on these emails as evidence that Quinlan harassed Hasabe. Not only were these out-of court statements by Robert Quinlan used as a basis for terminating Quinlan's legal custody, Quinlan was not permitted to rebut or explain his father's emails.

94. Although there were numerous disputes of fact contested by Quinlan, when Quinlan attempted to explain why various accusation were not true the Court admonished Quinlan: "I've read everything that you've given me, there can't possibly be another thing that you need to tell me."

95. Although Quinlan's ex-wife, Hasebe, appeared at the hearing she did not testify, and Quinlan was not able to cross examine her. The Court apparently relied on Hasebe's certifications. The Court also relied on numerous contradictory letters and other unsworn statements made by Hasebe.

96. The court terminated Quinlan's parental custody without a full hearing at which he was permitted to testify, present evidence and confront witnesses against him.

97. New Jersey denied Quinlan due process rights in other significant ways. Apparently through an "administrative error" New Jersey entered an Order in a national database that indicates that Quinlan is subject to a restraining Order preventing him from having any contact with his daughter. This incorrect entry in the federal database has repeatedly caused Quinlan to be detained, and significantly interferes with Quinlan's ability to be with his daughter. For example, if he re-enters the country with his daughter he risks being detained or even arrested.

98. Quinlan has repeatedly demanded that New Jersey and/or its subdivisions correct this error, which has been ongoing for years. However, New Jersey and/or its subdivisions has refused to take any action. This repeated refusal to correct this interference with Quinlan's ability to parent his child indicates an ongoing policy failing to protect the parental rights of people like Quinlan.

99. In addition to other relief sought, Quinlan requests injunctive relief directing New Jersey to correct this apparent administrative error.

100. Furthermore, during litigation, Quinlan's wife retained a law firm that Quinlan had previously consulted with about his divorce case. Quinlan had not only consulted with this firm but had paid them a \$2,000 retainer for their advice. Quinlan brought this to the attention of the court even providing a carbon copy of the check written to the law firm. However, the court

refused to even make a ruling on this issue, apparently because the attorney with the conflict of interest was becoming a judge.

101. The attorney with this conflict of interest, in fact, became a family court judge in the same county and division as the presiding judge who had refused to address Quinlan's complaint about a conflict of interest. Thus the Court denied Quinlan due process by refusing to grant a motion that would have been detrimental to a fellow judge.

102. Further, the Court denied and continues to deny Quinlan due process and his Second Amendment rights by ordering him not to possess any weapons. The Court issued this Order without any type of hearing on the issue or any showing that Quinlan's possession of weapons presented a danger. Thus Quinlan demands a declaratory and injunctive relief that the State and county may not deprive a person the fundamental right to keep and bear arms without showing the Order is necessary on a case by case basis, and the Order is at the very least narrowly tailored to an important state interest.

Facts Relevant to all Plaintiffs

103. The denial of prompt and full custody hearing in the context of transferring custody from one parent to another is widespread throughout the state and country. *See, e.g.*, "Parental Rights and Due Process" in 1 THE JOURNAL OF LAW AND FAMILY STUDIES, 2:123-150 (1999) (noting the widespread violation of due process in the family law context); *B.S. v. Somerset County*, 704 F.3d 250, 275 (3d Cir. 2013) ("[T]he County essentially admits . . . the County has a custom of removing children from a parent's home without conducting a prompt post-removal hearing if another parent can take custody" and holding that this violated the Fourteenth Amendment).

104. New Jersey case law is littered with examples of parents losing custody without due process in the context of disputes between parents. *In S.M. v. K.M.*, visitation rights of father were terminated without a plenary hearing or even an explanation. 433 A. 2d. 552 (N.J. Super. Ct. App. Div. 2013).

105. In another example, *Young v. Lee*, 2005 WL 3676804 (N.J. Super. App. Div. 2005) involved a "decision to immediately wrest custody from the father" after "an abbreviated non-evidentiary proceeding at which the father was not present . . . [n]o findings of fact or conclusions of law were entered by the judge, who heard the case in the most summary of manners and apparently based the decision on his personal disapproval . . . and on unsworn comments by the mother's attorney that do not appear to have had any basis in fact." *Id.* at *1. The Appellate Division called this "an unfortunate example of the difficulties caused by precipitate judicial action in matters involving child custody." *Id.*

106. Again, in *Division of Youth and Family Services v. G.M. and M.M.* (398 N.J. Super. 21 (2009)), in a custody dispute between two parents, one parent was denied physical custody of children for months without a plenary hearing in which the judge relied on unsworn assertions of counsel. The Appellate Division concluded that "the procedures employed during the several hearings that followed the fact-finding hearing . . . were deficient and denied G.M. the basic due process rights that must accompany any action that contemplates such significant consequences" as terminating physical custody. *Id.* at 37-38.

107. New Jersey Courts have previously held that violations of due process were common in proceedings to terminate parental custody. In 2002, for example, in a case involving an appeal of a termination of parental rights of both parents, the Appellate Division of New Jersey described how the trial court stripped those parents of custody based on summary proceedings, without full hearings, and relying on unsworn allegations without the basis to confront witness. *New Jersey Div. of Youth & Family Servs. v. J.Y.*, 352 N.J. Super. 245, 265-8 (App. Div. 2002).

108. Notably, the New Jersey Appellate Division described this type of denial of due process in the Family Courts of New Jersey as "business as usual":

[T]he adjudicative methods employed here were not aberrational but represented the typical "business as usual procedure" in cases involving the involuntary removal of children from their parents. If this is so, immediate corrective measures must be taken to restore the appropriate adjudicative process in these cases.

Id. at 268.

109. Regardless of any corrective measures that may have been taken when the state removes children from *both* parents, it continues to be "business as usual" for the New Jersey family courts to strip individual parents of custody in summary proceedings as described in this Complaint.

110. Despite the appellate courts of New Jersey repeatedly holding that individual parents have been denied due process by failing to hold a plenary hearing, the State has failed to implement any guidelines or procedures to ensure that a parent receives a prompt and full hearing when the state takes custody from one parent to give custody to another parent. On the contrary, the State's practice and policy is that a parent losing physical or legal custody to another parent generally has no due process rights.

111. In *Sacharow v. Sacharow*, 177 N.J. 62, 79, 826 A.2d 710, 721 (2003) the New Jersey Supreme Court held that a parent has no fundamental right to the custody of children in when another parent is given custody because "[i]t is not a third party or the State that seeks to intrude

into the protected sphere of family autonomy." This appears to be the basis for the statewide policy of stripping parents of custody without due process.

112. Similarly in *New Jersey Division of Youth & Family Services v. R.G.*, 397 N.J. Super. 439, 448 (N.J. Super. App. Div. 2008) the court held: "[W]e do not view the transfer of custody to a non-abusive parent a 'placement' under the statute. Accordingly, there is no need for a permanency hearing prior to placing a child in the physical custody of the non-abusive parent and dismissing the litigation."

113. Thus, given these examples, cited by New Jersey Courts, and the experience of plaintiffs named above, there is a widespread policy in New Jersey of depriving parents of custody when custody is transferred from one parent to another.

Count I

Deprivation of Fundamental Rights under Color of Law

114. Plaintiffs re-allege previous paragraphs as fully restated.

115. It is clearly established federal law that a parent may not be deprived of his or her fundamental rights to the care, custody and control of minor children without due process. Minors have a reciprocal right not to be separated from their parents absent a compelling reason.

116. New Jersey and the other Defendants violated the substantive and procedural rights of Plaintiffs by interfering with the care custody and control of minor children without affording Plaintiffs the most basic due process rights, including adequate notice, the right to counsel, the right to cross examine accusers, and the right to present evidence in one's defense.

117. Defendants further stripped Plaintiffs of their fundamental rights based on a mere "preponderance of the evidence" standard, and furthermore, the Defendants fail to allow proper discovery or court room procedures to uncover evidence. Thus not only is the state using an impermissible "preponderance of the evidence" rather than "clear and convincing evidence" but it not even permitting a fair playing field for what evidence is presented.

118. Defendants have established policies, procedures, and precedents denying parents a full and prompt hearing when stripping one parent of physical and legal custody and giving full physical and legal custody to another parent. This is a clear violation of the Fourteenth Amendment to the United States' Constitution under color of law.

119. Edelglass was the fundamental right to the care custody and control of his children, by significantly restricting access to his child for years without due process.

120. The Hudson County Family Court ultimately determined that Malhan was a fit parent and that the allegation made against him were false; however, had Defendant Judge Sugliuzzo

permitted a full and prompt hearing Plaintiff Malhan would have demonstrated that the allegations against him were unfounded and his children would have been returned to his custody within a matter of days rather than the sixteen months the process ultimately took.

121. Malhan initially was permitted only short periods of supervised visitation with his children. Such short periods seriously impede the parent child relationship. *See, e.g., New Jersey Div. of Youth & Family Servs. v. L.M.*, 430 N.J. Super. 428, 455 (App. Div. 2013) ("We note that the one-hour per week supervised visits offered by DYFS did not afford either parent a meaningful opportunity to cultivate a relationship with Sally."); *New Jersey Div. of Youth & Family Servs. v. I.S.*, 202 N.J. 145, 180, 996 A.2d 986, 1008 (2010) ("Before this Court intervened, defendant was restricted to seeing his child for only one hour weekly, in the DYFS office and supervised by a DYFS case worker. . . . Indeed, with such limited contacts, no parent could reasonably be expected to develop a relationship with his child.")

122. Graf was the fundamental right to the care, custody and control of his children, by denying him full and equal custody with his ex-wife for over six months without due process. His children were denied access to their father, without due process.

123. Quinlan was denied the fundamental right to the care custody and control of his child, by denying him full and equal custody with his ex-wife for over a year without due process. His child has also been substantially denied access to her father for over a year, without due process.

124. Joshi was denied the fundamental right to the care custody and control of his children, by denying him full and equal custody of his children for over a year without due process. Most importantly, his young impressionable children have also been substantially denied access to and alienated from their father for over sixteen months, without due process.

125. As a result of the above deprivation of rights, the Plaintiffs (and putative class members) have suffered profound injuries; the bonds between parent and child have been perhaps permanently injured in ways that are not quantifiable. Plaintiffs have suffered emotional pain and mental anguish as a result of said deprivations.

126. Defendants (and putative class members) have suffered deprivation of their First and Second Amendment rights under color of law under the theory that "best interests of the children" trump any and all fundamental rights, and do so without a plenary hearing or specific findings prior to depriving plaintiffs of such rights.

Relief

WHEREFORE, Plaintiffs request:

Declaratory and injunctive relief against all Defendants on behalf of all persons who have been or in the future will be deprived of the physical or legal custody of their children without a prompt and full hearing; (declaratory relief should Order New Jersey to provide a plenary hearing within ten days to any parent who has their right to the care custody and control of their children reduced through State action);

Declaratory and injunctive relief against all Defendants on behalf of all persons who have been or in the future will be deprived of other fundamental rights (including first and second amendment right) without due process;

Costs and attorneys' fees as provided under federal law;

Such other relief as the Court determines to be just and appropriate.

Count II

Declaratory and Injunctive Relief Declaring a preponderance of the evidence "Best Interest" Standard is Unconstitutional as a basis for suspending or terminating parental rights and other fundamental rights (including free speech)

127. Plaintiffs re-allege previous paragraphs as fully restated.

128. Plaintiffs in this case presumably all had their physical and/or legal custody reduced or eliminated based on a "best interest" test. Although not all the proceedings of the above plaintiffs clearly articulated what standard was being used, New Jersey purports to be able to reduce or eliminate custody of one parent on favor of another based on what is in the "best interests" of the children.

129. In *Watkins v. Nelson*, 163 N.J. 235, 253, 748 A.2d 558, 568 (2000), the New Jersey Supreme Court held that "When the dispute is between two fit parents, the best interest of the child standard controls because both parents are presumed to be equally entitled to custody." However, in a custody dispute between a parent and a non-parent New Jersey applies a vastly different standard, the "exceptional circumstances" standard. The Court in *Watkins* explained: "Because the right to custody is a fundamental one protected by the constitution the parental termination or 'exceptional circumstances' standard is required to pass constitutional muster in this type of custody dispute [between a parent and third party]. *Id.*

130. New Jersey's policy of interfering with parental rights based on nothing more than a "best interest" standard, without a showing of exceptional circumstances or unfitness, violates the fundamental constitutional rights of parents to the care custody and control of children.

131. This double standard of applying a far lower standard when stripping one parent of physical or legal custody in favor of another parent is contrary to well-established federal law.

As the Third Circuit held in *B.S. v. Somerset*:

From the parent's perspective, there may be little meaningful difference between instances in which the state removes a child and takes her into state custody and those in which the state shifts custody from one parent to another, as occurred here. In either case, the government has implicated a fundamental liberty interest of the parent who loses custody.

B.S., 704 F.3d at 272; *see also Stanley v. Illinois*, 405 U.S. 645, 649 (1972) ("Stanley was entitled to a hearing on his fitness as a parent before his children were taken from him[.]")

132. As the Court went on to explain in *Stanley*:

Under Illinois law, therefore, while the children of all parents can be taken from them in neglect proceedings, that is only after notice, hearing, and proof of such unfitness as a parent as amounts to neglect, an unwed father is uniquely subject to the more simplistic dependency proceeding. By use of this proceeding, the State, on showing that the father was not married to the mother, need not prove unfitness in fact, because it is presumed at law. Thus, the unwed father's claim of parental qualification is avoided as 'irrelevant.'

Id. at 650.

133. When New Jersey seeks to strip both parents of custody they only do so after notice, hearing, and proof of unfitness, but in the context of an inter-parent dispute Defendants treat the parent's fundamental rights as nonexistent or irrelevant. This practice is unconstitutional.

134. Further, again although in many of the proceedings involving the named Plaintiffs the Defendants did not articulate what standard of proof was being applied, they appear to have applied a mere preponderance of the evidence standard.

135. In *Santosky v. Kramer*, 455 U.S. 745, 769, 102 S. Ct. 1388, 1403 (1982) the U.S. Supreme Court mandated a clear and convincing evidence standard when the state interferes with a parent's fundamental rights to the care, custody and control of children. *Troxell v. Granville*, 120 S. Ct. 2054 (2002) (holding that "best interest of the children" could not trump fundamental constitutional rights).

136. Accordingly, Defendants' application of less than a clear and convincing standard to deprive one parent of custody is unconstitutional. It is widespread enough to constitute a policy.

137. Defendants' application of a "best interest" standard to strip parents of other fundamental rights, such as free speech, is unconstitutional. It is widespread enough to constitute a policy.

Relief

WHEREFORE, Plaintiffs request declaratory and injunctive relief against all Defendants that the "best interest" standard is unconstitutional when used to deprive parents of fundamental rights;

Costs and attorneys' fees as provided under federal law;

Such other relief as the Court determines to be just and appropriate.

Count III

Denial of Equal Protection

138. Plaintiffs re-allege previous paragraphs as fully restated.

139. As described above, New Jersey applies an "extraordinary circumstances" test when denying custody of a parent in favor of a non-parent, but applies a lower standard when denying one parent custody in favor of another. This double standard denies plaintiffs and similarly situated parents equal protection of the law in violation of the Fourteenth Amendment of the United States' Constitution.

140. Named plaintiffs are fathers who have had their parental rights severely restricted in favor of the mothers. Although in theory mothers and fathers are to be treated equally under New Jersey Law, in reality the established practice in New Jersey is to favor mothers with custody under the unconstitutional assumption that they are better parents.

141. This custom of favoring mothers over fathers with respect to custody is so-widespread and entrenched as amount to a policy or procedure of Defendants.

142. One study published in 1990 showed that fathers are denied equal custody of children in an overwhelming majority of case. Shrier, et al, *Child Custody Arrangements: A study of Two New Jersey Counties*, The Journal of Psychiatry & Law/Spring 1989. This study showed that although joint custody was sought most of the time, the mother was routinely awarded sole custody by New Jersey Courts. For example, in Essex County the mother was awarded sole physical and legal custody of the children 80% of the time, with fathers receiving sole custody in only 3% of case (the rest being joint or split custody). This study and the above facts suggest that fathers are routinely denied custody of children in a denial of equal protection of their rights.

143. Furthermore, in New Jersey indigent parents accused of abuse or neglect of their children have a constitutional right to counsel. *N.J. Div. of Youth & Family Services v. E.B.*, 137 N.J. 180, 186 (1994); *Crist v. New Jersey Division of Youth & Family Services*, 135 N.J. Super. 573, 575, 343 A.2d 815 (App. Div. 1975) (holding that the temporary loss or permanent termination of an indigent parent's rights to his or her child in a judicial proceeding is a consequence of magnitude requiring the assignment of counsel).

144. However, New Jersey does not provide the same right to counsel for indigent in the context of a divorce proceeding or other inter-parent dispute that results in loss of custody by a parent. This denial constitutes a policy of Defendants.

145. The interest of a parent in retaining custody of his or her children is the same whether the proceeding is a custody hearing or otherwise but the State regularly strips indigent parents of custody without counsel. Such discrimination is unconstitutional.

146. Furthermore, under New Jersey law, when New Jersey takes custody of a child from both parents "the State must "make reasonable efforts to make it possible for the child to safely return to his home." N.J.S.A. 9:6–8.8(b)(2)).

147. When the State terminates parental rights in favor of another parent, however, the State typically makes no efforts to reunite the family. In the case of the named Plaintiffs, Defendants made no active efforts to ensure that both parents can resolve any issues to help preserve the parent child relationship.

148. The State of New Jersey has vastly different policies and procedures which afford far less protection of parental rights to parents involved in custody disputes with co-parents.

149. As the discrimination is based on gender and also affects a fundamental right, the state interest in perpetuating the classification must be "compelling" in order to be sustained. *Dandridge v. Williams*, 397 U.S. 471, 520 (1970). *See also Stanley*, 405 U.S. at 649 (1972) ("[B]y denying [plaintiff] a hearing and extending it to all other parents whose custody of their children is challenged, the State denied Stanley the equal protection of the laws guaranteed by the Fourteenth Amendment.")

Relief

WHEREFORE, Plaintiffs request:

Declaratory and injunctive relief against all Defendants on behalf of all persons who have been, or in the future, will be deprived of the physical or legal custody of their children without a prompt and full hearing based on their gender;

Declaratory and injunctive relief against all Defendants on behalf of all persons who have been, or in the future, will be deprived of the physical or legal custody of their children without the same rights afforded to their counterparts who did not lose custody to another parent;

Costs and attorneys' fees as provided under federal law;

Such other relief as the Court determines to be just and appropriate.

COUNT IV

DECLARATORY JUDGMENT

150. Plaintiffs re-allege previous paragraphs as fully restated.

151. Plaintiffs seek declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201

152. Plaintiffs remain in the New Jersey family court jurisdiction and will remain subject to custody orders of the family court until the minors turn 18-years old. As such they remain subject to the deprivation of the their fundamental rights at any time given the prevalence of the above described treatment.

153. Plaintiffs seek declaratory judgment that fundamental rights, including parental rights, First and Second Amendment rights may not be taken away without due process merely because they are in family court.

Relief

WHEREFORE, Plaintiffs request:

Declaratory relief;

Costs and attorneys' fees as provided under federal law;

Such other relief as the Court determines to be just and appropriate.

Respectfully Submitted,



Paul A. Clark, Esquire (PC4900)
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(202) 368 5435

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, FAMILY PART
HUDSON COUNTY
DOCKET NO. FM-09-1641-11C
APP. DIV. NO. _____

ALINA MYRONOVA,)
)
Plaintiff,)
)
vs.)
)
SURENDER MALHAN,)
)
Defendant.)
)
vs.)
)
VICTORIA MYRONOVA,)
)
Third-Party Defendant.)

TRANSCRIPT
of
MOTIONS HEARING

Place: Hudson County Courthouse
583 Newark Avenue
Jersey City, N.J. 07306

Date: May 4, 2012

BEFORE:

HONORABLE MAUREEN P. SOGLUIZZO, J.S.C.

TRANSCRIPT ORDERED BY:

MR. SURENDER MALHAN (10 Huron Avenue, 1N,
Jersey City, New Jersey 07306)

Transcriber Dolores Hastings, AD/T 417
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Audio Recorded
Operator, Marina Oleynik

Argument - Malhan / The Court - Ruling / 95
Argument - Malhan

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MR. MALHAN: In all past cases involving the parenting time there was a valid bias, otherwise, how else can I not have parenting time? Every time she presents an argument it's taken as truth.

THE COURT: I've already answered that. I have answered it and I'm not doing it again. And you've given me nothing new --

MR. MALHAN: Right.

THE COURT: -- that says I should disturb my prior ruling. My ruling from throughout this case, and the multiple times we've been here --

MR. MALHAN: Okay. Let me --

THE COURT: -- I've amended to the facts that are presented.

MR. MALHAN: Right.

THE COURT: You've given me nothing today that disturbs that. So, moving --

MR. MALHAN: Okay, let's move on the parenting time then. Now, as you say that the law presumes that both parents are equal in their parenting ability --

THE COURT: Correct.

MR. MALHAN: That would naturally lead to the consequence that both are given equal parenting

Argument - Malhan / The Court - Ruling / 96
Argument - Malhan

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time then, unless there are some real --

THE COURT: And that's the presumption of the law --

MR. MALHAN: Yes.

THE COURT: -- which is changed in colors by the facts of each individual case.

MR. MALHAN: Exactly.

THE COURT: The facts as they initially developed and as we are still under the umbrella --

MR. MALHAN: Right.

THE COURT: -- thereof, pointed this Court to send the matter to a Dr. Pasternak --

MR. MALHAN: Right.

THE COURT: -- to do a custody evaluation.

MR. MALHAN: Right.

THE COURT: I'm comfortable with the parenting time as it is now until I have the evaluation from the custody expert, at which point we can begin to talk about any enlargement, because nothing new has occurred.

MR. MALHAN: Everything new has occurred, Your Honor. Everything was false. That's very new. Everything is false. I have provided you audio evidence, audio records I have provided you.

THE COURT: And it will not be proven --

Argument - Malhan / The Court - Ruling 97

1 it will not be proven as false until the trial takes
2 place and until the factors by examination and
3 cross-examination are fleshed out.

4 MR. MALHAN: Please help me understand,
5 how was I proven false without a trial, then?

6 THE COURT: There was documents and there
7 --

8 MR. MALHAN: There was nothing.

9 THE COURT: -- were certifications that
10 were presented to the Court --

11 MR. MALHAN: Let's pull up that -- where's
12 the certification?

13 THE COURT: -- that lead the Court to its
14 initial conclusion, which the Court still stands on.
15 The fact that this case has changed, the fact that
16 everybody has had new thought processes, moves you
17 to a better place. I stopped your parenting time
18 initially. I then have seen that you can be an
19 ample caregiver. I've given you more and more and
20 more of their waking time. I am satisfied that --

21 MR. MALHAN: This is mockery, Your Honor.

22 THE COURT: -- what is happening now is
23 reasonable until I get all the remainder of the
24 facts from the experts. And if at that point in
25 time parenting time can be readdressed, I certainly

Argument - Malhan / Coleman

98

1 will do so. I have nothing new that changes my
2 initial mindset. So --

3 MR. MALHAN: Dr. Pasternak's report is
4 three months away. So, that means that I and my
5 children should go through the emotional torture and
6 emotional distress for three more months. My son is
7 reaching his breaking point. He was crying
8 yesterday that he wants more time with me. And look
9 at the paintings he has drawn. Those pictures he
10 has drawn. They say volumes about a child in
11 distress. A child who loves his Daddy.

12 Everything is clear that she has lied,
13 lied, lied, and you have perceived all her lies as
14 truth, truth, truth. That is the fact, Your Honor.

15 THE COURT: Thank you. Now, moving on to
16 the issue of the signing of the Visa release form.
17 Mr. Coleman, that was part of an Order.

18 MR. COLEMAN: Yes. My -- my client has
19 received the -- the form. The -- the initial page
20 was for her signature. The second page had some
21 irregularity. She brought that to his attention and
22 then she was presented with the first page only.
23 We've just gotten this -- this reply certification,
24 a blank form. She's going to fill it in now, and
25 get it to him by Monday. It's not an issue. She --

CERTIFICATION

I, Dolores S. Hastings, the assigned transcriber, do hereby certify the foregoing transcript of proceedings in the Hudson County Superior Court, Chancery Division, Family Part, on May 4, 2012, on C.D., index number from 2:21:59 to 4:42:43, is prepared in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings as recorded.



May 17, 2012

Dolores S. Hastings, AD/T 417
APPEALING TRANSCRIPTS, INC.
CLARK, NEW JERSEY 07066

ATI-603-12

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
VICINAGE OF TRENTON

SCOTT EDELGLASS, et al,)	
)	Hon. Freda L. Wolfson, U.S.D.J.
Plaintiffs,)	
)	Civil Action No. 14-760 (FLW-DEA)
v.)	
)	
STATE OF NEW JERSEY, et al)	
)	Certification of Service
<u>Defendants.</u>)	

- I, Paul Clark, counsel for Plaintiffs, certify as follows:
- I arranged to have all Defendants served with Plaintiff’s Brief in Opposition to Motion to Dismiss through the ECF system as well as by emailing a copy to counsel for Defendants Eric Pasternack at Eric.Pasternack@dol.lps.state.nj.us.

I certify that the foregoing statements are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

1/22/2015
Paul Clark, Counsel for Plaintiffs

/s/_____

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Attorney for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY
VICINAGE OF TRENTON

SCOTT EDELGLASS, et al,)	
)	Hon. Freda L. Wolfson, U.S.D.J.
Plaintiffs,)	
)	Civil Action No. 14-760 (FLW-DEA)
v.)	
)	
STATE OF NEW JERSEY, et al)	
)	[Proposed] ORDER
<u>Defendants.</u>)	

This matter having come before the Court on a Motion to Amend by Plaintiffs, by and through Counsel Paul A Clark, on notice to Defendants’ Counsel, and the Court having considered the papers submitted herein; and for good cause shown;

IT IS on this _____ day of _____, 2015,

ORDERED, that Plaintiff’s Motion to Amend the Complaint is hereby Granted;

Plaintiffs shall file their Second Amended Complaint within 10 days of this Order.

Hon. Freda L. Wolfson, U.S.D.J.