

IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT IN AND FOR MIAMI-
DADE COUNTY, FLORIDA

IN RE: MATTER OF:

FAMILY DIVISION
Case No.: 11-21207-FC-04

MARIO JIMENEZ
Petitioner/Father,

JUVENILE DIVISION
Case No.: D13-15193A-B (D003)
(closed)

and

KAREN WIZEL
Respondent/Mother.

DOMESTIC VIOLENCE DIVISION
Case No.: 12-17840-FC-04 (closed)
Case No.: 12-17838-FC-04 (closed)
Case No.: 11-10881-FC-04 (closed)

**MOTION TO STRIKE NOTICE OF HEARING FOR MOTION OF CIVIL
CONTEMPT/ENFORCEMENT**

COMES NOW, Petitioner, MARIO JIMENEZ, and hereby files his Motion to Strike Notice of Hearing and to Compel Coordination/Collaboration with Petitioner and in support thereof states as follows:

1. On July 20th, 2012 Emergency Order to suspend Petitioner's time sharing was granted.
2. The order was obtained on allegations that Petitioner scared minor children when praying with them.
3. The order was obtained in clear violation of Petitioner's constitutionally protected and inalienable rights of religion and speech.
4. DCF ordered psychological report by Dr. Michael J. DiTomaso.
5. Dr. DiTomaso found that Petitioner "does not appear to be suffering from major psychiatric disease."
6. DCF found no reason to pursue a case against Petitioner, especially in light of four other accusations, all found to be unfounded.
7. Despite strong objection to be re-evaluated by psychologist recommended by Respondent's counsel, Mrs. Vanessa Archer, two other evaluations were performed by Mrs. Archer.

8. Mrs. Archer's competence has been seriously questioned by cases such as the Nubia Barahona's case, where Nubia's death was at least in part due to Mrs. Archer's errors.
9. There is absolutely no evidence that Petitioner who is a Christian man who volunteers his services for children, families, and is a well regarded physician in the community poses any kind of psychological or physical danger to his children, or any other person for that matter, or he would not be able to practice in his profession.
10. While in Petitioner's shared equal custody, his minor children thrived not only physically but emotionally, were excelling in school, and were attending therapies on a weekly basis without showing any signs of physical or psychological abuse.
11. However, almost a year after suspension of Petitioner's time sharing and continuing to this day, Petitioner's minor children psychological and school performances have greatly deteriorated.
12. Petitioner's minor son was diagnosed with Major Depression and Post Traumatic Stress Disorder, and his grades and conduct have significantly declined prompting serious concerns from at least four of his teachers. He has also developed involuntary twitching of his neck and shoulders as a negative side effect of the medications he has been forced to take.
13. The son's therapist, Dr. Gregory Brown believes that it is imperative that minor children and petitioner are reunited as soon as possible to avoid any further psychological deterioration of minor children.
14. Dr. Brown has even volunteered to visit Petitioner's home to facilitate this reunification process.
15. Due to the lack of prompt response from Respondent to repeated requests for mediation as ordered by Honorable Judge Scott Bernstein in October of 2013, and secondary to children's recent physical and psychological deterioration resulting from violations to children's and

Petitioner's constitutional rights, Petitioner filed Emergency Petition for Immediate Unsupervised Visitation on August 21, 2014.

16. Soon after, in retaliation to and in an attempt to circumvent Judge Bernstein's order for mediation, Respondent's counsel filed in bad faith a Second Motion For Temporary Attorney's Fees, Suit Money and Costs.
17. These Fees, Suit Money and Costs arose solely from Petitioner's illegal time sharing suspension.
18. Petitioner has not been given an opportunity for an evidentiary hearing on time sharing with his minor children and/or these Fees, Suit Money and Costs.
19. On October 7, 2014, a second order for Unified Family Court Mediation was entered; almost a year after the 1st initial order for mediation had been given on October 13, 2013.
20. On November 17, 2014, no agreement was reached on mediation, leaving the issue of time sharing still pending.
21. Respondent and her attorneys, as they are doing in this instance, have filed numerous sham pleadings, causing spurious and vexatious litigation by posing as a "victim" when in reality, as previously presented in a Verified Petition for Dependency, Respondent has been alienating Petitioner from the affection of the minor children in a very serious case of Parental Alienation Syndrome.
22. Respondent and her attorneys have brought forth many unsubstantiated allegations and have abused the process in filing similar motions at different venues when they did not get the results desired, or to simply retaliate at Petitioner's attempts at reunification with minor children, as they are once again doing here.
23. As a result of Respondent's vexatious behavior, the minor children have suffered serious physical and psychological damages, most notably the older child whose school performance went from being an A/B student and being named student of the month during 50/50 shared

custody with Petitioner, to presenting with Major Depression, PTSD, and worrisome symptoms such as involuntary movements of his neck and shoulders with serious deterioration of his academic performance and behavior while in sole custody of Respondent.

24. At one point, Petitioner even requested the services of a private mediation firm, Glazier Mediation Group, in an effort to bring Respondent to the table as ordered by this honorable court, but all such efforts were repeatedly ignored by opposite counsel in bad faith.
25. Petitioner has made every effort to minimize unnecessary litigation trying to expedite full reunification with minor children, efforts that have been repeatedly thwarted and ignored by Respondent and her attorneys.
26. Pursuant to Section 61.16, Florida Statutes the court may not award fees, suit money or costs to a noncompliant party that has cause vexatious litigation. The Court may consider violations of court orders as the basis for limiting or denying a fee award regardless of need and ability to pay. *Flannery v. Crowe*, 720 So. 2d 308 (Fla. 4th DCA 1998); *Rosa v. Rosa*, 723 So. 2d 312 (Fla. 4th DCA 1998).
27. According to *Rosen*, supra, the Court may consider any factor necessary to do justice and equity when determining a fee award. A request for fees may be denied when the court finds that the action is frivolous, spurious or brought primarily to harass the adverse party as it is more than clear in this case. *Rosen v. Rosen*, 696 So. 2d 697 (Fla. 1997)
28. A party's financial circumstances should not shield them from paying their own fees and possibly the other party's fees when having engaged in frivolous litigation such as what Respondent and her counsel has been doing since day one. See *Mettler v. Mettler*, 569 So. 2d 496 (Fla. 4th DCA 1990); *Sutter v. Sutter*, 578 So. 2d 788 (Fla. 4th DCA 1991); *Ugarte v. Ugarte*, 608 So. 2d 838 (Fla. 3rd DCA 1992).
29. Attorney's fees may be awarded as a punitive measure when a spouse in a domestic relations case institutes frivolous non-meritorious claims that contribute to unnecessary legal

expenses, costs and a delay of the proceedings – Crowley v. Crowley, 678 So. 2d 435 (Fla. 4th DCA 1996); Barna v. Barna, 850 So. 2d 603 (Fla. 4th DCA 2003). See also, Young v. Young, 898 So. 2d 1076 (Fla. 3rd DCA 2005) (husband threatened prolonged litigation and his superior position as an attorney). In this case, Petitioner believes to have incurred well over one hundred thousand dollars in unnecessary legal expenses, costs, delays of proceedings, time lost from his medical practice as a direct result of Respondent's and her counsel's actions or lack thereof.

30. All this spurious and vexatious litigation has occurred as a direct result of opposing counsel litigating in bad faith and Respondent ignoring the best interest of the minor children.
31. Due to this behavior, fees may be assessed against counsel for litigating in bad faith as case law well supports it. See Patsy v. Patsy, 670 So. 2d 1204 (Fla. 4th DCA 1996), Smallwood v. Perez, 735 So. 2d 495 (Fla. 3rd DCA 1998); Kuttas v. Kuttas, 879 So. 2d 3 (Fla. 2nd DCA 2004).
32. Petitioner is set to speak before the Florida Supreme Court Committee Public Meeting on Future of Florida Courts on February 23rd and will not be able to attend this hearing nor would he have the time to explain the intricacies of this case in five minutes.
33. There is already a hearing set in regards to this topic on March 5, 2015 at 3:30 p.m. before this honorable court.

WHEREFORE, Petitioner respectfully requests this honorable Court an Order striking Respondent's Notice of Hearing for MOTION FOR CIVIL CONTEMPT/ENFORCEMENT set for Feb. 23, 2014, and an order that the opposing counsel begin Collaborating with the Petitioner to amicably mediate for a positive outcome in the best interest of the minor children granting any and all other relief the Court deems just and proper.

Respectfully submitted,

By: _____/s/_____
Signature of Petitioner/Father
Mario Jimenez, M.D.

CERTIFICATE OF SERVICE

I certify that a copy of this document was emailed to the person(s) listed below on February 11th, 2014.

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