

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

IN RE: MATTER OF:

MARIO JIMENEZ
Petitioner/Father,

and

KAREN WIZEL
Respondent/Mother.

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

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

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 FOR PROTECTIVE ORDER

Petitioner, MARIO JIMENEZ, pursuant to Fla.R.Civ.P. 1.410, and S.D. Fla. Local Rule 26.1(h), hereby files Motion For Protective Order requesting the Court quash Motion For Ex-Parte Order Compelling Discovery, and providing that discovery not be permitted in this action, and states as follows:

1. Due to the lack of prompt response from Respondent's counsel to repeated requests for mediation as ordered by Honorable Judge Scott Bernstein on October 13, 2013, and secondary to children's recent physical and psychological deterioration resulting from violations to children's and Petitioner's constitutional rights, Petitioner recently filed Emergency Petition for Immediate Unsupervised Visitation on August 21, 2014.

2. Soon after filing this Emergency Petition, 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, and has now filed Motion For Ex-Parte Order Compelling Discovery instead of obeying Judge Bernstein's order for mediation.

3. At this emergency hearing, a second order for Unified Family Court Mediation was entered on October 7, 2014 for November 17, 2014 at 8 a.m., almost over a year after the 1st initial order for mediation was entered.

4. Respondent has 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.

5. For instance, Respondent initiated this very long legal process of spurious and vexatious litigation by requesting a purported emergency telephonic hearing based on clearly erroneous information that since then has been shown to be false. This has been followed by numerous instances of the same vexatious behavior.

6. Respondent and her counsel 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.

7. 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.

8. As mentioned before, a Verified Petition For Dependency was filed against Respondent, but later dismissed without prejudice to avoid lengthy and costly court costs, and an Order for Mediation was issued, which Respondent did not comply with despite Petitioner's repeated attempts at scheduling such.

9. 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.

10. 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 counsel.

11. 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).

12. 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)

13. 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).

14. 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.

15. 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 children.

16. 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).

17. If Respondent wishes Temporary Attorney's Fees, Suit Money and Costs, a trial should be set before this most honorable court, at which time all evidence and witnesses as to Respondent's and opposite counsel's vexatious and bad faith litigation will be presented.

18. Respondent claims to make a gross monthly income of \$1,360.00 as a Teacher's Assistant and additionally receives \$1,180.00 in child support from Petitioner, but claims not to have financial resources to draw from.

19. Petitioner has a gross monthly income of approximately \$4,333.00 and pays \$1,180.00 per month in child support, plus is responsible for providing for two other minor children from his new family.

20. Petitioner is trying to establish a medical practice in a very volatile and changing health industry. Respondent's repeated attacks have made it even more difficult for Petitioner to establish his medical practice, which is not even expected to even break any time soon.

21. Fla.R.Civ.P. 1.280(c), provides that, "[u]pon motion by a party ... and for good cause shown, the court in which the action is pending may make any order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice

requires." And, this is exactly what Respondent's counsel is doing in this instance. The Rule proceeds to cite a number of instances legitimizing the court's imposing a protective order including, most notably, "that discovery not be had." *Tennant v. Charlton*, 377 So.2d 1169 (Fla. 1979); *Office of Attorney General, Dept. of Legal Affairs v. Millennium Communications & Fulfillment, Inc.*, 800 So.2d 255 (Fla. 3d DCA 2001).

WHEREFORE, Petitioner respectfully requests that this honorable Court issue a protective order providing discovery not be permitted in this action and quash Motion For Ex-Parte Order Compelling Discovery, and grant such other relief that may be awarded at law or in equity.

Respectfully submitted,

By: _____

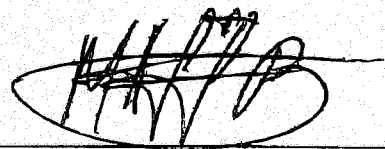

Signature of Petitioner/Father
Mario Jimenez, M.D.

CERTIFICATE OF SERVICE

I certify that a copy of this document was emailed to the person(s) listed below on October 30th, 2014.

Ana C. Morales, Esq.,
Attorney for Former Wife
Reyes & Arango Moore, P.L.
amorales@reyesmiller.com,
yreyes@reyesmiller.com,
efile@reyesmiller.com
jsequebre@reyesmiller.com

Anastasia Garcia
Guardian Ad Litem
agarcia821@aol.com



Signature of Petitioner/Father
Mario Jimenez, M.D.
Pro Se Petitioner
12901 SW 66 Terrace Drive
Miami, FL 33183