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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

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ALLAN KASSENOFF,
Plaintiff,

vs. Indictment No.
58217/19

CATHERINE KASSENOFF,
Defendant.

----- X

January 28, 2021
Westchester County Courthouse
111 Dr. M.L.K., Jr. Boulevard
White Plains, New York 10601

BEFORE: HONORABLE NANCY QUINN KOBA

A P P E A R A N C E S:

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1 MOST & SCHNEID, P.C.
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4 BY: CAROL W. MOST, ESQ.

5 Also present: Court Attorney Referee Irene Ratner
6 Catherine Kassenoff
Allan Kassenoff

7
8 Jennifer Gruseke, Senior Court Reporter

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1 THE COURT: Everybody, let's put your
2 appearances on the record, please, starting with
3 Plaintiff's Counsel.

4 MR. DIMOPOULOS: Dimopoulos Bruggemann by Gus
5 Dimopoulos on behalf of Allan Kassenoff who is on the
6 call as well, Your Honor. Good morning.

7 MS. KUSNETZ: Marcia Kusnetz, Law Office of
8 Marcia E. Kusnetz, for Catherine Kassenoff who is also on
9 the phone, Your Honor, and co-counsel are also -- will
10 enter their own appearances.

11 MS. VARA: Co-counsel for Catherine Kassenoff,
12 Sanctuary for Families, by Lisa Vara and Ruchama Cohen.
13 Good morning, Your Honor.

14 THE COURT: Good morning.

15 MS. MOST: Carol Most, attorney for the
16 children. Good morning, Your Honor.

17 THE COURT: Okay. The reason I'm having this
18 conference is based on the correspondence The Court
19 received yesterday afternoon regarding the oldest child's
20 failure to attend school and taking a taxi, I understand,
21 to the mother's house.

22 So first of all, let me start with
23 Ms. Kassenoff. Could you please tell me what happened
24 from your perspective yesterday?

25 MS. KASSENOFF: So around 12:50, Ally came to my

1 house. She rang the doorbell. She showed up at my
2 house. I was here working. And she was -- you know, she
3 seemed happy to see me, but she was also very upset. She
4 said that she didn't want to live in her Larchmont house
5 anymore, that she couldn't take it anymore living there.
6 She said that she was scared for her safety there. She
7 said that she, you know, is scared of her father and her
8 nanny. She was on a Zoom call when she showed up. She
9 was like in her class, one of her classes, on her cell
10 phone.

11 She said she had taken a taxi from Larchmont. I
12 didn't see a taxi when she arrived, but that's probably
13 because they had left and she had walked all the way up
14 to the front door by then and they had gone.

15 And then she and I sat for a few minutes to
16 discuss what to do. I -- I then called counsel so that
17 we could figure out exactly what to do. I was reluctant
18 to immediately call the father given that she had just
19 said that she was scared for her safety, and, you know,
20 he seemed to be the reason she was scared. Sorry about
21 the dog.

22 So we called Ms. Most. After I spoke with
23 counsel, we immediately called Ms. Most.

24 And at some point, I think around that same
25 time -- I don't know exactly when -- Plaintiff's Counsel

1 was also notified.

2 THE COURT: So what specifically did she tell
3 you triggered her? First of all, was she supposed to be
4 physically in school at that time?

5 MS. KASSENOFF: I can't answer that. I don't
6 know.

7 THE COURT: So what did she tell you triggered
8 her going to your house other than this generalized
9 statement?

10 MS. KASSENOFF: Well, she said that she had been
11 thinking about doing this for a long time, that she had
12 been miserable for a long time, that she -- and she
13 specifically referenced her father and her nanny as
14 making her miserable. She talked about, you know,
15 physical violence of her nanny and her father in the
16 past, and she said that she just didn't want to be there
17 anymore. She said this was too much for her. She didn't
18 want to live there anymore. It was -- you know, and then
19 she asked why she can't live here.

20 I'm so sorry about the dog. Let me let him out.
21 I'm so sorry. Sorry about that.

22 THE COURT: That's okay. Okay. So when was the
23 father notified that Ally was at your house and not in
24 school?

25 MS. KUSNETZ: Can I answer that, Judge?

1 THE COURT: Yes, you can.

2 MS. KUSNETZ: Immediately when we got the notice
3 from our client and I was on another conference call at
4 the time, I called her back and she told me, "Ally is at
5 the house." So I -- simultaneously I sent an e-mail to
6 Mr. Dimopoulos and to Ms. Most saying, "we have an
7 emergency situation." I could forward the e-mail to you.
8 I don't have it in front of me. But, "we have an
9 emergency situation. Ally showed up at mom's house and
10 let's figure out a way to get her back home without a
11 scene or without causing the child any more upset."

12 THE COURT: Okay. So Ms. Most?

13 MS. MOST: So, yes. Ally did tell me that
14 nothing in particular happened. It was something over
15 time, that her father had yelled at her. She talked
16 about the cell phone that she -- the argument that she
17 taped with her father yelling at Charlotte, and she
18 talked about the issue that happened with her cell phone
19 that happened months ago.

20 I think the problem here is that Ally is a very
21 complex and troubled child. She is psychologically --
22 I'm going to use the word "psychologically unhealthy."
23 That is the language that Dr. McGuffog argues.

24 I'm not particularly surprised this has
25 occurred. She's run away before. She's done it numerous

1 times. I think that she -- she has a lot of issues that
2 have to be addressed, and I think that we are not going
3 to be addressing -- be able to address those issues.

4 She needs to be in a therapeutic environment.
5 She needs to be really in a therapeutic school. I don't
6 think we can address all of her issues. We have an
7 extensive, a very extensive report, from Dr. McGuffog
8 which describes her issues. She's diagnosed with a
9 conduct disorder, a reactive attachment disorder, and a
10 borderline personality disorder.

11 Those -- those are very significant, and so she
12 also has experienced what the doctor referred to as
13 splitting, and she does that. When something happens
14 that she doesn't like, she moves to the other side. She
15 had a therapy session last night. She didn't like what
16 was going to happen, so she walked away. And that is --
17 that is a problem because when she's --

18 THE COURT: wait. I'm sorry. Did she walk away
19 from the therapy session?

20 MS. MOST: well, from the virtual, yes. She
21 either turned it off -- she happened to walk away last
22 night. She doesn't face her issues, and so when somebody
23 raises an issue with her and she doesn't like it, she
24 just turns off the screen.

25 The current split that she has had with her

1 father had to do with him confronting her with behavior
2 that was inappropriate, and so she split with her father
3 and now she's with her mother.

4 And nobody denies that this child longs to have
5 a relationship with a mother figure. No one is denying
6 that. And so she -- she goes back and forth. But she is
7 a very complex, complex child, and she's very troubled.

8 MS. KUSNETZ: Can I respond to that?

9 MR. DIMOPOULOS: Judge Koba, you presided over a
10 trial where the mother denied having encouraged Ally to
11 run away from home and go to a police station in the
12 past. You heard the testimony. I don't have to
13 reiterate it. You saw it yourself.

14 I don't know, nor does my client know, how Ally
15 got money for a taxi. He does not know how Ally would
16 even know how to call a taxi. He doesn't think that she
17 knows how to do that. He has no idea what taxi company
18 would pick up an 11-year-old child from school where she
19 was in person dropped off at 12:30 for in-person
20 learning. What kind of a taxi company -- I want to know
21 so I can report them immediately to the police actually.

22 what taxi company would pick up an 11-year-old
23 child at school without the consent of a parent or school
24 administrator and drive that child 12 to 15 minutes away
25 to an unknown address and then drop that child off

1 without a parent to be greeted?

2 why -- how does the child know the mother's
3 address? why wasn't the child immediately reprimanded
4 and brought back to school which she absconded from by
5 the mother? why was I not contacted for 30 minutes
6 afterwards? why were my efforts to get the nanny to pick
7 the child up from the mother's residence immediately
8 rebuked, only to agree to then drop the child off back at
9 school or home at 2:20 or 2:25 when school was ending?

10 when the child was dropped off at the residence,
11 Your Honor, she was left at the end of a dark driveway
12 which I have personally seen. It's about 50-feet long.
13 The child was not seen entering the residence or put into
14 the custody of another adult. There are four different
15 entrances, paths, to the house where she could have seen
16 inside of the house. There's a front door where we could
17 have seen a person come out of the front door and accept
18 the child. That never happened. She was left by the
19 mother at the end of the dark driveway and left to walk
20 through fenced bushes 50 feet to a back door where you
21 cannot see the back door from the end of the driveway.

22 Then the child allegedly unilaterally left after
23 being left by the mother and ran to the police station.
24 We got a call from Detective Pompilio shockingly.
25 Because apparently Detective Pompilio works 24 hours a

1 day, seven days a week, 365 days a year, or she's just
2 always on duty when Ally runs away. So Detective
3 Pompilio gave us a call, and we were told to pick the
4 child up.

5 So we have a lot of questions about what
6 happened yesterday.

7 THE COURT: what happened when you went to the
8 police department?

9 MR. DIMOPOULOS: Mr. Kassenoff would have to
10 answer that question.

11 THE COURT: Okay. Mr. Kassenoff?

12 MR. KASSENOFF: I went to the police, I got
13 buzzed in, sort of went to the next room. Ally was
14 sitting on a bench. My guess was she had been alone, but
15 when I was buzzed in Dr. Pompilio came out. I ended up
16 standing there for about 20 minutes while Detective
17 Pompilio very repeatedly kept telling Ally that she can
18 always come to talk to her at the police station. I was
19 a little disturbed by it, primarily because it sounded
20 like the detective was almost endorsing Ally running away
21 and coming to the police whenever she wanted. So I
22 interrupted and said, "Obviously you mean telling a
23 parent that you want to go to the police and not just
24 running to the police," and the detective said at that
25 point, "Yes, of course."

1 She continued talking to Ally just repeating the
2 same thing over and over. That probably lasted for 20 to
3 25 minutes. We then left. I texted Dr. McGuffog because
4 Ally's therapy was supposed to be at 5. At this point it
5 was 10 to 6, and I told Dr. McGuffog that we should be
6 home by 6 if she was available for a therapy session at
7 that time.

8 MR. DIMOPOULOS: After the therapy session, Your
9 Honor, I'm told by -- by my client -- he can tell you as
10 well that -- well, Allan, why don't you say what happened
11 during the therapy session because Dr. McGuffog asked him
12 to be on the call so that he could try to make sure that
13 Ally didn't disconnect it or walk away. So please tell
14 the Judge what happened.

15 MR. KASSENOFF: Yeah. I mean, that's exactly
16 what happened. Dr. McGuffog asked if I could sit in on
17 the call primarily to just make sure that Ally didn't
18 sort of shut off, walk away, shut off the screen, what
19 she tends to do during therapy as well as not during
20 therapy, when something is raised that she doesn't want
21 to talk about.

22 So Ally -- we got on the Zoom call with
23 Dr. McGuffog. Dr. McGuffog was asking Ally what
24 happened, why she did this, what's upsetting her. And
25 Ms. Most got it a little wrong. She didn't walk away.

1 She just sat there and wouldn't respond. She was totally
2 unresponsive. So --

3 MS. KUSNETZ: Can I say something? Please don't
4 interrupt.

5 MR. DIMOPOULOS: Can I just finish my point,
6 Your Honor, and then I have nothing more to say? I'll
7 just be two more minutes.

8 Here are the facts: In the summer when
9 Ms. Kassenoff didn't have any access to the kids and in
10 the end of the school year leading to the trial, she had
11 a fabulous relationship with her father. She -- sending
12 him cards.

13 MS. KUSNETZ: This is not relevant.

14 THE COURT: First of all, everyone who is not
15 talking should mute their mics. I'm getting feedback
16 still.

17 Mr. Dimopoulos, I'm not going to go over what
18 happened. This is about the immediate concern. So my
19 question --

20 MR. DIMOPOULOS: The immediate concern doesn't
21 go away.

22 THE COURT: Okay. My question is: what is
23 being done to enact the recommendations of Dr. McGuffog?

24 MS. KUSNETZ: Your Honor, can I address that
25 because --

1 THE COURT: Ms. Kusnetz, stop. I stopped him
2 from talking about what happened in the summer. Please
3 mute.

4 MS. KUSNETZ: I want to talk about what happened
5 yesterday because it was not represented correctly.

6 THE COURT: I heard what Ms. Kassenoff said to
7 me. Hold on.

8 Go ahead, Ms. Most.

9 MS. MOST: So, Your Honor, I don't know if you
10 have read the report that was prepared by Dr. McGuffog.
11 I did send that with the permission of the father to
12 Ms. Ratner. We have a serious, serious situation here
13 with this little girl, and the recommendations were
14 firstly that she needed to have a 504 plan.

15 And I did speak to the father because I felt
16 that we need to provide this document to the school
17 district so the school can start planning for Ally, and
18 part of that planning is that she's going to need a
19 forensic -- I'm sorry -- a therapeutic environment. And
20 the costs of those kinds of programs, a wilderness
21 program, I mean, my numbers are a little old, but I'm
22 going to tell you \$150,000 a year. A therapeutic
23 environment is \$100,000 a year. And frequently those
24 things can be gotten through the state and through the
25 CSC.

1 So I asked that Mr. Kassenoff provide this
2 document to the school district. I will tell you that I
3 did have a consultation with my former partner to ask
4 her -- who only does special ed law, and she said that's
5 what should be done. So I said to Allan Kassenoff, "You
6 need to discuss that with your wife." He sent an e-mail
7 stating that he would like to send this to the school
8 district and she was adamantly opposed. And you did get
9 a letter from I think it was Sanctuary for Families this
10 morning.

11 THE COURT: Let me stop you right there. I did
12 not read the letter from Sanctuary for Families this
13 morning because, quite frankly, I had other matters in
14 front of me. But let me make this point, my
15 understanding -- and this has been said multiple times --
16 the attorney of record is Ms. Kusnetz. The Sanctuary for
17 Families represented to me on prior occasions that they
18 were going to be in the, quote, background, and would not
19 be making filings with The Court. I can't have filings
20 from two attorneys representing the same party. And,
21 moreover, sending me a letter minutes before I have a
22 conference, I don't have time to read it, just so that's
23 clear.

24 Go ahead, Ms. Most.

25 MS. MOST: So I believe that I have to go

1 through the school district in order to set up a history
2 with this child so that we can go through the school
3 district to get the services that Ally is going to need.
4 We need to provide the neuropsychiatric evaluation to the
5 school district. It is done every day. There is no
6 basis not to provide that. There is no information in
7 there that shouldn't be provided. It is private. It
8 does not go to colleges, hence five years from now. It
9 is a private document, and it can be expunged.

10 So they need to have this document to understand
11 what they are dealing with. It has to be sent. So I --
12 I guess we're going to -- personally I think the father
13 has the right to send it because he is the custodial
14 parent.

15 However, given that the -- Mrs. Kassenoff has
16 objected, I'd like direction from you because I think
17 this little girl needs a lot of services. We have to get
18 them through the school district and the CSC. He has to
19 make -- he has to forward this document with a request
20 for further evaluation from the CSC. It's got to be
21 done.

22 MS. KUSNETZ: May I please respond? I want to
23 go back, Judge, because you didn't hear me.

24 THE COURT: I heard your client.

25 MS. KUSNETZ: But I spoke to Ms. Most. Ms. Most

1 asked us, first of all, to answer to Mr. Dimopoulos'
2 insinuation, completely unfounded, that my client had
3 anything to do with a distraught child showing up at her
4 house, and I heard the kid crying in the background when
5 I was talking to my client on the phone.

6 When Ms. Most asked us to wait, she had a court
7 conference at 3 o'clock, we had to convince her to speak
8 to the child. She spoke to the father. She had no
9 intention of speaking to the child because she said the
10 child has a complicated psychiatric background and she's
11 a liar. That is a breakdown in an attorney/client
12 relationship. We had to beg her to speak to the child
13 before she made a recommendation, and I had all the
14 co-counsel on the phone with me.

15 She then speaks to the child and tells me to
16 wait until her conference is over to get back to me with
17 her recommendation, and we waited. And then I had a
18 conversation with her, and she said to just tell the
19 mother to either drive her home or put her in a taxi by
20 herself.

21 I want Your Honor to note, if your child ran
22 away, would you not come home from work? Where was the
23 father? They were on notice of this from 1:15 in the
24 afternoon. And his best recommendation by his attorney
25 is possession rather than parenting. Send the nanny to

1 go get her from the mother's home because that's his
2 answer to everything. He was in the city at work. He
3 was not home, he didn't get home, and my client had no
4 idea when she sat there in front of the house and sent
5 the child up the driveway that the child would leave.
6 She is not permitted on his property, and she is not
7 permitted to see the other children as per Your Honor's
8 order.

9 She could not walk the child up to the door. I
10 told Mr. Dimopoulos and Ms. Most she was going to drive
11 the child home. It took a good deal of convincing to get
12 that child in a car with her mother, and I know that she
13 was texting her attorney all the time begging her not to
14 make her go back home. But my client put her in the car
15 and she drove her home so as not to disobey a court
16 order. But frankly, other colleagues that I have spoken
17 to asked me why I did direct my client to follow
18 Ms. Most's order when a kid was that distraught to send
19 her back to a home that she is extraordinarily unhappy
20 in.

21 And I would like to now talk about what is going
22 on. He's not around. He is either sleeping over at his
23 paramour's house in New Jersey or he brings a replacement
24 mother into the home, sleeps over, and locks the door,
25 which I have to tell you, Charlotte and Ally report on

1 almost a daily basis. He's either at work or at the
2 girlfriend's. He is not there.

3 Ally is failing two subjects. She has absences,
4 she doesn't get on Zoom calls, she has complained I'm
5 going to tell you daily to her mother, which her mother
6 cannot respond to, to the fact that there is no one there
7 to help her with her schoolwork, no one to help her get
8 on a Zoom call, and the school records reflect that.
9 What does Dr. McGuffog's report say? She calls her a
10 liar, a thief.

11 She recounts past experiences of theft and past
12 emotional personal experiences that she derived from
13 therapeutic sessions about both parents, information that
14 parents provided in relation to the therapy separate from
15 this report, and the -- and she refers to Dr. Ravitz's
16 report, a psychological evaluation, past possible
17 diagnoses of the child. She refers to the prior therapy
18 provider who treated Ally, past possible diagnoses, and
19 if Your Honor reads the report, which I urge you to do,
20 you will see that she tests her but comes up with a
21 various number of diagnoses that she is not even sure of.

22 This a neuropsychological report for educational
23 purposes, but she talks about sibling rivalry, she talks
24 about custody issues, she talks about domestic violence
25 in the home. She talks about issues with bonding with

1 both parents. She talks about custody that she recants
2 her prior representation in an off-the-cuff premature
3 report back in August where she said, "Ally wants to live
4 with her father." And now she says, "No. She wants to
5 live with her mother but she's really just, you know,
6 playing one parent off of the other."

7 Your Honor, Ally has sent her mother e-mails and
8 texts on a daily basis, and she is --

9 THE COURT: This is good. So I'm directing you
10 to produce those texts.

11 MS. KUSNETZ: Absolutely, Your Honor.

12 THE COURT: Let me go back to my initial
13 question.

14 MS. KUSNETZ: I want to talk about the McGuffog
15 report.

16 THE COURT: I said I want to hold on a second.

17 So, Mr. Kassenoff, what actions are being taken
18 to address the recommendations in the report?

19 MR. KASSENOFF: Your Honor, before -- I will
20 address that, but I would like to correct a couple of
21 things that Ms. Kusnetz said. It's a very disturbing
22 pattern that she just frequently lies.

23 MR. DIMOPOULOS: Allan, don't bother. We know.

24 MS. KUSNETZ: I am not a liar and I will not be
25 called a liar by anyone in these proceedings.

1 MR. KASSENOFF: You are a liar, Ms. Kusnetz, and
2 please be quiet.

3 THE COURT: Hold on a second now. Mute your
4 mic.

5 MS. KUSNETZ: It's an abusive remark.

6 THE COURT: Mute your mic. Thank you.

7 Mr. Kassenoff, you're allowed to speak. I'm not
8 going to listen to people go back and forth. Because
9 just so we're clear, I scheduled this emergency
10 conference in the middle of a very booked schedule
11 because my concern here is whether the child was
12 manipulated or not manipulated. The fact remains the
13 child took a taxi from Larchmont to New Rochelle crying
14 to her mother's house and making certain statements.

15 So let's deal with the distress of the child,
16 and the parties can keep -- and especially counsel and
17 parties keep negative comments out of it.

18 I want to know what we're doing to help a child
19 that's clearly in crisis, and there were recommendations
20 made in Dr. McGuffog's report about what type of therapy
21 may be beneficial for this child. So I'd like to know
22 what is being done to address those recommendations.

23 Mr. Kassenoff.

24 MR. KASSENOFF: I spoke to Ms. Most about this.
25 And as she indicated before, I did two things. First,

1 and based upon Ms. Most's recommendation, I -- she told
2 me to send the report to the school. I then said, "I
3 don't want to get in trouble with The Court for not
4 discussing this with Catherine." So I sent her a very
5 straightforward on our Family Wizard, "I plan on sending
6 the neuropsych to the report." And now that turned
7 into -- you know, you didn't read the letter from
8 Sanctuary for Families, but it's a nine-page letter with
9 exhibits saying they want to file an emergency motion, a
10 temporary restraining order, and they want to discontinue
11 Ally's treatment with Dr. McGuffog, et cetera. So I did
12 that.

13 I still have not sent the report because
14 Catherine and her army of lawyers are preventing -- or
15 threatening to prevent it. I also -- one of the
16 recommendations was Dr. McGuffog suggested a monthly
17 meeting with myself with Catherine -- well, with myself
18 and Catherine.

19 THE COURT: Has that happened?

20 MR. KASSENOFF: Personally, Your Honor, I don't
21 think that would be productive, but Ms. Most suggested I
22 reach out to Dr. McGuffog to see if she still wanted it.
23 I did. I copied Catherine. I said, "Dr. McGuffog, in
24 your report you indicated that you thought monthly joint
25 parent-guided sessions would be helpful for Ally. Do you

1 still believe that to be the case? Thank you, Allan." I
2 never heard back from Dr. McGuffog.

3 The one thing I will say is in Sanctuary for
4 Families' letter, they're accusing me of violating court
5 orders by sending that e-mail. I'm not sure what court
6 order I'm violating, but their exact statements are, "The
7 Plaintiff violates The Court's orders without
8 repercussion," and they're referring to me sending that
9 e-mail. Those were the two things that I did in response
10 to --

11 THE COURT: well, actually, the court order does
12 allow to contact the doctor for scheduling. So I suggest
13 that Counsel understand the orders before they write
14 letters to The Court.

15 Go ahead. So Ms. Kassenoff.

16 MS. KASSENOFF: Yes, Judge, I'm here.

17 THE COURT: So what is your position on the
18 report?

19 MS. KASSENOFF: I'll defer to Counsel to address
20 it.

21 MS. KUSNETZ: I would like to be heard, please.

22 THE COURT: You were heard on the report
23 already.

24 MS. KUSNETZ: You didn't let me finish because
25 what I wanted to tell you, Judge --

1 THE COURT: Ms. Kusnetz let me make something
2 perfectly clear.

3 MS. KUSNETZ: I can't speak because I didn't
4 finish.

5 THE COURT: You did speak. Stop interrupting
6 The Court.

7 MS. KUSNETZ: You did not let me finish.

8 THE COURT: I got what you said about the
9 report. You don't want the report disclosed to the
10 school. I got it.

11 Go ahead, Mr. Dimopoulos.

12 MS. KUSNETZ: In --

13 THE COURT: Stop talking until I give you an
14 opportunity.

15 Go ahead.

16 MR. DIMOPOULOS: Your Honor, just for the
17 record, I am not going to address anything Ms. Kusnetz
18 said. By not addressing it should not be deemed as an
19 admission.

20 THE COURT: I just asked you what your position
21 is.

22 MR. DIMOPOULOS: My position is very clear. My
23 advice to my client is to not do anything in the report
24 without a specific directive from this Court. That's
25 number one.

1 Number two is my recommendation and suggestion
2 to this Court is that The Court permit Mr. Kassenoff to
3 engage a specifically-trained and educated experienced
4 educational lawyer. He should be able to use marital
5 funds to do so. This is a benefit for the child. He
6 should get a lawyer who should guide him as to what the
7 process is, as to how to keep this report confidential to
8 take care of anyone else's fears. Nobody wants this
9 going on the internet or anywhere else.

10 From my experience, personally and
11 professionally, you trust the school that if you give
12 them something to help a kid they don't publish it. It's
13 fine. They get these things every day.

14 But in any event, I will allow a trained
15 professional to make -- to give that advice. I myself
16 don't know the area of the law that well. Once we have
17 an educational lawyer engaged, we should have that
18 educational lawyer guide this Court as to how to get the
19 school district to fulfill its -- from what I understand
20 in consultation with a few people, they have some final
21 obligation under certain circumstances, and there
22 may be -- Dr. McGuffog recommends a therapeutic boarding
23 school.

24 Here are the facts, I'm going to say this on the
25 record. My client cannot protect a child that runs away

1 from school. He can't. Let's forget all of the advocacy
2 for a minute. An 11-year-old child was off on her own.
3 Forget whether or not Ms. Kassenoff did it, forget
4 whether or not my client was behind locked doors with a
5 girlfriend. Forget all of that.

6 THE COURT: Right. Like I said, I want to talk
7 about the child.

8 MR. DIMOPOULOS: And there's no way for him to
9 prohibit in 35 minutes from that happening again. Is he
10 to not allow his child to go to school and be accused of
11 neglect at that point? So he's at a loss, Your Honor,
12 truly at a loss.

13 MS. KUSNETZ: Judge, may I please respond?

14 THE COURT: Everybody can stop. When he
15 finishes speaking, I will allow other people to speak.
16 The court reporter can't write down more than one person
17 at a time.

18 MR. DIMOPOULOS: It is very rare, Your Honor,
19 for a client to be asking me a question and for me to say
20 I don't know what to do. I don't know how to keep this
21 child safe, neither does he. That's a fact. So we need
22 specific advice from an education attorney how to deal
23 with this situation with the school and get this child
24 into an environment where she can be physically safe.
25 I'm not even advocating right now anything else other

1 than to make sure this child is not running around
2 Westchester County for whatever reason. That's the only
3 thing that I think is important.

4 THE COURT: Right, which is what I said.

5 Ms. Ratner, do you have anything to add?

6 MS. KUSNETZ: May I please respond?

7 THE COURT: I'm going through what I want to do.

8 Ms. Ratner, do you have anything to say? I
9 can't hear you. I can't hear. You're muted.

10 REFEREE RATNER: I think the child desperately
11 needs some intervention. The school district is the way
12 to do it. It is their obligation if a child has problems
13 in school. Clearly by running away from school, turning
14 off Zoom classes, et cetera, there is an issue.
15 Dr. McGuffog recommends that she go to a therapeutic
16 environment school, boarding school, wilderness, and the
17 way to do that is through the school district unless
18 Mr. Kassenoff is willing to pay the \$150,000 a year that
19 Ms. Most says it would cost. And from my understanding,
20 it would be at least that much. And --

21 MS. KASSENOFF: This child was not running away
22 from school. This child was running away from a
23 miserable home.

24 MS. KUSNETZ: May I please respond, Judge?

25 THE COURT: Ms. Kassenoff, let your attorney --

1 MS. KUSNETZ: May I please respond?

2 THE COURT: Stop. I'm going to terminate the
3 conference.

4 REFEREE RATNER: It's almost irrelevant whether
5 she was running away from school or from home.

6 MS. KUSNETZ: It is not irrelevant.

7 THE COURT: Ms. Kusnetz, stop. I'm going to --

8 REFEREE RATNER: Dr. McGuffog has clearly stated
9 that there are very serious issues with this child.

10 She's the expert. She's the one that recommended that
11 the child be in a boarding school or a wilderness program
12 as a therapeutic environment in order to try to help her
13 before it is too late. She is 11 years old. She has
14 been doing things that are quite unusual for an
15 11-year-old child. And my fear is that if we don't get
16 her help immediately, sooner rather than later --

17 MS. KASSENOFF: She needs her mother actually.
18 That's what she needs.

19 REFEREE RATNER: And Ms. Kassenoff obviously
20 does not understand what you have said, Judge. She keeps
21 interrupting.

22 MS. KUSNETZ: You know, this is a mother
23 fighting for her child who has not been permitted to
24 parent. This is a situation. She does not --

25 THE COURT: Are you finished speaking,

1 Ms. Ratner?

2 REFeree RATNER: I think everybody understands
3 what I'm saying. I'm not an expert. Dr. McGuffog is.
4 Ms. Kassenoff is not an expert, Ms. Kusnetz is not an
5 expert. None of us here are experts. She is the expert,
6 and now it is time to take that report to the school
7 experts and see what they -- if they agree that the child
8 should be --

9 THE COURT: Hold on a second. We lost Ms. --

10 REFeree RATNER: I'll bring her back in. I've
11 got her.

12 THE COURT: Is Ms. Kassenoff back? There she
13 is.

14 Ms. Kassenoff, can you hear me?

15 MS. KASSENOFF: Yes, I can.

16 THE COURT: Ms. Kusnetz, go ahead. Wait, wait,
17 wait. Unmute. I can't get you unmuted.

18 Ms. Kassenoff, unmute your button.

19 MS. KASSENOFF: Yes, I did.

20 THE COURT: I mean Ms. Kusnetz.

21 Can you unmute her, Irene? I can't get her
22 unmuted.

23 Ms. Kusnetz, can you unmute?

24 REFeree RATNER: No. It's not allowing me.

25 THE COURT: Ms. Kusnetz, call back in. I can't

1 get you unmuted.

2 REFeree RATNER: She's going to have to sign out
3 and sign back in.

4 THE COURT: I can't hear you. Sign back in.

5 REFeree RATNER: I think she said okay.

6 THE COURT: Did she say okay?

7 REFeree RATNER: I thought I heard her -- I saw
8 her mouth say okay.

9 THE COURT: Ms. Kusnetz, do you have a text to
10 tell her to sign back in?

11 She's back. You have the floor. Go ahead.

12 MS. KUSNETZ: Thank you. I appreciate it. Dr.
13 McGuffog admits in her report that she has been unable to
14 create a therapeutic bond with the child. Dr. Ravitz
15 said in his report, Judge, that he did not recommend
16 individual therapy, that it would not be successful with
17 the child. There are group therapy for children her ages
18 where they do use dialectical therapeutic, cognitive
19 therapeutic sessions with -- in group environments and
20 the child has individual therapy with both parents
21 through Columbia doctors. There are many programs like
22 this that help children remain in their home, and they do
23 provide therapeutic services that are different than that
24 is provided by Dr. McGuffog. And really they are
25 alternatives to a boarding school or sending the child

1 away.

2 I think -- my client -- I have to tell you that
3 my client is not in support of sending the child away to
4 a boarding school. She thinks it will destroy her. What
5 is concerning to all of us right now clearly is the
6 child's state of mind. She ran away twice yesterday. My
7 client had nothing to do with that.

8 They can suppose all they want. She had nothing
9 to do with it. The child came to her. What no one is
10 considering in any of these scenarios unfortunately is
11 that the child is failing without both parents in her
12 life. She needs her mother in her life. Supervision
13 should be lifted. This Court should listen to the child.
14 She wants to be with both parents. She's never said she
15 didn't want to be with the father. She has said -- and
16 we will provide them to The Court. They were provided to
17 the Appellate Division, all of the e-mails and texts to
18 her mother begging her to be with her. She sent them to
19 Ms. Most during the Covid outbreak in December. Her
20 mother was cc'd on it. "Please let me be with my
21 mother."

22 Ally is not, as Ms. Most might say, sociopathic
23 or without empathy. She took care of the entire family
24 during the Covid outbreak. She was making spaghetti.
25 She made sure her sisters were showered. She made sure

1 everybody was organized and where they had to be. There
2 is a great deal of hope in this child. She, as
3 Dr. McGuffog says, is highly intelligent, highly
4 intelligent. She is able to communicate her feelings,
5 yet her feelings are not being heard. why? Because her
6 judgment has been substituted by her attorney. This is
7 not that situation.

8 This child knows exactly what she wants, and
9 Mr. Dimopoulos is right, the father cannot keep her from
10 doing what she wants. He's right. There is a danger.
11 The kid ran away twice yesterday. why isn't anyone
12 thinking that instead of shipping her off to a wilderness
13 program, which in my personal experience through my cases
14 have been nightmares, and shipping her off to a boarding
15 school, you know what, my client is willing to take on
16 the responsibility of finding, with the father,
17 alternative therapeutic programs that treat a child so
18 they can remain in their home and they don't have to be
19 shipped off to Idaho.

20 This is not -- this is draconian. This is not a
21 child that deserves that. what I would like, Your Honor,
22 please, read the report. what Dr. McGuffog says is the
23 teacher says that she's doing average. They don't note
24 her oppositional behavior at all. She is behaving in
25 class. She tries to get on the zoom calls. There is no

1 one at home. My client is home. She works remotely to
2 supervise her work. She -- Ally does not want --

3 THE COURT: Let me interrupt here. You're
4 assuming in your statement that I didn't conduct a 10-day
5 hearing under oath where I received evidence of the
6 entire history of this family and this child. So I'm
7 intimately familiar with the history of this child. I'm
8 intimately familiar with the allegations and admissions
9 that she did have a problem with stealing that resulted
10 in her problems with school and camp. I'm intimately
11 familiar with all of it. Okay.

12 MS. KUSNETZ: That's true. I'm not saying --

13 THE COURT: Excuse me.

14 MS. KUSNETZ: Okay.

15 THE COURT: So the question is again, and
16 I'm not attributing fault to anybody at this point. The
17 question is again, the child clearly needs help. I'm not
18 saying that the wilderness program is the first reaction
19 that I would do with this child.

20 I am saying that we need to get the child the
21 help that the child requires, and if the school district
22 is obligated to provide services to her because there's
23 admissions that she is a child with needs, and that was
24 replete throughout the hearing that I held, then let's
25 get her the help that she needs.

1 My preference would be to keep the child in a
2 home environment before we take her and put her in the
3 middle of the wilderness. Okay. I'm not saying that's
4 the first course. I'm saying let us get a plan to give
5 help to the child. And there are several issues going on
6 here, and I have conflicting reports. Because, yes, I do
7 believe she tells the mother that she wants to live with
8 her mother, yes. Do I believe that she tells the father
9 she wants to live with the father on occasion, yes. Do I
10 think this is a child that has some very sensitive issues
11 that we need to try collectively to find a solution
12 because this child is 11 and in my opinion she's at a
13 crossroads and decisions we make now can either lead this
14 child to have a fulfilling and productive life to
15 emphasize the traits that she has, which she does have
16 some empathy, she does have high intelligence, she has a
17 lot of hope and potential.

18 And I agree with you, I want us to try to
19 maximize this child's ability to thrive and succeed and
20 focus on her very positive traits and help her deal with
21 some traits that may not be in her best interest. So let
22 us think of a plan collectively to get the child what the
23 child needs.

24 Okay. So if you can find information regarding
25 a therapeutic program that addresses this child's needs

1 that keeps her home --

2 MS. KUSNETZ: Yes.

3 THE COURT: -- of course The Court will consider
4 that. I want the child to get what the child needs. One
5 thing the child needs is for the parents to be able to
6 work together for her best interest. And if the parents
7 are working together, it's less -- the child is less able
8 to split and play one parent against the other parent or
9 to make these conflicting decisions. So, yes, let us
10 focus on getting a therapeutic program.

11 Now, if the school is obligated as it is in some
12 circumstances to pay for the services this child requires
13 to thrive, then you need to initiate the process to get
14 those services.

15 If there's information in Dr. McGuffog's report
16 that the parents feel is detrimental to her health you
17 know, to her future, like a revelation of things that she
18 said in therapy, it should not be disclosed to the
19 school. I agree with you. Test results should be
20 disclosed to the school, academic problems should be
21 disclosed to the school. If you can reach an agreement
22 as to what you think is appropriate to be disclosed to
23 the school, you should do that. There is some personal
24 information that I don't think should go to the school.

25 But we need to initiate the process to get her

1 what she's entitled to and what this family is entitled
2 to from the school district, and we need to get the
3 program set up so she gets the therapeutic support that
4 she needs to thrive. We want this child -- these
5 parents love this child. There's no doubt in my mind
6 about it. We want to work together to get this child
7 therapy so she can thrive.

8 MS. KUSNETZ: I agree with everything you said,
9 Judge, everything you said. And really what the letter
10 is that my co-counsel said that we wrote together, you
11 know, talks about redacting out just as confidential
12 intimate information that doesn't belong there and
13 shouldn't track the child throughout, you know, high
14 school. It's none of anyone's business really. I think
15 that what the client should do is they should get on the
16 phone with Dr. McGuffog and say, "If this report is going
17 to the school" -- and, understand, all Dr. McGuffog asked
18 for in special services was extra time and generalized
19 psychological services. I don't think a recommendation
20 should go in for boarding school at this point or --

21 THE COURT: You can revise a report that's
22 appropriate for the school.

23 MS. MOST: Thank you. Thank you.

24 THE COURT: Mr. Dimopoulos.

25 MR. DIMOPOULOS: Your Honor, I asked Counsel to

1 provide the proposed redaction a week ago. I said, "All
2 right. I'm not going to argue with you about this.
3 Let's get the report. If you want to redact certain
4 things, send me a proposed redaction." Crickets. Okay.
5 Then I get a nine-page later.

6 MS. KUSNETZ: The doctor should do it.

7 THE COURT: I have to tell you, Ms. Kusnetz
8 having crickets, I don't know. She seems to be pretty --
9 likes sending letters to The Court.

10 Let's do this, I think Dr. McGuffog should be
11 contacted and told, "Can you please," you know, "issue a
12 separate report that is appropriate for filing with the
13 school so we can begin to initiate the process to get
14 Ally services that she is entitled to under the school."
15 Okay. Because we also want this child to buy into the
16 process. Okay. We don't want her to be worried that her
17 confidences are being shared with the school.

18 MS. MOST: She would have no way of knowing
19 that, Judge.

20 THE COURT: I don't know. She's going to know
21 if she has a plan, right?

22 MS. MOST: Yes.

23 THE COURT: Doesn't the child know? The child
24 is going to ask what information did they get for the
25 plan.

1 MS. KUSNETZ: That's not right. She has a right
2 to privacy.

3 THE COURT: whatever. I still say information
4 that she disclosed in her therapeutic relationship with
5 this therapist should not be disclosed.

6 MS. KUSNETZ: Thank you.

7 THE COURT: I'm sorry. That's private. The
8 whole point of me having this child go to a therapist was
9 to have an environment where her confidences were
10 maintained in accordance with the psychologist's ethical
11 obligations. So I don't see why this doctor can't write
12 a report that's appropriate. I'm sure she's written them
13 before for school districts. That's appropriate for
14 submission to the school district outlining her testing
15 and, you know, basic history, whatever they usually put
16 in there, to go through this process.

17 Mr. Dimopoulos.

18 MR. DIMOPOULOS: I think we were all --

19 THE COURT: All on the same page it sounds like.

20 MR. DIMOPOULOS: I think we're all treading into
21 water that we're not -- we don't have experience in. At
22 least I am. I'll speak for myself.

23 MS. KUSNETZ: I do.

24 MR. Dimopoulos: I'll speak for myself.

25 THE COURT: I don't have a lot of experience.

1 Then get the educational lawyer on board that knows what
2 you need to show.

3 MS. KUSNETZ: I think that's a good idea.

4 MR. Dimopoulos: I think there are nuances in
5 all of this.

6 THE COURT: There definitely are nuances in all
7 of this. I think we should get an educational lawyer
8 engaged. I think we should -- he or she should tell
9 us -- he or she may say, "Don't you dare redact that
10 paragraph," whatever paragraph that may be. "That
11 paragraph is critical." How am I supposed to know that?

12 MS. KUSNETZ: Dr. McGuffog knows.

13 MR. DIMOPOULOS: But she's not a lawyer, Marcia.

14 MS. KUSNETZ: You don't need a lawyer yet.

15 First of all --

16 MR. DIMOPOULOS: That's completely inaccurate.

17 THE COURT: Everybody stop talking. Here's the
18 thing, we need a strategy, a collective understanding as
19 to what is the best way -- I don't know the school
20 district. Some school districts are more amenable to
21 giving services. Some school districts look at the price
22 and try to figure out not to give services. I don't
23 know. I don't know that you want a lawyer to show up
24 first, but you might want a lawyer to advise you during
25 the process.

1 MS. MOST: Your Honor, I --

2 THE COURT: Wait, wait, wait. Ms. Kassenoff,
3 are you trying to say something because I can't tell?

4 MS. MOST: Judge, if I may, it's Carol Most.

5 THE COURT: We're running out of time.

6 MS. KASSENOFF: Judge, I just wanted to mention
7 the following: About a year and a half ago I met with an
8 educational lawyer, Rachel Ascher -- she's very well
9 known in this area -- with regard to an IEP and a 504
10 plan. She does know Ally's situation pretty well. I
11 would just suggest that maybe we start with her since
12 she's so well respected and because she does know Ally's
13 situation.

14 I will tell you at the time that I met with her
15 she said something along the lines of, "It will be hard
16 to get a 504 plan if there's no direct impact on
17 academics." That, however, seems to have changed in some
18 degree in the last year or so. So that may affect her
19 analysis now I think.

20 THE COURT: So I think you're in agreement to
21 have an educational lawyer come onboard?

22 MR. DIMOPOULOS: Yes, Your Honor. But we are
23 going to clean the slate. We're not hiring someone that
24 she's previously dealt with. We are going to hire
25 someone and --

1 THE COURT: well, you can all do your
2 independent research and try to reach an agreement on the
3 lawyer and --

4 MS. MOST: Your Honor, if I can be heard?

5 THE COURT: Hold on. Hold on. Hold on.
6 Ms. Most.

7 MS. MOST: Yes. I did special ed law for many
8 years. So let me just tell you that it's very important
9 to bring on a lawyer from the beginning.

10 THE COURT: No one is disagreeing with you.
11 Everyone agrees.

12 MS. MOST: Because a lawyer has to plan if you
13 want --

14 THE COURT: I already said we're all onboard
15 with that. The question is what lawyer.

16 MS. MOST: I think we have to look into it. You
17 have to --

18 THE COURT: Here's what we're going to do.
19 Everybody look into an appropriate educational lawyer,
20 exchange the name, and see if you can reach one that is
21 agreeable. Okay. Because I need both parents, all
22 sides, involved in this.

23 MR. DIMOPOULOS: Your Honor, if we can't agree,
24 can we just submit a list?

25 THE COURT: Absolutely. Submit the names to me

1 and I'll make a decision, but you should try to contact
2 each other. Because again, despite all the yelling, I
3 start with -- I end with what I said. To me the most
4 important thing is this child and getting this child what
5 the child needs. We have another conference tomorrow on
6 all those other issues you've raised.

7 This is what we're doing today. So on the
8 record it's agreed that the parties will each research
9 educational lawyers that we can bring into the -- you
10 know, be hired to assist with getting Ally special
11 services through the school and helping us reach a plan
12 that helps her thrive.

13 If the parties -- I'm encouraging the parties to
14 agree on the educational lawyer. But if they cannot
15 agree, then they are to submit to The Court their
16 recommendations, and The Court will select the attorney.

17 REFEREE RATNER: I think you should limit it to
18 two names by each party, not by the lawyers.

19 THE COURT: Two names by each party because I'm
20 not going to research 12 lawyers. You can put a
21 little -- you know, and the educational lawyer will be
22 paid for out of the marital funds subject to
23 reallocation. But we need to get the lawyer involved.
24 So how much time do you all think -- I know some of you
25 made initial contacts already to get a lawyer, you know,

1 get your names together.

2 MR. DIMOPOULOS: Your Honor, quite honestly, it
3 should be by Monday. Time is of the essence here.

4 THE COURT: I agree.

5 Ms. Kusnetz, can you have a couple of people by
6 Monday?

7 MS. KUSNETZ: Yes, no problem.

8 THE COURT: I want you to talk to each other
9 too, but if you can't reach it by Monday, send me the
10 names because we all agree -- and this is very important.
11 We all agree, we're all on the same page, that we need to
12 work collectively to get services for this child.

13 MS. KUSNETZ: Except that I think we just need
14 to be clear that the services that were recommended by
15 Dr. McGuffog with regard to extra time and psychological
16 services, we don't agree to the therapeutic boarding
17 school and the wilderness camp.

18 MR. DIMOPOULOS: I'm not sure my client even
19 agrees. I never said that.

20 THE COURT: I said that. Everybody can also do
21 research, you know, about these therapeutic programs that
22 you mentioned. I am familiar with the children's
23 programs out of Presbyterian Hospital. There are
24 programs like you said, that they provide services this
25 child needs and keeps her home.

1 Do I think it's always better to keep the child
2 home, yes, because sending her away to me may exacerbate
3 these underlying issues of attachment and abandonment and
4 things of that nature, and she already has some of that
5 just by virtue of the fact that she's adopted. You want
6 to try to do what's in the best interest of the child
7 which to me, first and foremost, is to stay with her
8 family if at all possible. My first reaction is not to
9 send her out to the middle of Utah.

10 Okay. So this is it for today. We have our
11 other conference scheduled for tomorrow and the other
12 issues that you have raised. If you make progress before
13 tomorrow, that would be terrific. If you don't, we'll
14 have until Monday. That's a plan. Okay?

15 MS. KUSNETZ: Yes. Thank you, Judge.

16

17 THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE
18 AND ACCURATE TRANSCRIPT OF THE ORIGINAL STENOGRAPHIC
19 RECORD.

20

21



JENNIFER GRUSEKE, CSR
Senior Court Reporter

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