

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF WESTCHESTER:

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3 ALLAN KASSENOFF, Plaintiff, Index No.
4 - against - 58217/2019

5 CATHERINE KASSENOFF,
6 Defendant.

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7 Westchester County Supreme Court
8 111 Dr. Martin Luther King, Jr. Blvd.
9 White Plains, New York 10601
10 Wednesday, October 20, 2021

11 B E F O R E:

12 HON. LEWIS LUBELL
13 Justice of the Supreme Court

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

15 DIMOPOULOS BRUGGEMAN P.C.
16 Attorneys for the Plaintiff
17 73 Main Street
18 Tuckahoe, New York 10707
19 BY: GUS DIMOPOULOS, ESQ.

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25 MOST & SCHNEID, P.C.
Attorneys for the Children
222 Bloomingdale Road, Suite 302
White Plains, New York 10605
BY: CAROL W. MOST, ESQ.

Mary T. Slavik, RPR
Senior Court Reporter

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1 THE COURT: All right. This is the
2 matter of Kassenoff versus Kassenoff, Index Number
3 58217 of 2019.

4 Plaintiff's appearance, please.

5 MR. DIMOPOULOS: Dimopoulos Bruggemann,
6 by Gus Dimopoulos, on behalf of the plaintiff,
7 Allan Kassenoff, who is in court this morning.

8 Good afternoon, your Honor.

9 THE COURT: Defendant?

10 MR. FRISCH: For Ms. Kassenoff, Andrew
11 Frisch, with Schlam, Stone & Dolan.

12 Your Honor, good afternoon.

13 THE COURT: Good afternoon, Mr. Frisch.
14 The children?

15 MS. MOST: Good afternoon, your Honor.
16 Carol Most, attorney for the children.

17 THE COURT: Have a seat. The Court is
18 in possession of the following application. Those
19 I understood would be dealt with, at least in some
20 manner today, is motion sequence 34 and motion
21 sequence 39.

22 Motion sequence 34 is an application by
23 the plaintiff seeking contempt. Certain interim
24 relief was granted, which interim relief number
25 two, which was an amendment of an order of

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1 protection which included a one-mile stayaway,
2 which framed the basis for your motion, Mr.
3 Frisch, which is motion sequence number 39.

4 I also have motion sequence number 35,
5 which is an application by the plaintiff seeking
6 to consolidate the Family Court matter. I have
7 motion sequence number 36, which is an application
8 by the plaintiff -- by the defendant --
9 sanctioning the plaintiff for forum shopping.
10 Motion sequence 37, which is an application by the
11 defendant lifting supervised visitation, or, in
12 the alternative, directing that the plaintiff be
13 responsible for 80 percent. Motion sequence 38,
14 which is an application for contempt against the
15 plaintiff by the defendant for violation of
16 orders, which seems to me to be similar to motion
17 sequence number 36 or 37. I will have to review
18 same.

19 I just want to be clear on a few things.
20 Number one, Ms. Kassenoff, I did receive an e-mail
21 from you, which was e-filed, which was relative to
22 Dr. Mark Abrams and whether or not you have to
23 make a motion with regard to his report. I
24 believe that you were mistaken in interpreting my
25 comment originally when this case came to me with

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1 regard to the Court with what this case with Dr.
2 Abrams was.

3 What the Court meant, and I want to be
4 patently clear, is that Dr. Abrams was purportedly
5 going to do a follow-up or an amended, or an
6 updated report that has not happened. As far as
7 anything that has happened in the past, relative
8 to Dr. Abrams, including, but not limited to a
9 prior report, which I understand was the subject
10 of a trial, and a hearing, and proceeding,
11 relative thereto, I do not know what it was that
12 has caused Dr. Abrams to be in the circumstance;
13 whether it was relative to a report that he may
14 have written, I really do not care or have
15 concern. In this case, as to any other complaint
16 or application that may have been made as to Dr.
17 Abrams, but absent any showing or proof that the
18 report may be tainted or may be the subject of
19 some type of application, if it's your intention,
20 Ms. Kassenoff, through counsel to vacate that
21 report, that will have to be the subject of an
22 application.

23 MS. KASSENOFF: Thank you, your Honor.

24 THE COURT: I apologize that because of
25 the return dates of these motions that due to the

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1 absence since of the Court, I was unable to
2 address them, and I apologize for any
3 inconvenience that it may have caused, but it was
4 totally out of my control. To that extent, and
5 with that in mind, Mr. Frisch, I understand that
6 your appearance in this matter is limited to
7 contempt; is that accurate, sir?

8 MR. FRISCH: It is essentially accurate.
9 There may be some --

10 THE COURT: Well, "essentially" kind of
11 doesn't satisfy my inquiry, Mr. Frisch. You know
12 I have -- let me give you an example. I have one,
13 an application in Family Court, which I understand
14 was recently determined, that was, I believe, the
15 defendant's application in Family Court, and yet I
16 have a motion by the defendant seeking to sanction
17 the plaintiff for forum shopping, which I find
18 really an irony. I got a case from 2019, and I am
19 up to motion sequence 39. I'm not insensitive to
20 the nature and the allegations and everything
21 going on here, but this has to stop. And quite
22 frankly, the only way that these cases stop is
23 with a trial.

24 To that extent and with that in mind, I
25 will tell you that I can state, with a reasonable

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1 degree of experience and judicial certainty, that
2 Mr. and Mrs. Kassenoff will be present in this
3 courthouse long after this particular action is
4 resolved, whether I try it by stipulation or
5 something else. And these people are attorneys,
6 and I'm not blaming either one of them. I've been
7 through this process. I get it. I truly get it.
8 I don't understand why they don't get it, and I
9 say this to every pair of litigants that come in,
10 especially both of them with a heightened level of
11 education and degrees and who are familiar with
12 the law, and who are familiar with the process. I
13 have two people that come from respectable areas
14 of the law; whether it's through a law firm or the
15 Department of Justice or through the Governor's
16 office, you don't get there being foolish, and you
17 don't get there being stupid.

18 But it seems that all common sense and
19 rationalization leaves these people's heads -- and
20 it's not just the Kassenoffs -- it leaves their
21 minds when they come into this building and this
22 part. And believe it or not, this is not the
23 worst case I have.

24 But at some given point, and I don't
25 know what it's going to take, short of a trial, to

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1 bring this to a head and a conclusion, but with
2 equal emphasis, I am completely persuaded and
3 convinced that a trial will not end the war of the
4 Kassenoffs, I'm sorry to say, because I can tell
5 you, based upon my review and my experience in
6 this case from the day the Kassenoffs came into
7 this building, two years ago, when Judge Everett
8 presided over this case, it has gone downhill from
9 there. And I have no ill will towards either
10 side. You make motions, you make motions. I
11 mean, you're not scaring me.

12 But one would think that the level of
13 emotional, mental involvement, versus moving on
14 with life, has got to permeate somewhere. So
15 absent -- I can state for sure that I will see a
16 motion from the defense with regard to Dr. Abrams'
17 report, and to whether or not it is to be utilized
18 by the Court in considering the custodian
19 circumstances of the parent, and whatever, has
20 nothing to do with the finances, but I can't end
21 the divorce, I cannot end the matrimonial
22 proceeding, until I end custody. I can't end it
23 with just the findings.

24 I'm well aware of the allegations. I've
25 seen them against Ms. Most. I've seen -- I have

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1 been -- I have seen through the -- through the
2 production by counsel of Facebook posts. It just
3 keeps promulgating and propagating and getting
4 worse, and I don't know what everyone intends to
5 prove through all of this. This is not about the
6 rest of the world. It's about Allan and Cathy.
7 Period. Paragraph. And what is in the best
8 interest of their children. And I can state, with
9 all of the experience and tenure that I have had
10 in this courthouse and this system, and more
11 specifically in this part, that when I write a
12 decision, or whatever judge presides over this
13 case, because it will, more likely than not, not
14 be me -- I'm not running from it. But it's just
15 the reality of how this part runs, is that someone
16 is going to be in the Appellate Division. I
17 guarantee it. I'm willing to wager, because I
18 have seen through 39 motions, if someone is not
19 happy with what I do, they either run to Family
20 Court or they go somewhere else, and it's a shame,
21 to forum shop and then accuse of forum shopping,
22 if somebody makes that determination.

23 It boggles my mind. And these are
24 lawyers. These are lawyers that are completely
25 desecrating this system and this part, that their

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1 dirty laundry goes out on the Internet. What do
2 we attempt to prove? Do you think that will
3 affect a trial judge? Absolutely not. Absolutely
4 not. But what I will say and what both of these
5 people are on notice of are clear mandates of the
6 Court. And I will hold an attorney to a higher
7 standard, and a clear violation, which I will deem
8 willful on its face, I think, and I have said this
9 to the defendant, is a referable consequence to
10 the grievances committee for knowing and willfully
11 violating a clear mandate of the Court. That is
12 referable. I'm under an obligation, and, quite
13 frankly, so are counsel. You have ethical
14 obligations as well. Do we want to go down that
15 road, folks? Look where we are now. 39 motions
16 in less than two years, and what have we
17 accomplished? The denigration of two people's
18 lives and the hurting of children. That's what we
19 have accomplished. And these motions are going to
20 do nothing but create a pathway to 45 Monroe
21 Place.

22 Now, Mr. Frisch, how deep is your
23 involvement going to be in this case, because,
24 quite frankly, I cannot and will not condone, and
25 pardon my laxity in my description, but lawyers

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1 parading in, depending on the motion. It's
2 inappropriate. It's not how this part operates.
3 I know that I have recently received a letter from
4 a firm that I gather Ms. Kassenoffs has consulted
5 with, and they have declined to represent her on
6 the avenues that Mr. Wiederkehr is not
7 representing her, to wit, the custody and other
8 issues that are nonfinancial.

9 So it's very, very difficult for the
10 Court to have counsel coming in and coming out,
11 depending upon the weather, so to speak, or what
12 is the nature of the application. It's just not
13 how we work. So I welcome your appearance, Mr.
14 Frisch, quite frankly, especially on serious
15 matters of contempt.

16 How far do you go beyond those
17 applications? Because you said, essentially --
18 and that kind of didn't close the door completely
19 on my inquiry.

20 MR. FRISCH: Well, here is what I meant
21 by using that word. I'm here to address the
22 contempt issues. To be sure there are issues of
23 orders of protection, which are ancillary to the
24 contempt issues. To that extent, I'm essentially
25 here for the contempt, but there are some related.

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1 To address your Honor's specific
2 concern, I hear what you're saying. My
3 understanding is that Ms. Kassenoff is in the
4 process and expects to have a lawyer to deal with
5 the custody issues within the next week or ten
6 days or two weeks.

7 THE COURT: Let me stop you there for a
8 moment, sir. If that is the case, are you no
9 longer involved?

10 MR. FRISCH: I currently -- if that is
11 the case, I currently do not expect to be
12 involved, apart from what is before the Court.

13 THE COURT: Okay. So I will give people
14 a choice here, because I want to be fair. And
15 quite frankly, I would like Ms. Kassenoff to be
16 represented. I would like her to have competent
17 counsel. And that is no disrespect to you, sir.
18 You come from a very experienced background, as
19 well. I do my own work, but I don't want to start
20 briefing schedules and taking argument when you
21 are going to vacate this particular case, in the
22 event Ms. Kassenoff has the good fortune of
23 retaining counsel.

24 I'm willing to adjourn these, all of
25 them, because I know I'm advised that one of them

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1 is returnable Friday. But that's not happening.
2 And, quite frankly, all of these, 34 through 39,
3 notwithstanding what I anticipate will be 40, at
4 some given point, which we will deal with -- I
5 assume the Dr. Abrams' issues, to the extent
6 that's going to be an issue, because, quite
7 frankly, one could say that if the Abrams report
8 stays, hypothetically, if I rule that way, two
9 things will happen. One, we're going to trial.
10 In the alternative, there's an appeal on that
11 decision.

12 And what's frustrating to the Court is
13 there were decisions that were made that I do not
14 know what frames the basis for those decisions,
15 and, is the decisions that were made mutually
16 exclusive from the report and the findings of Dr.
17 Abrams? I don't know that.

18 So all I can say is if Ms. Kassenoff --
19 and I'm not denying her right or her opportunity
20 to bring that application -- if that application
21 is made, Mr. Dimopoulos will have something to
22 say, Ms. Most will have something to say, and I
23 will ultimately render a decision, which now,
24 we're looking at maybe three to four months down
25 the line, by the time we're done. And at that

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1 point in time I can tell you, that if I decide
2 that the report stays, and maybe nothing is really
3 changed custodial-wise, in the Court's mind, this
4 case will get referred to trial.

5 In the alternative, there will be an
6 appeal, if I decide that way. And it begs the
7 question as to whether or not a stay is sought,
8 with regard to the trial, based on the appeal and
9 the underlying decision.

10 I don't write to the appellate division,
11 I write what I think is fair and appropriate under
12 the circumstances, and whatever the appellate
13 division, in their infinite wisdom decides to do,
14 they do. I live with it. It's the beauty of the
15 job.

16 But to that extent, and with that in
17 mind, do you -- is it your position, Mr. Frisch,
18 that it is more likely than not, new counsel will
19 be appearing on behalf of the defendant? And this
20 is not casting stones. I'm not seeking your
21 testimony, I'm asking for your opinion, based upon
22 your relationship with the defendant.

23 MR. FRISCH: I understand the question.
24 No offense to be taken, to be sure. I know that
25 -- I don't know that I can say -- I believe it's

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1 more likely than not, that new counsel will come
2 in to address custody, but it's a process, and,
3 you know, there have been discussions whether I
4 should come in and do it.

5 What I can tell the Court is that that's
6 going to be resolved, one way or the other, within
7 the next week or two. But she is currently
8 speaking to other people, and currently the
9 expectation is someone will come in, other than
10 me, to address custody.

11 THE COURT: Will you participate?

12 MR. FRISCH: To the extent that --

13 THE COURT: If this is something that's
14 out of the scope of -- I'm just trying to avoid a
15 myriad of attorneys coming in on various levels.
16 I have no problem, Mr. Frisch, if you are
17 co-counsel with whoever comes in. I can deduce
18 that the, you know, the background between you and
19 Ms. Kassenoff from years ago, okay, and, you know,
20 and working together and whatever.

21 MR. FRISCH: Got it.

22 THE COURT: And obviously she has
23 confidence in you, and I welcome your expertise.
24 But with equal emphasis, you can't cherry-pick the
25 portions of the case that you come in. And I

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1 would be compelled, at some given point in time,
2 somebody is either representing Ms. Kassenoff or
3 she's pro se, and you either second-seat her on
4 the contempt and the relative issues thereto, or
5 somebody comes in and says, "Mr. Frisch, thank you
6 for at least handholding, for the time being, but
7 we got this."

8 That's all I would like to know, in
9 fairness to the parties, and in my ability to
10 navigate the gauntlet of Kassenoff versus
11 Kassenoff, because you are with me until such time
12 as I make the determination who is going to try
13 this case.

14 So, Mr. Dimopoulos, how are you, sir?

15 MR. DIMOPOULOS: I'm well, thank you,
16 your Honor.

17 THE COURT: Are you adverse to a
18 two-week adjournment to allow for this process to
19 maybe come to some moderm of control?

20 MR. DIMOPOULOS: Your Honor, this case
21 will never come to control, if you would just
22 allow.

23 THE COURT: So you heard me, I guess, at
24 the very beginning?

25 MR. DIMOPOULOS: I heard you loud and

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1 clear, your Honor, and I will preface my comments
2 by saying, with all due respect, you keep
3 referring to both parties, who have done X, Y, and
4 Z, to torture and over-litigate, and I'm going to
5 say, with all due respect, that's inaccurate.

6 THE COURT: I'm well aware of your
7 position, Mr. Dimopoulos, and I'm not making
8 findings of fact as to anybody. I have thoughts,
9 believe me, Mr. Dimopoulos, I have thoughts but it
10 would be inappropriate for me to make certain
11 findings, absent another trial or another hearing
12 or testimony which would frame or solidify the
13 basis of those thoughts.

14 I will say, for example, one of the
15 reliefs sought within the applications currently
16 extant before the Court is to transfer this case
17 to IDV. So somebody is harboring the opinion that
18 there may be some contribution to this debacle
19 other than just me -- and I know you are referring
20 to the defendant.

21 I am not -- I am not harboring any
22 opinion at the immediate moment as to Mr.
23 Kassenoff or Mrs. Kassenoff, because I have got to
24 be very clear when I render a decision on finding
25 of fact. Do I think that maybe somebody may be

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1 more culpable than the other? Well, that's going
2 to be in my mind for the time being and will
3 reflect my findings in a decision on motion or
4 hearing, should this Court be called to task to do
5 that.

6 With that in mind, I accept your -- I
7 take no issue with your exception. I take no
8 issue with your thought process as to who is
9 really driving the negativity of this bus. It's
10 not my first rodeo.

11 MR. DIMOPOULOS: Thank you.

12 THE COURT: So what I would like to
13 know, and I agree with you that this will never
14 end, unless Mr. and Mrs. Kassenoff, for some
15 reason, just stop.

16 MR. DIMOPOULOS: And your Honor, on that
17 front, and I thank you for that, but let me just
18 say a couple of things, constructive things. I'm
19 not arguing the motions before the Court. I
20 understand what your Honor is saying. I
21 understand the colloquy with Mr. Frisch. I
22 understand. Herein lies the problem, that when we
23 say "this will never end," there are two ways that
24 I know to end -- or three ways. You can
25 discontinue the case, you can try a case, and you

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1 can settle.

2 THE COURT: They can reconcile.

3 MR. DIMOPOULOS: That's true, too.

4 Here's the problem. Settlement is never going to
5 happen, because one of the parties believes that
6 therapeutic supervision is necessary. One of the
7 parties --

8 THE COURT: Let me stop you a second.
9 I'm not talking about settlement.

10 MR. DIMOPOULOS: Okay. So let's move
11 on, then.

12 THE COURT: That's even a thought. I
13 have been of the opinion that the only way this
14 ends is through a trial.

15 MR. DIMOPOULOS: Right. And on that you
16 are --

17 THE COURT: And that has been voiced to
18 me, by you, Mr. Dimopoulos, on previous
19 appearances, "Judge, we need a trial." This will
20 not end without a trial. And quite frankly, I
21 agree with you.

22 MR. DIMOPOULOS: The problem is --

23 THE COURT: It's unfortunate, but I
24 agree with you.

25 MR. DIMOPOULOS: And that's unfortunate

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1 that we agree. But here's the problem. Okay?
2 And I have done quite a bit of research on this
3 topic. The problem is that when one party attacks
4 a forensic, which happens all the time -- it's not
5 your first rodeo, it's not mine. Okay? I have
6 seen it time and time again, and I've seen
7 changing of lawyers, we've all seen it before.
8 But here's the problem.

9 One of the parties in this case is
10 attempting to benefit from attacking a forensic,
11 in colluding to attack a forensic. There are
12 multiple people.

13 THE COURT: I'm well aware of it.

14 MR. DIMOPOULOS: And I'm not going to go
15 any further than that, your Honor. Herein lies
16 the problem. The motion you are going to get, you
17 may think, your Honor, is, I don't believe this
18 Court should consider the first forensic
19 evaluation or any of the testimony of Dr. Abrams.
20 I can almost accept that. It's a motion your
21 Honor is going to decide. I'll oppose it. A
22 decision will be rendered, and ultimately that
23 will mean we are going to trial, when your Honor
24 makes a decision.

25 That's not the motion you are going to

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1 get. The motion you are going to get is, Dr.
2 Abrams must be disqualified, and now you must
3 appoint a new forensic to begin the evaluation
4 from the beginning, which will inevitably delay
5 this six months. And if -- you misspoke, your
6 Honor, when you said 39 motions; there are three
7 separate motions to the Appellate Division, one of
8 which asked for nine different stays. Nine. It
9 was at least a week and a half that I worked on
10 this motion, because it was just the sheer amount
11 of requests. All three motions were denied by the
12 Appellate Division. There will be another one
13 here.

14 I don't need to explain --

15 THE COURT: Let me say something to you,
16 Mr. Dimopoulos, and I think that I made this
17 patently clear. Judge Koba presided over a
18 hearing. There was testimony and determinations
19 were rendered. All right? And so I don't know
20 what has changed, other than Dr. Abrams'
21 circumstance as participant on the forensic list
22 prospectively in his report. And so if you're
23 asking me to render a decision, it's sub judice,
24 or to tell you what I think. Am I denying
25 Mrs. Kassenoff's motion? I don't know.

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1 MR. DIMOPOULOS: You will have to see
2 the law and --

3 THE COURT: And I'm sure, with
4 certainty, Mr. Dimopoulos, that I will get
5 vigorous, vigorous opposition from you, which will
6 be given due and deliberate consideration as I
7 give to every application or opposition or
8 briefing that comes across my desk or my computer.

9 MR. DIMOPOULOS: May I just take a
10 different approach to this, your Honor, and then I
11 will make my request?

12 THE COURT: What I want to know, Mr.
13 Dimopoulos, is whether or not you will consent to
14 a two-week adjournment of these applications,
15 which, quite frankly, some of them favor your
16 client. The TRO favors your client, which was
17 vigorously challenged, not vigorously yet, but by
18 motion sequence number 39 by Mr. Frisch.

19 MR. DIMOPOULOS: I can tell you, without
20 having consulted with my client, he's gonna say,
21 "What's the difference? We're not getting a trial
22 date for a year, so what's two weeks"?

23 THE COURT: You don't know that, Mr.
24 Dimopoulos.

25 MR. DIMOPOULOS: I will consent to the

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1 two weeks, your Honor, but I would ask that we can
2 -- I'm sure you will want to solidify that and
3 finish it, but there are other issues that I would
4 like to address following that, which have nothing
5 to do with the pending motions.

6 THE COURT: Are they relative to any
7 e-mails that I received of recent date?

8 MR. DIMOPOULOS: Yes, but they also --
9 they are in regards to that. You received the
10 e-mails, you read them. I assume your Honor will
11 not address them on today's date. But here's --
12 you ordered on the 15th of September, your Honor,
13 it's unequivocal, it's in my letter. You are to
14 cease being on NYSCEF. You told Ms. Kassenoff and
15 Mr. Kassenoff, who has never been on NYSCEF -- but
16 you didn't know that at the time -- remove
17 yourself from NYSCEF. That was an order.
18 September 15th. I attached the transcript. I
19 sent it into the Court. I can read it to you
20 again. It says: From all of the e-mails --
21 that's not it. "Let me make it easy, Mr.
22 Kornfeld, both the plaintiff and the defendant are
23 precluded from NYSCEF, period, paragraph, end of
24 story."

25 THE COURT: Do you know what the

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1 criteria of that comment was? I had Mr. Kornfeld
2 at that time. Now, I do not have Mr. Kornfeld.

3 MR. DIMOPOULOS: And I wasn't going to
4 ask you to enforce that order today, your Honor,
5 just for one second. Please -- and your Honor has
6 the discretion to do this. No more motions by
7 either party without the authority of the Court,
8 unless it is a clear and unequivocal emergency,
9 pursuant to Rule E, that your Honor deems as an
10 emergency, my client cannot -- there are motions
11 upon motions -- I'm not going to argue this,
12 because I can tell, from knowing your Honor as
13 long as I do, this isn't the time. These motions
14 are patently frivolous.

15 If you read my opposition to the motion
16 for sanctions --

17 THE COURT: You mean when?

18 MR. DIMOPOULOS: When? When you read
19 it.

20 THE COURT: If? When.

21 MR. DIMOPOULOS: They're patently
22 frivolous. So what's going to happen is --

23 THE COURT: Are you asking me for cost
24 in your opposition?

25 MR. DIMOPOULOS: Cost and sanctions,

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1 yes, your Honor.

2 THE COURT: Okay.

3 MR. DIMOPOULOS: But beyond that, I
4 think your Honor can and should, today, issue an
5 order: Neither party can file any motions, absent
6 a clear emergency rising to the level of that
7 definition under Rule E, without the authority of
8 this Court. Your Honor checks his e-mail within
9 10 minutes. If there's something --

10 THE COURT: Even on Sunday night?

11 MR. DIMOPOULOS: Even on Sunday. If
12 there's something that must be addressed by either
13 party, that's not an emergency, your Honor can
14 hear it and --

15 THE COURT: I'm not offended by the
16 application, Mr. Dimopoulos. Like I said, 39
17 motions plus appeals. These kids will be in
18 college by the time, and there will be no money
19 left.

20 MR. DIMOPOULOS: No money left.

21 THE COURT: You're preaching to the
22 choir, Mr. Dimopoulos. I got it.

23 MR. DIMOPOULOS: All right. So on that
24 note --

25 THE COURT: So what's good for the goose

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1 is good for the gander. If there is an emergency
2 which requires the Court's attention, which you
3 believe should frame the basis for a motion, no
4 motion will be filed without a letter application
5 to the Court.

6 MR. DIMOPOULOS: May I submit a proposed
7 order to Mr. Frisch and the Court on that topic?

8 THE COURT: Who?

9 MR. DIMOPOULOS: For Mr. Frisch to
10 review the proposed order.

11 THE COURT: If you would like, I'm sure
12 I will see it by five o'clock.

13 MR. DIMOPOULOS: Yes, your Honor.

14 THE COURT: With a reasonable degree of
15 judicial certainty.

16 Mr. Frisch?

17 MS. MOST: Wait.

18 THE COURT: Hang on.

19 MR. FRISCH: I have two things I wanted
20 to say Ms. Most and I will be brief.

21 THE COURT: You pay taxes in New York,
22 Mr. Frisch?

23 MR. FRISCH: I live in New Jersey, but
24 when I work in New York, I pay taxes.

25 THE COURT: So these are your tax

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1 dollars hard at work. Take whatever time you
2 want.

3 MR. FRISCH: I appreciate it, Judge.
4 Let me say two things. There's an emergency right
5 now, and that's the one-mile stayaway, which has
6 the effect of displacing Ms. Kassenoff from her
7 home and causes hardship. We briefed it, and I
8 would like to be heard on that and argue why that
9 should be vacated, or at least lifted, pending a
10 two-week hearing date, whatever your Honor has in
11 mind.

12 It's a combination of the hardship, and
13 it's a combination of what -- as we argue, it's
14 not a proper basis for it, and I will come back to
15 that in a second.

16 I also want to just answer expressly and
17 specifically the question you asked about my role
18 going forward, and it is, as long as there is
19 contempt on the table, and as long as there may be
20 related orders of protection related to the
21 contempt, I will be co-counsel, but that's the
22 cabin role that I would play.

23 But I feel that the Court really should,
24 today, take a look at the one-mile stayaway and
25 vacate it. And the reason is, based on something

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1 Justice Koba found on July 6th, and she got it
2 right, which is, that knowing that Ms. Kassenoff
3 was going to move to Larchmont, she said, just, if
4 there's an encounter, acknowledge and carry on.
5 Acknowledge and carry on. That directive has not
6 been violated.

7 The basis for the contempt and thus the
8 basis for the one-mile stayaway, pending a
9 hearing, are these sightings of Ms. Kassenoff
10 being present in Larchmont where she lives.
11 There's no contact, no discussion, nothing of the
12 sort, according, as I understand the plaintiff's
13 allegation, the nanny saw Ms. Kassenoff in
14 Larchmont, where she lives.

15 Now, one of the things they say -- and I
16 think this is important to have on the record, as
17 I learn the case and become educated about it --
18 they say, well, there's some chicanery here,
19 because Ms. Kassenoff had first said she was going
20 to live at this location within the one square
21 mile of the Village of Larchmont and now she's
22 moved a half mile closer. There's no chicanery,
23 and I don't know why this didn't happen before,
24 but there's e-mail exchanges establishing that she
25 did in fact lease that apartment, she did in fact

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1 pay a one-month rent, which she ultimately had to
2 refund, and ultimately gave it up and moved, when
3 the address was unexpectedly provided to
4 plaintiff's counsel, and plaintiff, for better or
5 worse, with whom she's had a traumatic prior
6 relationship, so there's no merit to their
7 argument that she's moving out of some act of
8 deception to the order of Judge Koba.

9 My point, your Honor, is that Justice
10 Koba got this right. If there's an encounter,
11 acknowledge and carry on. And meanwhile, based on
12 these allegations, which are just sightings,
13 sightings of Ms. Kassenoff in Larchmont, her
14 presence where she lives, has the effect -- wasn't
15 intended, but it has the effect of separating her
16 from where she lives, it causes harm to her, all
17 the inconvenience, and the facts don't warrant it.

18 She had a legitimate purpose to be
19 there. To the extent that the -- it's one thing
20 to impose that temporarily pending a hearing, but
21 to allow it to continue, and now we're on, I
22 think, week five, and to allow it to continue,
23 even the two weeks that your Honor envisions,
24 violates the Constitution and violates due
25 process, because it effectively displaces her from

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1 her residence and causes hardship.

2 So the extent Mr. Dimopoulos wants to
3 narrow our discussions to what's an emergency,
4 this is one of them.

5 MR. DIMOPOULOS: Your honor, can I be
6 heard briefly on this?

7 THE COURT: Mr. Frisch, I'm not asking
8 for an admission or denial, because that's really
9 going to be my finding. There was a temporary
10 order of protection issued on July 6th, which in
11 and of itself, absent supervised visitation,
12 directed the defendant to stay away from the home
13 of, school of, place of business of, et cetera, et
14 cetera, relative to that case.

15 I give very, very serious thought when
16 I'm contemplating interim relief, and as to
17 whether or not the relief would be appropriate,
18 the hardship is irrelevant to me. And if I find
19 that there was a violation of the TOP, meaning, I
20 don't know where the nanny saw Ms. Kassenoff or
21 where allegedly, as Ms. Most has represented, the
22 children, or one of them was extremely frightened.
23 That rises to the level of the Court's specter of
24 inquiry.

25 And if I determine -- if I make a

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1 determination that I find that a violation of an
2 OP, whether or not I give it rise to contempt,
3 that will be your argument, but if I find that
4 there's a violation of a currently existing order,
5 and then I make a determination or issue a ruling
6 or a finding that I deem to be appropriate under
7 the circumstance -- now, whether or not Ms.
8 Kassenoff's residence was within a hundred yards
9 or a hundred miles, is irrelevant.

10 It was my understanding that her
11 residence was not in Larchmont, until such time as
12 it was brought to my attention. There was
13 questions of whether or not she was really living
14 in New Rochelle or in Larchmont, or wherever it
15 was. But based upon the application made before
16 me, I made a ruling.

17 Because of the utmost concern is I stand
18 in loco parentis. And if this is something that
19 the attorney for the children has made a
20 representation to the Court, I assume everybody
21 that carries a law license will use deference,
22 candor, and honesty to the Court.

23 And then I make a decision. Is it a
24 hardship to a litigant? Possibly. TOPs are not
25 final, but TOPs exist. And without justifying or

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1 making any comment as to the determination of the
2 Court, the Court was satisfied to issue the relief
3 sought. That is the nature of this particular
4 beast, Mr. Frisch, is that there are no winners,
5 one. Number two, one side is not going to be
6 happy with the decision of the Court on any
7 specific issue. I'm not in the happy business.

8 What make me happy is resolving cases
9 and having litigants move forward. Because if you
10 drive a car, looking in the rearview mirror all
11 the time, you're going to crash. And the ability
12 to look forward is of the utmost, paramount, and
13 that's what is stopping these people from doing
14 that, and it is what is causing an excessive --
15 exorbitant amount of motion practice.

16 I know you wanted to say something. Let
17 me hear from you.

18 MS. MOST: I have to say something, and
19 it's about your loco parentis, Judge. So I think
20 you are aware that at the very beginning Judge
21 Everett made an order -- I think you're aware that
22 Judge Everett made an order, probably the first
23 week he was on this case, or the first month.

24 THE COURT: I was here.

25 MS. MOST: Okay. That the mom --

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1 THE COURT: I heard the evidence with
2 regard to that, which presented -- which caused at
3 the very beginning, in the onset of the case, Ms.
4 Kassenoff to be removed from the marital
5 residence.

6 MS. MOST: No. I'm talking about the
7 mom contacting the therapist. And this -- I
8 received a call today from Dr. McGuffog, because
9 she sent me a copy of the e-mail, the threatening
10 e-mail, which I did not have before, or was able
11 to give to the Court before, which I would like to
12 give to the Court now; the threatening e-mail from
13 Ms. Kassenoff.

14 THE COURT: Show it to counsel.

15 MS. MOST: I have one for everybody --
16 to Dr. McGuffog. And the issue is that all three
17 girls really need their therapist, their
18 therapists -- they have two different therapists.

19 THE COURT: Did I not see this?

20 MS. MOST: Not this one. No. You saw
21 the one to Dr. Susan Adler. This is a different
22 one. So knowing that she doesn't have the right
23 to contact the therapist, this gets sent. Both of
24 them have hired lawyers. They're trying to
25 protect themselves.

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1 And the other issue is, as you are
2 aware, because you ordered it on September 15th,
3 that Ms. Kassenoff signed the E-TRADE account so
4 the doctors can be paid, because they're owed
5 about \$50,000 together, or more now. What we were
6 not aware of at that time, and I think you also
7 might be aware that there is an order by Judge
8 Koba that the mother is to put the doctors' bills
9 in for her insurance, and whatever reimbursement
10 she gets, goes back to the father so that he can
11 pay them. And apparently that has not happened.

12 So we are in a situation now where I'm
13 asking you to make an order today, that the money
14 from the E-TRADE account that Mr. Kassenoff has,
15 he needs to be ordered to pay that to the doctors.
16 But Ms. Kassenoff has received many tens of
17 thousands of dollars of reimbursement; we knew
18 that when the order was first signed, because Ms.
19 Kuzner said she's not given that money back, we
20 will deal with it later, so that was about 10- or
21 \$20,000 that she received, and now we have another
22 10- or \$20,000 that she received. There are EOBs
23 out there. I have not seen them. I have been
24 told about them.

25 THE COURT: Explanation of benefits?

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1 MS. MOST: Yes. I have been told about
2 them by Dr. Adler that the mother has been getting
3 paid. Now, this is insurance fraud. I get that.
4 Mr. Kassenoff has made a complaint about the
5 insurance fraud; however, he doesn't want to pay
6 because once the doctors are paid now, the
7 insurance fraud goes away. But I have these two
8 doctors who are really doing wonderful things with
9 their clients and they're not getting paid. I
10 need them paid so they will continue to work, and
11 they can't be threatened.

12 So I'm asking you to take some action.
13 There's already orders.

14 MR. DIMOPOULOS: If I can just add to
15 the specifics?

16 THE COURT: Hold it.

17 MS. MOST: I don't want to make a motion
18 to hold the mother in contempt, but she --

19 THE COURT: It's too late. There is
20 already a motion seeking to hold everybody in
21 contempt.

22 MS. MOST: I know, but she has to turn
23 over the money and pay the doctors. It's a lot of
24 money, and it's got to be done.

25 THE COURT: You want to go talk to your

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1 client about this?

2 MS. KASSENOFF: Your Honor, can I speak?

3 THE COURT: I don't know, Ms. Kassenoff,
4 because, one, I'm hearing an attorney is coming
5 in. I have an attorney who's sitting here that
6 goes, "If it's contempt, or collateral to
7 contempt, I'm your gentleman," and right now I'm
8 smelling something that can be tantamount to a
9 collateral contempt and/or a possible referral,
10 which I cautioned you about previously, Ms.
11 Kassenoff.

12 I'm not making a finding today. I don't
13 have enough in front of me, though this e-mail is
14 quite disturbing. Quite disturbing. But this is
15 an e-mail. Is it evidentiary? Okay. I can sit
16 and start taking testimony. Is this your e-mail
17 address? Did you send this e-mail? Did you use
18 this language? And quite frankly, on its face, I
19 could make a finding that you are interfering with
20 the children's therapy.

21 And whatever business it is that you
22 feel compelled to spread the word of Dr. Abrams to
23 everybody involved in this case and outside of
24 this case, I don't know what you think you are
25 accomplishing, but it surely doesn't bode well in

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1 your favor, or potentially has the ability to
2 backfire on whatever your underlying thought
3 process or plan may be.

4 And as long as you are involved, Mr.
5 Frisch, I suggest you communicate with Ms.
6 Kassenoff about the seriousness of these alleged
7 violations of which I have not made any finding
8 yet. There has been no hearing, but I will tell
9 you, this Court has the wherewithal, the
10 discretion, and the ability to go past willful,
11 collect two hundred dollars, pass go, and go
12 straight to punishment.

13 And what your client needs to realize is
14 that willful violations of Court mandates as an
15 attorney, not in her capacity as an attorney, but
16 she is an attorney, is very, very concerning to
17 this Court, and raises the specter of this Court's
18 duty to the ethical obligations of members of the
19 Bar, regardless of the capacity in which you
20 appear in this Court.

21 So to that extent --

22 MS. MOST: So your Honor, I think that
23 the father does have copies of some of those EOBs.
24 I don't know if he has them with him, but I don't
25 know how you want to handle this, but the doctors

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1 have to get paid.

2 MR. DIMOPOULOS: Your Honor, it's a
3 standing order of the Court that Ms. Kassenoff,
4 who we already established months ago, collected
5 \$20,000 from the insurance company, submitted all
6 the claims from the therapist, didn't pay a
7 nickel. Okay? Submitted all of the claims.
8 Received \$22,000. Pocketed the money. Didn't
9 tell the Court.

10 We negotiated and made a motion to pay
11 the therapist from this E-TRADE account. Did in
12 fact pay the therapist from the E-TRADE account.
13 The issue was brought to Judge Koba's attention.
14 Judge Koba issued a directive -- it's in my letter
15 to the Court four days ago -- which said, "I want
16 all of the money received for reimbursements given
17 to Mr. Kassenoff, to be put into the segregated
18 account for the payment of therapy."

19 Not only did she not do that, your
20 Honor, she continued to file claims and continued
21 to receive money, all the while pushing -- in
22 front of your Honor -- to say, okay, fine, I will
23 finally sign the E-Trade thing so we can pay them.
24 At that particular time, she was standing in this
25 Court, knowing she was about to receive insurance

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1 reimbursements for claims she never paid.

2 My advice to my client was very clear.
3 If you pay those therapists, you are complicit in
4 the crime of insurance fraud. Because when you
5 submit a claim for reimbursement for a bill that
6 you are not paying, and receive the money, and
7 then do not pay, it is a textbook definition.

8 So what I would respectfully request is
9 that Ms. Kassenoff is directed to immediately
10 comply with Judge Koba's order, that's been in
11 place for months, any and all dollars she's
12 received from the insurance company, must be paid
13 over to the therapist, and any balance, then,
14 thereafter, can then be paid by the E-Trade.

15 MS. MOST: Do you have that dollar
16 amount currently?

17 MR. DIMOPOULOS: Only she has it. It's
18 her insurance. She can provide it.

19 THE COURT: What is the date of Judge
20 Koba's order?

21 MR. DIMOPOULOS: I will give you my
22 letter.

23 THE COURT: Is it in your letter?

24 MR. DIMOPOULOS: It is in my letter.

25 THE COURT: What's the date of your

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1 letter?

2 MR. DIMOPOULOS: October 7th. Judge
3 Koba's order.

4 THE COURT: If it's attached to your
5 letter, let me just look at your letter. That was
6 Ms. Most's letter. I have your letter to the
7 Court. Okay. So where is the order of Judge Koba
8 with regard to Ms. Kassenoff and the insurance
9 claims?

10 MR. DIMOPOULOS: I will get that for
11 your Honor in one minute.

12 MR. FRISCH: Your Honor, can I be heard
13 on this very briefly?

14 THE COURT: Hang on.

15 MR. DIMOPOULOS: So the order of Judge
16 Koba is July --

17 THE COURT: 6th?

18 MS. KASSENOFF: It's the 12th, your
19 Honor.

20 MR. DIMOPOULOS: The order originally
21 came from Judge Koba almost a year ago. That was
22 the way the protocol was to be done. The problem
23 is when we found out that she was submitting the
24 claims, we had to have her memorialize it and
25 signed an order of July --

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1 THE COURT: July 12th, 2021, referring
2 to motion sequence 23 and 25?

3 MR. DIMOPOULOS: Correct.

4 THE COURT: Okay. I got it. It's on
5 page four of the decision and order with Judge
6 Koba, which is dated July 12th, 2021.

7 MR. DIMOPOULOS: The directive was
8 originally given --

9 THE COURT: It says, "The Court further
10 directs the defendant to continue submitting
11 requests for reimbursement from defendant's
12 insurance carrier for the therapeutic services and
13 to provide all reimbursement checks to plaintiff
14 within one week of receipt for deposit into the
15 separate account established to hold the funds
16 withdrawn to pay the children's therapy expense."

17 So I'm going to say that that is a clear
18 mandate of the Court. Sit down, Ms. Kassenoff.

19 MS. KASSENOFF: We have not been heard,
20 your Honor.

21 THE COURT: Ms. Kassenoff, there's an
22 attorney here for you, so you're making choices.
23 I will allow you to make choices, but be guided,
24 Ms. Kassenoff, the choices come with benefits and
25 consequences. I don't represent you, I don't

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1 advocate for you, nor do I take a position of the
2 plaintiff, but in my Court, Ms. Kassenoff, I make
3 the rules.

4 MS. KASSENOFF: Judge, I'm homeless.
5 I'm homeless, and I've been homeless for five
6 weeks. I can't do my job effectively. I can't
7 get my medication for cancer. I can't house my
8 dog. This is not a sustainable situation, Judge.
9 The hardships are relevant in this situation.
10 This order was entered ex parte on evidence that
11 is self-serving, that we have plenty to say about,
12 Judge, but the hardship has to be considered,
13 because the order is too broad, it bars me from my
14 home. It is unconstitutional, Judge.

15 The Court was aware, and as my counsel
16 said, Judge Koba got it right. When she said,
17 "Look, if you're in Larchmont and you run into
18 your children, this is what you got to do." She
19 contemplated the idea that I would be there.

20 THE COURT: Well, so let me ask you
21 this, and Mr. Frisch, feel free to respond. One
22 could argue, without making an assertion or an
23 allegation, that there is a deference between
24 running into and taking opportunities to be
25 somewhere and making a decision to do that. I

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1 have not made that decision. I have made a
2 decision, based upon ex parte orders, folks, are
3 given -- well, even Judge Walker said the DA
4 couldn't indict a ham sandwich if they wanted to.

5 Ex parte orders are giving in
6 consideration in this part because, most
7 importantly, of what I heard about the children.
8 Whether it's self-serving or not. There is so
9 much finger pointing in this case, back and forth,
10 that you folks just don't see the damage you are
11 doing to yourselves. The best medication in this
12 case is to exit this courthouse for the last time.

13 MS. MOST: Judge, if you can address the
14 therapists?

15 THE COURT: Hang on. Hang on. I'm
16 getting caught in crossfire here. There are a
17 couple of things. Do you want to address the
18 insurance issue, Mr. Frisch? Is that what you
19 were going to address?

20 MR. FRISCH: I would like an opportunity
21 to address it on -- I would like an opportunity to
22 address it; not at this moment.

23 THE COURT: All right. Well, that's
24 fine. Well, here's the deal. I find Judge Koba's
25 January 12th order to be a clear mandate of the

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1 Court, which is binding on all sides. And,
2 therefore, there was no decision, ruling, or any
3 determination which is being made today on
4 anything.

5 I am adjourning this matter -- today is
6 October 20th -- to Thursday -- I'm adjourning
7 this, and hopefully Ms. Kassenoff will have
8 counsel.

9 MS. KASSENOFF: Or a place to live.

10 THE COURT: Ms. Kassenoff. Check your
11 calendars, folks. You can have either Wednesday,
12 November 3rd, at 2 p.m., or Thursday, November
13 4th, at 2 p.m.

14 MR. DIMOPOULOS: Your Honor, is it at
15 all possible to do the day before? I am going to
16 be away those days.

17 MS. MOST: It's election day.

18 THE COURT: Or Friday, the 5th, at 2.
19 It's your choice.

20 MR. FRISCH: Your Honor, any one of
21 those three days --

22 THE COURT: If there is a compelling
23 reason that I modify the TOP, I will give it due
24 and deliberate consideration. I know she has a
25 lease now in Larchmont, but with equal emphasis, I

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1 don't create in my own mind the circumstances that
2 are presented to me.

3 MR. FRISCH: I appreciate that, your
4 Honor.

5 THE COURT: As everyone knows, when a
6 jury sits in the box, people could be telling the
7 truth, and the issue of credibility may go the
8 other way. With equal emphasis, people may be
9 disingenuous and could be found credible.

10 Most important is how the Court reviews
11 and views the existence of these children.

12 MR. FRISCH: With that in mind --

13 THE COURT: And mom and dad will somehow
14 get past all of this.

15 MR. FRISCH: With that in mind, I have
16 two applications. Number one, that the plaintiff
17 be required to bear the cost of Ms. Kassenoff's
18 alternate lodging until this matter is resolved
19 with regard to her residence. That's number one.

20 And number two, with regard to the
21 issues raised by Ms. Most and Mr. Dimopoulos,
22 about the insurance, that we have an opportunity
23 to respond to that in writing.

24 MR. DIMOPOULOS: Your Honor, on that
25 second point, we can concede to that. The only

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1 thing is my client, who is the sole custodial
2 parent, should be given administrative rights in
3 the insurance app, so that he can download all the
4 claims made and the EOBs, so that this Court has
5 all of the evidence before it.

6 THE COURT: I'm not ruling by ambush,
7 Mr. Dimopoulos. Here's the deal. There is a
8 clear mandate of Judge Koba dated July 12th. I
9 read it into the record.

10 MS. MOST: There's an earlier one, as
11 well, your Honor. I'll send it to you tomorrow.

12 THE COURT: I don't need it. I have
13 e-file.

14 MR. DIMOPOULOS: How do we know that we
15 have all of the evidence that your Honor needs to
16 make a determination?

17 THE COURT: Here is the deal. You want
18 to respond, Mr. Frisch, in writing, please do so.
19 But with equal emphasis, I'm telling you that as
20 of right now, whether you agree with it or not,
21 Mr. Frisch, there is a clear mandate of Judge
22 Koba, that Ms. Kassenoff is to continue to seek
23 reimbursement through insurance for the children's
24 therapists, and upon -- I don't want to hear from
25 you, because your attorney is going to respond in

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1 writing. You have waived your right to speak on
2 that. And that within one week of receipt, those
3 checks are to be surrendered. If they have not
4 been done, all I can say to you is that they
5 better -- that order better be current by the
6 return date, notwithstanding whatever you provide
7 to me, Mr. Frisch, but there will be consequences
8 on violations of orders, running to Family Court.

9 I will tell you that if anybody goes to
10 Family Court, from here on in, I will consolidate
11 it, and I will deem it forum shopping. This is
12 the Judge that is steering, guiding, and driving
13 this litigation until trial. Period. Paragraph.
14 End of story.

15 MR. FRISCH: We will get a writing in to
16 your Honor by next Friday, by the latest.

17 THE COURT: I will see everyone --

18 MR. FRISCH: Can your Honor entertain my
19 application to have Mr. Kassenoff bear the cost of
20 lodging until that issue is resolved?

21 THE COURT: I will entertain it, but not
22 today. Not today.

23 MR. DIMOPOULOS: Your Honor, can Mr.
24 Frisch be directed to or Ms. Kassenoff be directed
25 to provide all claims made and EOBs provided, all

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1 information in there written response, because we
2 have no access whatsoever?

3 MR. FRISCH: Your Honor, with all due
4 respect, I would like to respond and get a grasp
5 of the issue --

6 THE COURT: Be prepared to discuss this
7 issue in detail at the adjourn date.

8 MR. FRISCH: Yes, your Honor.

9 THE COURT: And to provide whatever
10 proof, either in defense or in pursuing your
11 particular claim. I am not going to deal with
12 this case by ambush. I do not operate that way.
13 Let me make this patently clear.

14 The litigants' inability to accept
15 control and responsibility of their actions will
16 have a negative impact. This is not a runaway
17 train.

18 Mr. Dimopoulos, your schedule for the
19 week of November, election day?

20 MR. DIMOPOULOS: Your Honor, I just
21 texted my wife. We're good for the 5th, is okay,
22 at 2:00 p.m.

23 THE COURT: Okay. I will see everyone
24 on November 5th at 2:00 p.m. Motions 34, 35, 36,
25 37, 38, and 39 are deemed adjourned to that date.

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1 All rulings and directives placed on the record
2 this date constitute the decision and order of the
3 Court and are hereby deemed so ordered, without
4 the necessity for signature, notwithstanding the
5 submission of any documents in which counsel or
6 the parties are seeking as sole order by the
7 Court.

8 By representation of plaintiff's
9 counsel, cost of today's transcript will be borne
10 by the plaintiff, subject to any reallocation
11 determined by the Court or by stipulation of the
12 party, with a copy to be electronically
13 transmitted to the Court. So ordered.

14 (Whereupon, the proceedings were
15 adjourned.)

16
17 * * * * *

18
19 This is hereby certified to be a true and
20 accurate record of the above proceedings.

21
22
23 -----
24 Mary T. Slavik, RPR
25 Senior Court Reporter

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