

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

3 -----X

4 ALLAN KASSENOFF,
5
6 Plaintiff,

7 -against-

Index No.
58217/2019

8 CATHERINE KASSENOFF,
9
10 Defendant.

11 -----x

12 Courthouse
13 White Plains, New York

14 November 29th, 2021

15 BEFORE:

16 HON. LEWIS J. LUBELL,
17 Justice of the Supreme Court

18 APPEARANCES:

19 DIMOPOULOS BRUGGEMANN, PC
20 Attorneys for the Plaintiff
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22 Tuckahoe, New York 10707

23 BY: GUS DIMOPOULOS

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BY: ERIC SAAR, ESQ.
ANDREW FRISCH, ESQ., Cocounsel

MOST & SCHNEID, LLP
Attorneys for the Children
222 Bloomingdale Road
White Plains, New York

BY: CAROL MOST, ESQ.

Susan L. Giampiccolo,
Senior Court Reporter

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2

THE COURT: This is the matter of Kassenoff versus Kassenoff, index number 58217 of 2019.

3

Plaintiff's appearance, please.

4

5

MR. DIMOPOULOS: Dimopoulos Bruggemann, by Gus Dimopoulos, on behalf of the Plaintiff, Allan Kassenoff, who is in court this afternoon.

6

Good afternoon, your Honor.

7

THE COURT: Good afternoon.

8

Can I have Defendant's appearance?

9

MR. SAAR: Krauss Shaknes Tallentire & Messeri, by Eric T. Saar, on behalf of the Defendant, Catherine Kassenoff.

10

THE COURT: Good afternoon.

11

MR. SAAR: And also present is Andrew Frisch, also cocounsel on the matter.

12

Good afternoon, everyone.

13

THE COURT: For the children.

14

MS. MOST: Carol Most, Law Offices of Most & Schneid, 222 Bloomingdale Road, White Plains, New York.

15

Good afternoon, your Honor.

16

THE COURT: Good afternoon.

17

Mr. Dimopoulos, any applications to be made to the Court this afternoon?

18

MR. DIMOPOULOS: No, your Honor.

1 THE COURT: Mr. Saar.

2 MR. SAAR: Yes, your Honor.

3 The Court, in its order from last Wednesday,
4 invited us, in essence, to make a proposal as to a path
5 forward for Miss Kassenoff in terms of access and/or contact
6 with the children.

7 THE COURT: Let me make something patently clear.

8 I'm on this case strictly for the purposes of the
9 contempt proceeding. I'm not doing custody. I'm not doing
10 financial's. I am on this purely for the motion of
11 contempt.

12 There will be another judge that will be handling
13 the custody. Judge Koba has a motion which has been made to
14 expunge Dr. Abrams report.

15 So, I'm not doing anything on custody. All I have
16 been doing, Mr. Saar, is the proceeding on contempt.

17 If you wish to make a formal application to amend
18 custody or anything like that, you can bring it. I have no
19 problem transferring it on January 1. There will be a new
20 judge that will be assigned on this case for all matters.

21 MR. SAAR: Judge, there is a pending order to show
22 cause before the Court on one-on-one family therapy. That's
23 precisely what I would ask for.

24 THE COURT: Has it been signed yet, Mr. Saar?
25 You'll forgive me, there is 41 motions in this case.

1 MR. SAAR: I understand. It has been signed, and I
2 believe it's been fully briefed.

3 THE COURT: Well, if it's fully briefed and it's
4 before me, I'll take a look at it. If it has not been
5 considered by me, it will be passed on for a determination
6 and a ruling.

7 Any other applications?

8 MR. SAAR: My only application today was for
9 one-on-one family therapy between Miss Kassenoff and the
10 children to go forward. We have recommendations that I
11 brought with me today as to a therapist who can conduct that
12 one-on-one family therapy, your Honor.

13 THE COURT: So, in other words, Mr. Saar, you are
14 asking me to continue considering things in this case?

15 Is that correct?

16 MR. SAAR: I'm just --

17 THE COURT: You're aware of all of the Facebook
18 posts that have been posted in this case, whether it's
19 against me; it's against Miss Most, or anything else?

20 You're aware of them?

21 MR. SAAR: I am aware of them.

22 THE COURT: You've seen them?

23 MR. SAAR: I've seen them.

24 THE COURT: And have you seen the video that was
25 recently posted with regard to unfit to sit?

1 MR. SAAR: That I have not seen.

2 THE COURT: Technically, I'm going to ask your
3 client today if she's wired. And is she wearing a wire?
4 Because that's what litigants were encouraged to do.

5 Is your client wearing a wire, Mr. Saar?

6 MS. KASSENOFF: No, your Honor.

7 THE COURT: Okay.

8 Let me say something very patently clear. There
9 is -- As you've seen, Mr. Saar and Mr. Frisch, strong
10 support for recusal in this matter, calling me anything but
11 corrupt, unfit, graft.

12 Your client, Mr. Saar, who has called the issue
13 with Dr. Abrams a bombshell. You know that was submitted as
14 part of a motion almost a month before that, and then
15 proceeded through two days of a hearing.

16 I am not going to be manipulated by a Facebook
17 campaign. I'm not afraid of it. I have nothing to hide.
18 There is nothing unethical by this judge, or corrupt or
19 unfit. It just so happens that particular post; bombshell,
20 came out after you've already gone through two days of a
21 hearing, and your client gets an adverse decision on a
22 motion by the Court relative to the one-mile radius.

23 This Court will not be manipulated, navigated or
24 cave to a Facebook campaign. Because I will tell you, I
25 know truths and I know what are not truths. And everybody

1 who sits in here that is a litigant is subject to
2 credibility and assessment. Whether it's at a hearing or
3 any other type of proceeding.

4 Your client didn't like one person. She started a
5 campaign to get them removed. She doesn't like Miss Most.
6 She's starting a campaign to get her removed. It will not
7 work on this judge.

8 MR. SAAR: Understood.

9 THE COURT: This judge has not done anything wrong
10 or anything unfair. And then to have to go through two days
11 of hearing, where is the surprise, where is the bombshell?
12 And the level of spin that is put on these Facebook posts,
13 you know, Mr. Frisch knows, and Mr. Wiederkehr knows and
14 Mr. Dimopoulos knows, they are not true. They are a spin
15 to gain support, which this Court will not kowtow to.

16 I can't stop her from exercising her First
17 Amendment rights. Be my guest. Please, be my guest. Say
18 whatever you want. But when you misrepresent the truth and
19 you maliciously malign a jurist of the Court with falsities,
20 then there are issues.

21 I remind you that this Court, as the trier of fact,
22 will be deciding issues of contempt, and will consider and
23 will utilize as part of its consideration Pattern Jury
24 Instruction 1:22; Falsus in Uno, which I'll read into the
25 record so everybody is clear.

1 "If you find that any witness has willfully
2 testified falsely as to any material matter of fact; that
3 is, as to an important matter, the law permits you to
4 disregard completely the entire testimony of that witness
5 upon the principle that one who testifies falsely about one
6 material fact is likely to testify falsely about everything.
7 You are not required, however, to consider such a witness as
8 totally unbelievable. You may accept so much of his or her
9 testimony as you deem true, and disregard what you feel is
10 false."

11 By the processes which this Court will sit on, I as
12 the sole judge of the facts decide which of the witnesses I
13 will believe, what portion of their testimony I accept, and
14 what weight, if any, I choose to give to it.

15 These people will get a fair, impartial and unbiased
16 determination on any application that is currently before
17 me.

18 MR. SAAR: Understood.

19 THE COURT: But I will not be deciding things that
20 are outside the realm of the contempt proceeding.

21 Now, you're also aware -- You should have all
22 received an e-mail that I got from Mrs. Youssef.

23 Was she told to send me that e-mail, Mr. Saar? I
24 don't mean by you. I'm not asking you to breach attorney
25 client privilege. Was that e-mail instructed to be sent, or

1 did Miss Youssef send it on her own?

2 You may want to ask your client.

3 MR. SAAR: If I may confer with my client, your
4 Honor?

5 THE COURT: Sure.

6 MR. SAAR: Miss Youssef sent that e-mail on her own
7 volition, your Honor.

8 THE COURT: I understand.

9 Anything that has been done thus far by this Court
10 is based upon the existing Orders that are currently in
11 place that have not been stayed by the Appellate Division or
12 anybody else. Whether it's a stay away, albeit I did extend
13 the order of protection, I did not take away the access that
14 Miss Kassenoff is entitled to, which is one hour a week
15 supervised.

16 I did get your e-mail, Mr. Saar. I do not litigate
17 by e-mail.

18 MR. SAAR: I apologize for that.

19 THE COURT: Mr. Saar, I extended a courtesy.

20 MR. SAAR: I appreciate it. I do. And it won't
21 happen again.

22 THE COURT: To ask me to make rulings, and then go
23 back and forth. Whether it's you and Mr. Dimopoulos, or
24 anybody else. It's really a -- It's how we run on a
25 holiday. You're not the first, you won't be the last.

1 So, everything that exists, for a lack of a better
2 word, is before me. And any Orders that are currently being
3 enforced by me are Orders that have already been determined.

4 You've got a Decision and Order by Justice Koba
5 from last year based upon a hearing. You have further
6 Orders and Decisions by Justice Koba which have been done.
7 I've done whatever I've done, whether it's agreed to or not.

8 Mr. Saar, as you know, we're not in the happy
9 business. That's the reality. And I truly understand, as
10 I've indicated in my Decision and Order -- I believe it was
11 motion sequence in 39 -- I'm not insensitive to the
12 frustrations that the Defendant has in this case.

13 But I'm dealing with the issues of contempt.
14 That's all I'm doing. And I will not recuse myself, because
15 there is no basis for me to.

16 And let me make the facts patently clear, so that
17 everybody understands the falsity when you malign people
18 with untruths.

19 You're concerned about Dr. Abrams. The first day
20 that the Kassenoff's were in here Mrs. Kassenoff asked to
21 make sure that Dr. Abrams did nothing further in this case,
22 and I removed him. Notwithstanding of the fact that he was
23 removed from the panel going forward. Technically, he had
24 the ability to stay on here. I removed him at the request
25 of the defendant before you were here.

1 Anything related to Dr. Abrams is now before Judge
2 Koba, because that was her decision. Not me.

3 I have never had a social relationship with Dr.
4 Abrams. I never had dinner with him. Any dealing that I
5 had with him was purely on a professional basis.

6 And mark my words, Mrs. Kassenoff, my words are
7 very significantly calculated, because I know where they're
8 going to wind up.

9 MS. KASSENOFF: Your Honor, I'm not sure what you
10 mean by that.

11 THE COURT: Oh, yes you do.

12 MS. KASSENOFF: Okay.

13 THE COURT: We don't create a problem, and then
14 claim to be a victim of a problem.

15 You wrote all those posts, Mrs. Kassenoff. Please,
16 I get it. You want to vent, that's fine. You have a First
17 Amendment right. But when you lie, ma'am, that's when you
18 have trouble.

19 MS. KASSENOFF: Your Honor, since you're addressing
20 me --

21 THE COURT: No, no. I'm not listening to you.

22 MS. KASSENOFF: I did not lie.

23 THE COURT: I'm not listening to you. I have said
24 to your attorney and to Mr. Dimopoulos that both Mr.
25 Kassenoff and you will have an impartial, unbiased, without

1 prejudice and without fear decision.

2 You have a First Amendment right. Go exercise it.
3 But I will tell you that if I believe that people lie about
4 one material fact, I can discount your entire testimony. Be
5 guided accordingly. I harbor no ill will towards Mr.
6 Kassenoff or you. That is the truth. Somebody at least is
7 speaking it.

8 Is there anything else that needs to be addressed?

9 Mr. Frisch, I know that you have a real problem in
10 December on dates to continue this hearing.

11 MS. MOST: I have some dates which I am
12 unavailable.

13 THE COURT: Me too.

14 I don't want to read into your letter, Mr. Frisch,
15 but did you indicate that on your unavailable dates that
16 other lawyers; to wit, Mr. Saar, would step in on the
17 proceeding, or no? I wanted to be clear.

18 MR. FRISCH: Before drafting and filing a letter, I
19 did not check with other counsel as to their availability.

20 THE COURT: Okay.

21 MR. FRISCH: It simply was not clear to me when I
22 wrote the letter whether we would be here today, and whether
23 the Court intended to reschedule today's appearance for a
24 day in December. So, I wanted to give the Court the
25 courtesy of --

1 THE COURT: No. We needed to clear the air, quite
2 frankly. And I wanted to know if anybody had an
3 application. It appeared to me that if there was one, make
4 it. Articulate it. If there wasn't, then I cleared the
5 air. Because your letter somewhat said the expected content
6 of our -- So, everybody knew why we're here, Mr. Frisch.

7 MR. SAAR: Judge, can I just ask for purposes of --

8 THE COURT: Housekeeping.

9 MR. SAAR: Sure. Yes. Housekeeping.

10 Will your Honor be deciding the motion that's
11 pending on the issue of family therapy or will that be Judge
12 Koba? I believe it's motion sequence number 37.

13 THE COURT: I will look at it, Mr. Saar. I will
14 be unavailable, though available, between Wednesday and
15 Wednesday, this week to next week. I will have e-mail. I
16 will go over it, and I will see. It may wind up -- There
17 is a lot of moving wheels, as I'm sure have brought yourself
18 up to speed.

19 MR. SAAR: Yes.

20 THE COURT: I want to take a look at the fully
21 briefed motion. I'm not so sure it precedes or should
22 succeed the motion to expunge Dr. Abrams report, and all the
23 circumstances relative to the hearing, which was held last
24 year. I'm not sure. I don't want to create double work for
25 anybody where a determination may be made, and it may be

1 inconsistent rulings. So, I don't want to put people
2 through things they don't have to go through.

3 So, here is where we stand. Also I am starting a
4 trial December 9th.

5 Let's go off the record.

6 (Whereupon, at this time there was a brief
7 discussion among the Court and counsel off the record.)

8 THE COURT: Let the record reflect that an
9 off-the-record conference was held with counsel in order to
10 establish dates for a continuum of the contempt proceeding.

11 It has represented by counsel for the defendant
12 that the application for contempt as against the plaintiff
13 have been deferred to trial at this point and time.

14 Counsel for the defendant --

15 MR. DIMOPOULOS: I apologize. I'm not sure. I
16 thought I heard it in the reverse. Applications by the
17 defendant against the plaintiff are deferred to trial.

18 THE COURT: Yes. The defendant against the
19 plaintiff --

20 MR. DIMOPOULOS: I'm sorry if I heard it wrong.

21 THE COURT: -- have been deferred to counsel.

22 Counsel for the defendant has indicated plaintiff's
23 counsel all additional witnesses aside from the defendant
24 who will be called to testify at the time of trial.

25 It has been determined that in order to complete

1 the hearing for contempt that two days should be sufficient.
2 In the event that it is not, we will carry over, more likely
3 than not to the 17th as a courtesy so that we can continue
4 to move this to a conclusion.

5 So, we'll start on Thursday, January 13th, from
6 9:30 to 4:30. Everybody will be advised of the courtroom
7 that I will be sitting in at that particular time. We'll
8 continue on the 14th. And to the extent necessary, we'll
9 continue to the 17th.

10 Please advise Mrs. Kassenoff's mother that I have
11 received her e-mail. I've read it. I understand it.
12 Please don't e-mail me.

13 Anything else, Mr. Dimopoulos?

14 MR. DIMOPOULOS: No, your Honor.

15 THE COURT: Mr. Saar, Mr. Frisch?

16 MR. SAAR: No.

17 MR. FRISCH: No.

18 MR. SAAR: Thank you.

19 THE COURT: Everything placed on the record this
20 date will be utilized by the Court and will be considered
21 for a Decision and the Order of the Court for all purposes.

22 The cost of the transcript is directed to be borne
23 equally amongst the parties, subject to any reallocation by
24 the Court or by stipulation, with a copy to be
25 electronically transmitted to the Court.

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So Ordered.

Mr. Saar, I'm getting back to you on the motion
that you were inquiring about by tomorrow.

MR. SAAR: Thank you, Judge.

* * * * *

Certified to be a true and
accurate transcription of the
within proceedings.

SUSAN L. GIAMPICCOLO
Senior Court Reporter

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