

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

X-----X
ALLAN KASSENOFF,

Index No.: 58217/2019

Plaintiff,
-against-
CATHERINE KASSENOFF,
Defendant.

**REPLY AFFIDAVIT IN
SUPPORT OF
ORDER PURSUANT TO 22
NYCRR 202.7(f)**

X-----X

STATE OF NEW YORK)
) ss:
COUNTY OF WESTCHESTER)

CATHERINE KASSENOFF, being duly sworn, deposes and says:

1. I am the Defendant in the above-captioned matter. I have personal knowledge of the facts and circumstances set forth herein. I submit this Reply Affidavit in further support of my emergency motion to change custody with respect to: (1) the mental health care and treatment of all the Children and (2) educational decisions for Alexandra (d.o.b. 7/15/09). I also respectfully ask that costs (including therapy with Ms. Culley for Ally) associated with these be borne by the Father, who is the monied spouse. In addition, I ask that the nesting schedule that existed on a 50/50 basis before Dr. Abrams, the unfit forensic evaluator, issued his report on March 25, 2020, and that has now been demonstrated as fundamentally flawed and stale, be re-established (with Ms. Culley to provide ongoing support through regular check-ins). I ask as well to be given a right of "first refusal" with respect to the Children's activities and, generally, when the Father is traveling or otherwise not staying in the Marital Home, that I be permitted to occupy it. I ask that all restrictions on communication with the Children are lifted. Finally, to the extent the current access schedule is not supplanted by a 50/50 nesting arrangement, I ask that all meal visits with Charlotte and Josephina are conducted as virtual "sandwich" visit and for expanded access with

the Children. Absent these immediate changes, my relationship with the Children will be forever damaged.

2. Plaintiff's opposition to this motion erroneously argues from determinations made by the Court in heavy reliance on discredited Court personnel who have been unceremoniously removed from this case. The removal of these bad actors is unprecedented and, in itself, qualifies as a substantial change in circumstances warranting a restoration of custody to me.

3. I should not be positioned as having to fight to regain that which I lost – but should never have lost – at the hands of an unfit forensic evaluator and an AFC who violated the witness/advocate rule by becoming a witness against me. The misguided AFC, Carol Most, went so far as to hire (and then conceal her hiring) of the same Assistant District Attorney, Christine Paska, who had months prior unsuccessfully prosecuted me. It is beyond alarming that since June 2019 this same AFC was repeatedly arguing for less and less contact between me and the Children, culminating in her abhorrent position in 2021 that I should have no contact with my own Children.

4. To require me to advance facts apart from conclusively showing that custody should never have been removed to begin with, in order to show a substantial change in circumstances, would be to set the standard far too high than required. I was not justifiably cast into this position -- and have proven as much. I should not now be forced to justify my way out of it, where I have definitively demonstrated that it resulted from wrongdoing committed by the forensic, the former AFC and the Father himself who had an "unusual alignment" with her.

THE FATHER'S JUDGMENT IS EXTRAORDINARILY POOR

5. My Affidavit recounts the facts leading up to the conference before the Court on January 6, 2023, in which the Court expressed alarm at the Father's "disingenuous" representations about the status of the Children's therapy and his "opinion" about how therapy should proceed.

That alarm was justified inasmuch as the Father had spent the better part of the prior 9 months pretending to have the girls in therapy when they were not.

6. Though the question here should not be what I must demonstrate to regain custody that I wrongfully lost, I can do that based on the Father's poor judgment alone. From May 2022 to the present, the Father put the girls in remote sporadic therapy that Dr. McKay found – and the Court found—totally inappropriate.

7. Before that time, the Father used therapy as a means to an end. The history of his misconduct is highly relevant as a response to his false argument that he prioritizes therapy for our Children.

8. On March 3, 2021, Dr. Josephine Kuhl, M.D., Charlotte's former therapist, recognized this herself, commenting that the Father has a "particular agenda" with therapy. She wrote to both Carol Most and Dr. Adler:

"I hope you have both received copies of my evaluation. I think I made clear recommendations that any professional Would understand but as you can see from the attached, Mr Kassenoff seems to have a particular agenda."

See NYSCEF Doc. No. 2360. She wrote this in response to the Father's attempts to change the content of Dr. Kuhl's report. He specifically pressured her to have her report say that I had "told Charlotte what to tell [her] and that this is 'triangulation.'" He also wanted her to add that "Charlotte is angry at" me. The Father clearly simply wants to create witnesses and favorable documentary evidence in the Children's therapists – even where those therapists strongly disagree with him. That is his "agenda" with therapy.

9. And how can we forget the Father's secret communications with Dr. Adler and Dr. McGuffog when there was a standing Court order (*see* NYSCEF Doc. No. 1847) that he was required to include me on his correspondence with the therapists? He did no such thing – he used private communications with both therapists to denigrate me mercilessly. He admitted to his

exclusive conversations in emails such as the one he wrote to his attorney and Carol Most on April 22, 2021, in which he said:

“I have been texting dr mcguffig and dr Adler all day.”

See NYSCEF Doc. No. 2361. I was completely excluded from this conversation with the therapists (and many like it) – which is even more remarkable because I was the one raising the concern to begin with.

10. The Father conducted “in home” “therapy” with Dr. Adler on numerous occasions, from the Marital Home. He also sat in on Ally’s therapy sessions with Dr. McGuffog over Ally’s objection! Ally said about Dr. McGuffog:

“She is lying about me to daddy. I even told her that I wasn’t comfortable having daddy join the meeting with her and she let him join any way!! Please fix this!!!!”

See NYSCEF Doc. No. 2104. He pushed Ally to accept and work with Dr. McGuffog, even though Ally said how much she “hated [her] therapist” Dr. McGuffog. *Id.* All of this demonstrates poor judgment by the Father and his desire to manipulate therapy in order to benefit himself, rather than our Children.

11. The Father repeatedly denigrated me to the prior therapists because he views their role as to become witnesses against me, not to deliver therapy to our Children. For instance, on September 9, 2020, he wrote to me with a cc: to Dr. McGuffog to berate me after Dr. McGuffog wished to set up a session for Ally that would conflict with a visit I had with her, after not having seen her for about three weeks due to COVID restrictions and difficulty finding a supervisory agency. *See* NYSCEF Doc. No. 1702. His email – referring to my “therapeutic supervision”, “causing trouble” by setting up a visit, and having an “army of lawyers” – was designed to have Dr. McGuffog take a negative view of me just a few weeks into her treatment of Ally.

12. The Father and Carol Most strategized to have a psychological report written by Dr. McGuffog about Ally not be “watered down” with the truth. When Ally ran away from the

Father's home on January 27, 2021, Carol Most tried to cast the issue as one of truancy rather than Ally seeking me and trying to escape misery in the Father's household. She and the Father orchestrated a narrative to Ally's school that Ally "sneaked off campus" – which was not the truth – because Dr. McGuffog's "report will not be helpful if it is watered down." *See* NYSCEF Doc. No. 2407. It was important to the Father that Dr. McGuffog not write a report that Ally left his home as a result of abuse. If this is not the height of manipulation of the therapist by the Father, it is hard to imagine what is.

13. The Father's lack of esteem for therapy existed throughout our marriage. For several years, Ally was seen by a pediatric neurologist, Dr. Martin Kutscher, M.D., who prescribed her Adderall. Amazingly, not once during the entirety of her treatment did the Father ever speak with, call, meet with, email or otherwise reach out to Dr. Kutscher.

14. Yet, the Father went so far as to remove Ally entirely from Adderall in late 2018, after only giving it to her sporadically during the 2017-18 academic year. *See* NYSCEF Doc. No. 760. Ally's teacher, Ms. England, remarked on this in October 2017. *See* **Exhibit "A"**. Just a month earlier, on September 11, 2017, when I raised an issue regarding Ally's mental health – i.e., that Ally was either eating two lunches a day or throwing out lunch -- the Father's response was:

"who knows and who cares." *See* **Exhibit "B"**.

15. When Ally began attending a program at Dramatic Pragmatics at Dr. Kutscher's suggestion, I wrote to him to ask for his assistance with getting her to and from the program. Here is his response on February 26, 2018:

"Thanks. But unfortunately I will not be able to do so gi[v]en my job requirements." *See* NYSCEF Doc. No. 817. This convincingly shows how little the Father values therapy for the Children; at the time, Ally was experiencing serious issues at school and at home.

16. Since the January 6, 2023 conference, we have only had more occasion to witness the Father's poor judgment – if that is even possible, even where he is under the microscope of the Court and presumably acting on his best behavior. On February 3, 2023, the Father's attorney wrote one of the most obtuse emails to date to the Court, confirming the Father's poor judgment, in which he proudly announced:

As for Charley and Jojo, Mr. Kassenoff has been in constant communication with the Family Services of Westchester ("FSW"). It turns out that his persistence paid off as their intake coordinator called him today to say that they have a therapist who can begin immediately – so long as the therapy takes place in the marital residence. Mr. Kassenoff thought this was fantastic as it would save the children from having to travel to White Plains for therapy. The children can each meet with the therapist in the privacy of their own bedroom or in their playroom.

See Exhibit "C". Almost immediately, the Court rejected this proposal:

"The Judge does not find "in home" therapy to be appropriate for these children."

17. The Father is completely tone-deaf and refuses to accept the Court's views about how therapy for our Children should proceed. If he suggests "in home" therapy when the Court is watching, just imagine what he will suggest when it is not.

18. Since making this outlandish suggestion, the Father has further demonstrated his incompetence in choosing a therapist. His most recent suggestion for Ally, for instance, is Dr. Schuster-Monaco – who has virtually no experience in CBT/DBT whatsoever. It is not even clear if she has availability and Ms. Carton has specifically said she does not wish this doctor to be appointed.

19. Moreover, the Father's flurry of activity in recent weeks amounted to no tangible progress and was clearly for appearances only.

20. Mr. Dimopoulos went so far as to mislead the Court as to Ms. Carton's own efforts to find a therapist for Ally, as she wrote in her email dated February 3, 2023, set forth in part below:

Regarding Ally's therapy, it is not accurate that Mr. Dimopoulos "has yet to hear back" from me. I was the one who contacted Dr. Sickles after the last court appearance to inform her of the Court's ruling and encourage her to set up an appointment for a medication consultation with Ally. I advised Mr. Dimopoulos that same day. I also advised Mr. Dimopoulos that, although Dr. Barbara Sabbeth had told Mr. Kassenoff that she was not accepted new patients, I intended to reach out to her to see if she would reconsider in light of our thirty year professional relationship. However, when I learned from Dr. Sabbeth that she does not use CBT or DBT treatment modalities, I so informed the Court. I also spoke with Mr. Dimopoulos about the name he proffered from a Psychology Today list – Dr. Schuster-Monaco – and told him in that conversation that I had received the name of another psychologist referral from Dr. Verno that I was pursuing. My goal is to have at least of couple of options that, if the Court is willing, Ally could interview a few therapist and choose which one she prefers. Ally is 13 ½ years old and, in my opinion, should have some input into her treatment provider.

Therefore, I respectfully request that the Court refrain from endorsing Mr. Dimopoulos' unilateral choice of a therapist for Ally. Notwithstanding the disturbing tone and content in the plethora of emails that flood my inbox in this case – which, frankly, I find professionally disturbing and distracting -- I am actively pursuing several leads in the quest for a therapist for Ally and I will advise the Court, counsel, and the parties as promptly as possible. Thank you.

Respectfully,
Robin D. Carton, Esq.
Attorney for the Child Ally K.

See Exhibit "D".

21. The Father has further demonstrated his utter lack of understanding of our Children's psychological vulnerabilities by publicly filing very sensitive information about me and about them online. It is remarkable that he writes openly – when he could file under seal – about Charlotte's suicide note, feebly referring to her as "C.K." – which so obviously refers to Charlotte as her initials are unique. In the *Kassenoff v. Adler*, 67296/21 case, he publicly filed a motion to quash a subpoena. In that motion, he wrote this:

"receipt of the email from C.K. on June 1, 2020 at 9:41 p.m., stating she wanted to disappear or kill herself."

See Exhibit "E".

22. Even when I begged the Father to redact the private health information about Charlotte and her sisters, he refused. He prioritizes hurting me over protecting their mental health and privacy.

23. The bottom line is that the Father continues to stall with therapy for the Children because he is terrified that substantive therapy will reveal his abuse of them. The history of his inability to prioritize meaningful therapy for the Children, a topic that has never been adjudicated by this Court before, and as set forth partially above, is a sufficient basis to remove his final-decision making authority as to mental health issues for the Children.

**I HAVE IDENTIFIED THERAPISTS WHO ARE
IMMEDIATELY AVAILABLE AND WELL-QUALIFIED**

24. The Family Services Center identified by the Court for therapeutic services for the Children has a *3-month waitlist*. JoJo and Charlotte simply cannot wait this long.

25. My proposal is for them¹ to attend therapy at the world-renowned Child Mind Institute in Manhattan, where they have a staff of PhD-level psychologists who fit exactly the criteria identified by Dr. McKay. They are female, experts in CBT/DBT, and are available immediately to see the Children in person. Their charges can be reimbursed by United Health Care.

26. I attach here the C.V.s of the two doctors who are ready to begin meeting with the girls, Dr. Whitehouse (for Charlotte) and Dr. Domingues (for JoJo). *See Exhibit "E" and "F"*. Their credentials are impeccable and they meet all the criteria identified by Dr. McKay and the Court.

27. Child Mind Institute was previously considered acceptable to the parties when a therapist was sought for Ally. *See NYSCEF Doc. No. 46 at p. 4.*

¹ Although Ally also needs therapy, I believe that Ms. Carton is making progress in this regard.

28. Because the girls are no longer traveling to Carmel for visits (except for dinners, which could be changed to Larchmont), going to New York City once a week is not a hardship for them. I am willing and able to drive them myself as well – or take the train.

**ALLY'S ACADEMIC PERFORMANCE IS BELOW STANDARDS
AND I CAN HELP HER**

29. Again, I do to believe it is my burden to justify why I should be entitled to the restoration of decision-making authority for Ally when I should not have been deprived of it at all. However, aside from that, the Father is doing such a poor job of managing Ally's academic needs that there exists an emergency justifying my ability to make decisions on Ally's behalf.

30. Ally's grades and test scores are suffering, particularly in Earth Sciences and Spanish where her grades for the Second Marking Period were 79 and 66, respectively. *See Exhibit "G"*. A "79" is equivalent to "C+" grade and a "66" is equivalent to "D+." Unfortunately, both of these grades will appear on her high school transcript. These grades are not acceptable and a precipitous drop from grades Ally got in prior years when she was in my care.

31. I have repeatedly tried to discuss with the Father the hiring of a tutor for Ally – but he will not discuss it and becomes annoyed when I raise the issue. The same is true if I remind the Father that Ally's standardized test scores were much higher when she was taking Adderall.

32. It was my suggestion to appoint Dr. Sickles, M.D. to see Ally, whom I hope can help her with finding strategies for doing better academically.

33. On or about January 28, 2023, I learned that a "vaping" pipe was found in Ally's bedroom. I do not know whether Ally is vaping herself or not. Neither does the Father. Whether Ally is using nicotine (or possibly THC), or whether it is simply a friend who is doing so, there is clearly a problem here. Ally, especially with her history, cannot be left unsupervised at age 13. How is it that the Father did not even know that Ally's friend, Val "LNU", decided to vape in the middle of the night at the Marital Home? How is it that the Father does not have basic rules that


our daughter abides by, for her own protection? Is vaping or other activity interfering with Ally's academics?

34. The Father's lackadaisical attitude toward Ally's education is long-standing. At conference before the court on January 28, 2021, the Father was instructed to get an educational lawyer for her by Judge Koba. *See* NYSCEF Doc. No. 2120 at p. 40-42. Despite numerous requests for him to follow through with this directive, the Father never did. Indeed, this issue *remains the subject of a contempt motion* set to be heard at final trial of this matter.

35. I can give Ally the attention she needs and deserves. My work schedule is flexible and I can take her for tutoring or simply help her myself. Unlike the Father, I do not travel extensively and work long hours.

CONCLUSION

For all the foregoing reasons, the Court should in its discretion grant Defendant's motion in its entirety.



CATHERINE KASSENOFF

Sworn to before me this
22 day of February 2023



Notary Public

