ORIGINAL

In the
Supreme Court of Ohio

THE STATE, ex rel. ARISTIDES JURADO, ET, AL. Relators, v. OFFICE OF DISCIPLINARY COUNSEL, ET. AL. and FRANKLIN COUNTY COURT OF COMMON PLEAS, DOMESTIC RELATIONS DIVISION, JUVENILE BRANCH, ET. AL., Respondents.	Case No. 14-1225 ORIGINAL ACTION IN MANDAMUS AND PROHIBITION

FILED
JUL 18 2014
CLERK OF COURT
SUPREME COURT OF OHIO

AFFIDAVIT OF RELATOR ARISTIDES JURADO
IN SUPPORT OF PETITION FOR EXTRAORDINARY WRITS

STATE OF OHIO
COUNTY OF FRANKLIN, *SS.*

Now comes Relator Aristides Jurado, being first duly cautioned and sworn, and states the following:

1. I, Aristides Jurado, am a resident of the State of Ohio, County of Franklin, and the natural father of the child (the "Infant Child" or "Infant Son"), whose is the subject of the custody dispute in Case Number 12JU-11-14479 of the Franklin County Common Pleas Court , Domestic Relations Division, Juvenile Branch, in which I am the Defendant party.

2. In April 2013, with only a few weeks in the case after her appointment by the trial court, the Guardian Ad Litem (GAL) suddenly began putting pressure to enforce the will of the custody petitioner ("mother" or "the mother") in the child custody case: that my then 9-month old son not be under my care during regular business hours on weekdays and instead, that the child be

maintained under out-of-home care with virtually no exceptions. At the time, I had (and still have) shared custody, abided by a court-ordered parenting schedule, and was willing and able to care for him at home on some weekdays that were my scheduled days off from work and were already assigned as my parenting days. The first rationale for such recommendation-turned-directive was based on the GAL's assertions that the consistency of the child's routines, especially his naps, would be better maintained at the daycare facility. Those reasons were more important than the bonding time between father and son, if they were true at all, but they were not. The GAL intensely persisted in such restriction despite the fact that (a) she had not done home visits yet, nor interviewed any collateral witnesses from the daycare facility or otherwise, (b) the court order in effect at the time allowed me to have parenting time during the week without daycare restrictions, along with split custody rights for decision making, (c) this directive was not only against reason, but also there was no evidence that a problem existed with the child's naps and routine at home, and (d) the GAL was aware of my limited number of days in town due to my weekly work commute between Columbus and Chicago, and that at times required me to work weekends and evening hours.

3. The no exceptions rule for the child to be at the daycare facility Monday through Friday included, for example, my parents' 6-week long visit to spend time with their first—and then—only grandchild. Even after knowing that they had planned that trip from afar several months in advance, and that it involved costly international airfare, the GAL still refused to make an exception and fervorously pursued to enforce this restriction by any means at her disposal, so that the child would be cared for by others while his father and visiting grandparents stayed home waiting for the next opportunity to spend time with the child.

4. Before the GAL was appointed, I had setup a limit in the number of times the mother could stop by to drop off breast milk, so that my bonding time with my son would not be disrupted. It was also my attorney's recommendation to do so in order to maintain boundaries.

5. At first, the GAL maintained the position that if mother needs to stop by too often to drop off breast milk, as opposed to providing it all at once, it may be an indication that it is time to supplement with formula. But after she interviewed mother for the first time, that opinion changed to the contrary: that mother could stop by as many times as she wanted to—even when (a) there were growth issues with the child, (b) the mother had acknowledged that she had been having breast milk production challenges since the child was born, (c) I had shared my concern that the child may have been undernourished and wanted to supplement with formula, especially when the child would show signs that he was still hungry after he was done feeding. After that, the mother started taking advantage of the unrestricted access to my parenting time to the point that she would stop each time she had produced an ounce of milk.

6. Around the same time, conflict between the parties and counsel in the case increased to an all-time high, and exercising my parenting schedule and rights became a major daily ordeal, given the GAL's increasingly exerted pressure as an officer of the court to keep my infant son deprived of my care and confined to a daycare facility on my court-assigned parenting days.

7. Between April and July 2013, the GAL facilitated the withholding of medical care for my infant son and obstructed my efforts to address health concerns with pediatricians and specialists, while also dismissing my concerns about the quality of care offered at the daycare facility.

8. In mid-May 2013, I was retrieved by EMS personnel, along with my infant son, from the side of the freeway and was taken to the Emergency Room. After at least 2 hours of numerous tests done at the adjacent Hearth Center to rule out any life threatening condition, I was diagnosed with experiencing a severe panic attack, without ever being known as an anxiety sufferer.

9. Starting in May 2013, after collecting and submitting evidence to the GAL proving that I always have carefully observed and facilitated the child's nap routines, the GAL's justification for her daycare restriction was changed from the importance of the child's routine to the high conflict nature of the custody case.

10. This situational heath condition, as my family physician referred to the health crisis I had just suffered, had been triggered by two months of continuous harassment and accumulated mental anguish caused by the GAL and the child's mother. The harassment partially and temporarily subsided after I called local police to get involved during an escalated incident the day before the trip to the emergency room. In June 2013 and only a month after the health crisis that resulted in the trip to the ER, another incident took place but I did not involve law enforcement this second time around, after giving in to the GAL's coercion.

11. My attorney at the time, in response to my therapist's and my own inquiries regarding the removal of the GAL from the case, stated that "it is nearly impossible to have a GAL removed from a case... and particularly [name redacted]". (Emphasis Sic.)

12. Between late May and July 2013, I made several unsuccessful attempts to reach out for help, including the contacting of the Children and Families Section of the Supreme Court of

Ohio, the Ohio Attorney General's (OAG) office, and several attorneys specializing in custody proceedings. There was a clear consensus across the attorneys I consulted with, that trying to remove a GAL and this one in particular, would be a waste of time, given her influence with the courts.

13. On July 8 2013, the following events that took place the day of a status conference conducted in front of the Magistrate, all led to a turning point in the custody dispute:

a. Prior to the commencement of the court proceeding, I requested my attorney to object to the appointment of a psych evaluator being recommended by the GAL. I had recently learned new facts and thus had two universally compelling reasons to request a different evaluator. Because she refused to do so, I communicated to the court that I was dismissing my attorney before the start of the proceeding because I was of the opinion that her assistance was ineffective and she was no longer representing my best interests as her client.

b. The GAL-attorney, under false pretenses, persuaded the court to issue an opinion or recommend restrictions or limits for my visits to see and have lunch with my son while in daycare. As a result of her deceptive conduct and misrepresentations of material facts, I was labeled an "*Overinvolved*" Dad by the court.

c. During the status conference, the court was made aware that my temporary work contract had reached its intended end date, and I had just become unemployed.

14. In early-July 2013, following the advice of the Ohio Hispanic Coalition and an early child care education expert, I filed complaints with two state government agencies against the

daycare facility staff and administrators for possible violations of licensing rules, while in complicity with the adverse parties in the custody case to interfere with my civil and constitutional rights.

15. A week or two after the July 8 hearing, I signed an agreed entry while under tremendous duress, that finally made all the restrictions pursued by mother and GAL's directives fully enforceable: I would not be allowed to care for my son on weekdays between 9a-4p with few or no exceptions and also would be precluded from using the statutory Open Door policy for daycare facilities throughout the state. Not only that I couldn't parent my own son on weekdays even under my assigned parenting days, but I could not visit him, have lunch with him or appear in the premises to ensure the quality and safety of the child care program.

16. As a result of this new July 2013 court order, even when having a 50/50 parenting schedule I had to continue paying close to $1,200.00/month for child support while unemployed payable to a corporate executive/upper-level manager having an annual salary of about six figures, in addition to incurring in unnecessary child care costs given that I had the time, was fully capable and willing to care for my child on my assigned weekdays, while job searching. This contrived arrangement quickly became a substantial hardship for me: My bank accounts were depleted; credit cards maxed out and was forced to start asking for loans from friends and family, in order to stay current with my child support obligations, cover increasing attorney and GAL fees, and provide for the basic needs of my son, not to mention the usual monthly bills, medical expenses and groceries.

17. In September 2013, I obtained clear and convincing evidence substantiating that the GAL had been engaging in deceptive conduct and committing unlawful—and even criminal—offenses. Added to the existing body of evidence, I knew that I had met my burden of proof even beyond probable cause that the GAL was wilfully interfering with my rights and was not acting alone. In parallel, indicators of outside interference with the state government agencies' functions had become evident.

18. Sometime between late-September and early-October 2013, the office staff at my parish expressed concern with the number of injuries my son was presenting, which only added to my own growing concerns and that of my family and friends about the welfare of my young child, given the steady increase in frequency and severity of incidents and injuries that were occurring while in daycare.

19. In late September-early October 2013 and following a suggestion of a fellow parishioner, I sought the advice of a juvenile officer with local law enforcement headquartered near our church, who agreed to review some of the evidence I had collected. Although the precinct did not have any jurisdiction in the matter, the officer stated that the involvement of law enforcement was a must, along with a referral to Children Services, given the circumstances, evidence reviewed, my concerns of on-going interference, the GAL's far-reaching influence, as well as my fears of possible retaliation.

20. On October 8, 2013, the Emergency Room staff at Nationwide Children's Hospital made a referral to the Franklin County Children Services (FCCS) agency given their concerns of the repetitive head injuries my infant son had suffered, and after learning of a black eye the child

suffered a few months back. Almost immediately, the GAL openly censured the involvement of Children Services and my decision to take my son to the ER after suffering a more recent and severe of several head injuries sustained in recent weeks. Within 5 hours since our arrival at the hospital, the GAL had already made contact with the children services agency via (a questionable) phone call, which was all prompted by another call the mother made from the hospital complaining to the GAL about the child being at the ER and the involvement of FCCS.

21. In October 2013, following the advice from the police officer and with plenty of evidence at hand, I reached out to the OAG/BCI office one more time to ask for guidance with involving the proper law enforcement agency, given the predicament I had. But that action resulted in adverse consequences. I soon realized that I had made a mistake by expecting equal protection of the law when being up against a prominent and influential individual or public official.

22. In October 2013, my then 15-month old son was permanently expelled from their facility by the daycare administrators, only two days after the ER visit and involvement of Children Services, and after the successful instigation by the GAL and my son's mother.

23. On October 15, 2013, several weeks after the questionable communications between the GAL and the daycare's attorney began, the daycare facility filed a civil lawsuit against me—less than a week after expelling my 15-month old son from the facility. On the exact same day of the filing, the child's mother, with the support of the GAL, was preparing a Motion to Modify Temporary Orders. This is evident by the date of the Affidavit filed later with the motion.

24. About the same time I was being served with court documents regarding the civil lawsuit, the mother—with the full support of the GAL—enrolled the child in a daycare facility located in

the west-most point of Franklin County, or farthest in distance from my residence and place of work, and over my repeated objections and in violation of my custody and parenting rights.

25. On December 13, 2013, the mother, her legal counsel, and the GAL filed an emergency ex-parte motion and obtained a restraining order to prevent me from enrolling my son on a secondary daycare facility for him to attend on my assigned parenting days. The GAL and opposing counsel knowingly circumvented and ignored multiple rules of procedures in order to obtain the restraining order. Those issues were acknowledged by the court at the next hearing.

26. On December 20, 2013, the GAL and petitioner were offered several opportunities to take the stand and present their testimony during a 2-3 hour full evidentiary oral hearing proceeding conducted by the trial court for the final adjudication of the Petitioner's Emergency Motion for Restraining Order. When finally my turn came up after waiting anxiously for several hours, the court took a recess but the hearing was never resumed on this day. I was not afforded the opportunity to be heard on this day, and the hearing was continued to January 8. A binder with hundreds of exhibits and other evidence to impeach the GAL and demonstrate her ongoing misconduct was left unused.

27. On January 6, 2014, I filed a formal grievance against the GAL with the Office of Disciplinary Counsel, which included the standard grievance form, a supplementary document in excess of 10 pages with statements of fact and law, and electronic media containing evidence, including over 400 pages of exhibits, as well as audio and video recordings.

28. On January 7, 2014, less than 24 hours before the proceeding was scheduled to start, the hearing continued to January 8 got dismissed without an agreement by all parties or order of

the court, after Custody Petitioner and her counsel filed a Notice of Voluntary Dismissal. As a result, I lost the opportunity to (a) be heard, (b) rebut the false accusations made by the GAL and opposing party, (c) impeach the GAL's testimony, (d) made the court aware of instances of intrinsic and extrinsic fraud, misrepresentation and other misconduct by opposing party and GAL. These assertions could have been easily proven with the evidence I brought to the proceeding, including a binder containing several hundred pages of exhibits, visual aids, and video/audio recordings that were ready to be presented or played in either the initial December 20 proceeding or the January 8 scheduled hearing. The immediate result was not only the violation of my due process rights, but also created substantial prejudice against me with the court, as it became evident during the next proceedings.

29. On January 22, 2014, while testing the credibility of the GAL and establishing her unreliability during an emergency custody hearing, I was not allowed to make references to the testimony and statements she made during the December 20 2013 hearing because that hearing had been voluntarily dismissed and thus was "out of the court's jurisdiction"—even when I had made claims of misconduct by the GAL. Even after explaining to the court that I was working part-time after a period of unemployment, I was ordered (a) to resume my payments to the GAL, (b) to pay the opposing party for reimbursement of the evaluation report. I was also ordered not to file any motions, schedule hearings or appear in front of the court for the adjudication of the recently filed emergency motion to remove the GAL, until the end of February. Also at this proceeding, I brought up to the attention of the court that the last July 2013 agreed order had my signature only because I was under duress.

30. On Feb 18, 2014, filed a new motion for removal of GAL along with separate motions to: (a) Expedite Hearing without Referring for Removal of GAL, (b) Instant Motion for Protective Order. All three motions were set for oral hearing in front of Honorable Jamison on Mar 13, 2014. Subsequently, a subpoena for the GAL file was filed and served on March 4, 2014.

31. On March 3, 2014, the Office of Disciplinary Counsel issued a determination letter communicating the dismissal of my grievance against the GAL while asserting that "Concerns with the conduct of a Guardian ad Litem should be raised to the court that appointed him or her" and that "The court will take whatever action it deems is appropriate, and is obligated by the Code to report any disciplinary rule violations to this office."

32. Between December 2013 and March 2014, on at least 2 occasions when shopping for groceries with my son, I had to leave the store virtually empty handed, or with a fraction of the items on the shopping cart, as the result of my payment cards been declined by the bank and my failure to scramble up enough cash to cover the total. During this same period, my health and life insurance lapsed due to the non-payment of premiums. Nevertheless, I complied with the recent court order and managed to make 4 payments to the GAL totaling over $2,000.00.

33. On Mar 13, 2014, upon commencement of the hearing in which traditionally the movant party is allowed to start addressing the court or initiate the direct examination of witnesses, the exception was made and the non-movant party was allowed to start addressing the court. After a dissertation was made by opposing counsel, as referred to it by the judge, I was not given the opportunity to be heard. In fact, while trying to address the court, I was not able to complete a single full sentence due to interruptions by the court. Despite my pleadings that I

had paid over $2,000.00 to the GAL since the last hearing and in compliance with the court order and that I had already made substantial sacrifices to be able to make those payments, still the judge stated that she knew the GAL had been fulfilling her duties under Sup. R. 48 and that since the GAL was not paid in full as she had ordered me, none of my motions would be heard. Without properly able to make arguments against it, the court dismissed the parties and continued the hearing for a later date.

34. Without an order of reference, or adjudication of my Motion for Expedited Hearing without Referring for the Removal of the Guardian Ad Litem, the hearing was referred to the Magistrate and continued for the trial date when the final hearing was scheduled to start on March 26, 2014.

35. Although a motion for continuance of the final hearing and trial was denied, at the March 26 2014 final hearing in front of the magistrate, the court agreed that there were too many outstanding issues that needed to be addressed before the final trial, including my most recent motions along with other motions by the opposing party and the GAL. As a result, the final hearing was continued, and several of the pending motions were set to be heard by affidavits all at the same time.

36. As of May 11, 2014, the court is currently reviewing affidavits filed by the opposing party and by the GAL for the adjudication of pending Motions.

AFFIDAVIT OF RELATOR ARISTIDES JURADO

FURTHER AFFIANT SAYETH NAUGHT.

Aristides Jurado

STATE OF OHIO COUNTY OF FRANKLIN

SWORN to before me and subscribed in my presence this 11th day of May, 2014.

Notary Public

NOTARIAL SEAL
STATE OF OHIO

ROGER RILL
Notary Public, State of Ohio
My Commission Expires 03-14-18