

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ANTHONY ALLEN for himself and as)
parent of A.A., TODD BENNETT, for)
himself and as parent of E.B., SCOTT)
EDELGLASS, SHARIR FELDMAN, for)
himself and as Parent of A.F. and J.F,)
WERNER GRAF, for himself and as parent)
of A.G. and A.G., KARL HAGBERG, for)
himself and as parent of E.H, A.H. and)
C.H., CLIFTON HILL, for himself and as)
Parent of A.H, SAMIR JOSHI, for himself)
and as parent of J.J., J.J and J.J., YEHUDA)
B. LITTON, SURENDER MALHAN, for)
himself and as parent of E.M and V.M.,)
CARLY OLIVIER for himself and as)
parent of M.O, ANTONIO QUINLAN for)
himself and as parent of K.Q., ZIA)
SHAIKH for himself and as parent of M.S.,)
S.S., and H.S for themselves and on)
behalf of all others similarly situated,)

No. 3:14-cv-00760-FLW-DEA

Plaintiffs,)

v.)

LAWRENCE DE BELLO, TIMOTHY)
CHELL, KATHLEEN DELANEY, JAMES)
DEMARZO, MADELIN EINBINDER,)
CHRISTOPHER GARENGER,)
LAWRENCE JONES, SEVERIANO)
LISBOA, ANTHONY MASSI, JOHN)
TOMASELLO, SHERRI SCHWEITZER,)
NANCY SIVILLI, MAUREEN)
SOGLUIZZO,)

Defendants.)

SECOND AMENDED COMPLAINT

Jurisdiction

1. This Court has jurisdiction over this matter under 28 U.S.C. §1331. Plaintiffs maintain this action, inter alia, under 42 U.S.C. §1983, and the Declaratory Judgment Act, 28 U.S.C. § 2201, on their own behalf and on behalf of all others similarly situated. The State Court System and individual defendants, in their official and individual capacity deprived Plaintiffs of liberty under color of law by depriving parents of the fundamental right to the care, custody and control

of their minor children without affording them even minimal procedural protections guaranteed by the United States Constitution.

Summary

2. Plaintiffs seek declaratory and injunctive relief under Federal Rule of Civil Procedure 23(a) and (b)(2) on behalf of all persons who have been or in the future will be deprived of child custody by Defendants, who, under color of law, unconstitutionally interfered with the fundamental rights to the care, custody and control of children without a full hearing in violation of the Fourteenth Amendment.

Parties

3. Anthony Allen is an adult residing in Mercer County. He is father of the minor child A.A.

4. Todd Bennett is an adult residing in Morris County. He is father of the minor E.B.

5. Sharir Feldman is an adult residing in Hudson County. He is father of the minor children A.F. and J.F.

6. Werner Graf is an adult residing in Mercer County. He is father of minor children A.G. and A.G.

7. Karl Hagberg is a resident of Monmouth County. He is father of minor children , E.H, (born 2003), A.H. (born 2005) and C.H. Hagberg is also an employee of Currents Magazine.

8. Clifton Hill is a resident of Maryland, He is father of the minor child A.H. Hill brings suit on behalf of himself and A.H.

9. Yehuda Ben Litton is an adult residing in Ocean County. He is father of L.L.

10. Samir Joshi is an adult residing in Pennsylvania. He is father of the minor children J.J., J.J., and J.J. Joshi brings this suit on behalf of himself and his minor children.

11. Surrender Malhan is an adult residing in Hudson County, Jersey City, New Jersey. He is father of the minor children E.M. and V.M. Malhan brings this suit on behalf of himself and his minor children.

12. Carly Olivier an adult residing in Hudson County. He is the father of the minor child M.O. He brings this suit on behalf of himself and his minor child.

13. Antonio Quinlan is an adult residing in Hudson County, New Jersey. He is father of the minor child K.Q. Quinlan brings this suit on behalf of himself and K.Q.

14. Zia Shaikh is an adult residing in Ocean County. He is father of the minor children, M.S. S.S., and H.S. He brings this suit on behalf of himself and his minor children.

15. All of the above Plaintiffs (parents and children) remain subject to the jurisdiction of the New Jersey Family Courts and could lose custody at any time without due process

16. Defendants DE BELLO, CHELL, DELAINEY, DE MARZO, EINBINDER, GARENGER, LISBOA, MASSI, TOMACELLO, SCHWEITZER SIVILLI, and SOGLUIZZO, are sued in their official and individual capacities; by their actions and policies they denied plaintiffs constitutional rights under color of law; they are persons within the meaning of 42 U.S.C. §1983 with respect to declarative and injunctive relief sought in this case.

17. Defendants personally violated Plaintiffs' fundamental rights under color of law by stripping them of parental rights without Due Process.

18. New Jersey State and County agencies participate fully in enforcing superior court orders through a variety of state and county agencies including law enforcement agencies, county prosecutors, county jail, child welfare agencies and social services offices.

Statement of Facts

19. Defendants have established policies, procedures, and precedents denying parents a full and prompt hearing when stripping one parent of physical and legal custody and giving full physical and legal custody to another parent. This is a clear violation of the Fourteenth Amendment to the United States' Constitution under color of law. All of the parents and children have had their parental rights and other fundamental rights violated under color of law.

Facts Establishing a Widespread Policy of Denying Due Process and Fundamental Rights by Family Court Judges in New Jersey

Facts Relevant to Allen

20. Anthony Allen is the father of the minor A.A. (born 1998).

21. The mother of the child is Terri Hand, who works for the Attorney General's, Division of Criminal Justice.

22. In September 2003, Hand filed a motion requesting sole legal and physical custody of A.A. On September 26, 2003, at a summary, ex parte proceeding, Judge Raymond Hayser stripped Allen of custody. The Order signed by Judge Hayser stated "the care and custody of the aforesaid child(ren) is (are) committed herein to Terri Hand of Trenton, Count of Mercer, State of New Jersey until further order of the Court."

23. This Order was in effect for several years, during which time Hand permitted almost no contact whatsoever between Allen and A.A.

24. Over the next decade Allen repeatedly returned to court seeking custody, or even just parenting time with his daughter. In March 2009, after Hand repeatedly refused to permit visiting time between Allen and A.A., Allen sought joint residential custody of A.A..

25. On March 17, 2009 Judge Blackburn concluded that Hand was not permitting visitation. Rather than granting custody to Allen, however, Judge Blackburn signed an order that limited Allen's parenting time to "supervised visitation" through the county probation office.

26. Although Judge Blackburn may have intended this to encourage visitation and ensure there was a clear record of when Allen saw his daughter, this was a significant restriction on Allen's parental rights as his visitation time went from unsupervised to supervised.

27. The Court also took no action to hold Hand accountable for her failure to cooperate with earlier court orders.

28. Allen continued to demand 50% custody including residential custody to ensure he actually saw his daughter.

29. On December 16, 2010 Judge Anthony Massi Ordered that Allen would have parenting time limited to every other weekend, from Friday after school to Sunday afternoon. Although this Order was apparently intended to assist Allen to see his daughter, this two days every two weeks, fell woefully short of the 50/50 parenting time Allen was demanding as his constitutional right.

30. Despite the December 16, 2010 Court Order Hand continued to interfere with Allen's custody. In an Order dated June 16, 2014 Judge John Tomasello Ordered the Hand should arrange for counseling "to establish reunification between the Defendant [Allen] and the parties['] daughter."

31. Hand continued to interfere with Allen's parenting time, and on January 21, 2015 Judge Tomasello issued a written Order appointing a third party, a Mrs. Kearney, to supervise parenting time and Ordering that "Mrs. Kearney to pick the dates for parenting time to take place."

32. Judge Tomasello may have intended this to help Allen, but stripped Allen of any right to see A.A. contingent upon the whims of Mrs. Kearney who was designated with plenary power by the Court to determine how much time, if any, Allen would have with his daughter.

33. Hand, who continued to have residential custody all this time, over Allen's objection, continued to refuse to permit visitation between A.A. and Allen. On February 4, 2015, Hand failed to bring A.A. to Allen for a scheduled visitation.

34. On February 5, 2015 Allen filed an Order to Show Cause demanding "50% custody + 50% parenting time to start immediately." Judge Call heard the Emergent Motion and scheduled a return date for Tuesday February 10, 2015. On the record Judge Call phoned Hand and left a message ordering her to appear in Court on the following Tuesday.

35. On February 10, 2015 Hand was in court pro se, there was no plenary hearing but Hand told the Court that she had been unable to allow parenting time on February 4 due to an unspecified "private" medical problem. Hand also claimed she had needed to cancel another parenting time session due to weather.

36. The Court stated that it was not impressed by Hand's constant excuses for why parenting time was not happening. Judge Tomasello threatened to sanction Hand.

37. Judge Tomasello then actually reduced the amount of parenting time permitted to Allen. Although Allen had previously been allowed every other weekend, now Judge Tomasello reduced Allen's parenting time to a short supervised visit after school on Wednesdays and eight hours each Saturday.

38. Allen objected on the record that he was entitled to 50% custody, that the court was violating his parental rights and the rights of the child by not granting 50% custody and pointed out that Judge Tomasello was allowing Allen less time with A.A. than Allen had been allowed a month earlier.

39. In response Judge Tomasello stated on the record: "It's been a long time since you've had a regular relationship with the child and I want to reestablish that, okay, and make sure everything is okay."

40. Accordingly, without making any finding that Allen was unable or unfit to parent A.A., Judge Tomasello limited Allen to about an hour of supervised time on Wednesday and eight hours of unsupervised visitation each Saturday.

41. On March 24, 2015, Allen again appeared in court to demanding 50/50 parenting time.

42. On March 24, 2015 Judge Tomacello signed an Order which further reduced Allan's parenting time with his daughter, now instead of being together eight hours on Saturday, it was reduced to six hours each Sunday.

43. Allen has never received a Plenary hearing, although there does not appear to be any issue as to whether Allan is a fit parent. The 2014 and 2015 Orders of Judge Tomasello substantially restricted the legal rights of Allen to the care, custody and control of his children based on no particular findings of fact, but based on a vague concern that A.A. and Allen must be reunified "slowly." These Orders of Judge Tomasello deprived Allen of the care, custody and control of his children with out due process.

44. For years, Allen has sought 50% custody of his daughter, but for years, Judge Tomasello and other family court judges have severely restricted his legal rights without justification and without any apparent standard being applied.

45. These severe restrictions on Allen's custody rights has damaged, and continues to damage the father-daughter relationship between Allen and A.A.

Facts Relevant to Bennett

46. Todd Bennett is the father of E.B., born 2009. E.B.'s mother is Valerie Galdieri.

47. Bennett and Galdieri resided together for years, but were not legally married.

48. On October 2, 2013, Bennett filed a non-dissolution complaint in the Superior Court, Family Part, Morris County seeking joint legal custody of, and parenting time with, his natural son Ethan Bennett.

49. In 2014 the New Jersey Division of Child Protection and Permanency conducted an investigation of Bennett and Galdieri, but this investigation was terminated by Court Order on May 8, 2014 as the State found "insufficient facts to substantiate any abuse or neglect" of E.B.

50. The Court Order of May 8, 2014 also provided that Bennett and Galdieri would share joint physical custody.

51. After this Order was entered, Bennett and Galdieri separated, but they each continued to take of E.B.

52. On August 25, 2014, Galdieri filed an application for an Order to Show Cause demanding that Bennett's parenting time with E.B. be suspended indefinitely.

53. The basis for Galdieri's demand that all parenting time be suspended was her assertion that Bennett had kept the child longer than their unofficial agreement had allowed.

54. August 27, 2014, Judge James M. DeMarzo had the parties and their counsel appear for oral argument. No cross examination of Ms. Galdieri was allowed and no plenary hearing was conducted.

55. Judge DeMarzo signed an order which ordered Bennett to immediately relinquish physical custody of E.B. to Galdieri, and also limited Bennett's parenting time to every other weekend, plus six hours during the week. Effectively, Bennett was given, on average 30 hours of parenting time per week while Galdieri was given 138.

56. In entering this Order Judge DeMarzo, made no findings of fact or conclusions of law, no hearing was conducted.

57. Judge DeMarzo did not find that Bennett was an unfit parent, nor did Judge DeMarzo find any abuse or neglect—which a full investigation three months earlier had not found either.

58. Judge DeMarzo did not appear to apply any legal standard at all.

59. Judge DeMarzo arbitrarily, capriciously and without due process, substantially obstructed Bennett's right to the care, custody and control of E.B, causing severe anguish and suffering on the part of father and child.

Facts Relevant to Edelglass

60. Plaintiff Scott Edelglass's son, Z.E. was born in the Spring of 1994. The mother of the child was Erin Fisher. Within a few months of the birth of Z.E., Edelglass discovered there were serious threats to Z.E.'s safety in the home of Erin and he petitioned Monmouth County Court for custody. This was the start of a prolonged custody dispute that would last for the next eighteen years.

61. In December of 1997, Erin filed a motion in Monmouth County Family Court seeking sole custody of Z.E. As a result of this motion Erin was granted "sole custody" of Z.E. Moreover, Edelglass was only permitted to have supervised visitation with Z.E. for the next two years.

62. Although there were numerous and extremely serious allegations regarding the safety of Z.E. in Erin's custody, Erin was granted full custody and Edelglass's custody severely restricted by the Monmouth County Superior Court per Judge Raymond A Hayser, without a plenary hearing. Edelglass was not permitted a full opportunity to present evidence or challenge the evidence against him.

63. Judge Hayser's Order of December 12, 1997 granted "sole custody" of Z.D. to Erin, provided that "[a]ll future visitation . . . shall be supervised," and that visitation would occur only with the agreement of Erin.

64. In April 1998, Edelglass petitioned the court to permit him unsupervised visitation, but this request was denied. Again the Court, per Judge Hayser refused to afford Edelglass a plenary hearing. Judge Hayser in an Order dated April 3, 1998 continued to deny Edelglass any unsupervised visitation with his child. Judge Hayser does not appear to have made any finding to justify this continued denial of parental rights. The court did not explain the basis for continuing to deny Edelglass unsupervised visitation, but presumably credited the unsubstantiated allegations made against him which he was not permitted to refute.

65. For the next ten years, until Z.E. was old enough to decide to see his father on his own, Edelglass's parenting time with his child was severely restricted due to the actions and willful inactions of the Monmouth County Family courts and Monmouth counties agencies. For example, in the Fall and Winter of 2005 to 2006, Edelglass was permitted only a few hours every few weeks with Z.E., with the exception of a few additional hours the night before Thanksgiving.

66. In March 2006, Edelglass asked the Court, per Judge Terence Flynn, to schedule a hearing to resolve this problem, but Edelglass's parenting time remained severely restricted based on unsubstantiated allegations and the stipulation that he not use his last name, talk about his religion, or ask his son about his grades if he were to continue to see his son even on a limited basis. Judge Flynn's order therefore violated not only the parental rights of Edelglass but also his First Amendment Rights (as incorporated through the Fourteenth).

67. These severe restrictions on Edelglass's ability to interact with his son brought about by the actions of Judges Thornton, Flynn and Hayser likely have caused significant and long-lasting damage to father-child relationship, and severe mental anguish.

Facts Relevant to Feldman

68. Sharir Feldman is an adult residing in Hudson County. He is father of the minor children A.F. (born 1999) and J.F. (born 2002).

69. As of early October 2013, Feldman had joint legal custody and residential custody of his son J.F., while the mother, Feldman's ex-wife, Cristina Langley had residential custody of the daughter A.F.

70. On October 24, 2013, Langley filed an Order to Show Cause in the Hudson County Family Court, demanding physical custody of J.F. as well as demanding that Feldman begin paying Langley child support. Judge Maureen Sogluizzo granted this Order to Show Cause and immediately suspended all parenting time of Feldman with J.F. until further notice.

71. The October 24 Order acknowledged that this cessation of parenting time was based on allegations still being investigated. The Court held no plenary hearing. Feldman was not permitted to present any evidence and was not represented by counsel.

72. The October 24 Order set a date of December 12, 2013 for further proceedings, during the interim Feldman's parenting time was suspended. The October 24 Order of Judge Sogluizzo denied even telephonic contact between Feldman and J.F., but only allowed text messaging.

73. December 12 came and went but there was no change in custody.

74. On February 10, 2014 the NJ Department of Children and Families completed its investigation of the allegations and concluded that the allegations were "not established."

75. On March 10, 2014 Judge Sogluizzo conducted a "hearing review." In an Order dated March 10, 2014, Judge Sogluizzo permitted some parenting time to Feldman, however, Judge Sogluizzo continued to severely limit Feldman's parental rights. For the months of March and April 2014 Feldman was permitted parenting time consisting of every other weekend, as well as several days for Spring break.

76. Thus for all of March and April Feldman's physical custody was limited to nine days compared with fifty days for the mother. For May and June Feldman's physical custody was limited to six days each month, compared to 24 or 25 days a month with the mother.

77. Thus after being totally deprived of time with J.F. for four and a half months, Judge Sogluizzo continued to severely limit Feldman's time with his children without any apparent reason.

78. Only in the Summer of 2014 was Feldman finally permitted anything close to equal time with J.F.

79. The denial of due process and the severe restrictions on Feldman's ability to be with his children caused severe mental distress to both parent and children, and detrimentally affected the parent child relationship.

Facts Relevant to Graf

80. Werner Graf was married to Lisa McComb (Graf) in 1998. They had two children, daughters, A.G. and A.G., born in 2004 and 2008.

81. On January 9, 2012 McComb filed for an ex parte domestic violence temporary restraining order (TRO) in Mercer County Court. During the TRO interview on January 9, McComb also stated that she would be filing for divorce.

82. The TRO was largely based on an predicate incident 10 days earlier when, in reaction to McComb's insistence to discuss divorce in front of their traumatized children, McComb was evicted from an immobile car near the marital home.

83. McComb's exaggerated version of the incident was actually supplemented by the TRO officer during the interview, who added facts and conjecture not offered by McComb such as being thrown to the ground. The Officer then prompted McComb to upgrade the complaint to an assault and proclaimed that McComb was, as a victim of violence, the "more appropriate parent."

84. This original interview for the TRO also contained a singular, exaggerated allegation against Graf of corporal punishment (spanking) of the oldest daughter two months earlier. McComb clearly stated it was a single incident, and did not allege any other physical abuse nor neglect of the children.

85. Importantly, although this testimony involving the child warranted no mention in the Order itself, the TRO Officer still granted full temporary custody of the two children to McComb and denied any and all parenting time, visitations or contact for Graf or anyone in his family "until further ordered."

86. Judge Lawrence De Bello, Superior Court Judge Mercer County, signed a TRO dated January 9, 2012 which granted temporary custody of both children to McComb, and further ordered “No parenting time/visitation until further ordered.”

87. Judge De Bello stripped Graf of legal custody and ordered no parenting time without making any findings as to any harm to the children and without a plenary hearing.

88. After being notified of the TRO at work on the evening of January 9th, Graf had to find alternative living arrangements and was required to work a full day on the 10th. This left no time to prepare or obtain counsel for hearing for a permanent, final restraining order (FRO) scheduled for January 11, 2012.

89. Further proceedings were not scheduled until the next month, during which time Graf was ordered not to have any contact whatsoever, (including indirect communications as well as phone or email) with his two daughters. Grandparents and friends of Graf were also restricted from all contact with the girls.

90. Although Graf wanted to resolve the issue on the 11th, the Court correctly cited the lack of time to prepare and opposing counsel agreed that additional time should be granted. Several weeks later (February 1, 2012), the complaint was amended with other allegations including two alleged incidents involving the children in an attempt to prohibit all visitation rights.

91. On February 10, 2012, the Court per Judge Anthony Massi issued a Consent Order permitting ten hours of Supervised parenting time for Graf on February 12, but otherwise ordering that all other terms of the January 9 Order remained in effect, including denial of any “parenting time/visitation” with his children.

92. Judge Massi thus without a plenary hearing and without making any finding with respect to the children turned a “temporary” denial of parental rights, into an indefinite denial of parental rights. Graf consented to this Order in order to see his children, who he had not seen in a month.

93. The FRO hearing date, delayed again by opposing counsel and the Court schedule, eventually was set a full four months later on May 3rd and 10th. In the meantime, Graf was forced to pursue costly motions and certifications just to establish minimal and supervised parenting time.

94. On March 22, after repetitive appeals to Judge Massi, the court finally allowed Graf to have custody/ parenting time every other weekend (from Friday evening to Sunday at 1 p.m.), but subject only to the availability of supervisors approved by the Court. Judge Massi continued to deny Graf his fundamental parental rights without a plenary hearing.

95. Graf was permitted periodic phone contact and only supervised visitation the weekends of March 30, April 13, and April 27, 2012.

96. On April 23, 2012, after costly petitions and repeated delays from the court, Judge Massi finally signed an Order Amending Temporary Restraints which permitted telephonic or Skype contact between Graf and his daughters twice a week, but otherwise continued severe restrictions on his parenting time and requiring all visitation to be supervised.

97. Essentially for four months, until May 2012, Judges De Bello and Massi denied Graf almost all contact with his daughters, including a prohibition on phone and email contact. During this time, Judge Massi made no inquiry as to the fitness of McComb, even though she admitted on the record that she had once slapped Graf without provocation.

98. No offers of settlement were made during the 4 months of separation by opposing counsel. Finally, on the morning of the hearing date of May 3rd, opposing counsel made an offer of continued home restraints and anger management counseling as a condition to settle the matter and grant eventual parenting time. This is a common ploy when misusing the Domestic Violence statute to gain leverage in divorce. Despite Graf's emotional trauma of separation from his girls, the prospect of losing custody, and the threat of criminal sanctions associated with an FRO, Graf refused to settle.

99. Eventually, the TRO was dismissed with prejudice in August, several months after a court-appointed Psychiatrist determined that no basis for restrictions existed and that the domestic violence allegations were inconsistent.

100. Still, not until September was a 50-50 custody agreement finally struck. For nine long months Graf's parental rights were significantly restricted without basis by Judges De Bello and Massi.

101. Graf was initially denied any contact with his daughters for over 30 days. He literally disappeared from their lives from January 9th through February 12th, 2012 with no explanation. Then for over four months without a full hearing, he was denied almost all contact with his children. Supervised contact was finally lifted a full 5 months later and only after the Court doctor's report. In the meantime, the children were subject to a potentially volatile and unstable parent, and in the absence of the protection and counterbalance that Graf had previously provided.

102. Judges De Bello and Massi stripped Graf of contact with his children on the basis of McComb's unchallenged (and in some cases prompted) allegations for the TRO on January 9th. Graf was not allowed to refute these allegations, and only because he had the means, family support, and drive was he able to minimally reinsert himself into their lives during the extensive hearing delay.

103. The Judge De Bello and Massi's presumptuous dissolution of Graf's parenting rights (and free speech rights) has likely damaged the father-child relationship and mental anguish for Graf who worried that the children were at risk during the prolonged period of his absence. The severe restrictions on Graf's ability to be with his children caused severe mental anguish to both parent and children.

Facts Relevant to Hagberg

104. Karl Hagberg is an adult residing in Monmouth County. He is the father of three children, E.H. (born 2003), A.H. (born 2005) and C.H. (born 2008). Karl and Anna Hagberg were married for twelve years and separated in April 2013.

105. Hagberg is an employee of the magazine Currents.

106. In June 2014, Anna accused Karl of hitting E.H. In subsequent investigations by a social worker and a guardian ad litem E.H. repeatedly denied there was any abuse and no evidence of this alleged hitting was ever produced.

107. Anna filed an Order to Show Cause demanding that Karl's custody be terminated. In an order dated August 14, 2014 Judge Lawrence Jones denied Anna's motion to be granted full legal and residential custody; however, in this August 14 Order Judge Jones significantly reduced the parenting time/physical custody permitted to Mr. Hagberg. The August 14 Order signed by Judge Jones denied Hagberg any overnights with his children and permitted Hagberg to have physical custody only for 11 hours Wednesday (during much of which time the children were in school) and 12 hours on Saturday.

108. No plenary hearing was conducted, the Court apparently concluded that even if the allegation that Hagberg had hit A.H. were true it would not justify a total loss of custody, however, the Court apparently concluded that a substantial reduction in parenting time was justified by the unsubstantiated allegation.

109. This schedule (with Hagberg allowed less than 24 hours a week with his children) was to remain in place until further order of the Court. Hagberg repeatedly demanded equal parenting time with his children, and while Judge Jones has gradually allowed additional time, Hagberg is still being denied anything close to equal parenting time with his children.

110. On September 17, 2014, Judge Jones signed an Order expanding parenting time somewhat allowing Hagberg to keep the children overnight on Wednesday nights and Saturday night. However, the Order continued to deny Hagberg equal parenting time, allowing him only two days a week with his children compared to five days a week with their mother.

111. Hagberg has repeatedly sought equal parenting time and Judge Jones has repeatedly adjusted the parenting time but without significantly increasing the time Hagberg and his

children could spend together. As of February 27, 2015 Hagberg is limited in his time with his children to Saturdays from 10:00 a.m. to Sunday at 4:00 p.m. and on Wednesday from 4:00 p.m. to 8:00 p.m. This is a total of 34 hours and one overnight with his children compared to 134 hours and six overnights for the mother.

112. Hagberg has never had a plenary hearing, and the court has not been presented with any actual evidence of abuse or neglect. Judge Jones appears to be denying Hagberg significant time with his children based on generalize and unsubstantiated concerns about his parenting.

113. These substantial restrictions on Hagberg's right to the care, custody and control of his children, without a plenary hearing and based on a vague "best interests" standard, are deleteriously affecting the relationship between parent and child.

Facts Relevant to Hill

114. Clifton Hill is currently a resident of Maryland and is the father of the minor A.H. (born 2010). The mother of the child is Hills's ex-wife Jennifer Hill, now Jennifer Russell (hereafter "Russell").

115. Hill and Russell separated soon after the birth of A.H. but Russell did not file for divorce until 2013.

116. In June 2013, Hill petitioned the court to allow him unsupervised parenting time with A.H. while the litigation was pending.

117. Judge Kathleen Delaney denied this request and in a written Order dated June 14, 2013 denied any parenting time between Hill and A.H. No plenary hearing was held.

118. The entire extent of contact allowed between Hill and his then 3-year-old son under Judge Delaney's Order was that they were to "attend reunification therapy through the court."

119. Even this small amount of time during "reunification therapy" was limited, as after participating in several sessions, Russell refused to bring A.H. to reunification therapy as Ordered.

120. In September 2013 Hill filed a motion to enforce litigants rights demanding that Russell be sanctioned for refusing to participate in reunification therapy and also demanding that the court to allow him physical custody of A.H.

121. In a written order dated October 18, 2013 the request for custody was denied by Judge Kathleen Delaney.

122. Judge Delaney granted the motion to enforce litigants rights in small part by ordering that Russell comply with the prior order for reunification therapy, but otherwise refusing to sanction Russell for not permitting Hill to see A.H.

123. Judge Delaney's October, 2013 Order limited Hill's entire contact with the child outside of reunification therapy to occasional emails to Russell inquiring about the child. No plenary hearing was held, then or ever.

124. During this time Jennifer had made criminal allegations of misdemeanor harassment against Hill, although Hill was eventually exonerated of all charges.

125. As a result of the criminal charges pending in municipal court, however, Hill lost his job.

126. Despite having lost his job as a result of unfounded criminal charges, Hill was forced to continue paying child support or face being incarcerated. Hill was forced to borrow money to avoid imprisonment.

127. Being unemployed and faced with borrowing money to make child support payment he could not afford, Hill was unable to afford an attorney to assist him, and he was appearing pro se.

128. In April 2014 Judge Sherri L. Schweitzer suspended the "reunification therapy" visits as a result of an application for a TRO filed by Russell.

129. The TRO was dismissed yet Russell refused "reunification therapy" and applied to have the therapy terminated.

130. Hill has not seen his son, A.H. since April 2014.

131. Judge Schweitzer also insisted that Hill pay for parenting classes, which he could not afford.

132. In an Order dated October 23, 2014 Judge Schweitzer terminated all parenting time between Hill and A.H. indefinitely until Hill "complete[d] parenting classes with a licensed psychologist" and submitted the psychologist's report to the Court.

133. No plenary hearing was conducted, then or ever.

134. Faced with the prospect of never seeing his son again, Hill was forced to borrow money to hire a psychologist to start the Court ordered classes.

135. In early 2015, Hill also filed a motion with the court to allow him parenting time, and asking for a plenary hearing.

136. An Order and Statement of Reasons signed by Judge Timothy Chell dated March 5, 2015 denied Hill's motion. More specifically Judge Chell ruled that Clifton could not see E.H. until Clifton demonstrated "changed circumstances" by completing the parenting classes with a licensed psychologist.

137. Judge Chell's March 5, 2015 Statement of Reasons also ruled that Clifton had not demonstrated that a change in custody was in the best interests of the child.

138. Judge Chell further limited Hill's contact with A.H. to one short phone call per week.

139. Judge Chell made no findings that Hill was an unfit parent, and no plenary hearing has ever been conducted.

140. As of the date of this filing (March 2015) Hill has not seen A.H. since April 2014. He has had no contact whatsoever other than one weekly phone call.

141. These Orders of Judges Chell and Schweitzer deprived Clifton of the care, custody and control of his child without due process.

142. Most severely, these Orders of Judges Chell and Schweitzer have not allowed Hill to even see his 4-year-old son for eleven months and counting.

143. For years, Hill has sought joint custody and 50% parenting time of his son, but for years, Judges Delaney, Chell and Schweitzer have severely restricted his fundamental, constitutional rights without justification and without any apparent standard being applied in violation of the Fourteenth Amendment.

144. The Orders of Judges Delaney, Chell and Schweitzer have virtually excluded Hill from his son's life and meant that the 4-year-old child has thus far be growing up without a father.

145. These severe restrictions on Hill's custody rights has damaged, and continues to damage the father-son relationship and create aleination between Clifton Hill and A.H.

Facts Relevant to Joshi

146. Joshi was married to Christine Joshi in Pennsylvania. The children of the marriage were born in Pennsylvania and Christine filed for divorce in Pennsylvania. In or around 2012 Christine asked New Jersey to take jurisdiction.

147. On or about June 22, 2012 Christine filed an Order to Show Cause in New Jersey Superior Court, Burlington County. Joshi was not properly served and did not appear for this proceeding. At the proceeding, Christine gave testimony, but her testimony was based largely on hearsay evidence, alleging what a police officer supposedly told Christine.

148. Judge Janet Smith signed an Order directing that Joshi hand over physical custody of the children to Christine immediately and Ordered he was not to take the children outside of New Jersey.

149. The Court set a return date on the Order to Show Cause for July 12, 2012.

150. Joshi did not have notice of the July 12 proceeding until a few days before the hearing. Joshi contacted the Court and requested a continuance due to the fact that Joshi's father had just passed away a few days earlier and Joshi was in the midst of funeral arrangements for his father.

151. Joshi appeared telephonically in Court July 12, 2012 and reiterated his need for a continuance as he was in the middle of funeral arrangements and religious services for his father.

The request for a continuance was denied. Joshi also objected to New Jersey jurisdiction pointing out that the Order from Pennsylvania transferring jurisdiction was on appeal.

152. At this July 12 proceeding, Joshi was not allowed to cross examine Christine. Due to the short notice and death in the family, Joshi did not have time to prepare evidence to submit, nor obtain counsel.

153. Judge Smith required Joshi to hand over physical custody of the children later that day. By written Order dated July 12, 2012, the Court "suspended parenting time until [Joshi] provides assurance that he will return the parties' children, and the Court issues another order."

154. Joshi requested that this Order be revised to give him full and equal custody, or in the alternative, at least parenting time each weekend.

155. In response in an Order dated December 4, 2012 Judge Christopher Garenger denied these requests, and slightly modified the earlier Order but only permitted "supervised visitation through the Burlington County Supervised Visitation Program." December 4, 2012, Order. Moreover, the Order did not specify any actual parenting time, other than requiring that any such time would be through Burlington County Supervised Visitation Program.

156. No plenary hearing was held prior to entry of this December 4 Order which continued to deny Joshi custody of his children.

157. During the summer of 2013, Joshi again demanded full and equal custody, and requested a full plenary hearing. In an Order dated July 26, 2013 Joshi's request for a plenary hearing was denied. The Court Order granted limited parenting time to Joshi of 14 hours a week--four hours on Wednesday evenings and ten hours on Saturday.

158. As of early 2014, Joshi had been permitted little or no visitation with his children for more than a year without a plenary hearing.

159. Joshi currently has joint legal custody of the children. Only in 2015 has Joshi now been permitted to have equal parenting time with his children after the mother finally agreed to Joshi having residential custody of two of the three children after the children asked to live with Joshi.

160. The severe restrictions on Joshi's parent rights by Judge Garenger likely have caused significant and long-lasting damage to father-child relationships, and caused severe mental anguish to both parent and children.

Facts Relevant to Litton

161. Litton was married to Linda Litton in 1982. They had one child, a son, L.L., born in 1998. The parties separated in 2004 but Litton and his wife agreed to a 50/50 custody arrangement.

162. On January 10, 2008 a Judgment of Divorce was granted in Monmouth County Superior Court, Family Division. Custody was divided 50/50 between them, however, Linda denied Litton any time with his son. Immediately following the judgment, jurisdiction in the case was transferred to Ocean County. On May 7, 2008, Litton asked the Ocean County Court to enforce the 50/50 custody arrangement to which the parties had previously agreed.

163. Litton's son was 10-years-old at this time and the court conducted an in camera interview of the child without the parties present. After the in camera interview the Court, per Judge Sheldon R. Franklin, ruled that Litton's parenting time should be suspended indefinitely.

164. The Court mentioned some of the allegations but did not make known to Litton all of the allegations made in camera. *See Uherek v. Sathe*, 391 N.J. Super. 164, 167-68, (App. Div. 2007) ("The divulging of information ascertained from the in camera interview, when relied upon by the judge in rendering a decision, is required by due process principles.")

165. In an Order dated May 8, 2008 Judge Franklin directed that Litton's visitation "is suspended pending further order of court."

166. Litton's right to be with his son was suspended indefinitely without a plenary hearing. Litton had no opportunity to challenge whatever allegation had been made against him, or to call witnesses or refute whatever allegations had been made that concerned the judge.

167. This Order remained in effect until March 2010 when the Court conducted a full hearing and issued a new Order which allowed Litton to see his son a few hours each week.

168. The Order issued by the court on March 24, 2010 concluded that "Linda has substantially poisoned L[]'s perception of [Litton], thereby causing L[] to reject his father. . . . I find that she has manipulated L[] to make the implementation of parenting time with [Litton] almost impossible."

169. The March 24, 2010 Order was "too little, too late." Had the Court convened a plenary hearing back in 2008 these facts would have been uncovered then.

170. For nearly two years, from May 2008 until March 2010 Litton only saw his son once. As it was, the State stripped Litton of contact with his son based on unsubstantiated allegations that Litton was not permitted to refute.

171. Litigation was protracted unnecessarily due to Judge Franklin ignoring six years of documented information, via court orders and transcripts, all of which were made available to the Court), thus, in effect, allowing Linda to completely block all access to L. This situation virtually bankrupted Litton due to his attempt to gain access to his child.

172. These severe restrictions on Litton's ability to see his son by Judge Franklin likely have caused significant and long-lasting damage to father-child relationship and caused severe mental anguish to both parent and child.

Facts Relevant to Malhan

173. On February 24, 2011, Alina Myronova, mother of Malhan's minor children filed an Order to Show Cause in Hudson County Family Court asking that full physical and legal custody of the children be given to her. Myronova claimed that Malhan was an unfit parent who could not take care of children. Myronova made these allegations in an affidavit.

174. Malhan had less than two hours' notice of a legal proceeding and had no time to seek legal advice or obtain counsel.

175. Malhan, appearing before the family part judge, Maureen Sogluizzo, contested all of Myronova's allegations about his alleged unfitness as a parent. Malhan stated that Myronova was lying. Malhan was not permitted to cross examine Myronova.

176. Malhan told the court that he wished to present evidence to refute the allegations made by Myronova, specifically he stated that he had audio recordings, photographs and videos which could document his ability to parent and would show that Myronova was lying. The court did not permit Malhan to present any evidence at this proceeding.

177. Malhan told the Court that Myronova had in her possession documents, including bank records, which would prove that she was lying about some of her allegations and asked the Court to require Myronova to produce these records; the court refused to order the production of said documents.

178. On February 24, 2011, Judge Sogluizzo stripped Malhan of physical and legal custody ordering Myronova to assume full legal and physical custody of the two children.

179. Judge Sogluizzo permitted Malhan only one hour a week of supervised visitation at Hudson County Courthouse.

180. Although the Court in Malhan's case did not explain the basis for the decision, counties throughout New Jersey apply a preponderance of the evidence standard, and thus strip parents of custody based on no more than a showing of "best interests of the child" by a mere preponderance of evidence when custody is transferred to another parent.

181. The Judge Sogluizzo set a further return date of April 1, 2011. On April 1, the court still did not permit Malhan to cross examine Myronova and there was no plenary hearing. The Court continued to deny Malhan legal and physical custody of the two children keeping Myronova as

sole legal and physical custodian. Malhan was permitted several hours a week of unsupervised visitation with his children.

182. Myronova kept sole legal and physical custody of the two children for sixteen months, until June 2012 when she agreed to permit joint custody. During this sixteen month period Malhan was never granted a plenary hearing.

183. Malhan ultimately prevailed in obtaining joint physical and legal custody, with the Court ruling that Myronova's previous objections to Malhan taking care of the children had been without basis.

184. On March 30, 2012 Malhan filed a motion with the Hudson County Court pointing out that the parenting time was divided between him and his wife with his wife receiving 85% of the parenting time and him receiving a mer 15% of parenting time. Malhan demanded that parenting time be split 50/50 between the two parents.

185. On May 4, 2012 Malhan appeared in Court to argue for 50% parenting time. At this point in time, Malhan had been denied equal parenting time for fifteen months without a plenary hearing.

186. In response to Malhan's assertion that he should not be denied 50% parenting time without a plenary hearing or trial, Judge Sogluizzo merely stated: "I am satisfied that ... what is happening now is reasonable until I get all the remainder of the facts from the experts."

187. Judge Sogluizzo then signed an Order continuing to restrict Malhan to 15% parenting time indefinitely.

188. These severe restrictions on Malhan's ability to see his children likely damaged the parent-child relationships and caused severe mental anguish to both Malhan and his children.

189. On or about February 18, 2014, a television news reporter for channel nine (WWOR), the local NBC affiliate in New Jersey, interviewed Malhan and two other plaintiffs in the instant suit about their experience in family court and their complaints about constitutional deprivations.

190. On February 4, 2014, Judge Nanci Sivilli of the the Essex County Superior Court, Family Part issued a "gag order" retraining Malhan from discussing any issues surrounding the divorce or custody proceedings with any employee of any media and further restrained Malhan for posting anything on the internet discussing these issues.

191. The Gag Order further restrained Malhan from discussing any aspect of the divorce litigation with his children.

192. The Gag Order further restrains Malhan from discussing this case with one of his co-defendants, Karl Hagberg, who is an employee of Currents Magazine.

193. The Court did not hold a plenary hearing and made no findings whatsoever specific to Malhan or his children. The Court "found" that publicity about divorce proceedings was not in the best interests of the children.

194. Once again Malhan's fundamental rights to raise his children were violated but reference to an amorphous "best interests" standard. His First Amendment rights were also, and continue to be, violated without specific finding and reference to "best interests."

195. Upon information and belief, imposition of gag orders in family matters based on alleged "best interest" is common in New Jersey. *Borra v. Borra*, 333 N.J. Super. 607, 614, 756 A.2d 647, 651 (Ch. Div. 2000) (ruling that "when presented with a choice between parent's rights and children's rights, children's welfare and best interests will always be paramount"); Kelly Kanavy, *The State and the "psycho Ex-Wife": Parents' Rights, Children's Interests, and the First Amendment*, 161 U. Pa. L. Rev. 1081, 1083-84 (2013) ("These types of [gag] orders, however, are actually quite common in family court proceedings.")

196. This is but one more example of how New Jersey family courts regularly deny parents fundamental rights by reference to nothing more than an ambiguous "best interests" standard without a plenary hear and presumably using a "preponderance of the evidence standard" when any standard is used at all.

197. This denial of fundamental rights based on mere "best interest" is contrary to well established constitutional law. *Troxell v. Granville*, 120 S. Ct. 2054 (2002) (holding that "best interest of the children" could not trump fundamental constitutional rights).

Facts Relevant to Olivier

198. Carly Olivier is the father of the minor child M.O. (born 2006). Lisa Jenkins is the mother of M.O. Olivier and Jenkins reside apart.

199. In January Jenkins filed an Order to show cause accusing Olivier of physically abusing their daughter.

200. The Court scheduled the Order to show cause for February 21, 2014.

201. In February 2014 Judge Severiano Lisboa signed an Order that limited Olivier's parenting time with his daughter to one supervised visitation per week, supervised at the Hudson County Courthouse.

202. No plenary hearing was held prior to execution of this Order.

203. Olivier was not represented by counsel, which he could not afford.

204. The February 21, 2014 Order of Judge Lisboa required that Olivier and the mother were to "comply with all Dyfs recommendations."

205. The State of New Jersey hired a Dr. Figarelli to make recommendations. Dr. Figarelli recommended a variety of actions to be taken by both Jenkins and Olivier to improve their parenting skills.

206. The recommendations for Olivier were for domestic violence counseling, parenting skills training, substance abuse counseling, and anger management.

207. Olivier did not believe these recommendations were appropriate, although he did complete the parenting skills training.

208. On August 7, 2014 Olivier was in court for Judge Lisboa to review the case.

209. Olivier acknowledged that he had not complied with all of the recommendations of Dr. Figarelli because he did not believe Figarelli was correct.

210. In response Judge Lisboa told Olivier, "You're going to have to dig in your own pocket and hire your own doctor to present to this court that Dr. Figarelli has made a mistake." Olivier stated he could not afford to hire his own doctor.

211. A representative from DCP&P was on the phone, but Olivier was not permitted to cross examine this person. In any event, the DCP&P employee stated on the record at this August 7, 2014 proceeding, "We have no child abuse or neglect issues."

212. Judge Lisboa also stated on the record. "This is not an FN case, this is not an abuse case. ... Division is doing this as a courtesy to the court."

213. Despite there not being any issues of abuse or neglect Judge Lisboa then told Olivier on the record, "You are not going to see the child until you comply with all these other things."

214. Judge Lisboa also put this in a written Order dated 8/7/14 which stated: "The visitation is suspended until further order of the court and DCP&P will close their case."

215. After this, facing the prospect of not seeing his daughter again, ever, Olivier contacted DCP&P to ask to that he be permitted to participate in the "recommended" (i.e. required) programs. However, Olivier was informed that because DCP&P had closed the case they no longer could provide any services to Olivier.

216. In a letter dated September 11, 2014 the Department of Children and Families sent Olivier a letter stating "Since at this time there is no need for further services, we will be terminating involvement effective immediately."

217. Between June 2014 and February 2015 Olivier did not see his daughter one single time.

218. Despite the acknowledgment that there was "no child abuse or neglect" and without a plenary hearing, and without benefit of counsel, or the ability to present evidence, Olivier's parenting time has been terminated by Judge Lisboa.

219. Olivier's right to the care and custody of his daughter has been terminated permanently due to his inability to afford, and the State's refusal to provide, "recommended" programs.

220. Effectively the Court stripped Olivier of physical custody leaving the mother with 100% custody of Olivier's daughter.

221. These severe restrictions by Judge Lisboa on Olivier's ability to see his daughter likely have caused significant and long-lasting damage to father-child relationship and caused severe mental anguish to both parent and child.

Facts Relevant to Quinlan

222. In December, 2010 Quinlan was stripped of legal custody of his minor child, K.Q., who was 13-years-old at the time. This was a result of a motion filed by Quinlan's ex-wife Kayoi Quinlan Hasabe.

223. In an order dated December 16, 2010, the Hudson County Superior Court, Family Division, per Judge Sogluizzo, stripped Quinlan of legal custody without a full hearing and in violation of due process. Although there was a court proceeding on December 3, 2010 before the Court terminated Quinlan's legal custody of his child, Quinlan was not permitted to testify or present evidence in his own defense at this hearing. For example, Judge Sogluizzo relied on hearsay emails written by Quinlan's father, Robert Quinlan, who never testified.

224. The Court relied on these emails as evidence that Quinlan harassed Hasabe. Not only were these out-of court statements by Robert Quinlan used as a basis for terminating Quinlan's legal custody, Quinlan was not permitted to rebut or explain his father's emails.

225. Although there were numerous disputes of fact contested by Quinlan, when Quinlan attempted to explain why various accusation were not true the Court admonished Quinlan: "I've read everything that you've given me, there can't possibly be another thing that you need to tell me."

226. Although Quinlan's ex-wife, Hasebe, appeared at the hearing she did not testify, and Quinlan was not able to cross examine her. The Court apparently relied on Hasebe's certifications. The Court also relied on numerous contradictory letters and other unsworn statements made by Hasebe.

227. The court terminated Quinlan's parental custody without a full hearing at which he was permitted to testify, present evidence and confront witnesses against him.

228. New Jersey denied Quinlan due process rights in other significant ways. Apparently through an "administrative error" New Jersey entered an Order in a national database that indicates that Quinlan is subject to a restraining Order preventing him from having any contact

with his daughter. This incorrect entry in the federal database has repeatedly caused Quinlan to be detained, and significantly interferes with Quinlan's ability to be with his daughter. For example, if he re-enters the country with his daughter he risks being detained or even arrested.

229. Quinlan has repeatedly demanded that New Jersey and/or its subdivisions correct this error, which has been ongoing for years. However, New Jersey and/or its subdivisions has refused to take any action. This repeated refusal to correct this interference with Quinlan's ability to parent his child indicates an ongoing policy failing to protect the parental rights of people like Quinlan.

230. In addition to other relief sought, Quinlan requests injunctive relief directing New Jersey to correct this apparent administrative error.

231. Furthermore, during litigation, Quinlan's wife retained a law firm that Quinlan had previously consulted with about his divorce case. Quinlan had not only consulted with this firm but had paid them a \$2,000 retainer for their advice. Quinlan brought this to the attention of the court even providing a carbon copy of the check written to the law firm. However, the court refused to even make a ruling on this issue, apparently because the attorney with the conflict of interest was becoming a judge.

232. The attorney with this conflict of interest, in fact, became a family court judge in the same county and division as the presiding judge who had refused to address Quinlan's complaint about a conflict of interest. Thus the Court denied Quinlan due process by refusing to grant a motion that would have been detrimental to a fellow judge.

233. Further, the Court denied and continues to deny Quinlan due process and his Second Amendment rights by ordering him not to possess any weapons. The Court issued this Order without any type of hearing on the issue or any showing that Quinlan's possession of weapons presented a danger. Thus Quinlan demands a declaratory and injunctive relief that the State and county may not deprive a person the fundamental right to keep and bear arms without showing the Order is necessary on a case by case basis, and the Order is at the very least narrowly tailored to an important state interest.

Facts Relevant to Shaikh

234. Zia Shaikh is an adult residing in Ocean County. He is father of the minor children, M.S. (born 2000) S.S. (born 2003) and H.S. (born 2007).

235. In October 2013, Mr. Shaikh filed for divorce from his wife Laura Germandig-Shaikh ("Germandig").

236. January 18, 2014 Germandig filed for a Temporary Restraining Order against Shaikh. On January 31 the TRO was dismissed after a hearing. The Court on January 31 ruled that

nothing in the testimony of Germandig alleged domestic violence or alleged anything more than an argument typical of a failing marriage. Nevertheless, as a result of the TRO Shaikh was made to vacate his house.

237. On April 2, 2014 Germandig filed a motion in the family court requesting that Shaikh again be evicted and excluded from the family residence and demanding full custody of the children. This motion had with a return date of May 2, 2014.

238. On the morning of April 23, 2014 Counsel for Germandig appeared before Judge Madelin Einbinder for a case management conference. Shaikh had not been notified of the proceeding, and for reasons which remain unclear, Shaikh's counsel did not attend.

239. The Court attempted to call Shaikh's counsel that morning but she could not be reached, and the voice mailbox was full.

240. Germandig's counsel at the April 23 proceeding made an Oral request for an Order to Show Cause to award exclusive custody of the children to Germandig. Germandig submitted an affidavit in which she accused Shaikh of "verbal harassment" and also claimed that Shaikh had "kicked" his daughter sometime in February.

241. Ms. Germandig was present and was sworn, but the court only asked her about her telephone account. Ms. Germandig's testimony at the ex parte proceeding did not discuss the allegations of verbal harassment or a "kick" and Germandig's entire "testimony" was a mere 22 lines of transcript. These 22 lines consisted in responding to two questions from Judge Einbinder: "Tell me about – you spoke with T-mobile about the phone?" and "Does it also have passwords to your accounts as well?"

242. The entire proceeding April 23 lasted less than 50 minutes, and most of the proceeding was unrelated to custody issues.

243. Judge Einbinder granted the oral, ex parte request for an Order to Show Cause. Judge Einbinder, by a written Order dated April 23, awarded Laura Shaikh "sole, legal and residential custody of the children." This Order stripped Mr. Shaikh of legal and physical custody indefinitely until "further order of the Court." Shaikh was "barred from returning to the residence."

244. The April 23 order made no provision for any parenting time. Judge Einbinder's Order and decision provided no explanation for the decision to strip Shaikh of custody and no plenary hearing has ever been held.

245. At the ex parte proceeding April 23, Judge Einbinder made no explicit fact findings or conclusions of law, but Judge Einbinder stated "there is a concern that the Court that Mr. Shaikh may try to take the children. So I do feel that it rises to the level of immediate and irreparable

harm[.]” The Court provided no factual basis for this “concern.” This appears to have been based entirely on Ms. Germandig’s certification.

246. On June 13, 2014 the Court heard oral argument on the motion by Germandig but no plenary hearing. Shaikh appeared pro se at this June 13 proceeding and he contradicted virtually all of Germandig’s assertions. Shaikh stated that he was not informed of the April 23 proceeding before it happened. Shaikh denied allegations of child abuse. Shaikh also contradicted Germandig’s claim that Shaikh was a Pakastani national who was planning to flee the country, pointing out that he was a U.S. citizen who had resided in the U.S for 26 years.

247. As a result of the June 13, proceeding, Judge Einbinder ordered that Germandig continue to have full legal and physical custody. The Order further directed that all parenting time of Shaikh with his daughter M.S. was suspended indefinitely. The Court order provided for two short visits each week with the other two children, but no overnights.

248. Judge Einbinder’s Order further directed that Shaikh and Germandig mediate the issue of parenting time, and stated that if no agreement could be reached Shaikh could request a Plenary hearing—which he had been, and continues to be, denied.

249. In this same Order Judge Einbinder ordered a variety of other things, including requiring Shaikh to attend anger management, make various financial payments and requiring him to turn over a variety of documents including his passport.

250. When Shaikh failed to comply with these directives of Judge Einbinder, on August 29, 2014, Judge Einbinder ordered that all Shaikh’s parenting time with his children was suspended until further notice.

251. This suspension of parenting time appears to have been based on unsubstantiated allegations that Shaikh was going to flee the country. The denial of parenting time also appears to have been intended to “punish” Shaikh for failing to comply with these court orders.

252. Denying children time with their parents is not appropriate “punishment” for failing to comply with court orders.

253. As of the filing of this Complaint, Shaikh has not seen his children at all since August 2014, with the sole exception of one hour on February 15, 2015.

254. Shaikh has repeatedly demanded that his parental rights be restored.

255. On December 12, 2014, per a written Order, Judge Einbinder denied Shaikh’s requests for joint legal custody was denied with the Order stating that Shaikh had not shown changed circumstances.

256. As of the date of this Complaint Shaikh continues to be denied his fundamental rights to the care, custody and control of his children without a plenary hearing, and based on

unsubstantiated allegations not subject to cross examination, initially resulting from an ex parte hearing.

257. Correspondingly, M.S., S.S., and H.S. continue to be denied access to their father.

258. This court ordered separation is detrimentally affecting the parent-child relationships between Shaikh and his children.

Facts Relevant to all Plaintiffs

259. The denial of prompt and full custody hearing in the context of transferring custody from one parent to another is widespread throughout the state and country. *See, e.g.*, "Parental Rights and Due Process" in 1 THE JOURNAL OF LAW AND FAMILY STUDIES, 2:123-150 (1999) (noting the widespread violation of due process in the family law context); *B.S. v. Somerset County*, 704 F.3d 250, 275 (3d Cir. 2013) ("[T]he County essentially admits . . . the County has a custom of removing children from a parent's home without conducting a prompt post-removal hearing if another parent can take custody" and holding that this violated the Fourteenth Amendment).

260. New Jersey case law is littered with examples of parents losing custody without due process in the context of disputes between parents. *In S.M. v. K.M.*, visitation rights of father were terminated without a plenary hearing or even an explanation. 433 A. 2d. 552 (N.J. Super. Ct. App. Div. 2013).

261. In another example, *Young v. Lee*, 2005 WL 3676804 (N.J. Super. App. Div. 2005) involved a "decision to immediately wrest custody from the father" after "an abbreviated non-evidentiary proceeding at which the father was not present [n]o findings of fact or conclusions of law were entered by the judge, who heard the case in the most summary of manners and apparently based the decision on his personal disapproval . . . and on unsworn comments by the mother's attorney that do not appear to have had any basis in fact." *Id.* at *1. The Appellate Division called this "an unfortunate example of the difficulties caused by precipitate judicial action in matters involving child custody." *Id.*

262. Again, in *Division of Youth and Family Services v. G.M. and M.M.* (398 N.J. Super. 21 (2009)), in a custody dispute between two parents, one parent was denied physical custody of children for months without a plenary hearing in which the judge relied on unsworn assertions of counsel. The Appellate Division concluded that "the procedures employed during the several hearings that followed the fact-finding hearing were deficient and denied G.M. the basic due process rights that must accompany any action that contemplates such significant consequences" as terminating physical custody. *Id.* at 37-38.

263. New Jersey Courts have previously held that violations of due process were common in proceedings to terminate parental custody. In 2002, for example, in a case involving an appeal

of a termination of parental rights of both parents, the Appellate Division of New Jersey described how the trial court stripped those parents of custody based on summary proceedings, without full hearings, and relying on unsworn allegations without the basis to confront witness. *New Jersey Div. of Youth & Family Servs. v. J.Y.*, 352 N.J. Super. 245, 265-8 (App. Div. 2002). 264. Notably, the New Jersey Appellate Division described this type of denial of due process in the Family Courts of New Jersey as "business as usual":

[T]he adjudicative methods employed here were not aberrational but represented the typical "business as usual procedure" in cases involving the involuntary removal of children from their parents. If this is so, immediate corrective measures must be taken to restore the appropriate adjudicative process in these cases.

Id. at 268.

265. Regardless of any corrective measures that may have been taken when the state removes children from *both* parents, it continues to be "business as usual" for the New Jersey family courts to strip individual parents of custody in summary proceedings as described in this Complaint.

266. Despite the appellate courts of New Jersey repeatedly holding that individual parents have been denied due process by failing to hold a plenary hearing, the State has failed to implement any guidelines or procedures to ensure that a parent receives a prompt and full hearing when the state takes custody from one parent to give custody to another parent. On the contrary, the State's and the Defendants' practice and policy is that a parent losing physical or legal custody to another parent generally has no due process rights.

267. In *Sacharow v. Sacharow*, 177 N.J. 62, 79, 826 A.2d 710, 721 (2003) the New Jersey Supreme Court held that a parent has no fundamental right to the custody of children in when another parent is given custody because "[i]t is not a third party or the State that seeks to intrude into the protected sphere of family autonomy." This appears to be the basis for the statewide policy of stripping parents of custody without due process.

268. Similarly in *New Jersey Division of Youth & Family Services v. R.G.*, 397 N.J. Super. 439, 448 (N.J. Super. App. Div. 2008) the court held: "[W]e do not view the transfer of custody to a non-abusive parent a 'placement' under the statute. Accordingly, there is no need for a permanency hearing prior to placing a child in the physical custody of the non-abusive parent and dismissing the litigation."

269. Thus, given these examples, cited by New Jersey Courts, and the experience of plaintiffs named above, there is a widespread policy in New Jersey of depriving parents of custody when custody is transferred from one parent to another.

270. All Plaintiffs have minor children of an estranged relationship and any and all of them are at risk of losing custody at any time without due process.

Count I

Deprivation of Fundamental Rights under Color of Law

271. Plaintiffs re-allege previous paragraphs as fully restated.

272. It is clearly established federal law that a parent may not be deprived of his or her fundamental rights to the care, custody and control of minor children without due process.

Minors have a reciprocal right not to be separated from their parents absent a compelling reason.

273. New Jersey and individual Defendants violated the substantive and procedural rights of Plaintiffs by interfering with the care, custody and control of minor children without affording Plaintiffs the most basic due process rights, including adequate notice, the right to counsel, the right to cross examine accusers, and the right to present evidence in one's defense.

274. Defendants further stripped Plaintiffs of their fundamental rights based on a mere "preponderance of the evidence" standard or no standard at all.

275. Furthermore, the Defendants denied Plaintiffs discovery and court room procedures to uncover evidence. Thus not only is the State and individual defendants using an impermissible "preponderance of the evidence" rather than "clear and convincing evidence" but it not even permitting a fair playing field for what evidence is presented, if evidence is presented at all.

276. Defendants have established policies, procedures, and precedents denying parents a full and prompt hearing when stripping one parent of physical and legal custody and giving full physical and legal custody to another parent. This is a clear violation of the Fourteenth Amendment to the United States' Constitution under color of law.

277. As a result of the above deprivation of rights, the Plaintiffs (and putative class members) have suffered profound injuries; the bonds between parent and child have been perhaps permanently injured in ways that are not quantifiable. Plaintiffs have suffered emotional pain and mental anguish as a result of said deprivations.

278. Defendants (and putative class members) have suffered deprivation of their First and Second Amendment rights under color of law under the theory that "best interests of the children" trump any and all fundamental rights, and do so without a plenary hearing or specific findings prior to depriving plaintiffs of such rights.

279. Declaratory relief alone appears to be inadequate as Declaratory Judgment may not stop Defendants from continuing to violate rights of Plaintiffs and others similarly situated.

Relief

WHEREFORE, Plaintiffs request:

Declaratory and injunctive relief against all Defendants on behalf of all persons who have been or in the future will be deprived of the physical or legal custody of their children without a prompt and full hearing; (declaratory relief should Order Defendants to provide a plenary hearing within ten days to any parent who has their right to the care custody and control of their children reduced through State action);

Declaratory and injunctive relief against all Defendants on behalf of all persons who have been or in the future will be deprived of other fundamental rights (including first and second amendment right) without due process;

Costs and attorneys' fees as provided under federal law;

Such other relief as the Court determines to be just and appropriate.

Count II

Declaratory and Injunctive Relief Declaring a preponderance of the evidence "Best Interest" Standard is Unconstitutional as a basis for suspending or terminating parental rights and other fundamental rights (including free speech)

280. Plaintiffs re-allege previous paragraphs as fully restated.

281. Plaintiffs in this case presumably all had their physical and/or legal custody reduced or eliminated based on a "best interest" test. Although not all the proceedings of the above plaintiffs clearly articulated what standard was being used, New Jersey purports to be able to reduce or eliminate custody of one parent on favor of another based on what is in the "best interests" of the children.

282. In *Watkins v. Nelson*, 163 N.J. 235, 253, 748 A.2d 558, 568 (2000), the New Jersey Supreme Court held that "When the dispute is between two fit parents, the best interest of the child standard controls because both parents are presumed to be equally entitled to custody." However, in a custody dispute between a parent and a non-parent New Jersey applies a vastly different standard, the "exceptional circumstances" standard. The Court in *Watkins* explained: "Because the right to custody is a fundamental one protected by the constitution the parental termination or 'exceptional circumstances' standard is required to pass constitutional muster in this type of custody dispute [between a parent and third party]. *Id.*

283. New Jersey's policy of interfering with parental rights based on nothing more than a "best interest" standard, without a showing of exceptional circumstances or unfitness, violates the fundamental constitutional rights of parents to the care custody and control of children.

284. For example, in the case of Mr. Olivier, Defendant Judge Lisboa stated on the record “this is not an abuse case” and then terminated all visitation between Olivier and his daughter indefinitely without articulating any legal standard whatsoever.

285. This double standard of applying a far lower standard when stripping one parent of physical or legal custody in favor of another parent is contrary to well-established federal law.

As the Third Circuit held in *B.S. v. Somerset*:

From the parent's perspective, there may be little meaningful difference between instances in which the state removes a child and takes her into state custody and those in which the state shifts custody from one parent to another, as occurred here. In either case, the government has implicated a fundamental liberty interest of the parent who loses custody.

B.S., 704 F.3d at 272; *see also Stanley v. Illinois*, 405 U.S. 645, 649 (1972) (“Stanley was entitled to a hearing on his fitness as a parent before his children were taken from him[.]”)

286. As the Court went on to explain in *Stanley*:

Under Illinois law, therefore, while the children of all parents can be taken from them in neglect proceedings, that is only after notice, hearing, and proof of such unfitness as a parent as amounts to neglect, an unwed father is uniquely subject to the more simplistic dependency proceeding. By use of this proceeding, the State, on showing that the father was not married to the mother, need not prove unfitness in fact, because it is presumed at law. Thus, the unwed father's claim of parental qualification is avoided as ‘irrelevant.’

Id. at 650.

287. When New Jersey seeks to strip both parents of custody they only do so after notice, discovery, hearing, appointed counsel for the indigent, and proof of unfitness, but in the context of an inter-parent dispute Defendants treat the parent's fundamental rights as nonexistent or irrelevant. This practice is unconstitutional.

288. Further, again although in many of the proceedings involving the named Plaintiffs the Defendants did not articulate what standard of proof was being applied, they appear to have applied a mere preponderance of the evidence standard at best. Frequently, custody is restricted based on nothing more than unspecified “concerns.”

289. In *Santosky v. Kramer*, 455 U.S. 745, 769, 102 S. Ct. 1388, 1403 (1982) the U.S. Supreme Court mandated a clear and convincing evidence standard when the state interferes with a parent's fundamental rights to the care, custody and control of children. *Troxell v. Granville*, 120 S. Ct. 2054 (2002) (holding that “best interest of the children” could not trump fundamental constitutional rights).

290. Accordingly, Defendants' application of less than a clear and convincing standard to deprive one parent of custody is unconstitutional. It is widespread enough to constitute a policy.

291. Defendants' application of a "best interest" standard to strip parents of other fundamental rights, such as free speech, is unconstitutional. It is widespread enough to constitute a policy.

292. Declaratory relief alone appears to be inadequate as Declaratory Judgment may not stop Defendants from continuing to violate rights of Plaintiffs and others similarly situated.

Relief

WHEREFORE, Plaintiffs request declaratory and injunctive relief against all Defendants that the "best interest" standard is unconstitutional when used to deprive parents of fundamental rights;

Costs and attorneys' fees as provided under federal law;

Such other relief as the Court determines to be just and appropriate.

Count III

Denial of Equal Protection

293. Plaintiffs re-allege previous paragraphs as fully restated.

294. As described above, New Jersey applies an "extraordinary circumstances" test when denying custody of a parent in favor of a non-parent, but applies a lower standard, or no standard at all, when denying one parent custody in favor of another. This double standard denies plaintiffs and similarly situated parents equal protection of the law in violation of the Fourteenth Amendment of the United States' Constitution.

295. Named plaintiffs are fathers who have had their parental rights severely restricted in favor of the mothers. Although in theory mothers and fathers are to be treated equally under New Jersey Law, in reality the established practice in New Jersey is to favor mothers with custody under the unconstitutional assumption that they are better parents.

296. This custom of favoring mothers over fathers with respect to custody is so-widespread and entrenched as amount to a policy or procedure of Defendants.

297. One study published in 1990 showed that fathers are denied equal custody of children in an overwhelming majority of case. Shrier, et al, *Child Custody Arrangements: A study of Two New Jersey Counties*, The Journal of Psychiatry & Law/Spring 1989. This study showed that although joint custody was sought most of the time, the mother was routinely awarded sole custody by New Jersey Courts. For example, in Essex County the mother was awarded sole physical and legal custody of the children 80% of the time, with fathers receiving sole custody in only 3% of case (the rest being joint or split custody).

298. This study and the above facts suggest that fathers are routinely denied custody of children in a denial of equal protection of their rights.

299. Furthermore, in New Jersey, indigent parents accused of abuse or neglect of their children have a constitutional right to counsel. *N.J. Div. of Youth & Family Services v. E.B.*, 137 N.J. 180, 186 (1994); *Crist v. New Jersey Division of Youth & Family Services*, 135 N.J. Super. 573, 575, 343 A.2d 815 (App. Div. 1975) (holding that the temporary loss or permanent termination of an indigent parent's rights to his or her child in a judicial proceeding is a consequence of magnitude requiring the assignment of counsel).

300. However, New Jersey does not provide the same right to counsel for the indigent in the context of a divorce proceeding or other inter-parent dispute that results in loss of custody by a parent. This denial constitutes a policy of Defendants.

301. The interest of a parent in retaining custody of his or her children is the same whether the proceeding is a custody hearing or otherwise but the State regularly strips indigent parents of custody without counsel. Such discrimination is unconstitutional.

302. Furthermore, under New Jersey law, when New Jersey takes custody of a child from both parents "the State must "make reasonable efforts to make it possible for the child to safely return to his home." N.J.S.A. 9:6–8.8(b)(2)).

303. When the State terminates parental rights in favor of another parent, however, the State typically makes no efforts to reunite the family. In the case of the named Plaintiffs, Defendants made no active efforts to ensure that both parents can resolve any issues to help preserve the parent child relationship. In the case of Defendant Olivier, for example, when he contacted the State to request the "services" Defendant Judge Lisboa had ordered, the State refused to make any effort to reunite Olivier and his daughter.

304. The individual defendants and the State of New Jersey has vastly different policies and procedures which afford far less protection of parental rights to parents involved in custody disputes with co-parents.

305. As the discrimination is based on gender and also affects a fundamental right, the state interest in perpetuating the classification must be "compelling" in order to be sustained. *Dandridge v. Williams*, 397 U.S. 471, 520 (1970). *See also Stanley*, 405 U.S. at 649 (1972) ("[B]y denying [plaintiff] a hearing and extending it to all other parents whose custody of their children is challenged, the State denied Stanley the equal protection of the laws guaranteed by the Fourteenth Amendment.")

Relief

WHEREFORE, Plaintiffs request:

Declaratory and injunctive relief against all Defendants on behalf of all persons who have been, or in the future, will be deprived of the physical or legal custody of their children without a prompt and full hearing based on their gender;

Declaratory and injunctive relief against all Defendants on behalf of all persons who have been, or in the future, will be deprived of the physical or legal custody of their children without the same rights afforded to their counterparts who did not lose custody to another parent;

Costs and attorneys' fees as provided under federal law;

Such other relief as the Court determines to be just and appropriate.

COUNT IV

DECLARATORY JUDGMENT

306. Plaintiffs re-allege previous paragraphs as fully restated.

307. Plaintiffs seek declaratory relief pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201

308. Plaintiffs remain in the New Jersey family court jurisdiction and will remain subject to custody orders of the family court until the minors turn 18-years old. As such they remain subject to the deprivation of the their fundamental rights at any time given the prevalence of the above described treatment.

309. Plaintiffs seek declaratory judgment that fundamental rights, including parental rights, First and Second Amendment rights may not be taken away without due process merely because they are in family court.

Relief

WHEREFORE, Plaintiffs request:

Declaratory relief;

Costs and attorneys' fees as provided under federal law;

Such other relief as the Court determines to be just and appropriate.

Respectfully Submitted,



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