No. 18 - 5199

IN THE

SUPREME COURT OF THE UNITED STATES

Keith Lewis, -- PETITIONER

v.

Rachelle Hadari -- RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

The New Jersey Supreme Court

PETITIONER'S **REPLY BRIEF** IN RESPONSE TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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I. The Issue is not Being Raised Here for the First Time

Respondent claims that Supreme Court Rule 14 requires me to identify specific parts of the record below where the issue being raised in the petition was raised and decided, or else it is "fatal to a Petition for Certiorari." Since I did not previously "raise the alleged violation of the due process clause of [sic] Fourteenth Amendment of the United States Constitution," the petition should be dismissed.

In claiming thus, Respondent distorts both the requirements of the law and the record below.

A. The Requirements of the Law

Court Rule 14 (g)(i) indeed requires the record below to "show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment." However, it does not explain in what manner this question must have been raised below. This is illuminated by Court precedent in each of the sources Respondent cites.

Every single one shows the requirement to be that the substance of the argument remain unchanged, regardless of the way in which that argument was technically phrased. Whether the question was raised as a specifically federal question is less important than that the lower courts considered and ruled upon the same argument now being presented in the Petition. Only completely new argument -- not raised before in any form -- would be "fatal to a Petition for Certiorari."

In the first case cited, *New York ex rel. Rosevale Realty Co. v. Kleinert,* 268 U.S. 646 (1925), the Court does rule:

> "It is clear, however, that no question as to alleged unconstitutionality of the substantive provisions of the zoning resolution or of the particular provisions relating to E. area districts was presented by the petition for mandamus, and no such question appears to have been presented to any of the state courts, or to have been considered or determined by them... as to the constitutionality of the substantive provisions of the Zoning Resolution as to which it is now sought to invoke our decision." [underlining mine]

And dismissed on this basis the Petition. However, that was solely because the main question presented to the courts below was not about E. area districts and the substantive provisions of the Zoning Resolution, but "merely challenged the constitutionality of the transfer of its property from a C to an E area district" as the decision itself earlier notes (650). The reason, therefore, the case was dismissed was not because it failed to raise a Constitutional issue below, as might be suggested by an out-of-context reading. In fact it did raise a Constitutional issue below, just a different one. No, the petition was dismissed because the object proposed for review by the Supreme Court was completely different from any considered below.

Similarly with Respondent's second precedent, *Mazer v. Stein,* 347 U.S. 201 (1954), where the Court held "We do not reach for constitutional questions not raised by the parties... The fact that the issue was mentioned in argument does not bring the question properly before us."

The Court was merely asserting the well-established principle that petitions will only be considered based on the questions they initially raise, that is, in the

current proceeding before the Supreme Court. As the decision itself clarifies earlier, "The Court's consideration will be limited to the question presented by the petition for the writ of certiorari." (208) The section quoted by Respondent is merely a footnote of the decision that clarifies the Court will only consider whether "a lamp manufacturer [can] copyright his lamp bases" (the question presented to the Court, 205) and not "[t]he constitutional power of Congress to confer copyright protection on works of art or their reproductions" that "is not questioned." (206)

Clearly this has no relevance to the issue at hand, where we have not yet advanced past the question presented in the Petition, and I have not even had an opportunity to raise new questions for consideration, even if I would want to.

The three precedents cited in *Mazer v. Stein* bear out exactly the same principle. The first, *Chicago & G.T.R. Co. v. Wellman*, 143 U.S. 339 (1892), discusses a case where the inadequate trial below prevented a full finding of facts. Since

> "On the very day the act went into force, the application for a ticket is made, a suit commenced, and within two months a judgment obtained in the trial court -- a judgment rendered not upon the presentation of all the facts from the lips of witnesses and a full inquiry into them, but upon an agreed statement which precludes inquiry into many things which necessarily largely enter into the determination of the matter in controversy."

The Court deemed it wrong to make a decision "without the fullest disclosure of all material facts," such as inadequate cross-examination of expert witnesses. Here, respondent has not raised any concerns about inadequate fact-finding below.

The second precedent of the Court -- *Herbring v. Lee*, 280 U.S. 111 (1929) -- is again limited to cases where an entirely new argument is made before the Court.

The question considered by the courts below was only whether the regulation infringed on the rights of an individual to freely sell insurance. Before the Supreme Court, however, the petitioner developed an entirely new argument claiming that the economic freedom of the corporation was being violated. This question had not been raised in any form previously, and so was dismissed.

The common thread of all of these cases is not to deny jurisdiction to an argument merely expressed in different language, but only to one completely different and disconnected from the questions raised before and ruled upon by the courts below. And this is obviously not the case here, as the following section makes clear.

B. The Record Below

For over two years, I have stated clearly and consistently at every opportunity before every tribunal in which I have appeared, that it is not fair nor just for me to be forced to cooperate with Respondent's partisan expert. That he is not neutral and that this violates my fundamental rights. In fact, since this issue arose, I have not failed in a single one of the dozen: appearances before the trial court, letters to the court, emails to said expert, motion filings, appeals, or my current petition, to say that he is not neutral and therefore this is not a fair trial, the exact subject of the current petition.

Since this is under dispute, I will quote extensively from the record:

On May 5, 2017, I sent a letter to the court stating my inability to pay for an evaluation and requesting a "necessary unbiased psychological evaluation," i.e. "an unbiased expert opinion of a psychologist recommended by the court or decided upon jointly by the defendant and plaintiff." (APPENDIX A)

Subsequently, Dr. Rosenberg, respondent's private medical expert, contacted me to schedule an appointment. On June 7, my email reply to him states "I do not believe him to be a neutral expert... I do not trust his judgment as he is employed and chosen by Mrs. Hadari... I am willing to collaborate with anyone neutral appointed by the court and I am in agreement with knowing that he is not biased and paid for by her from the beginning." (APPENDIX B)

Respondent filed a motion requesting the court to force me to cooperate with Dr. Rosenberg. In my reply, I again emphasized "I don't know how she found him or why she chose him or how she paid him, and I very much don't trust his opinion... it is essential that [the Court] hire an unbiased expert to make an evaluation of Plaintiff using all the information available." (APPENDIX C)

At the motion hearing on June 16 deciding these issues, I stated clearly that Dr. Rosenberg was "hired by her and I never agreed to go to him. And already formed conclusions about me without ever speaking to me" (Transcript).

After the court ordered I cooperate with Dr. Rosenberg, I filed a motion for reconsideration July 18 arguing: "Independent appointment by the court is necessary for obvious reasons. If sides are allowed to choose their own "independent" experts they would pick somebody they had personal or monetary

ties to, someone they know they can influence, or other unfortunate situations that would lead to a a distortion of the truth. Dr. Rosenberg was neither chosen mutually by the parties, nor appointed independently by the court... As such, I cannot cooperate with him and will appeal the appointment of this biased evaluator if the order is maintained." (APPENDIX D)

At the motion hearing on September 5, 2017, to decide this issue, the judge justified the order forcing me to cooperate:

> 'I will read to you from 5:3-3, the rule that allows the Court to appoint an expert... 'Custody/parenting time disputes: experts who report or who performed parenting/custody evaluations shall conduct strictly non-partisan evaluations to arrive at their view of the child's best interest regardless of who engages them...'
>
> So regardless of whether you hire an expert or Ms. Hadari hires an expert, they're bound, bound and required to do what they believe is in the child's best interest. I have seen expert reports where one party has hired an expert and they have, they have made recommendations adverse to the party that hired them."

Further in the proceedings an especially illuminating exchange took place:

> THE COURT: I'm going to ask Mr. Lewis what his specific objections to Dr. Rosenberg. Is it just that she had selected him?
> MR. LEWIS: Yes.
> THE COURT: -- without your input? Is that it?
> MR. LEWIS: Yes, yes.
> THE COURT: You don't have a personal feeling --
> MR. LEWIS: I don't know --
> THE COURT: -- one way or another for Dr. Rosenberg.
> MR. LEWIS: -- I don't know who he is, but that was not the appropriate selection process for an unbiased expert, yes.
> THE COURT: Well I disagree. The court rules allow -- the very same court rule says nothing in this rule shall be construed to preclude the parties from retaining their own

> experts either before or after the appointment of an expert by the Court on the same or similar issues. So again, I disagree with your evaluation that that process was improper.

Here, I clearly raise my objection before the judge that Dr. Rosenberg is not neutral. And she clearly rejects this logic, because he has a legal obligation to be neutral. However, my objection before the judge, in each of my appeals, and in my petition now, is not (only) in the interpretation of this state statute, but mainly in the fairness of being forced to participate in a biased evaluation. And at this motion hearing, the judge clearly rules on the issue: "I disagree with your evaluation that that process was improper" to procure an unbiased expert. (APPENDIX E)

I repeated my objections directly to Dr. Rosenberg, when I met with him for our appointment on October 3, 2017. With his consent, I recorded our session. At the beginning, I stated clearly: "I am here to listen, not to answer questions, really out of respect for the court. And to hear what you have to say. However, as the process of your selection was through Mrs. Hadari and her family, and hiring and so on, I am choosing to come here in order to listen."

In my appeals to both the Appellate Division of New Jersey (on January 5, 2018) and the Supreme Court of New Jersey (February 13), I reiterated and expanded upon these arguments regarding the bias of a partisan expert and its place in a fair trial. This portion of my argument had <u>no relation to state law</u>, except inasmuch as it proved that any state law requiring neutrality was irrelevant:

> The often prohibitive cost of hiring any kind of extra expert suggests that very few would be willing to pay for another expert just to settle a score. It is because someone privately engaged and paid for is not neutral. They were

chosen by one party. This is business. Forensic doctors make money when people choose them. Why do people choose them? Because they help the people who hire them. This does not always happen but it is common sense. Even if there is no open favoritism, the fact that the hiring party didn't have to hire them as a doctor but did choose them, means that the doctor owes the hirer for the decision and ensuing business. And all the more so when they are paid by them, and can be disengaged at any time.

Yes, we hope that every expert is neutral and want them to follow the law that requires them to be (N.J. Rule 5:3-3(b)). But it is a fact that there is an empirical, historical difference between someone who was hired privately and someone whose appointment/hiring and payment was dictated from the beginning to the end by the court. They were not engaged in the same way, and the private expert received something positive from one party, whereas the appointed one did not.

This in any common sense of the term is called a bribe: paying someone to make a judgment on your behalf (even if the end-judgment is not explicitly tied to the payment). Nowhere in the American justice system does this happen -- the choosing and payment of someone to judge between you and another party. Judges are appointed or voted in by the public. Policemen are not paid by the bereaved or the criminal. Elected officials are prohibited from benefiting in countless ways from specific constituents or interests. They cannot receive gifts from interested parties (5 U.S.C. § 7353). They are prohibited by ethics guidelines from even going to events free of charge. And they most certainly cannot accept outside pay for doing their job for the government (18 U.S.C. § 209). We accept that being neutral means being completely free from pay and influence. Why else do we place so many limits on the interactions between those in power and those they affect?

...I hope the court acts today, in keeping with the spirit of justice and its integrity that characterizes the American legal system.

...How can the judge make an informed decision on issues of such magnitude when one party is not even represented? Is this justice?

It is not. And I hope that the Appeals Court will rectify this error of judgment. I have faith in the courts of

> our country and am ready to appeal here and even all the way to the Supreme Court, where justices like the Honorable Neil Gorsuch uphold truth and justice and the rule of law.

At the Case Management Conference held June 5, 2018, I clearly brought this issue before the trial judge one final time. After listening to my arguments, she placed me in default for failing to cooperate with Dr. Rosenberg. Before her, I read from prepared comments (the full text is in APPENDIX F):

> This is not a complicated case.
>
> But it is incredible to me that so far the law, at least in New Jersey, has treated me in such an unfair and discriminating fashion.
>
> I emphasized from the beginning - now for over a year - that I will fully and speedily collaborate with anyone neutral. Which I have. I immediately paid my portion of Dr. Mark Singer's remainder and am at a loss why proceedings are so delayed.
>
> Why is the law forcing me to cooperate with someone who she hired and selected, now for over a year.
>
> I think this ridiculous.
>
> And a clear violation of my right to a "fair trial in a fair tribunal" as guaranteed by our Constitution.
>
> I therefore am asking the highest authority to investigate this matter and tell me that this is not my constitutional right. I want the Supreme Court to tell me that I must go to a therapist who is biased from the beginning.
>
> I cannot believe that they would say such a thing.
>
> With what I know about the laws in our country, it is unbelievable to me.
>
> So I am studying the law -- cases, opinions, and statutes -- and personally preparing my case, which takes some time.
>
> I will submit to the law and its due process if that is truly what is upheld by the Supreme Court.
>
> If they force me to go to someone that she has hired from day one.
>
> While I have shown my willingness to cooperate with anyone objective.

> Is there a dearth of suitable neutral doctors? There must be thousands of them in New Jersey alone. Indeed, we have already found one: Dr. Singer. So why am I being forced to do this?

As clearly seen in the numerous examples quoted, I have repeatedly raised a "specific federal question," even if I have not phrased it as "the alleged violation of the due process clause of [sic] Fourteenth Amendment." Is such phrasing even required? The previous section showed the answer to be a resounding no.

If this petition is denied review solely on this technicality, a serious injustice will have been done to someone who faithfully and consistently raised the same challenge to an unjust execution of the law at every turn. Ignorance of legal semantics or terminology should not bar the layman from the courtroom. The argument raised has not once changed in substance. Therefore, it is respectfully submitted that this fulfills the requirement that "the federal question was timely and properly raised." (Rule 14 (g)(i))

II. This is Indeed a Federal Issue

Respondent claims my petition does not "present any paramount federal question." She further claims "The New Jersey Family Court never addressed any issue involving federal law whatsoever... The trial Court's Orders related solely to issues of local state law pertaining to the best interest of a child in determining custody."

But this is not true. I have shown at length in my petition how the decision of the trial Court that the partisan expert is neutral and I can be forced to cooperate

with him does indeed conflict with federal law that guarantees the right to a fair trial, with numerous specific justifications from Supreme Court precedent interpreting Constitutional law. This analysis remains unanswered. Additionally, the previous section has shown beyond a doubt that the trial and appeals courts were aware that they was ruling upon the issue of Dr. Rosenberg's neutrality and its relevance to a fair trial. This is not a state issue but a federal issue, and I will let the arguments of my petition and the record as stated in this brief be proof of the above.

The issue here is not custody, as Respondent claims. It is an issue of the proper procedure of a fair trial, as guaranteed by the federal Constitution.

Further, Respondent argues that "it is not unconstitutional for parties to present their respective expert testimony at trial," citing, "for example, *Whole Woman's Health v. Hellerstedt*, 136 S. Ct. 2292, 2301 (2016)," where "the court received 'the opinions from expert witnesses for both sides.'" This is ruling is 100% irrelevant to the issue at hand. The subject matter was the expected or observed effects of a change in abortion laws. Expert testimony concerned itself with health data and predictions, not psychological analysis of an unwilling party. No expert interviewed anyone -- neither the plaintiffs nor defendant. The analogous case here would be if Respondent wanted to hire an expert to examine her and her alone and present an opinion. This is something clearly allowed by state and federal law (see N.J. Rules of the Court 5:3-3(h) and Federal Rule of Evidence 706 (e)). And something clearly not at issue here. Respondent has repeatedly claimed that Dr.

Rosenberg is "at a standstill" and unable to complete his analysis because of my continuing non-cooperation (June 16, and Sept. 5, 2017, motion hearings). The kind of expert testimony that Respondent is demanding -- that requires my cooperation -- is precisely the one I my petition has shown at length to be unconstitutional.

The next case cited by Respondent, *Oklahoma Natural Gas Company v. Mahan & Rowsey, Inc.*, 786 F.2d 1004 (10th Cir. 1986), is likewise completely besides the point. There, the 10th Circuit ruled that a neutral court-appointed expert need not be appointed to interpret on behalf of the court the testimony of opposing partisan experts. Here, there are no opposing partisan experts, only the one employed by Respondent. And as made clear in my petition's analysis of decisions *Ake v. Oklahoma*, 470 U.S. 68 (1985) and *McWilliams v. Dunn*, 582 U.S. ___ (2017), the appointment by the court of a neutral expert might not even be enough to counterbalance a partisan expert employed by the other side. Here it definitely is not, when I am required to cooperate with and have my words interpreted by an expert hired by the other side. Such a case is not even considered in either of the two decisions cited by Respondent and so the arguments of the Petition still stand.

III. Whether the Issue is "Ripe for Adjudication"

In considering whether this case is ripe for adjudication, we must consider the urgency of intervention, and the legitimacy of review at this time (as established in *Abbott v. Gardner*, 387 U.S. 136 (1967)) . Let's take the latter point first.

Respondent claims that the Petition is "speculative and not ripe as no expert opinion has been rendered." Indeed, if relief were dependent upon a biased expert opinion being rendered in practice then that would be true, as any harm hinging on "contingent future events that may not occur as anticipated, or indeed may not occur at all," is not ripe for review (Thomas v. Union Carbide, quoting 13A C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 3532 (1984)).

However, the issue here is purely a legal one and will not be clarified by further proceedings, expert opinions or decisions regarding custody. Therefore, it is ripe for review (ibid. 582). As explained in the petition, since bias is so difficult to prove, no actual bias need be proven, merely the reasonable suspicion that the circumstances would give rise to bias for the average man (as with a judge in *Tumey v. Ohio*, 273 U. S. 510 (1927)). Once Dr. Rosenberg was chosen without my input, he irretrievably lost the position of neutral evaluator.

Any decision regarding final custody is likewise not relevant. The issue at hand is my being forced to cooperate with a partisan expert. And this issue has run its course. It has been considered and denied reconsideration by the trial court, and denied review by both appellate courts of New Jersey. I have been found liable to pay counsel fees for Respondent for proceedings in both the trial court and the Appellate Division, in an open attempt to force me to cooperate with Dr. Rosenberg (as the court stated in its December 27, 2017, order: "The relief sought through a motion under R. 1:10-3 to enforce a Court Order is essentially coercive."). The proceedings below have run their course.

Parker v. County of Los Angeles, 338 U.S. 327 (1949), cited by Respondent, differs in important ways. The damages caused by the decision below were not in the process of the law but in the result of its interpretation, being dismissed from work. And this interpretation was so vague that there might not even proceed from it the expected enforcement: "The California decision under review does not tell us unambiguously what compulsion, if any, the loyalty order of August 26, 1947, carried." (329) In any case, the law might be struck down for other reasons by the state courts, and this is why the Court stayed its hand: "These sanctions are being challenged under State law, as well as under the United States Constitution. For all we know, the California courts may sustain these claims under local law." (332)

As to the hardship incurred were this Petition to be denied, there is little doubt. If I choose to continue to refuse to see Dr. Rosenberg, I will remain in default and custody will be determined without my testimony or ability to proffer evidence or argue. This is clear, since I was placed in default for this very reason, "as a result of [my] failure to cooperate and participate in the best interest of the child evaluation with Plaintiff's proposed expert... until such time as [my pleadings may be restored on notice of motion after compliance with the Plaintiff's proposed expert's best interest of the child evaluation." (June 25, 2018, Order of the Trial Court, APPENDIX G) It seems highly unlikely that justice will be accomplished in such a manner, and the serious mental issues at stake do not recommend frivolous delays. I have incurred and will continue to incur enforcement actions against me for Respondent's legal fees. In fact, just such a motion is pending before the

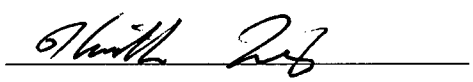
Supreme Court of New Jersey. If instead I cooperate with Dr. Rosenberg, my rights to a fair trial and equal say will have been hopelessly compromised.

In truth, all review by this court -- even of final decisions -- is discretionary. And, as noted by the Court before, "The exceptional power to review, upon certiorari, a decision of a Circuit Court of Appeals rendered on an appeal from an interlocutory order is intended to be and is sparingly exercised. But there can be no doubt that the power exists where no appeal would lie from a final decree of that court" (*City and County of Denver v. New York Trust Co.*, 229 US 123 (1913)). I can only hope that the Court consents to hear the arguments laid before it in this Petition.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

X 

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APPENDIX A

B"H

Justice Byrne
Morris County Courthouse
PO Box 910
Morristown, NJ 07960

Docket # FM 14-608-17

On April 26, 2017, plaintiff Rachelle Hadari and I, defendant Keith Lewis, appeared before the court for our case management conference. There it was decided that after failed mediation (which occurred Wednesday, May 10) we had 20 days to hire a joint psychologist to conduct an examination of the mental fitness of Rachelle Hadari. This was to be funded jointly, without prejudice to the final decision.

I, however, am without funds to pay for the necessary unbiased psychological evaluation, as seen in my Case Information Statement. I live very frugally and pay regularly very generous child support and have a number of debts to service. In short, I do not have the money nor means of procuring the money to pay for this psychological evaluation.

Therefore, I am asking the court to order Rachelle Hadari to pay solely for this evaluation. Or, absent that, that the state itself should.

Any previous evaluations procured by Mrs. Hadari are insufficient and not a substitute for an unbiased expert opinion of a psychologist recommended by the court or decided upon jointly by the defendant and plaintiff. Any opinions procured without the input and point of view of both parties are dishonest and potentially misleading.

It is the responsibility of the court to ensure that a valid evaluation takes place, regardless of the defendant's financial situation. It is inconceivable that in a justice system such as ours lack of ability to pay should cause such a perversion of justice to take place, at the risk to a child.

I am even willing to put on record with the police my opposition to and concern for my daughter who might be, based on insufficient and biased evidence, left with someone completely unable to care for her.

Please take these considerations into account when making your decision.

Truly,
Keith Lewis

Note: This letter has been sent by email to both Mrs. Hadari and her lawyer, as well as by mail to her lawyer.

APPENDIX B

Gmail **Keith Lewis <klewis434@gmail.com>**

Dr. Rosenberg - Appointment and documents

Tal Lewis <klewis434@gmail.com> Wed, Jun 7, 2017 at 10:55 PM
To: beverley@njforensicpsych.com
Cc: Mary Lynn Finnerty <mfinnerty@weiner.law>, odyssc11@gmail.com

B"H

Hello,

I am not a patient of Dr. Rosenberg and never was. I was not ordered by the court to undergo an examination by Dr. Rosenberg, and in fact do not believe him to be a neutral expert, and therefore have no interest in undergoing an evaluation by him.

I do not trust his judgment as he is employed and chosen by Mrs. Hadari.

It is a fact that Mrs. Hadari is a psychiatric case, and proven by the events that I was a witness to and victim of. It drove me to divorce her, as the rational response to her behavior. I have and had nothing to do with her behavior. Do not distort this fact... It is illegal, just as presenting untrue evidence in court is illegal. Continue to handle divorces that are normal and do not have anything in them that is behind one person's back or presenting someone as a bad person in opposition to factual history. I will not let this happen that I be disqualified from the normal person who I am. And I will not participate freely in an evaluation where the conclusion is pre-determined based on hearsay and improper evidence.

However, if you want to discuss my evaluation:

I am willing to collaborate with anyone neutral appointed by the court and I am in agreement with knowing that he is not biased and paid for by her from the beginning. This is simple logic. You fail to fit this description, and therefore I will not cooperate with you at the present time. You are not appointed by the court, and you are not someone I trust.

Indeed, I have cooperated with all people I trust along the way in this process. Rabbis such as Chaim Jachter, and even lawyers such as Adam Berner. With all these I have participated, as they are indeed neutral.

So please do not threaten me with pre- and malformed conclusions that are unfair and obviously tilted from the balance of the case.

I will not let you besmirch me in any way, as I have been told you have, as if this is my fault or I am somehow responsible for her actions. This is a lie.

Thank you for your collaboration and listening to me seriously.

-Keith Lewis
[Quoted text hidden]

APPENDIX C

13) I do not think here is the place for lengthy proofs supporting my position. Suffice it to say I disagree completely with Plaintiff's analysis of her mental state and past actions, and stand by my earlier assertions.

14) In terms of turning down Plaintiff's offer to speak with her psychiatrist and not seeking another psychologist, this was during mediation and not trial. I only said and continue to say that, for me, my life experience of living with her and seeing firsthand her behavior is enough for me, and that no expert assessment based on her now-different explanations and stories of the past will change my personal mind. Her psychiatrist did not speak to me and formed his opinions without any of my experience, so I have even less trust in what he says. Couple that with I don't know how she found him or why she chose him or how she paid him, and I very much don't trust his opinion. But I recognize that the court does not necessarily believe me, and therefore wants expert advice. Therefore it is essential that they hire an unbiased expert to make an evaluation of Plaintiff using all the information available.

The Past

15) Plaintiff claims in the counter motion that I left the marriage and Tzivia in her care, and therefore clearly do not believe that Plaintiff is a threat to her.

16) Further, she claims in her counter motion that I have not been clear about my desire for Tzivia not to leave with her, as I haven't visited her enough. I do not know how I could have made it more clear. At our first appearance before the court, I stated clearly that she is not responsible and suicidal and not fit to take care of my daughter and I asked the court for custody. It is clear in the court record. Before that, at our first mediation session, I explained for several hours my concerns about keeping Tzivia with her. But there is no other legal way for me to remove Tzivia from her care, so I have to wait and in the meantime visit her less than I would wish.

Bank Account

17) As far as the bank account, I stand by my earlier comments and regrets. The only thing I must say is that Plaintiff claims that I "was subject to this type of behavior as a young adult [to take things that do not belong to me], and obviously… believes it is acceptable to do with his daughter." I require further clarification exactly what actions I took as a young adult that indicate this less than honorable character, and absent any discussion or proof about my actions, decry Plaintiff's baseless slander.

Visiting Time at Daycare and Home

18) Attached to this reply is a record of my visits to Tzivia as recorded by Google Location Services, beginning December 11 when I turned these services on on my phone. In it, you can

APPENDIX D

17) Independent appointment by the court is necessary for obvious reasons. If sides are allowed to choose their own "independent" experts they would pick somebody they had personal or monetary ties to, someone they know they can influence, or other unfortunate situations that would lead to a distortion of the truth.

18) Dr. Rosenberg was neither chosen mutually by the parties, nor appointed independently by the court, but instead the court only affirmed the Plaintiff's choice. Therefore his selection does not fall under NJ law.

19) As such, I cannot cooperate with him and will appeal the appointment of this biased evaluator if the order is maintained.

Payment

20) I do not have the money to pay for a custody evaluator, as explained in my letter to the court of May 12 (Exhibit D), and evidenced by my Case Information Statement.

21) It would be a distortion of justice to deny me an independent expert just because of my inability to pay, and Plaintiff and her family's ability to pay, as evidenced by her expensive lifestyle detailed in her Case Information Statement and hiring of an expensive lawyer.

22) I have no objection to Plaintiff paying for this expert, as stated in Rule 5:3-3(b) ("Custody/Parenting Disputes. Mental health experts who perform parenting/custody evaluations shall conduct strictly non-partisan evaluations to arrive at their view of the child's best interests, regardless of who engages them.") and explained by the court at the motion hearing on June 16.

23) However, the selection of said expert is a separate matter under the law, and must be impartial for me to accept him or her.

RELIEF

Therefore, I am requesting the following relief:

24) That the court appoint a guardian ad litem pursuant to NJ Rule 5:8B, to independently and neutrally research and advocate for the best interests of my daughter.

25) That the court reconsider its order that I cooperate with Dr. Rosenberg, Plaintiff's custody evaluator, and instead appoint a neutral and independent custody evaluator.

APPENDIX E

--

THE COURT: No, no, he hasn't been appointed. He hasn't been agreed upon. That's her expert. She hired him. We talked about appointing an expert. We couldn't get there because we can't pay for an expert. We can't find money to pay for an expert. You're entitled to get your own expert. She's entitled to get her own expert. --

MR. LEWIS: Okay.

THE COURT: -- There is no court appointed expert here. And I can't appoint one until we figure out how we're going to pay for one, all right? So this is her expert that I ordered you to comply with in the, in the evaluation. But that's her evaluation. That's the evaluation that she's going to rely upon at a hearing, at a custody hearing to give recommendations, sir. That is not a court appointed expert. That is not an -- I don't believe that we ever agreed upon an expert because we couldn't get past the point of how that expert would get paid. So go on.

MR. LEWIS: Okay. So, however, there's a little bit of a misunderstanding of the story of how we could not agree on a joint custody evaluator, which is that plaintiff claims that she reached out to me numerous times in order to come to a joint custody

evaluator and that I refused after numerous attempts. This is in her --

THE COURT: Okay.

MR. LEWIS: -- cross-motion. She never reached out to me about an expert, any expert. I did not say that that I would not cooperate with one that we had mutually agreed upon, as the Court had said. I did not understand that me saying that I would not be able to pay for this joint expert, meant that a personal, private expert would be -- would then be --

THE COURT: But there was, there was discussion on this very topic the last time we were here.

MR. LEWIS: And I didn't understand --

THE COURT: Counsel, counsel for Ms. Hadari said we've already retained Dr. Rosenberg, we've already started working with him. He is our expert, Judge. We intend to use him. Then we had a separate conversation about whether we could appoint -- the Court could appoint an expert. The Court likes to appoint an expert. I'd rather not work with two different experts because then we've got two people saying different things.

Although I will read to you from 5:3-3, the rule that allows the Court to appoint an expert.

"Whenever the Court in its discretion concludes that disposition of an issue will be assisted by expert opinion, whether or not the parties propose to offer or have offered their own expert's opinions, the Court may order any person under its jurisdiction ... blah-blah-blah.

"Custody/parenting time disputes: experts who report or who performed parenting/custody evaluations shall conduct strictly non-partisan evaluations to arrive at their view of the child's best interest regardless of who engages them. They should consider and include reference to the criteria set forth in NJSA 9:2-4, which is the statute that sets forth all of the factors that the Court must take into consideration in determining custody disputes, as well as any other information or factors they believe pertinent to each case."

So regardless of whether you hire an expert or Ms. Hadari hires an expert, they're bound, bound and are required to do what they believe is in the child's best interest. I have seen expert reports where one party has hired an expert and they have, they have made recommendations adverse to the party that hired them. Or they have said that they can't make recommendations on behalf of the expert that hired them.

But we had this conversation the last time we were here. It all gets recorded. so the transcript is available to you, sir. We talked about how Mr. Rosenberg had already been retained by Ms. Hadari. We also talked about a joint, court appointed expert. And then we talked about how that expert would be paid.

And I was told that both parties, not just you, sir, but both parties cannot afford to retain a joint expert. I can't force her to use a joint expert if she's already decided that she's going to get her own expert. You, sir, can get your own expert. There's nothing that precludes you from that. Go ahead, sir.

MR. LEWIS: However, a joint a expert can be appointed even though -- regardless of the fact that she has engaged a private expert. So --

THE COURT: I agree, but we still have to pay for the joint expert. That's the reality --

MR. LEWIS: Yes.

THE COURT: -- of the situation.

MR. LEWIS: And as far, as far as the reason I am coming this time, in addition to what happened in the previous hearing, is that I did not understand that a mutual expert was be -- I -- it just for some reason, it wasn't clear to me, that a mutual expert was now by

that my client chose Dr. Rosenberg -- you know, in calling both Dr. Montgomery, Dr. Hagofsky, we called --

THE COURT: They're expensive.

MS. FREEMAN: They're -- well not the cost. One of the factors -- obviously the cost. Dr. Khahudis (phonetic) was also on the list. So these are sort of the known experts I'd say --

THE COURT: Yes.

MS. FREEMAN: -- in the area, was the wait time. I recognize that Your Honor would want this done in an expedited fashion. Dr. Rosenberg's initial call, it was my call to him, was he could turn this around in about four months, which is really short compared to some of the other wait times I've had in other cases. But we've already lost three and a half of the month (sic) --

THE COURT: Has Dr. Rosenberg started his work?

MS. FREEMAN: He cannot. So he does an initial -- he started with mom, so he met with Ms. Hadari, but he can't proceed. He won't just follow through with the evaluation of one parent and then pick up with the other. It really is a volleyball. And so he starts with mom or whomever, you know, retained him. And he only has that one initial session. And then he

does the testing. And then, same session, dad testing. Mom with child, dad with child.

So that the, that his recollection and the timing of each of these appointments is very significant to his process.

So Ms. Hadari is in a holding pattern because Mr. Lewis hasn't --

THE COURT: I understand.

MS. FREEMAN: -- made one single appointment.

THE COURT: I'm going to ask Mr. Lewis what his specific objections to Dr. Rosenberg.

Is it just that she had selected him --

MR. LEWIS: Yes.

THE COURT: -- without your input? Is that it?

MR. LEWIS: Yes, yes.

THE COURT: You don't have a personal feeling --

MR. LEWIS: I don't know --

THE COURT: -- one way or another for Dr. Rosenberg.

MR. LEWIS: -- I don't know who he is, but that was not the appropriate selection process for an unbiased expert, yes.

THE COURT: Well I disagree. The court rules

allow -- the very same court rule says nothing in this rule shall be construed to preclude the parties from retaining their own experts either before or after the appointment of an expert by the Court on the same or similar issues.

So again, I disagree with your evaluation that that process was improper. I understand that you would prefer a joint expert. I understand that. If -- well I don't want to lose the time. I don't know if there's been two hours, five hours. Obviously Dr. Rosenberg has to be paid for the time that he's already spent.

MS. FREEMAN: Sure. And he's read in preparation. He's read the motions and --

THE COURT: He's read things in preparation.

MS. FREEMAN: Okay. So he's done two hours. He does have my client's medical records, as well as the pleadings and he spoke to both of her treating doctors.

THE COURT: Because I have a doctor in mind that's equally quick and, and inexpensive. But again, he's got to be paid. And there isn't a lot of money in this case. So neither party earns any significant money. There aren't any significant assets there. So I don't know if Ms. Hadari is willing to either, in

addition to Dr. Rosenberg, whose her expert, work with a court appointed expert. But she'd have to pay 50 percent of that.

And he needs to -- I'm not going to say that because her parents can provide, that they should pay for the court appointed expert. Both of you want custody.

If you get sole, legal custody, sir, you're going to have to be able to provide for this child financially.

MR. LEWIS: And I have.

THE COURT: I don't know what your current financial status is. I don't -- because the CIS's were filed before you went to Wisconsin, was it, Wisconsin over the summer to work. So I don't -- probably both parties have to file updated case information statements for financial information. But the last time I looked there weren't any assets. She earns very little and you earn not an insignificant amount, sir. But certainly we're going to need at least $5000 for a custody evaluator. That's $2500 and $2500. Do you think you can come up with that, Mr. Lewis?

MR. LEWIS: If I have to, then that's what I will do.

THE COURT: So I will -- I'll appoint, but

APPENDIX F

B"H

Comments at Case Management Conference - June 5, 2018

I wrote down what I would like to say to keep it brief and to the point.

I am currently appealing to the Supreme Court of the United States.

This is not a complicated case.

But it is incredible to me that so far the law, at least in New Jersey, has treated me in such an unfair and discriminating fashion.

I emphasized from the beginning - now for over a year - that I will fully and speedily collaborate with anyone neutral. Which I have. I immediately paid my portion of Dr. Mark Singer's remainder and am at a loss why proceedings are so delayed.

Why is the law forcing me to cooperate with someone who she hired and selected, now for over a year.

I think this ridiculous.

And a clear violation of my right to a "fair trial in a fair tribunal" as guaranteed by our Constitution.

I therefore am asking the highest authority to investigate this matter and tell me that this is not my constitutional right. I want the Supreme Court to tell me that I must go to a therapist who is biased from the beginning.

I cannot believe that they would say such a thing.

With what I know about the laws in our country, it is unbelievable to me.

So I am studying the law -- cases, opinions, and statutes -- and personally preparing my case, which takes some time.

I will submit to the law and its due process if that is truly what is upheld by the Supreme Court.

If they force me to go to someone that she has hired from day one.

While I have shown my willingness to cooperate with anyone objective.

Is there a dearth of suitable neutral doctors? There must be thousands of them in New Jersey alone. Indeed, we have already found one: Dr. Singer. So why am I being forced to do this?

I will follow their decision.

But I will do as much as I can to protect my basic rights in this case. It is as much as a lawyer would do for me, and it is what I plan on doing for myself

And if I lose, then I will have done all I can, and I will collaborate with anyone.

But I still don't understand why this was not done properly, with someone unbiased, from the beginning. Giving both sides a fair chance, and letting us move on with our lives.

I am sorry that I am taking up so much of the time of the State of New Jersey.

However, I feel totally discriminated against and feel forced to defend my basic human rights.

That is why I am going to the Supreme Court.

If they say I have to, I will collaborate fully. But until then, it is my right to appeal and bring my case to them.

Thank you.

APPENDIX G

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Our File No.: FAM1905-001

RACHELLE HADARI,

Plaintiff,

vs.

KEITH WARREN LEWIS,

Defendant.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, FAMILY PART
MORRIS COUNTY
DOCKET NO.: FM-14-608-17

Civil Action

ORDER

THIS MATTER having been opened to the Court by WEINER LAW GROUP LLP (Bart W. Lombardo, Esq. appearing), attorneys for the Plaintiff, RACHELLE HADARI, and the Defendant, KEITH WARREN LEWIS, appearing *pro se* and the Court having heard the arguments and for good cause shown;

IT IS on this 25 day of June, 2018;

ORDERED that the Defendant's pleadings be and hereby are suppressed as a result of his failure to cooperate and participate in the best interest of the child evaluation with Plaintiff's proposed expert and for the reasons placed on the record during a case management conference held on June 7, 2018; and it is further

ORDERED that Default be entered against the Defendant as of June 7, 2018 and remain until such time as his pleadings may be restored on notice of motion after compliance with the Plaintiff's proposed expert's best interest of the child evaluation ~~and the entry of the other defaults as set forth on the record~~ during a case management conference held on June 7, 2018; and it is further

MBB

ORDERED that the Plaintiff file and serve a Notice of Proposed Final Judgment upon the Defendant returnable before this Court on August 15, 2018 and continuing on August 17, 2018; and it is further

ORDERED that a copy of this Order be served upon all parties of record within seven (7) days of the date herein.

HON. MARITZA BERDOTE BYRNE, P.J.F.P.