

*State of New York
Court of Appeals*

*Decided and Entered on the
sixth day of June, 2019*

Present, Hon. Jenny Rivera, *Senior Associate Judge,*
presiding.

SSD.26

In the Matter of Michael A. Deem,
Appellant,
v.
John P. Colangelo, &c., et al.,
Respondents.

Appellant having appealed to the Court of Appeals in the above title;

Upon the papers filed and due deliberation, it is ORDERED, that the appeal is dismissed without costs, by the Court sua sponte, upon the ground that no substantial constitutional question is directly involved. Chief Judge DiFiore took no part.

John P. Asiello
Clerk of the Court

State of New York
Supreme Court, Appellate Division
Third Judicial Department

Decided and Entered: April 5, 2019 528205

In the Matter of MICHAEL
A. DEEM,

Petitioner,

v

DECISION AND
ORDER ON MOTION

JOHN P. COLANGELO, as
Justice of the Supreme Court,
County of Westchester, et al.,
Respondents.

Motion to dismiss proceeding.

Motion for stay of trial.

Upon the papers filed in support of the motions
and the papers filed in opposition thereto, it is

ORDERED that the motion to dismiss the
proceeding is granted, without costs, and it is further

ORDERED that the motion for a stay of trial is
denied, without costs.

Egan Jr., J.P., Lynch, Clark and Mulvey, JJ., concur.

ENTER:

Robert D. Mayberger
Clerk of the Court

SUPREME COURT OF THE STATE OF NEW
YORK COUNTY OF WESTCHESTER

MICHAEL DEEM,

Plaintiff,

Index No.
68616/2017

-against-

LORNA MARIE DINELLA-
DEEM,

Defendant.

Courthouse
White Plains, New York

November 9th, 2018

BEFORE:

HON. JOHN P. COLANGELO,
Justice of the Supreme Court

APPEARANCES:

MICHAEL DEEM, Pro se

FUCHS & EICHEN, ESQS.
Attorneys for the Defendant
550 Mamaroneck Avenue
Harrison, New York 10528

BY: LINDA EICHEN, ESQ.

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Susan L. Giampiccolo,
Senior Court Reporter

Proceedings

THE COURT CLERK: Number four, five, six, seven and eight on the calendar, Deem versus Deem, index number 68616 of 2017.

State your appearance for the record.

MR. DEEM: Michael Deem, plaintiff, pro se.

MS. EICHEN: Linda Eichen, Fuchs & Eichen, 550 Mamaroneck Avenue, Suite 405, Harrison, New York, for the defendant, who is also present.

Good morning, your Honor.

THE COURT: Good morning.

MR. DEEM: Good morning, Judge.

THE COURT: You can have a seat.

We're here principally on two orders to show cause that were brought. One by the plaintiff; one by the defendant. One was a motion to consolidate this case with the Family Court proceedings and the family offense proceedings pending before, I believe, Judge Greenwald down in Family Court, and the other is a motion by the plaintiff.

The motion to consolidate was brought by the defendant, which plaintiff opposes. Plaintiff has brought a motion to disqualify Dr. Herman, the forensic evaluator that the Court previously appointed. And that's opposed by the defendant.

The Court is not dealing with or hearing any other motions because there are no rulees in compliance statements with respect to any of the other motions. I believe Mr. Deem served a number of motions; purported motions by notice of motion. So, there is no relief from them. So, the Court under the rules is not going to consider them at this time.

With respect to the motion to consolidate, that's a motion by the defendant. So, I'll start with Miss

Eichen. Would you like to add anything to your papers.

MS. EICHEN: Your Honor, just that my client is represented by counsel. She's working two jobs. She's not receiving any support from Mr. Deem. It is an enormous expense for her to have to appear in two courts, to have to take off from work for multiple occasions for different courts.

The order of protection that's pending, it's relevant that the forensic — that a Court see the forensic, and hear the forensic on that order of protection. And I just think in this case that the parties -- It's a marital action. I do believe that the motion to consolidate is wise and prudent.

For example, just the last time we were here, when we came here for whatever reason what was said in this court was not the same thing that was said in Family Court. And the order of protection, I had to go because apparently that Court changed the date. I had to go into Family Court. I had to file another petition in order to get the order of protection extended, because Mr. Deem didn't appear.

THE COURT: Isn't there a date today in Family Court before Judge Greenwald.

MS. EICHEN: Yes. He just put that on to see whether or not — because I told him that I was making a motion to consolidate, which we thought we were going to hear on Wednesday. We appeared here on Wednesday. I thought we were getting a decision on that. So, he just put it on today to see what the decision was.

THE COURT: Thank you, Miss Eichen.

Mr. Deem, do you have anything you'd like to add?

MR. DEEM: With respect to the motion to consolidate, your Honor, I'll rest on the papers.

I would like to be heard on the other motions that I did file. As explained in the affidavits supporting those motions, I attempted to raise those issues before the referee at the conference, but for whatever reason those issues were not memorialized in the papers that were presented to the Court.

As I explained in one of the letters to the referee, Miss Swidler, the rulee does not say -- It specifically states that the intent, of the rule is not to deny a party's ability to file motions. So, I'm at a loss what else I can do. I raised the issue before the referee pursuant to the rules. The issue is not memorialized and brought to the attention of the Court. Therefore, there is no rulee motion. But yet the intent of the rule is not to deny motions.

So, if the Court can please give me some guidance or some specific section of rulee on which its declining to consider those motions, I would appreciate it.

MS. EICHEN: Your Honor, if I just might be heard on that?

We were here before Miss Swidler on Wednesday with regards to -- and we had this discussion on the other motions that Mr. Deem wanted to bring. And we discussed those issues, and Miss Swidler specifically told him that there was going to be no rulee on those requests.

For example, one was that he wanted to bring a motion to compel a joint tax return. I showed Miss Swidler the letters that -- Mr. Deem was represented by prior counsel and Mrs. Deem was represented by prior counsel in April. So, I showed Miss Swidler on Wednesday the letters from Miss Carton, who represented Mrs. Deem, asking Mr. Deem to file jointly, because they would save money. I showed Miss Swidler

the E-mail from Mr. Kronic saying he refused to file jointly. Therefore, for example, just on that issue, she said there is no rulee because that was already gone through, so you can't go back.

The other issues were discussed. Additional discovery dates. She said we're ready for trial. Standards and goals have, been exceeded. So, it's not as if they weren't memorialized. She specifically told Mr. Deem no, there are no further motions.

MR. DEEM: Your Honor, if I may?

Counsel is singing my tune, your Honor. I raised the issue before Miss Swidler. That's what I'm supposed to do under the rules. She can't just summarily deny the motion. I have to be given an opportunity to present my argument to the Court in papers. Opposing counsel is given an opportunity to respond and me rely. Otherwise, we're just swinging from the trees, so to speak.

With respect to me not providing support to Miss Deem. That's not true. I do provide child support. It's deposited in the marital account; the joint account.

And counsel raised one other issue. With respect to the joint return, she mischaracterizes what the E-mail from my prior counsel stated. And there was no reference to Miss Carton's, Miss Deem's prior attorney. If all the e-mails are put together, it clearly shows that I was willing to sign a joint tax return, and I'm still willing to do so today, so long as I'm provided with the supporting documentation for both the federal and state tax return. To date, counsel and Miss Deem have refused to provide the complete tax returns, which is not just the form 1040 or

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We discussed the motions. And then there are also subpoenas. I believe the subpoenas to a large extent would fall by the waist side if I'm not provided with the documents I'm entitled to and I did request. My prior attorney requested in the interrogatories.

And finally, there is, as a result of not being provided documents, and not being given the opportunity to depose Miss Deem, I also raised at the conference two days ago the ability to file a motion to deem as accurate Miss Deem's statements to her financial advisor as reflected in the financial documents that her financial advisor produced on, I believe it was on November 7th or 17th, 2017, just a few days after she was served with papers. So, there are significant discovery issues outstanding, as well as my motions.

THE COURT: Okay. As I said initially, the Court is not considering any motion unless there is a rulee in compliance authorized by Miss Swidler. That's the purpose of the rule to have a pre motion conference, and the Court Attorney Referee, who is more or less acting as a filter will determine whether or not he or she will issue a certificate under rulee if she believes the motion is called for.

The rulee certifications that Miss Swidler provided were with respect to an issue of consolidation, and the issue of Dr. Herman. Those are the only two motions that the Court is considering as I said initially.

I don't know, Mr. Deem, if you'd like to add anything to your papers with respect to Dr. Herman; your motion with respect to Steven Herman.

MR. DEEM: With respect to the motion to disqualify?

THE COURT: Yes.

MR. DEEM: He's -- There is no legal authority under federal or state constitution to appoint a forensic

evaluator on the facts of this case. And although, the Court issued the order appointing the forensic evaluator on June 1st, and the conference was held, I believe, on May 23rd of this year, the U.S. Supreme Court rendered a decision on June 27th of this year, which clearly explains, in my opinion, in my argument, that there is no basis. So, therefore, he shouldn't be appointed.

And even if there was authority to appoint the Court evaluator, Dr. Herman is not qualified. If you look at his CV, there is absolutely no mention regarding Cluster B personality disorders, to include borderline narcissism or antisocial personality disorders. And there is — And he's also not listed on the list of Second Department's approved mental health practitioners.

There is somebody who seems qualified, Dr. Ferraro,

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render a report as early as he can, and will do so competently.

The Court Attorney Referee has also certified this case trial ready. The case has been pending for well over a year. All discovery deadlines have passed. The Court will issue a trial ready order. The trial will be scheduled sufficiently in the future so that Dr. Herman's report can be considered -- can be completed and considered by the Trial Court.

That's the Decision and Order of the Court on the motions and with respect to the trial ready order. Okay.

MR. DEEM: Your Honor, if I may?

We're very fortunate that Referee Swidler has actually stepped into the courtroom. Perhaps the Court

can inquire as to why a rulee certification was not rendered with respect to the issues that I raised at two conferences.

THE COURT: Miss Swidler is not here in a witness.

MR. DEEM: No, she's not. But she's here at the convenience of the Court. There is no reason not to.

THE COURT: Thank you, Mr. Deem. The Court is not going to inquire at this time. If you want another conference with Miss Swidler, you can request it.

MS. EICHEN: Just a couple of things.

The last time we were here, there was supposed to be an attorney for the children appointed. There weren't,