ORDER OF THE VERMONT SUPREME COURT (MARCH 5, 2021)

VERMONT SUPREME COURT

JENNIFER DASLER,

v.

TIMOTHY DASLER,

Appellant.

Docket No. 2020-146

Appealed from: Superior Court,
Windsor Unit, Family Division

Docket No 74-6-17 Oedm

Trial Judge: Michael J. Harris

Before: Beth ROBINSON, Associate Justice.,
Harold E. EATON, JR., Associate Justice.,
Karen R. CARROLL, Associate Justice.

In the above-entitled cause, the Clerk will enter:

Husband appeals the family court's denial of his Rule 60(b) motion to set aside the final divorce order in this case. We affirm.

The parties were married for five years and have one minor child. They separated in May 2017 following several incidents that led wife to obtain a relief-from-abuse order against husband and resulted in husband being charged with domestic assault. The family

division entered a final divorce order in August 2018 in which it awarded wife primary legal and physical parental rights and responsibilities, established a fifty-fifty parent-child contact schedule, and ordered wife to pay $300 in monthly maintenance to husband for two years. Husband appealed that decision to this Court, and we affirmed in June 2019. *Dasler v. Dasler*, No. 2018-301, 2019 WL 2359608 (Vt. June 3, 2019), *cert. denied*, 140 S. Ct. 673 (2019).

In January 2020, husband filed a motion seeking to vacate the divorce order pursuant to Vermont Rule of Civil Procedure 60(b). He argued that wife had perpetrated a fraud upon the court by exaggerating and misrepresenting the facts of the incidents that led to the relief-from-abuse order and his assault charge, causing the court to give temporary custody of the parties' child to wife and resulting in her ultimately being granted primary custody. He claimed that his pending criminal charge prevented him from presenting evidence during the divorce proceeding that would contradict her allegations of abuse. He argued that because he had recently resolved his criminal case by pleading no contest to a charge of disturbing the peace, he could now provide evidence that he was unable to present during the divorce hearing, which would show that wife's accusations of assault and abuse were unfounded. He sought to introduce evidence of prior "bad acts" by wife. Husband further argued that he could provide evidence that would disprove the accusations wife made in connection with her July 2017 motion to suspend visitation and other motions she filed during the divorce proceeding.

The family court denied husband's motion. The court concluded that because the motion was based

on fraud or other misconduct by an adverse party as well as evidence that husband had not previously presented to the court, it was untimely, because it was made more than a year after the final divorce order was entered. The court held that husband's appeal of the divorce order did not toll the running of the Rule 60 limitation period because the appeal did not make substantive changes to the order by remand. The court further concluded that the fraud claimed by husband did not amount to a fraud upon the court justifying relief outside the one-year time limit. Husband moved for reconsideration. While that motion was pending, husband filed this appeal. The court subsequently denied the motion for reconsideration.

On appeal, husband argues that the court should have granted his motion to set aside the divorce order because wife's alleged misconduct constituted a fraud upon the court. Alternatively, he claims that he was entitled to relief under Rule 60(b)(4) because the judgment was void. He also argues that the court should not have referred the motion to the judge who presided over the divorce proceeding because that judge was biased against him.

Under Rule 60(b), the court may, upon motion, relieve a party from a final order for six enumerated reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which could not have been discovered in time to move for a new trial; (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or otherwise rendered unenforceable; or (6) "any other reason justifying relief from operation of the judgment." V.R.C.P. 60(b); *see* V.R.F.P. 4.0(a)(2) (listing rules of civil pro-

cedure that are applicable to divorce proceedings in family court). A Rule 60(b) motion based on reasons (1), (2), and (3) must be filed "not more than one year after the judgment, order, or proceeding was entered or taken." V.R.C.P. 60(b). "A motion for relief from judgment under V.R.C.P. 60 is addressed to the discretion of the trial court, and is not subject to appellate review unless it clearly and affirmatively appears from the record that such discretion was withheld or otherwise abused." *Waitt v. Waitt*, 137 Vt. 374, 375 (1979) (per curiam).

Husband's motion was based on allegations of fraud or misconduct by wife in the divorce proceeding as well as evidence that he did not present at the divorce hearing. The family court therefore properly determined that it was barred by the one-year time limit set forth in Rule 60(b) for motions based on reasons (1)-(3). *See Olio v. Olio*, 2012 VT 44, ¶ 16, 192 Vt. 41 (affirming family court's denial of wife's motion to set aside divorce judgment based on husband's misrepresentations about his assets because motion was filed more than one year after judgment); *Brown v. Tatro*, 136 Vt. 409, 411 (1978) (explaining that "[t]he one year bar is an absolute one where it applies"). The court also appropriately declined to grant relief under Rule 60(b)(6) because that rule only permits relief "when a ground justifying relief is not encompassed within any of the first five classes of the rule." *Alexander v. Dupuis*, 140 Vt. 122, 124 (1981); see *Pierce v. Vaughan*, 2012 VT 5, ¶ 10, 191 Vt. 607 (mem.) ("If clause (6) were permitted to encompass grounds for relief that fall under clause (1), (2), or (3), then it would supply a backdoor to

circumvent the one-year time limit."). Husband does not challenge these conclusions on appeal.

Rather, husband argues that wife's alleged misrepresentations constituted a "fraud upon the court" that would permit the court to grant relief outside the one-year time limit. *See* Rule 60(b) (stating that rule does not limit power of court to set aside judgment for fraud upon the court). A finding of fraud upon the court is "reserved for only the most egregious misconduct evidencing . . . an unconscionable and calculated design to improperly influence the court," and "must be supported by clear, unequivocal and convincing evidence." *Godin v. Godin*, 168 Vt. 514, 519 (1998) (quotation omitted). We have emphasized that "the fraud-on-the-court doctrine must be narrowly applied, or it would become indistinguishable from ordinary fraud, and undermine the important policy favoring finality of judgments." *Id.* at 518. In *Godin*, we concluded that wife's failure to tell her husband over several years and during the divorce proceeding that the child he had raised as his own was not his biological child, "did not approach the kind of calculated, egregious 'defiling' of the adjudicative process that has traditionally characterized fraud on the court." *Id.* at 520. Similarly, in *Olio v. Olio*, we held that a husband's deliberate effort to hide assets from wife and the court during the divorce proceeding "falls on the 'ordinary fraud' side of the boundary and does not qualify for the narrow exception we recognized in *Godin*." *Olio*, 2012 VT 44, ¶ 20. As in *Godin* and *Olio*, husband's allegations that wife lied about or exaggerated abuse by husband in an attempt to influence the custody proceeding does not amount to the type of fraud that attempts to "defile the court

itself." *Godin*, 168 Vt. at 519. Rather, wife's alleged misconduct falls squarely within the category of misrepresentation by a party, and as the trial court found, is therefore time-barred.

Husband argues in the alternative that the court should have set aside the divorce order because it is void. *See* V.R.C.P. 60(b)(4). He claims that he was forced to choose between defending himself against wife's allegations in the divorce proceeding or retaining his right to remain silent in the criminal proceeding, which deprived him of a full and fair opportunity to be heard, thereby rendering the judgment void. "[A] judgment is void only if the court that rendered it lacked jurisdiction of the subject matter, or of the parties, or if it acted in a manner inconsistent with due process of law." *In re C.L.S.*, 2020 VT 1, ¶ 17 (quotation omitted). Husband does not allege that the court lacked jurisdiction over the divorce proceeding or the parties, and the record does not support his claim that the court acted inconsistently with due process. "[T]he fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner." *Brock v. Roadway Express, Inc.*, 481 U.S. 252, 261 (1987) (quotation omitted). Husband was provided notice of the various hearings in the divorce proceeding, and he appeared and participated with the assistance of counsel. As husband admits in his brief, he could have requested a delay in the family proceeding while he resolved his criminal case or sought immunity to prevent the State from using his testimony in the family proceeding against him in the criminal case. *See Groves v. Green*, 2016 VT 106, ¶¶ 26-27, 203 Vt. 168 (explaining that court could use procedures outlined in *State v. Begins*,

147 Vt. 295 (1986), where parent's right against self-incrimination in criminal case is in tension with right to present evidence in custody proceeding). He did neither because he believed a delay would benefit wife. He has therefore failed to show that the court acted in a manner inconsistent with due process such that the divorce judgment is void.

Husband also appears to argue that 15 V.S.A. § 665 violates due process because it authorizes the court to make findings regarding parental abuse, and to issue custody decisions, based on a preponderance of the evidence. "To properly preserve an issue for appeal a party must present the issue with specificity and clarity in a manner which gives the trial court a fair opportunity to rule on it." *State v. Ben-Mont Corp.*, 163 Vt. 53, 61 (1994). Because husband failed to properly preserve this argument by raising it below, this Court will not address it for the first time on appeal. *Bull v. Pinkham Eng'g Assocs. Inc.*, 170 Vt. 450, 459 (2000).

Finally, husband argues that it was error for the family court to refer his Rule 60 motion to the judge who heard the divorce proceeding over husband's objection, because the judge was plainly biased against him. Husband did not move for recusal of the judge, and he has not demonstrated that the judge was biased or prejudiced against him. *See State v. Davis*, 165 Vt. 240, 249 (1996) (explaining that judge's participation in earlier proceedings regarding same case does not ordinarily justify recusal; "[w]e presume the integrity and honesty of judges, and the moving party has the burden to show otherwise"). The judge's statement that husband's appeals to this Court and the U.S. Supreme Court as well as an action he filed

in New Hampshire "indicate the lengths [husband] may pursue to avoid the finality of the 2018 final order" does not create a reasonable ground to question the impartiality of the court. We disagree with husband's contention that recusal is required whenever a party complains about a judge. *See Ball v. Melsur Corp.*, 161 Vt. 35, 39 (1993) ("We decline to hold that a per se lack of impartiality, mandating recusal, arises whenever a judge is the subject of a judicial conduct complaint by an attorney."), *overruled on other grounds by Demag v. Better Power Equip., Inc.*, 2014 VT 78, 197 Vt. 176. We therefore see no reason to disturb the decision below.

Affirmed.

BY THE COURT:

/s/ Beth Robinson
Associate Justice

/s/ Harold E. Eaton, Jr
Associate Justice

/s/ Karen R. Carroll
Associate Justice

ORDER OF THE VERMONT SUPERIOR COURT, ORANGE UNIT FAMILY DIVISION (JANUARY 23, 2020)

STATE OF VERMONT SUPERIOR COURT
ORANGE UNIT FAMILY DIVISION

JENNIFER DASLER,

Plaintiff,

v.

TIMOTHY DASLER,

Defendant.

Docket No. 74-6-17 Oedm

ENTRY REGARDING MOTION

Count 1, Dasler vs. Dasler (74-6-17 Oedm)
Count 2, Dasler vs. Dasler (74-6-17 Oedm)

Title: Motion for Relief from Judgements (Motion 29)
Filer: Timothy Dasler
Attorney:
Filed Date: January 23, 2020

Response filed on 1/29/2020 by Attorney John B. Loftus for Plaintiff Jennifer Dasler. Reply filed on 2/10/2020 by Timothy Dasler

Title: Motion for Various, Relief and Request for Hearing (Motion 30)

Filer: Timothy Dasler
Attorney:
Filed Date: January 23, 2020

Response filed on 01/29/2020 by Attorney John B. Loftus for Plaintiff Jennifer Dasler Reply filed on 2/10/2020 by Timothy Dasler

The above two motions have been referred to the undersigned for consideration and decision. The motions and memos of the parties have been reviewed. The motions are denied.

The 1/23/20 motions seek relief from the final divorce order proceedings, which resulted in an 8/17/18 33-page Final Divorce Order, which, was upheld after appeal to the Vermont Supreme Court on 6/3/19 and remanded to the trial after denied motions to reargue on 7/9/19. And

In essence the current motions seek reopening or relief of the final order based on claimed information that relates to credibility determinations the court already made in the hearings; inadmissible "prior bad acts" evidence; reasonably available and known evidence at the time of the hearing not introduced due to mistake, inadvertence, surprise, excusable neglect, or now regretted tactical decisions; evidence which is claimed to be "new" but could have been discovered with due diligence before the final hearing or in time to move for a new trial; and/or claimed misconduct or fraud of an adverse party.

The Vermont Rules of Civil Procedure, Rule 60(b) applies to the motions.[1] It provides that a party may seek relief "from a final judgment, order, or proceed-

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[1] *See* Vt. Rule Fam. Proceedings, Rule 4.0(a)(2).

ing" for reasons of mistake, inadvertence, surprise, or excusable neglect; newly discovered evidence which by due diligence, could not have been discovered in time to move for a new trial under Rule 59(b); or fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party, subject to a time limit. Motions based on the just stated grounds must be filed "not more than one year after the judgment, order, or proceeding was entered or taken." V.R.C.P. 60(b). (Failure to submit evidence due to what is viewed as an ill-advised tactical decision in retrospect, is not a valid ground for Rule 60(b) relief at all. *Okemo Mountain Inc. v Okemo Trailside Condominiums, Inc.*, 139 Vt. 433 (1981))

These motions were filed well over one year after the trial court's August 2018 final order, but within a year of the Vermont Supreme Court decision affirming the trial court decision.

Does the Rule 60(b) one year time period run from the trial court's otherwise final opinion, or from the appellate final Opinion? The court Concludes the trial court order date controls where, like here, the decisions is affirmed with no material changes or any remands for further trial court action.

The Federal Rules of Civil Procedure contain a Rule 60, which in material respects is the same as Vermont Rule 60(b). The current federal Rule 60(b) also allows a party to seek relief "from a final judgment, order, or proceeding". It also contains a motion filing deadline, for the forms of relief described above, and requires the Rule 60(b) motion be filed "no more than a year after the entry of the judgment or order or the date of the proceeding." F.R.C.P. 60(b) and (c)(1).

Caselaw under the nearly identically worded federal rule has concluded that where (like here) the appeal does not make substantive changes to the order in issue (by remand)—the federal Rule 60(c) one year time period is not extended during the pendency of an appeal. 11 Charles Alan Wright, Arthur R. Miller & Mary kay Kane, *Federal Practice and Procedure: Civil 2d* § 2866 (1995) (citing cases); *Vaughan v. Petroleum Conversion Corp.*, 120 F. Supp. 175, 178 (D.Conn.1953); *Rhodes v. Huston,* 258 F. Supp. 546, 560 (D. Neb. 1966) (determining Rule 60 one year motion filing deadline form the date of the trial court judgment and not unsuccessful appeals to the 8th Circuit Court of Appeals or an "equally fruitless effort to obtain review from the Supreme Court of the United States under a writ of certiorari"); *Nevitt v. US.*, 886 F.2d 1187, 1187-88 (9th Cir. 1989) (Rule 60 one year filing period calculated from grant of 9/10/85 order granting summary judgment, not the later order dismissing an appeal); *In re Reilly,* 262 B.R. 197, 203 (Bankry. D. Conn. 2001) (Rule 60 motion filing deadline calculated from the bankruptcy court's claim disallowance, not the dates of the subsequent appeals to the Bankruptcy Appellate Panel or the Second Circuit Court of Appeals); *King v. First American Investigations, Inc.*, 287 F.3d 91, 94 (2nd Cir. 2002). Accord, *Federal Land Bank of St. Louis v. Cupples Bros.*, 889 F.2d 764, 766-67 (8th Cir. 1989); *Hancock Indus. v. Schaeffer*, 811 F.2d 225, 239 (3d Cir. 1987); *Carr v. District of Columbia*, 543 F.2d 917, 525-26 (D.C. Cir. 1976); *Transit Casually Co. v. Security Trust Co.*, 441 F.2d 788, 791 (5th Cir. 1971); *Jones v. Capital Cities/ABC Inc.*, 168 F.R.D. 477, 479 n. 3 (S.D.N.Y. 1996). *See also* 7 J. Moore & J. Lucas, *Moore's Federal Practice* ¶ 60.28 [2], at 60-316 n. 20

(2d ed. 1987) (to allow an appeal to toll the one-year limit would "unduly impair the finality of judgments" for "[a]ppellate proceedings may take months and even years to complete"). This later observation is a cogent policy reason for Vermont Rule 60(b) to also be so interpreted. The unsuccessful Vermont Supreme Court and U.S. Supreme Court appeals, and the ancillary New Hampshire court action pursued by Mr. Dasler indicate the lengths Mr. Dasler may pursue to avoid the finality of the 2018 final order.

The court thin denies these motions as being untimely. The court also recognizes that V.R.C.P. 60(b)(6) allows for motions for "any other justifying relief from operation of the judgment" that is not subject to the one-year deadline. However that provision is not available to obtain relief on grounds encompassed in the three other referenced subdivisions (*Levinsky v. State*, 146 Vt. 316, 317-318 (1985); *Olde & Co. v. Boudreau*, 150 Vt. 321, 323 (1988), which other Rule 60(b)(1) to (3) subdivisions the court finds applicable here.

Lastly the court has considered the possible application of what has been termed as "fraud on the court" that may be asserted under Rule 60(b). Vermont caselaw makes clear is a narrow exception and may only be shown "by the most egregious misconduct directed to the court itself, such as . . . fabrication of evidence by Counsel, and must be supported by clear, unequivocal and convincing evidence.". *Godin v. Godin,* 168 Vt. 514, 519 (1998)[2]. Similar to the "fraud on the

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[2] The *Godbin* Court, after stating that alleged witness perjury is insufficient to prove fraud on the court, cited the Moore's *Federal Practice* 'treatise and noted "[i]f fraud on the court were to be given a broad interpretation that encompassed virtually all

court" claims asserted in *Godin* and *Olio v. Olio,* 2012 VT 44, 192 Vt. 41, the claimed fraud here did not approach the kind of "calculated, egregious 'defiling' of the adjudicative process that has traditionally characterized fraud on the court". 168 Vt. at 520, quoting and citing *Great Coastal Express, Inc. v. International Bhd. of Teamsters*, 675 F.2d 1349, 1356 (4th Cir. 1982).

The motions are DENIED. The court declines to award sanctions or grant an award of attorney's fees against Mr. Dasler as the result of his filing and pursuit of these motions.

Electronically signed on April 01, 2020 at 07:09 PM pursuant to V.R.E.F. 7(d).

/s/ Michael J. Harris
Superior Court Judge

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forms of fraudulent misconduct between the parties, judgments would never be final and the time limitations of Rule 60(b) would be meaningless" 168 Vt. at 518-519.

ORDER OF THE VERMONT SUPERIOR COURT, ORANGE UNIT FAMILY DIVISION (MAY 4, 2020)

STATE OF VERMONT SUPERIOR COURT
ORANGE UNIT FAMILY DIVISION

JENNIFER DASLER,

Plaintiff,

v.

TIMOTHY DASLER,

Defendant.

Docket No. 74-6-17 Oedm

The court has considered Mr. Dasler's 4/14/20 motion asking for reconsideration of the 4/2/20 entry order.

Rule 59(e) "gives the court broad power to alter or amend a judgment." Reporter's Notes, V.R.C.P. 59. We have stated that Rule 59(e), largely identical to Federal Rule of Civil Procedure 59(e), is invoked "'to support reconsideration of matters properly encompassed in a decision on the merits.'" *In re Robinson/Keir P'ship*, 154 Vt. 50, 54, 573 A.2d 1188, 1190 (1990) (quoting *White v. N.H. Dep't of Emp't Sec.*, 455 U.S. 445, 451, 102 S. Ct. 1162, 71 L.Ed.2d 325 (1982)). Under this rule, "the court may reconsider issues previously before it, and generally may examine the cor-

rectness of the judgment itself." *Id.* (quotation omitted). That is, Rule 59(e) "codified the trial court's inherent power to open and correct, modify, or vacate its judgments." *Drumheller v. Drumheller*, 2009 VT 23, ¶ 28, 185 Vt. 417, 972 A.2d 176; *see* 11 C. Wright et al., Federal Practice and Procedure § 2810.1, at 124-25 (2d ed. 1995) (describing correction of manifest error of law upon which judgment is based as one of four basic grounds upon which Federal Rule of Civil Procedure 59(e) motion may be granted). The trial court enjoys considerable discretion in deciding whether to grant such a motion to amend or alter. 11 Wright, *supra*, § 2810.1, at 124.

The court denies the 4/14/20 motion as the motion to reconsider. The recent motion lacks sufficient grounds for the court to reconsider the correctness of it 4/2/20 order, which 4/2/20 order in turn relates to the arguments asserted in the 1/23/20 motions which were already considered. Mr. Dasler may appeal the court's 4/2/10 denial of those prior 1/23/20 motions and/or this ruling on his 4/14/20 motion to the Vermont Supreme Court.

Electronically signed on May 04, 2020 at 03:15 PM pursuant to V.R.E.F. 7(d).

/s/ Michael J. Harris
Superior Court Judge

DEFENDANT TIMOTHY DASLER
MOTION TO REARGUMENT
(MARCH 8, 2021)

SUPREME COURT, STATE OF VERMONT

JENNIFER DASLER,

Plaintiff.

v.

TIMOTHY DASLER,

Defendant.

Docket No. 2020-146

Timothy Dasler, appellant, moves for reargument of this court's 3/5/21 decision. As grounds for this motion, Mr. Dasler states that there are certain points of law and fact, presented in the brief upon the original argument, that the court has overlooked or misapprehended and which would probably affect the result. The Court's attention is respectfully referred to the following argument in support of the motion.

Fraud Upon the Court

1. This court's interpretation of Fraud Upon the Court for the purposes of Rule 60 relief differs significantly from the Federal definition. As a duplicate of a Federal rule, the interpretation under Rule 60 should conform with Federal standards.

2. In the Dasler case the dominant factor was Ms. Dasler's withholding of visitation for 9 months (and all 3 factors were dependent on Ms. Dasler's temporary order and accusations). That is the one factor the court put heavy weight upon. As indicated by the court's citations in the decision, the court's consideration was that Ms. Dasler had become primary caregiver and consequently it was up to Mr. Dasler to prove that arrangement would be harmful. In other words, by the court's reasoning, the burden had shifted to Mr. Dasler to disprove the merit of Ms. Dasler's pre-judgement attachment of parental rights.

3. In essence, all the 'relevant' factors that the court relied upon were decided on the basis of Ms. Dasler's accusation and consequences of the temporary order. It was overwhelmingly the dominant factor in the case, although the court didn't put heavy weight on the alleged assault itself.

4. That pre-trial attachment of rights was achieved through an exparte order, and Ms. Dasler never prevailed in any hearing justifying the merits of that temporary restriction of rights, so it is clear that her pre-trial action has subverted the normal course of justice and shifted the burden entirely to Mr. Dasler.

5. The real issue here is that there is evidence that she took steps to arrange the RFA prior to there being probable cause for the assault allegation, she sought Mr. Dasler at multiple locations that afternoon and set out to force a confrontation so she could frame him for conduct that would justify the RFA that she had already arranged to file in the morning.

6. Her cell phone evidence, not available prior to the hearing, clearly indicates that this exparte order

was fraudulently obtained, and denied Mr. Dasler a fair opportunity in that the mere existence of the temporary order shifted the burden entirely to Mr. Dasler.

> "fraud upon the court occurs where it can be demonstrated, clearly and convincingly, that a party has sentiently set in motion some unconscionable scheme calculated to interfere with the judicial system's ability impartially to adjudicate a matter by improperly influencing the trier or unfairly hampering the presentation of the opposing party's claim or defense."

Braun v. Zhiguo Fu, No. 11cv04383 (CM) (DF), 2015 U.S. Dist. LEXIS 90652, at *46 (S.D.N.Y. June 19, 2015)

7. By the standard in Braun it is really clear that Ms. Dasler's actions constitute "fraud upon the court". If Mr. Dasler is able to prove what was presented in his motion, which is supported by physical evidence and testimony of multiple parties, then it is clear that Ms. Dasler's intent was to subvert the normal functioning of the system through this fraudulent accusation.

8. Even if the court does not believe that her fraud rises to Fraud Upon the Court, it is still an extraordinary circumstance due to the numerous constraints on Mr. Dasler in his effort to defend himself. As such, even ordinary fraud in extraordinary circumstances falls within Rule 60 (B)(6) as cited below.

9. More broadly, though, fraud constitutes exactly what Ms. Dasler did, and how she controlled Mr. Dasler's ability to present a defense, and how she

changed the standards to shift the burden to Mr. Dasler entirely.

> "Extrinsic fraud is a broad concept which covers a number of situations. The presence of an extrinsic fraud claim necessarily depends upon the facts of the case. *Galper v. Galper*, 162 Cal. App. 2d 391, 396-97, 328 P.2d 487 (1958); *see also* 8 E.B. WITKIN, California Procedure, §§ 204-10, 215A (3d ed. 1988 & Supp. 1996) (reporting cases where a party was kept in ignorance of a lawsuit or was induced not to appear, a claim or defense was concealed from a party, and cases where the prevailing party obtained the judgment through coercion or duress)."

Lake v. Capps (*In re Lake*), 202 B.R. 751, 758 (B.A.P. 9th Cir. 1996)

> In *Marine Ins. Co. of Alexandria v. Hodgson* (11 U.S. 332, 7 Cranch [11 U.S.] 332, 336, 3 L. Ed. 362) Chief Justice MARSHALL said: "that any fact which clearly proves it to be against conscience to execute a judgment, and of which the injured party could not have availed himself in a Court of law; or of which he might have availed himself at law, but was prevented by fraud or accident unmixed with any fault or negligence in himself or his agents, will justify an application to a Court of Chancery." (emphasis added)
>
> "On the other hand, it is equally inappropriate that all judgments be treated as absolutely inviolable. Particularly is this true when a

> judgment has been procured by the fraud of the successful party. To immunize such a judgment from attack is to compound the injustice of its result on the merits with the injustice of the means by which it was reached. Equally important, if judgments were wholly immune it would give powerful incentive to use of fraudulent tactics in obtaining a judgment. A litigant would know that if he could sustain duress or deception through the moment of finality, the benefit of the judgment would be his forever."

Restatement (Second) of Judgments § 70 (1982)

Rule 60 (B)(6)

10. The court fails to distinguish between the cause of action and the existence of new evidence. The issue at hand here isn't that Mr. Dasler discovered evidence after the trial and didn't present it within a year. Rather it is that there is evidence that COULD NOT have been presented within that window of time due to procedural defects, which Ms. Dasler played a role in manipulating.

11. The purpose of Rule 60(B)(6) is to create an opportunity to correct injustices, and the exclusion of factors 1-3 is simply to ensure it doesn't provide an end run around the statute of limitations unless there are extraordinary circumstances. When the cause of action is a procedural defect, however, any such case would include evidence and/or defenses not presented at the prior hearing.

12. Federal precedent recognizes that exceptional circumstances allow Rule 60(b)(6) relief even when factors 1-3 may be present.

> "Since excusable neglect is a ground for relief recognized by Rule 60(b)(1), it is not, under normal circumstances, a ground for relief under Rule 60(b)(6). Moreover, Collectron has not shown that there are extraordinary circumstances justifying relief, or that the judgment will work an extreme and undue hardship.
>
> [*24] Collectron points to *Byron v. Bleakley Transp. Co.*, 43 F.R.D. 413 (S.D.N.Y. 1967), and *Canario v. Lidelco, Inc.*, No. 84 CV 4657, 1987 WL 12012 (E.D.N.Y. May 29, 1987), in support of its argument. Under Byron and *Canario*, a court may use Rule 60(b)(6) to vacate a default judgment resulting from a defendant corporation's failure to notify the Secretary of State of a change in address, but only in unusual circumstances. The Byron court, for instance, vacated a default judgment pursuant to Rule 60(b)(6) only because the plaintiff served process on the Secretary of State even though it knew the defendant's current address, and because the defendant, who had a meritorious defense to the action, had little reason to expect the lawsuit. *See Byron*, 43 F.R.D. at 415. Similarly, the Canario court withheld decision on a motion to vacate under Rule 60(b)(6) pending the result of an evidentiary hearing into "the dispositive issue" of whether the plaintiffs knew the defendant's current

> address, but nevertheless served process on the Secretary of State knowing that defendant would not receive it. *See Canario*, 1987 WL 12012, [*25] at *4."

Miller v. Collectron Corp., 98-CV-2221 (JG), 1999 U.S. Dist. LEXIS 14413, at *23-25 (E.D.N.Y. Sep. 16, 1999) (emphasis added)

13. The SCOTUS has also supported that extraordinary circumstances are exceptions to Rule 60 (1-3) issues because effectively the cause of action isn't the issue of (1-3), but rather the extraordinary circumstance that includes factor (1-3) and it is the 6th factor (extraordinary circumstance) that forms the exception to the 1-year statute of limitation, not the existence of factor 1-3 that bars relief on the basis of factor 6.

> "It is contended that the one-year limitation bars petitioner on the premise that the petition to set aside the judgment showed, at most, nothing but "excusable neglect." And of course, the one-year limitation would control if no more than "neglect" was disclosed by the petition. In that event the petitioner could not avail himself of the broad "any other reason" clause of 60 (b). [****16] But petitioner's allegations set up an extraordinary situation which cannot fairly or logically be classified as mere "neglect" on his part. The undenied facts set out in the petition reveal far more than a failure to defend the denaturalization charges due to inadvertence, [**390] indifference, or careless disregard of consequences. *Klapprott v. United States*, 335 U.S. 601, 613-14, 69 S. Ct. 384, 389-90 (1949)

Availability of Immunity/Stay and Time to Prepare Defense

14. This court's decision states that Mr. Dasler could have sought either a stay or immunity, however, neither is an option in this case. Even if the court granted immunity to Mr. Dasler's testimony in the Family Court case, Ms. Dasler is in the room and is involved in aiding the prosecution build a case against Mr. Dasler. The prosecution still would get a full preview of Mr. Dasler's defense, and Ms. Dasler would be able to adjust her version of events to work around any testimony/evidence presented by Mr. Dasler.

15. Ms. Dasler's shifting versions of events can be seen in the changes from her RFA Affidavit(1/2/20 Motion for Relief from Judgement pg. 10) to her later testimony, and also in her 7/19/17 Motion to Suspend Visitation claiming "several bruises" that Mr. Dasler "did not explain" and upon learning that evidence existed to disprove these claims she shifted to "developed into a black eye" and admitted that Mr. Dasler explained the child's slip and fall at the bubble exhibit in full detail, but covered for her claim that he "did not explain how the minor child was injured" (7/19/17 Motion) by testifying he "didn't indicate whether he had treated her wounds" (2/16/18 Transcript Pg. 67 L 13-17) (1/2/20 Motion for Relief from Judgement pg. 20).

16. The point is, that with the pre-knowledge of Mr. Dasler's testimony and evidence Ms. Dasler can and will come up with new versions of events to make her accusations appear plausible, and in a he-said/she-said case that is extremely prejudicial to Mr. Dasler's criminal defense. Mr. Dasler was not able to get a criminal attorney to investigate and obtain any

physical evidence until after the Family Court case had concluded. This was due in large part to the difficulty of fending off parallel civil/criminal litigation, the financial issues involved, Mr. Dasler's need to relocated due to Ms. Dasler's accusations, being barred from his home shop where he was working self-employed at the time, Ms. Dasler's ability to take 1/3 of his income through child support, and Ms. Dasler's constant flood of litigation including 170 pages of filings, and 3 additional criminal accusations since the 5/12/17 accusation and separation of the parties.

17. As a result of this series of events, Mr. Dasler is also well aware that Ms. Dasler can continue to come up with new versions, even when the conflict with prior written testimony, and is given special deference as the self-proclaimed "victim". Meanwhile the prosecutor has his thumb on the scale so to speak when it comes to perjury charges and he can find no instance of a prosecutor ever charging their own witnesses with perjury. It is also clear that Ms. Dasler's attorney was aware of the change from the version of events in her 7/19/17 Motion to her later testimony (if not before the filing) and was content to aid her in modifying her version of events to work around the evidence, so Mr. Dasler certainly has no confidence that "professional standards" prevents an attorney from aiding in misrepresentation to the court.

18. There does not exist any process whereby Mr. Dasler can defend himself in family court prior to the resolution of criminal charges without Ms. Dasler being able to review his testimony/evidence and compromise his case.

19. The result is that if Mr. Dasler does not present at least some level of defense, then he stood to lose contact entirely through this flood of accusations. With a lack of prejudgment protection, the only way to provide real justice in this case (within existing court rules) is to allow a Rule 60 Motion after the constitutional conflict of parallel civil/criminal litigation has resolved because neither stay, nor immunity prevents prejudice to Mr. Dasler's cases.

20. Through these accusations it appeared that Ms. Dasler's goal was to force Mr. Dasler into an impossible situation where he could not defend himself, couldn't afford representation, and caved to the extortion campaign. This is indicated by the standing offer (50/50 PCC if Mr. Dasler would agree to give Ms. Dasler PRR) reiterated throughout the campaign to sever Mr. Dasler's PCC (1/20/20 Motion Pg. 24). There is absolutely no doubt that Ms. Dasler and counsel knew that Mr. Dasler was not dangerous, but as we see in the Knutsen series of cases, she doesn't need to show that he is dangerous, she can prevail regardless of the merit of the accusations simply by keeping a fit parent away from a child.

21. Consequently, Mr. Dasler faces a penalty of deprivation of child custody until he defends himself against those accusations. There was no immediate danger ever substantiated, but that didn't stop her from withholding PCC/PRR.

> "Juvenile custody cases in Vermont are civil and not criminal proceedings. Nevertheless, the privilege against self-incrimination applies in civil as well as criminal litigation. The state cannot compel an individual to testify against himself or herself at least without an appro-

> priate grant of immunity in any subsequent criminal prosecution. Additionally, the state may not impose a penalty or sanctions against an individual for invoking the privilege. There is no question that deprivation of custody of a child is a sanction for purposes of U.S. Const. amend. V."

In re M.C.P., 153 Vt. 275, 279, 571 A.2d 627, 629 (1989)

22. Similarly, a stay of proceedings is of no avail in this case. Ms. Dasler filed 170 pages of motions and made at least 3 additional calls to police with criminal accusations in the 9 months between separation and the last filing seeking to interfere with "normalization of contact". It cost Mr. Dasler $15,000 just to get to "normalization of contact" in the 2/23/18 Order, which had already been agreed upon in the 6/9/17 Mediation Agreement. By the time of the Final Divorce Hearing Mr. Dasler had already fended off the attempt to get the child on an RFA, and 7 motions seeking to interfere with PCC that had already been agreed to (with no reasonable grounds to justify the interference).

23. After the failure of all of these attempts, Ms. Dasler fired her attorney and hired Attorney Loftus. The indication to Mr. Dasler is that he needs to brace for more litigation, which was well beyond his means.

24. Simultaneously he was paying child support, which left him with $1,200/month to defend against the litigation and pay all his bills, which illustrates the impossibility of meeting all of these needs (and a parallel criminal defense).

25. All of this is further compounded by the precedent of Knutsen and Cabot, both of which allow

a parent to prevail by wrongfully keeping a fit parent away from a child because the court may not "punish" the offending parent by shielding the child from that form of abuse (wrongfully denying contact with a fit parent).

26. The notion that Ms. Dasler prevails by keeping a fit parent away from a child is as well established as any legal principle in Vermont Family Court. Mr. Dasler argues, however, that it is a principal that is absolutely wrong, harmful to children, and only encourages such abuse. This point of view is also shared by the dissent in Cabot

> "I disagree only with the majority's holding that the family court exceeded its authority by awarding joint legal parental rights and responsibilities. The holding ignores the plain meaning [***38] of 15 V.S.A. § 665(a), which requires the court to award parental rights primarily or solely to one parent when the parents cannot agree to share those rights. Worse, it provides further incentive for divorcing parents who are primary caregivers to refuse to cooperate with their spouses on sharing parental rights and responsibilities, and thus undermines the Legislature's stated policy of furthering children's best interests by maximizing their continuing physical and emotional contact with both parents following divorce. 15 V.S.A. § 650."

Cabot v. Cabot, 166 Vt. 485, 505, 697 A.2d 644, 657 (1997)

27. In this case, the issue here forms a procedural defect such that the hearing was inconsistent with

due process. There was no available protection when Mr. Dasler pled the 5th, and the only 'pressure release' is Rule 60.

28. So the choice was to plead the 5th with no protection or waive the 5th when proving "no factual basis" would not change the fact that Ms. Dasler had already achieved a temporary order favoring her such that the burden shifted entirely to Mr. Dasler. Therefore, waiving the 5th would not change the case even if he disproved her allegations and it would only prejudice her criminal case while he still had not obtained the evidence to disprove her fraudulent accusations.

29. This procedural defect does not protect Mr. Dasler's 5th and 14th Amendment and should render the judgement void for being inconsistent with due process.

Child's Best Interest

30. As cited in the Cabot dissent above, the SCOV's long holding that the lower court may not shield the child from the weaponization of PCC/PRR (because the parent may prevail by wrongfully withholding PCC/PRR) is harmful to children (*Cabot v. Cabot*, 166 Vt. 485, 488, 697 A.2d 644, 646 (1997)).

31. The question of the best interest of the child is fundamental to this case generally, and a fundamental component is the issue that the child does not register any gain from an erroneous finding of abuse. In other words, the child only benefits from a correct finding, and the risk should not be equally balanced between the parties. This is consistent both with the VT Legislature's finding that the child's interests are

best served with maximizing time with both parents, and *Santosky v. Kramer*'s finding that the "The state registers no gain toward its declared goals when it separates children from the custody of fit parents."

32. Cabot's finding that the court should focus on "the best interest of the child, not equity between the parties." is another reason to grant relief in this case. It is clearly in the child's best interest to prevent an abusive parent (Ms. Dasler in this case) from using a false allegation of abuse to form a smoke screen to prevent scrutiny of their own history of abuse and mental health issues that have been life threatening to both parents. By hiding behind the false claim of "domestic abuse victim" Ms. Dasler severely hindered Mr. Dasler's ability to present these issues. This history is important for the court to make reasonable decisions that support the child's best interest.

Constitutional Issue

34. The question of whether it is unconstitutional to make the custody battle a "battle between the two parties" simply because one parent doesn't feel like sharing is foundational to Mr. Dasler's due process challenge raised with the lower court, however, the lower court was bound by the precedent of the SCOV, which has routinely upheld the application of § 665 even though it declined to consider the constitutionality of the statute in other cases. Fleshing out the § 665 challenge to a court bound by SCOV precedent would not have changed the lower court's decision.

35. There is substantial precedent laid out below that illustrates why this court should consider the § 665 challenge.

36. Mr. Dasler also recognizes that the Rocket Docket is bound by precedent, thus cannot set precedent by declaring the statute Unconstitutional. Perhaps the court's view that it could not consider this question is one reason this case ended up on the Rocket Docket, and Mr. Dasler does not understand whether or not there is still opportunity to move the case to the full panel upon compelling argument, so he will still lay it out.

37. Even if the court does not find § 665 Unconstitutional, the argument is still relevant to point out that the process has already compromised Mr. Dasler's right to due process before the parallel civil/criminal litigation issue enters into it, which makes it a compounding factor that has not been addressed in any precedential decision Mr. Dasler can find.

38. This court's decision cites *State v. Ben-Mont Corp.*, 163 Vt. 53, (1994) and *Bull v. Pinkham Eng'g Assoc.*, 170 Vt. 450 (2000) in denying consideration of the constitutional challenge to 15 V.S.A § 665. Following back the series of citations in these cases nearly 100 years fails to yield any foundation in law to justify the approach.

39. SCOV case law indicates exceptions to this apparently court-made rule

> ""Ordinarily, an issue raised for the first time on appeal is not eligible for review." *State v. Billado*, 141 Vt. 175, 183, [**761] 446 A.2d 778, 782 (1982)." *State v. Nash*, 144 Vt. 427, 433, 479 A.2d 757, 760-61 (1984)

40. As for when the "ordinary" rule doesn't apply, it does not appear to be well defined, however, one exception appears to be

> "unless the error is a glaring error so grave and serious that it strikes at the heart of a defendant's constitutional rights." *State v. Billado*, 141 Vt. 175, 179, 446 A.2d 778, 780 (1982)

41. This is certainly true of the case at bar, and the issue could not have been resolved by the lower court. As Mr. Dasler laid out in his brief, the presumption that one party can waive the appropriate evidentiary standard for the other party is an absurd proposition and is founded in an elementary error in presuming that it is a "battle between the two parties" rather than recognizing what both the VT legislature and SCOTUS (but somehow not the SCOV) recognize. That the child registers no gain when erroneously taken from a fit parent. That is a pretty significant, and glaring error that also illustrates just how far the Family Court process has fallen from what constitutes "due process" in such a case.

42. The justification for requiring the issue be raised at the lower court is to avoid issues that could/should have been addressed in the trial court such that they could effect the outcome and fairness and avoid mistrial/retrial. In this instance, however, raising § 665 challenge would not have changed anything in the lower court because there is substantial SCOV case law upholding the application of § 665 even if it hasn't directly addressed the constitutionality of the statute itself.

> "The purpose of such a rule "is to require that correctable error be addressed initially in the trial court. Its justification lies in promoting fair trials, 'maximizing correct decisions and concomitantly minimizing errors requiring mistrials and retrials.'" *Id.* (quoting *Henry v. Mississippi*, 379 U.S. 443, 463 (1965) (Harlan, J., dissenting))."

State v. Billado, 141 Vt. 175, 188, 446 A.2d 778, 785 (1982)

43. The same SCOTUS dissent cited in *State v. Billardo* goes on to flesh out an important exception.

> "Errors affecting [*456] fundamental rights are [****24] exceptions to the rule that questions not raised in the trial court cannot be raised for the first time on appeal." *Brooks v. State*, 209 Miss. 150, 155, 46 So.2d 94, 97." *Henry v. Mississippi*, 379 U.S. 443, 455-56, 85 S. Ct. 564, 572 (1965) (dissent)

44. Ordinarily discretionary rules exist to allow principals of equity and justice to prevail, and allow a party to argue that a procedural default should be excused through an exercise of judicial discretion (as in *Brooks v. State* above)

45.Multiple Federal courts also have fleshed out their exceptions involving important constitutional questions. The issue raised by Mr. Dasler would fall into exceptions outlined by both the 6th and 9th circuits because it is an important constitutional question that is purely one of law and the necessary facts to consider the question are fully developed.

46. "This court will generally not consider an issue raised for the first time on appeal. *Bolker v. Commissioner*, 760 F.2d 1039, 1042 (9th Cir. 1985). Three exceptions to this rule exist: (1) in an "exceptional" case when review is necessary to prevent a miscarriage of justice or to preserve the integrity of the judicial process, (2) when a new issue arises while appeal is pending because of a change in law, or (3) when the issue is purely one of law and the necessary facts are fully developed." *Romain v. Shear*, 799 F.2d 1416, 1419 (9th Cir. 1986)

47. "*See People v. Heim*, 206 Mich. App. 439, 522 N.W.2d 675, 676 (Mich. Ct. App. 1994) (agreeing to review a claim for the first time on appeal as an exception to the usual rule "because [the claim] involves an important constitutional question")." *Kircher v. City of Ypsilanti*, 809 F. App'x 284, 300 (6th Cir. 2020)

Considering the reasons given by multiple courts (including Vermont), it is appropriate to consider the question.

Misrepresentations in Oral Arguments

48. It should be noted that there were several false representations in Attorney Sheng's oral arguments.

49. Attorney Sheng claimed that Mr. Dasler plead "no contest to the charges" when in fact it was a plea to lesser charges that would not have justified Ms. Dasler's Family Court actions. Moreover, Ms. Dasler's accusation is what allowed her ex-parte order and a plea to lesser charges in no way justifies her action.

50. He also claimed the court heard the mental health issue, but in fact the court only narrowly heard

a portion as Mr. Dasler was cross examined about an email to Ms. Dasler where her counsel sought to roast Mr. Dasler for telling the self-proclaimed "victim" to get mental health counseling. Mr. Dasler had to defend his statement in the email, and gave some testimony about the basis for this email, however, the fact that it was not raised in Mr. Dasler's case led the court not to put any weight on it whatsoever. "Mr. Dasler never raised an issue as to her present mental-emotional fitness to parent her daughter during the temporary PRR-PCC proceedings in this case" (8/17/18 Final Divorce Order § 118).

51. As cited in Mr. Dasler's brief, he was advised that he would likely face consequences for "blaming the victim" and appearing to increase acrimony if he challenged her mental health in court prior to resolving the criminal charges. He had no control over the timing of that resolution.

52. Attorney Sheng also claimed that Mr. Dasler was able to testify about the events. It is clear in the record that Mr. Dasler did not testify about the alleged assault or Ms. Dasler's history of violence, nor could he provide the physical evidence (which was not yet available) that showed Ms. Dasler's pre-arrangement of the RFA and steps taken to frame Mr. Dasler for assault.

WHEREFORE, Mr. Dasler respectfully request that the court;

A. Grant Mr. Dasler a new hearing

B. Award Mr. Dasler fees and costs

C. Grant such other relief as deemed just and fair

Respectfully Submitted

/s/ Timothy Dasler
3/18/21

DEFENDANT TIMOTHY DASLER
MOTION TO RECONSIDER
(APRIL 14, 2020)

STATE OF VERMONT SUPERIOR COURT
ORANGE UNIT FAMILY DIVISION

JENNIFER DASLER,

Plaintiff,

v.

TIMOTHY DASLER,

Defendant.

Docket No. 74-6-17 Oedm

NOW COMES Timothy Dasler respectfully requesting that the court reconsider its Order denying Mr. Dasler's Relief from Judgement Motion.

Time Frame for Filing

Although this Court did not believe the time to file the underlying motion was stayed pending appeal, the Court rendered a decision on their merits.

As such, Mr. Dasler is not going to address the time frame unless the court asserts that this prevents reconsideration on the merits or prevents a hearing.

14th Amendment Protection

When this court initially heard the Dasler's divorce case, it should have recognized Mr. Dasler's right to due process under the 14th Amendment. *Troxel v. Granville*, 530 U.S. 57 (2000) reaffirms that the 14th Amendment right to due process extends to parental rights, and makes numerous citations of Federal cases supporting this right.

> "The Federal Constitution permits a State to interfere with this right only to prevent harm or potential harm to the child"
>
> and
>
> "The Fourteenth Amendment's Due Process Clause has a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests," *Washington v. Glucksberg*, 521 U.S. 702, 720, including parents' fundamental right to make decisions concerning the care, custody, and control of their children, *see, e.g., Stanley v. Illinois*, 405 U.S. 645, 651. Pp.63-66."

There should be no doubt that Mr. Dasler's parental rights were protected by the 14th Amendment, however, this court chose not to apply that protection as is the custom in VT. The Vermont Supreme Court has upheld that the lower courts vast discretion and ignored the 14th Amendment rights.

Compelled Election Between Constitutional Rights

On 5/12/17 Mr. Dasler told Ms. Dasler he was leaving (not in controversy). After she repeatedly called

him and tracked him throughout the day, she then falsely accused Mr. Dasler of assault. That false claim shifted the entire landscape of the case and infringed upon his parental rights. Mr. Dasler was charged with assault and from that moment the only way to preserve both Mr. Dasler's 5th and 14th Amendment right would be to issue a temporary order on parental rights and stay any final order until the resolution of the criminal charge.

Failure to prioritize the criminal charge before the final hearing on parental rights forced Mr. Dasler to choose between his 5th and 14th Amendment right. Under Procedural Due Process Mr. Dasler has a right to be heard, but holding the final hearing before the criminal charge is resolved deprives Mr. Dasler of that opportunity.

There is voluminous case law indicating that free exercise of Constitutional Rights is violated when a party is forced to waive one Constitutional Right to exercise another.

For instance, *Allen v. Honolulu*, 39 F.3d 936 (9th Cir. 1994) finding the plaintiff "cannot be forced to sacrifice one constitutionally protected right solely because another is respected.

> *United States v. Aguirre*, 605 F.3d 351, 358 (6th Cir. 2010) where a "defendant has disclosed truthful information to demonstrate financial inability and obtain counsel under the Sixth Amendment, that information may not thereafter be admitted against him at trial on the issue of guilt.". Citing this Court's decision in Simmons, the Sixth Circuit held that admitting such information

at trial would erroneously "force a defendant to choose between his Sixth Amendment right to counsel and his Fifth Amendment right against self-incrimination."

The Third Circuit concurred in *United States v. Pavelko*, 992 F.2d 32, 34 (3d Cir. 1993) holding that a district court erred "when it admitted the testimony and the financial affidavit, and thus created a tension between [the defendant's] Fifth and Sixth Amendment rights. It in effect conditioned the free exercise of one constitutional right upon waiver of the other.". As the court explained, "the Supreme Court has held in a similar context that placing an accused in such a dilemma and creating this tension between the free exercise of rights is constitutional error." *Id.* (discussing Simmons, 390 U.S. at 377).

In *Greene v. Brigano*, 123 F.3d 917, 921 (6th Cir. 1997) the court found it is likewise impermissible to offer a defendant access to a free trial transcript for appeal only if he chooses to be represented by court-appointed appellate counsel. Citing Simmons, the Sixth Circuit held that imposing this condition would, "in effect, require[] an indigent defendant to surrender one constitutional right in order to exercise another"—*i.e.*, to "surrender his Sixth Amendment right to self-representation in order to exercise his Fourteenth Amendment right to the basic tools of adequate appellate review."

The issue of whether or not a person may be forced to sacrifice one Constitutional Right to claim another is settled law as is the question of whether or not Mr. Dasler's parental rights are protected by the 14th Amendment. Thus, this Court disregarded Mr. Dasler's constitutional rights when it entered a final determination without providing Mr. Dasler with the opportunity to present all of his evidence.

The common practice in VT is to use a temporary order as the framework for a final order, and Mr. Dasler's temporary restriction of parental rights all but guaranteed a final order against him the longer that temporary order is in effect. Even if there were some mechanism for Mr. Dasler to delay a final order the point becomes moot given VT precedent of favoring the accuser even if the accusations are proven to have "no factual basis" (*Knutsen v. Cegalis*, 2016 VT 2 No. 2015-133) and that the emotional trauma to the child was caused by the accuser indoctrinating/ brainwashing a young child to believe the false allegations. As long as VT does not recognize Mr. Dasler's 14th Amendment right a delay in the hearing simply guarantees that he loses regardless of the facts of the case.

Mr. Dasler' intent is to press the issue with the state of VT and, if need be, seek a Federal ruling requiring that the state recognize 14th Amendment protection of due process in divorce/custody decisions. Mr. Dasler feels that a federal review may be necessary to rectify a terrible flaw in the family court system.

Prior Bad Acts

This court states that "prior bad acts" as inadmissible. It is unclear why the court would make this

claim, however, these bad acts were before the criminal court in a pre-trial motion which Mr. Dasler's criminal counsel believed to be pertinent and admissible. The Court should consider Ms. Dasler's actions in creating the scenario in which she could falsely allege that abuse occurred in order to afford Mr. Dasler the full protection of the law.

In addition, there were times during the marriage in which Ms. Dasler exhibited suicidal and irrational behavior, which if considered by the Court, would have weighed heavily on its determination of her credibility. The acts of a 'reasonable person' must be viewed in light of Mr. Dasler's prior experience with this violent and unstable person who has threatened his life on multiple occasions.

Mr. Dasler could not testify regarding the specific events regarding 5/12/2017 due to his 5th amendment right. Once his criminal charge was resolved, he was able to submit evidence regarding the events of that day which again could have impacted the Court's view of her credibility.

The 'Shotgun Doctrine'

The broad reaching effect of Ms. Dasler's accusations and how her fraudulent accusations shaped the rest of the case can best be described by a familiar childhood analogy.

While the "Tender Years Doctrine" has supposedly been replaced by the "Best Interest of the Child", in actual practice the doctrine that supersedes all other practices in VT Family Court is best described as the "Shotgun Doctrine".

This is the best analogy to demonstrate how the divorce court functions and systematically discriminates against parents providing a very low bar of entry for a parent to subvert the system guaranteeing special treatment from the court for years to come.

"The Shotgun Doctrine" is so named for a practice familiar to pre-teen children for decades. When it's time to get in the car the first to yell "Shotgun!" gets the front seat. They may not be driving the car, but they get the best view, control of the radio, etc . . .

In VT Family Court the equivalent of calling "Shotgun" is to make any accusation that may temporarily interrupt the PCC/PRR of the other parent. Under this doctrine the accusation need not be reasonable, and in fact even if the accusation is proven to be "without factual basis" the temporary order justifies a final order (Again, citing Knutsen 2017 VT 62), thus securing that coveted control 'front seat' control over the judicial process.

How does this relate to family court and this case? When Mr. Dasler told Ms. Dasler he was leaving (an undisputed fact), Ms. Dasler sought leverage with an accusation. And bam! "Ha! she called it. Before he ever got out of the house!" Now Mr. Dasler is subjected to a parallel system of justice.

In this parallel system it doesn't actually matter whether or not Ms. Dasler's accusations are true or unequivocally false. The only question is how long she can obstruct Mr. Dasler's PCC.

The Knutsen case illustrates very well what happens when the accusations are proven to be "without factual basis" and fabricated by the accuser. What happens then? The accuser still prevails because

they've managed to keep the accused away from the child for years.

Under the "Shotgun Doctrine" there is absolutely no consequence to making an accusation as long as you call it first. In this case, for example, Ms. Dasler admits to initiating physical contact with Mr. Dasler, seeking physical control over him, and claims that only after that did he allegedly push her and leave. By her own testimony he had tried to escape her no less than 4 times in 24 hours. Does that matter to the court? No, because she called "Shotgun".

This same doctrine is repeated over and over again wherein Ms. Dasler made false accusations and sought to repeatedly to eliminate Mr. Dasler's parenting time. When presented with compelling contrary evidence, Ms. Dasler then changes her story to try to continue the campaign of interference with his parenting time.

If the parties were protected equally under the law, then Ms. Dasler's admitted stalking would be considered under § 665(9), which includes abuse as defined 15 V.S.A. § 1101 which includes stalking referring to 12 V.S.A. § 5131(6). Ms. Dasler wielded the RFA like a weapon forcing Mr. Dasler to move where she wanted him to be during visitation even resulting in a threat of incarceration for Mr. Dasler getting his inhaler out of the car, causing Ms. Dasler and her mother to surround his car and come after him. There's no excuse for these acts, and they were sustained for months without reasonable fear of harm or any rational justification. These acts also speak directly to the child. The record before the court is full of examples of this behavior.

This type of behavior has continued even after entry of the final divorce. For example, Ms. Dasler filed a Motion for Contempt in Oct 2018 presenting nothing that reasonably supports their accusation. Rather, it is intended to support a change in counseling which would deny Mr. Dasler equal access to the therapist.

The Court has not been willing to enforce the requirement for mediation before filing of a motion. Instead, the court has awarded Ms. Dasler's refusal to participate in mediation by addressing her motions without mediation.

With respect to Mr. Dasler's attempt to obtain a restraining order to prevent Ms. Dasler from continuing to engage in stalking behaviors, no decision on the merits has been made by any Court. The VT Court was not willing to entertain a hearing due to the fact that Mr. Dasler is a resident of NH. The NH court dismissed his request due to the fact that litigation was on-going in VT.

Federal Challenge

Ultimately, this motion is the last option with the state of VT to get a fair opportunity to be heard on his 14th Amendment protected parental rights. This court, and the Vermont Supreme Court may simply state that Mr. Dasler IS obligated to waive one of his two rights in VT Family Court and therefore his testimony and related evidence (which relied on his testimony) was available at the time of hearing. If that is the outcome, then Mr. Dasler will have satisfied the requirement to seek all possible remedies within the state prior to filing a § 1983 in Federal Court.

Parallel System of Justice

The fundamental question of "fraud upon the court" and whether or not the fraud has effectively targeted the machinery is necessarily a sliding scale. Family Court is a very different animal than other areas of law in that the court has broad discretion, and the bar is extremely low to derail the process and subject the accused to an alternate system of justice.

In this case a single self-serving accusation need only meet probable cause in an ex-parte hearing to initiate this alternative system of justice. It takes very little, and the effect sweeps broadly across the entire case and the dominos of litigation that follows. Based upon an accusation, that Mr. Dasler could not refute without impacting his 5th amendment rights, the Court made certain factual determinations. The evidence that Mr. Dasler can now present, including telephone records and other investigation in connection with the criminal case, would be able to refute the baseless allegation. Without being colored by the claim of "abuse" the Court may have entered vastly different orders.

Resolution

As illustrated here, the only remedy for this case is to vacate all family court orders that relied upon that fraud including the RFA and Final Divorce Order, and grant a new hearing wherein Mr. Dasler can present a defense without being forced to elect between 5th and 14th Amendment rights. It is the only remaining remedy within the state to allow Mr. Dasler a fair hearing on his 14th Amendment protected parental rights, and this relief falls squarely within

the provisions under Rule 60 and Fraud Upon the Court.

Also as illustrated here, the false allegation of abuse cannot be extracted individually because all the factors of this case were intertwined and fell like dominos in Ms. Dasler's favor, and a new hearing is warranted.

The fact that Mr. Dasler did not have an opportunity to present a case and consequently substantial evidence was excluded tainted the trial irreparably. There should be no need to adjudicate the matter in a hearing to recognize that granting the motion is the only way to resolve the violation of Mr. Dasler's Constitutional Rights.

Mr. Dasler wants an opportunity to recover the costs of litigation resulting from Ms. Dasler's numerous false accusations as well.

WHEREFORE, Mr. Dasler respectfully request that the court;

A) Grant Mr. Dasler's Motion to vacate the orders based upon fraud including the RFA and Final Divorce Orders or schedule a hearing on this motion

B) Schedule a new Final Divorce hearing

C) Award Mr. Dasler legal fees incurred as a result of litigation based upon Ms. Dasler's fraud.

Respectfully Submitted,

Timothy Dasler
4/14/20
Prepared with Assistance of NH Counsel

MOTION FOR RELIEF FROM JUDGEMENT (JANUARY 9, 2020)

STATE OF VERMONT SUPERIOR COURT
ORANGE UNIT FAMILY DIVISION

JENNIFER DASLER,

Plaintiff,

v.

TIMOTHY DASLER,

Defendant.

Docket No. 74-6-17 Oedm

NOW COMES Timothy Dasler, submitting the following Motion for Relief from Judgements based upon VT Rule 60 and Fraud Upon the Court.

Summary of Fraud

Mr. Dasler is seeking relief from previous orders that were based upon fraud perpetrated by Ms. Dasler and her attorneys. Relief may be granted both by VT Rule 60 and evidence of Fraud Upon the Court.

The most prevalent issue in Mr. and Ms. Dasler's divorce was Ms. Dasler's accusation of assault, which led to criminal charges, an RFA order, granting her temporary custody, restricting Mr. Dasler's PCC, and silencing Mr. Dasler on Ms. Dasler's history of abusing him. Mr. Dasler plead the 5th and in VT family court

hearings on the RFA, Temporary Custody, and Final Divorce hearings the court proceeded forcing Mr. Dasler to choose between his 5th and 14th amendment rights.

Ms. Dasler's fraudulent claims prevented Mr. Dasler from presenting his defense in the family court proceedings and the only recourse available in VT is relief under Rule 60 and Fraud Upon the Court upon showing that new evidence illustrates the fraud upon which prior orders were based.

Now that Mr. Dasler has plead No Contest to Disturbing the Peace he is free to testify about the events of 5/12/17 and provide context to evidence that supports his testimony. Additional evidence has become available in the investigation of the criminal accusations with additional evidence recovered from the marital home after the property distribution. This new evidence shows numerous fraudulent claims made by Ms. Dasler.

Mr. Dasler was also unable to present evidence of Ms. Dasler's other "bad acts" because it would require him to testify prior to his criminal charges being resolved. Ms. Dasler's other bad acts are illustrated through testimony and supporting evidence, and illustrate how Ms. Dasler has been abusive in similar ways in the past, has sought punitive litigation in response to criticism, and how Mr. Dasler has weathered these attacks with patience seeking a mental health solution rather than trying to control Ms. Dasler or have her arrested/charged for her crimes.

Ms. Dasler's attorneys have repeatedly defrauded the court resulting in findings that are supported only by the fraudulent claims of Ms. Dasler's counsel,

not any evidence in the case. Ms. Dasler's counsel's willingness to defraud the court also played into the court's finding that Ms. Dasler's filings and refusal of court ordered visitation were in "good faith".

The court's overall assessment of the credibility of the parties is also shaped by Ms. Dasler's successful effort to silence Mr. Dasler on key issues in the case and contributed to the court's findings of Ms. Dasler being primary caregiver and favoring her in the division of assets.

Having relied more on Ms. Dasler's version of events the court focused on Ms. Dasler's claims that Mr. Dasler was willfully unemployed and disregarded Mr. Dasler's sacrifice of other opportunities in his field to move to VT, which resulted in Ms. Dasler's income nearly tripling while Mr. Dasler's income has remained flat and the local area has few opportunities in his field.

Revealing the depth of Ms. Dasler's fraud fundamentally changes every disputed aspect of this case.

Case Summary

An important underlying issue in this case is the fact that Ms. Dasler and her parents were traumatized 20+ years ago when Ms. Dasler's cousins were kidnapped by their father in the midst of a divorce. Ms. Dasler and her parents have repeatedly made the unfounded claim that Mr. Dasler is a "flight risk" or has attempted to "abduct" the minor child in the past. The overwhelming panic and desperate attempts to prevent Mr. Dasler having visits with the child, the false allegations of abuse, stalking Mr. Dasler during visitation (lying in wait and following him

during court ordered visitation), and the stream of filings are all rooted in this fear, which has nothing to do with Mr. Dasler or his actions, however, it is an overwhelming motivator for Ms. Dasler. Her sworn statements confirm this family history and related fears.

It is undisputed that Mr. Dasler chose to sleep on the couch on 5/11/17 avoiding conflict with Ms. Dasler, and in the morning told her he was leaving. The testimony of both parties indicate Mr. Dasler attempted to avoid conflict with Ms. Dasler no less than 4 times in 24 hours leading up to Ms. Dasler's accusations of assault. Conversely, Ms. Dasler pursued Mr. Dasler and when she found him that evening she used physical force to exert her will over PCC for reasons that are entirely disproven based upon new evidence and supporting testimony.

Within hours of Mr. Dasler telling Ms. Dasler he was leaving on 5/12/17 she made a fraudulent accusation of abuse to secure custody. Once Ms. Dasler got Mr. Dasler arrested she filed for an RFA, which was granted while Mr. Dasler did not testify and plead the 5th. Ms. Dasler leveraged that RFA to restrict Mr. Dasler's contact with the child for 9 months. The bar for Ms. Dasler to silence Mr. Dasler was only probable cause, and all further proceedings would force Mr. Dasler to choose between 5th and 14th Amendment rights, effectively preventing him from defending in the family court cases resulting in orders based solely on Ms. Dasler's testimony on issues of abuse.

Ms. Dasler had the leverage to dictate terms in the 6/13/17 Mediation Agreement, which allowed Mr. Dasler only 4 hours/week of visitation but called for

"normalizing contact". Mr. Dasler agreed because the agreement said "The parties agree and acknowledge that they do not expect or contemplate that contact between Timothy and Tenley will continue on the schedule currently agreed herein, and that they will work to normalize that contact as this matter or any related matter progresses." Unfortunately the Final Divorce order called this stipulation "voluntary" and Ms. Dasler's 8 month campaign to further undermine contact below the minimum required under this agreement was considered to be in "good faith" in spite of the fact that the 170 pages of filings produced nothing to justify the obstruction. In most cases they did not seek to prevail on the issues by presenting any substantial detail or evidence.

Ms. Dasler filed another false allegation on 7/19/17 about 30 days after the 6/13/17 Mediation Agreement and suspended visitation without a court order. Details of this fraud will be illustrated below, but Attorney Levine's malicious motion to suspend visitation was in direct response to Mr. Dasler's reasonable request for makeup visitation required under the order. Her own emails indicate the direct cause and effect here, and the claim of an injury that Mr. Dasler "did not explain" are refuted by Ms. Dasler's own testimony. The fraudulent filing was not recognized as Judge Tomasi saw the initial filing and then passed the case to Judge Harris after rotation of judges prior to the temporary custody hearing. Judge Harris did not recognize this and called Ms. Dasler's filings in "good faith" in the final divorce order.

While Ms. Dasler accused Mr. Dasler of threatening/abusive messages the court did not find this to be supported by messages presented in evidence.

Instead it found Mr. Dasler was "slightly ginger" in communicating parenting issues and held that against him in determining PCC. Ms. Dasler's fraud successfully put Mr. Dasler in a double bind where he must tread lightly as she makes constant accusations and terms of the RFA, but treading too lightly still counted against him in the eyes of the court.

Ms. Dasler would file a total of 7 motions totaling over 170 pages in 9 months seeking to prevent "normalizing contact" as she had agreed. Meanwhile Attorney Levine continued to offer 50/50 contact if Mr. Dasler signed away PRR to Ms. Dasler. The message is clear, Attorney Levine will continue to present Ms. Dasler's false allegations until Mr. Dasler submits to her demands. The stark contrast between the 50/50 offer and the filings claiming Mr. Dasler is a "flight risk", has threatened Ms. Dasler, and that visitation is "not safe" and even eliminating FaceTime claiming it was harmful all show that both Attorney Levine and Ms. Dasler were willfully defrauding the court.

After the 2/16/18 Temporary PCC hearing the court ordered contact to be normalized as Ms. Dasler's motions failed to show any good cause to prevent it. Unfortunately, the mere act of obstruction of contact for 9 months counts every day in her favor regardless of whether or not it was justified, which is the very reason they continued the flood of accusations.

After the 2/23/18 Temporary PCC Order for 50/50 contact Ms. Dasler attempted to obstruct the first overnight visit by falsely accusing Mr. Dasler of child endangerment (police arrived, but rejected her claim). Attorney Levine filed a 3/4" thick stack of 3 motions on 2/28/18 seeking to obstruct the new order,

and hand wrote her request to have the motions considered on an Ex Parte basis, a request only submitted on the court's copy, not on the copies delivered to Mr. Dasler's counsel. These motions were denied by the court.

Ms. Dasler then fired Attorney Levine and hired Attorney Loftus. There was a 3-month lull of filings leading up to the Final Divorce Hearing as new counsel became familiar with the case and prepared for the hearing. Ms. Dasler dropped her objection to 50/50 contact, but at the time of hearing Mr. Dasler's criminal charges had not been resolved.

Judge Harris ignored Ms. Dasler's violations of the visitation orders and called her motions "good faith", and that 'normalizing contact' was "voluntary" under the order, thus every day she withheld contact was to her credit regardless of voracity of her claims or whether it was in violation of the previous order. This is further reflection that her fraudulent claim to be a victim of domestic abuse gave her special status allowing her to violate court orders with impunity.

The Final Divorce Order relied on 3 factors to award custody 1. Mr. Dasler was accused of assault 2. Mr. Dasler was "slightly ginger" in communicating parenting issues (because of the flood of accusations against him) 3. Ms. Dasler was primary caregiver, largely because of 9 months of sole custody following the assault accusation.

How New Evidence Changes the Case

Ms. Dasler's fraud persuaded the court to accept Ms. Dasler's claim to be the victim, however, Mr.

Dasler's testimony and evidence unavailable at time of hearings indicate:

1. Ms. Dasler consulted with an attorney before the alleged assault, then rather than seeking an RFA or police protection Ms. Dasler sought confrontation with Mr. Dasler (illustrated by cell phone data).

2. Ms. Dasler was on the phone continuously between the call with the attorney until calling Mr. Dasler, and there was only one call to him, which he answered. Her claim of being unable to reach Mr. Dasler is provably false (illustrated by cell phone data).

3. Ms. Dasler knew Mr. Dasler's route on the day of the alleged assault and checked for him at multiple locations on his route (illustrated by cell phone location data).

4. Ms. Dasler went to daycare after speaking with Mr. Dasler on 5/12/17 and checked on the minor child, but rather than pick up the child she left and intercepted Mr. Dasler at the marital home shortly after. Indicating she was not in fear for the child or herself. (supported by cell phone data and testimony)

5. Ms. Dasler's reason for engaging physical force to prevent PCC was also not based upon her later justifications of a 7PM bedtime or weather. The historical weather data doesn't support either forecast of, or actual rainfall. Numerous photos and videos withheld by Ms. Dasler after Mr. Dasler's arrest now show the child's bedtime routine consistently between 8PM–9PM and Ms. Dasler well aware of this. Thus, for her to use

that excuse to physically body block and restrain Mr. Dasler is not just untenable, but also provably false (photo/video evidence and testimony)

6. Ms. Dasler lied under oath about the 2013 events involving Ms. Dasler threatening or attempting to burn her parents' house down, running Mr. Dasler down with her car, threatening/attempting suicide, and whether she went to the hospital because police gave her the choice between the hospital or the barracks and forced evaluation (illustrated by text messages and police report).

7. Evidence recovered after the exchange of personal items (following the divorce) outline Ms. Dasler's response to being accused of bullying by a co-worker who quit rather than have Ms. Dasler as her manager. Ms. Dasler tried to build a sex discrimination suit as direct response to being reprimanded, which parities Ms. Dasler's accusation of abuse when Mr. Dasler tried to leave her. Showing similar bad acts.

8. Mr. Dasler has additional evidence of Ms. Dasler's long history of abusing him. Without his testimony about the events of alleged assault these could not be used to illustrate prior bad acts. Furthermore, the evidence of Ms. Dasler's mental health issues and abusive behavior could only hurt Mr. Dasler's case while he plead the 5th prior to the resolution of the criminal charge.

9. Ms. Dasler's call to Jim on 5/12/17 shows on the records as a 10-minute call. Jim has told Mr. Dasler's investigator that on that call he did not hear her say anything about being scared, or

about abuse. He only heard her talk about her concerns about a business loan. Jim's version of this call is only further supported by the fact that when Ms. Dasler ended that call Jim made no attempt to call police or Mr. or Ms. Dasler. Mr. Dasler's testimony and text messages also indicate the business loan was the root of Ms. Dasler's personal attacks that day, although, she denied a fight about a business loan in her 8/1/17 testimony. (supported by texts and testimony)

10. Mr. Dasler expressed his fears of Ms. Dasler trying to frame him for a crime as leverage in a divorce to counteract the mental health concerns. These text messages support Mr. Dasler's testimony of the events of that day, and were also unavailable without his testimony prior to resolution of the criminal charge.

With Mr. Dasler's testimony excluded from the RFA hearing, Temporary Custody Hearing, and Final Divorce Hearing, Ms. Dasler's fraudulent statements tainted all of these processes targeting the very machinery of the court by securing temporary custody and silencing Mr. Dasler about her mental health issues and acts of abuse.

At the time of separation Mr. Dasler had limited self-employment and was seeking full time work. He was unable to pay an attorney to defend himself. He was granted a public defender, who refused to investigate aspects of the case that Mr. Dasler felt were critical to his defense. Mr. Dasler hired a private attorney after securing full time employment and a personal loan, but after months that attorney had also not done the investigation Mr. Dasler felt was

critical. Finally in May 2018 he replaced that attorney with Attorney Sussman who did investigate the accusations, but the evidence was not available by the time of the June 2018 Final Divorce Hearing.

Attorney Sussman acquired Ms. Dasler's cell phone records and location data from 5/12/17, which refute much of her testimony about the events of that day. These records in conjunction with Mr. and Ms. Dasler's testimony illustrate Ms. Dasler setting up her accusations in advance of the meeting, stalking Mr. Dasler and forcing a confrontation in a private setting of her choosing, and going to daycare just before Mr. Dasler picked up the minor child, but choosing to wait until he had the child and force a conflict afterward.

The afternoon of 5/12/17(prior to accusations of assault) Ms. Dasler called the attorney who would sign her RFA paperwork 3 days later. The call was short, then she called a victim's advocate that doesn't service her area, who apparently referred her to the victim's advocate that does service her area. After speaking with the victim's advocate she called her mother and had a lengthy call while driving to Thetford where the minor child was at daycare. Her cell phone data indicate she remained in Thetford for about 15 minutes after calling Mr. Dasler, then her mother again, then heading to the marital home.

Mr. Dasler's testimony indicated he was on his way from Bradford VT to Thetford VT to pick up the child, he told Ms. Dasler this. He arrived to pick up the minor child within the 15 minute window that Ms. Dasler waited at the exit where she could observe Mr. Dasler coming and going.

Ms. Dasler's testified that when she called Mr. Dasler he refused to tell her where he was, then claimed she had to cry and beg before he told her he was "at Groton State Park", and that she could hear the minor child in the background. The court accepted this version of events over her earlier affidavit filed with the RFA claiming she "checked daycare" after the call with Mr. Dasler. The new cell phone evidence refutes the version of events accepted by the court.

The phone records are important because they support Mr. Dasler's testimony that while he was initially afraid to say where he was, fearing another confrontation, he did tell Ms. Dasler his route, which allowed her to track him to 2 locations before forcing the confrontation Mr. Dasler was avoiding. Mr. Dasler's route:

> 1st From Bradford to Daycare to pick up their child (where Ms. Dasler checked for him then followed him)
>
> 2nd To the marital home (where Ms. Dasler intercepted Mr. Dasler)
>
> 3rd To Groton State Park (Mr. Dasler never arrived because Ms. Dasler had him arrested, but his phone records show him calling to arrange a camp site)

The reason the difference is critical to this case is that the cell phone records indicate Ms. Dasler was aware of Mr. Dasler's route and checked for Mr. Dasler both at daycare and at the marital home. If Ms. Dasler was genuinely scared she could have picked up the child well before Mr. Dasler arrived at daycare, but she checked for the child and left her

there in favor of confronting Mr. Dasler in a private setting.

After picking up the minor child Mr. Dasler made a stop at the Post Mills gas station, which is just around a tight bend in the road and a car pulling off would easily be lost by someone following. While Mr. Dasler was stopped he saw Ms. Dasler drive past, which supports the cell data indicating Ms. Dasler waited near daycare, then followed him. She apparently lost track of Mr. Dasler when he made this stop and when she got home she called his friend.

Even after a consultation with both a victim's advocate and an attorney Ms. Dasler did not call the police or any court that could grant her an RFA. The indication here is that she was looking for more leverage and everything that she does from this point is to set up that leverage before Mr. Dasler can safely escape.

Ms. Dasler claims that she called Mr. Dasler's friend Jim to get help calming him down, however, Jim discussed the call with Mr. Dasler's investigator and says he did not hear anything about Ms. Dasler being scared. Cell records indicate a 10 minute call to Jim, and he heard Ms. Dasler talk only about her concerns about Mr. Dasler starting a business and his desire for a business loan to get started.

When Mr. Dasler arrived at the marital home Ms. Dasler ended the call and confronted Mr. Dasler. If she had genuinely told Jim that she was scared, then ended the call the minute Mr. Dasler came home it would be very odd for Jim not to have called Mr. Dasler, called Ms. Dasler back, or called the police,

however Jim made no effort to reach out after that call.

Ms. Dasler was questioned about the business loan in the RFA hearing, but immediately tried to shut down that argument claiming there was no argument about the business loan. Mr. Dasler's private texts sent to a friend prior to the arrival of police also confirm that the argument was about Ms. Dasler's concerns about a business loan, which only further support Jim's account of events and refutes Jen's testimony.

Without Mr. Dasler's testimony the events around the alleged assault could not be fairly adjudicated, and related evidence was of no value without his testimony, thus was unavailable at the time of hearing.

Mr. Dasler will swear under oath that when he arrived to the marital home on 5/12/17 Ms. Dasler was on the phone, then ended the call as he exited the vehicle. She confronted him, told him he should have left earlier in the day, and he could no longer take their daughter because she would be getting to bed late. Ms. Dasler then physically took the child and body blocked Mr. Dasler and physically pushed him repeatedly to prevent previously agreed upon contact. Ms. Dasler admits to body blocking and to putting her hands on him initiating physical contact to prevent PCC previously agreed upon and apply unwanted and unjustified restraint.

Photos and videos he was later able to recover from electronic devices support that the child's bedtime was not 7PM as Ms. Dasler claims, but many photos and videos show a normal bedtime of 8-9PM, which Ms. Dasler is well aware of. Never was the child in

pajamas or approaching a 7PM bedtime contemporary to the 5/12/17 event. The relevance here is that Ms. Dasler knows the confrontation wasn't about the time of day or the weather as she later claimed (neither forecast, nor historical weather data show rain). Ms. Dasler was confronting Mr. Dasler for the sole purpose of securing leverage by force a conflict, which she would later lie about to gain advantage in court. She leveraged visitation in the same manner to fuel hundreds of pages of accusations dismissed by the court.

Ms. Dasler pointed to the Safe Line call as though it was evidence that she was scared, but the stalking behavior and pattern of the day indicate that it was just a component of a plan in which she could start a confrontation, then no matter what occurred she could rètroactively point to that call as though it were evidence. Mr. Dasler need not cause any harm in this plan, just either remain silent or admit to holding her back as she attacked him. Either way she can rely on that call to give the appearance that she was scared, and lie about the rest. However, now the depth of deception is illustrated by clear and convincing evidence.

Mr. Dasler will testify that after Ms. Dasler took the child down to the park he went to the park in hopes of still taking the child camping. Ms. Dasler was increasingly verbally and physically aggressive. She pushed and hit Mr. Dasler, and at one point as he tried to engage playfully with their child while keeling down Ms. Dasler struck Mr. Dasler with her knee pushing him back and he caught himself on his hands as he fell back nearly prone to the ground.

Mr Dasler continued to try and reason with Ms. Dasler telling her that he needs a supportive partner

during his transition in employment and Ms. Dasler screamed repeatedly "YOU CHOSE THIS!!!" Then she put the minor child in a child swing and turned on Mr. Dasler screaming "I'LL KILL YOU BEFORE I LET YOU TAKE HER!!!" and approached him rapidly swinging towards his testicles. Mr. Dasler's hands were up in a defensive position because Ms. Dasler's long history of physical abuse of Mr. Dasler prepares him for attacks in the upper torso and face with hitting, slapping, pushing, and spitting. All her attacks earlier this day had also been in the chest and shoulder area. With his hands up Mr. Dasler could not reach to block Ms. Dasler's low, upward swing for his testicles, but braced against Ms. Dasler's deltoids (the large muscle in the shoulder above the bicep). Ms. Dasler continued to try an push towards Mr. Dasler, and he could not control her arms, only keep her away as his arms were longer.

Mr. Dasler used his training as a wrestler seeking to stop her forward momentum by forcing her to change her footing. This allowed him to reduce the force she exerted against him rather than increasing force against her. He moved her sideways a few inches just until she lifted one foot, which stops her forward advance. When her toe touched the ground again she was not in danger of falling, but still could not advance for a split second, so Mr. Dasler used that moment to break away and put distance between them.

Mr. Dasler used the absolute minimum force possible to prevent Ms. Dasler from seriously injuring him, caused no injury, and took the first opportunity to leave and call the police. No evidence has been provided that indicate any injury in the area where Mr. Dasler made contact with Ms. Dasler. She has

never provided any photographic evidence to support her claim of a developing bruise, however, there is significant parity in her 7/19/17 motion claiming a black eye. This claim is thoroughly debunked by evidence Mr. Dasler presented at the Temporary Custody Hearing indicating she fabricated the "black eye" when she filed 2 weeks later because Mr. Dasler's photos from 4 days after the child's slip and fall show no evidence of injury at all. In conglomerate, the evidence is clear that Ms. Dasler has repeatedly sought to defraud the court and each incident taken individually is ignored by the court. The "black eye" accusation was made late enough that nobody could evaluate any injury. Daycare, a mandatory reporter, has no record of any such bruise or black eye. There is no doctor's report. Only a photo taken immediately after the child fell in which Ms. Dasler attempts to present a shadow over the eye as though it is a bruise minutes after the child fell. Had Mr. Dasler not had photos of his visitation the following week and a recording of the exchange Ms. Dasler may well have prevailed in another false allegation seeking to eliminate PCC.

The further evidence of Ms. Dasler's prior bad acts also illustrate why Mr. Dasler had to take great care and why he was accustomed to dealing with her mental health crises with compassion and care much like addressing a child having a tantrum. This routine is familiar to Mr. Dasler as indicated by the police report and text messages of the 2013 incident where Ms. Dasler threatened to burn her parents' house down, then ran Mr. Dasler down with her car in a suicidal episode.

The police report and text messages indicate Mr. Dasler taking an incident in which both their lives

were threatened, and seeking medical care for her rather than physically restraining her or asking to have her arrested for running him down. The parity with this particular incident is not to be overlooked as Ms. Dasler also later testified that every aspect of the incident where she or her parents would be at fault was either "fiction" or Mr. Dasler's fault.

Mr. Dasler's texts for help during the 2013 event indicate that after she ran him down he remained on her hood for 20 minutes attempting to talk her down, remaining in harm's way as she threatened harm to both of them. Even so, he did not seek to have her punished, only treated for her mental health issue.

Mr. Dasler's texts to a friend on 5/12/17 indicate she was aggressive, cite the "YOU CHOSE THIS!" language from Ms. Dasler, her aggression, the prevalence of the business loan argument (denied in Ms. Dasler's testimony), and the fact that he was afraid Ms. Dasler was simply looking for leverage in a custody dispute because of her past mental health issues.

Because of Ms. Dasler's assault accusation Mr. Dasler's evidence of her past mental health issues and acts of abuse could not be used as other "bad acts" without waiving his 5th amendment right. The only time Ms. Dasler's mental health was addressed in court was when Attorney Loftus grilled Mr. Dasler on why he sent her an email about her mental health issues. Mr. Dasler testified briefly about some of the incidents including Ms. Dasler running him down with her car after she fought with her parents and became suicidal.

Being unprepared to present this in the family case Mr. Dasler did not have the police report on

hand, and was unable to obtain it until after the Final Divorce Hearing. Ms. Dasler testified to Mr. Dasler's claims being "fiction", claimed she never threatened to burn her parents' house down, claimed Mr. Dasler forced her to go to the hospital, not the police, that her parents had not lied about her mother having a heart attack, she hadn't threatened suicide, and that she was going to see her mom at the hospital when Mr. Dasler blocked her car. She insinuated that Mr. Dasler's emotion when testifying was staged as he has only ever been that emotional after the death of his mother.

The police report refutes almost every statement Ms. Dasler made about the 2013 event. It shows that police responded to a call of a suicidal female and the husband on the hood as she was threatening suicide. Without Mr. Dasler present, Ms. Dasler told police that she was considering suicide by driving into a tree because of the fight with her parents. She told police her father refused to tell her where the hospital was, she thought her mother had a heart attack, and it was her fault which led her to be suicidal. She told them she had been fighting with her parents for days, and a friend was trying to find out her mother's condition. Police gave her the option of either going to the hospital in the ambulance or to the barracks to be evaluated. Ms. Dasler only agreed to go in the ambulance after Mr. Dasler came in having received a message that Ms. Dasler's mother had only had an anxiety attack and would be released from the hospital that day.

The impact on this case is significant. While the court credited Mr. Dasler's version of events about the 2013 incident it is clear from the police report

that Ms. Dasler either is delusional about events and blames Mr. Dasler for all the issues for which she and her parents are at fault in this scenario or Ms. Dasler willfully lied to the court. In either case it is clear that there is a major mental health concern that is central to the issues of Ms. Dasler and her parents' flood of unfounded accusations against Mr. Dasler and Ms. Dasler's attempt to use PCC to abuse Mr. Dasler and the minor child.

Mr. Dasler's texts from the events surrounding this suicide threat indicate how he tried (along with a friend that was with Ms. Dasler's parents) to moderate the damage and show an ongoing concern of suicidal actions over the span of days. The fight that landed both Ms. Dasler and her mother in the hospital stems entirely from Ms. Dasler being upset that her parents didn't want to attend her cousin's 30th birthday party in Boston.

If Mr. Dasler tried to present Ms. Dasler's mental health issues and her past abusive acts without waiving his 5th amendment right to remain silent prior to his trial on the assault charges it would more likely have damaged his case, and couldn't illustrate prior bad acts without his version of events on 5/12/17. Mr. Dasler's texts to a friend on 5/12/17 indicate this concern prior to police ever arriving on the scene.

Ms. Dasler stipulated in the 6/13/17 Mediation Agreement that Mr. Dasler must get an Anger Management Screening, but counsel had an ongoing discussion about a Family Evaluation so Mr. Dasler was not "evaluated in a vacuum". Both Attorney Levine and Attorney Loftus tried to present this as Mr. Dasler refusing the screening rather than offering

greater scrutiny, and when Mr. Dasler's former attorney, Attorney Dux, was called as a witness in the Final Divorce hearing a year later (while Mr. Dasler was represented by Attorney Steadman) she clarified that there was no effort to avoid a screening on Mr. Dasler's part. More importantly, though, it shows Mr. Dasler offering greater scrutiny, which could have damaged him in a criminal case if he had anything to fear. Conversely, Ms. Dasler refused to take part in any Family Evaluation.

Ms. Dasler further refused to allow the minor child's therapist Ms. Washburn to communicate directly with her therapist while Mr. Dasler signed releases so his therapist could work directly with the child's therapist. Ms. Dasler has refused Ms. Washburn's attempts to get both parents in a meeting with their own personal therapists and Ms. Washburn to work through the families issues.

Ms. Dasler's financial records also indicate that she has paid her therapist from sources other than the credit and checking accounts made available in discovery. All other medical payments are made from these accounts, but it appears that Ms. Dasler had been hiding the identity of her mental health providers since long before separation. Another indication that she has been masking her mental health issues.

There are many other acts of abuse, which Mr. Dasler would present as prior bad acts that shape the way he made decisions on the day of 5/12/17, but again without his testimony it was of no use in the hearings that followed. Incidents include Ms. Dasler regularly physically and verbally attacking Mr. Dasler. The nature of the attacks which shape how he would try and protect himself. Previous false allegations

documented in email. Ms. Dasler using contact with their child as a weapon to force compliance over issues unrelated to fears of abuse (documented in texts/emails). Ms. Dasler being accused of bullying at work and responding by seeking legal action based upon sexual discrimination and harassment claims. This is illustrated in text messages, Jen's hand-written notes (received by Mr. Dasler in one of his work journals from the marital home after Final Divorce), and documentation of Ms. Dasler's contact with attorneys about a month after being accused of bullying.

On the whole, Ms. Dasler's numerous false representations left Mr. Dasler unable to effectively present a case in defense of the allegations without choosing between 14th amendment right affirmed by the SCOTUS in *Troxell v. Granville* to include parental rights, or his 5th Amendment Right related to the assault allegation presented in both the family and criminal cases.

Ms. Dasler's false statements were heavily relied upon by the court, and significantly impacted the court's weighing of credibility in choosing to side with her on other claims that Mr. Dasler wasn't working enough or providing enough care for the child. As a man accused of assault, and unable to speak on the issue, a case that appears to be "I didn't do it, my wife is just crazy" or illustrating her history of mental health issues and violence simply damage the case without the evidence unavailable at the time of the hearing. Rather than 'prior bad acts', without Mr. Dasler's testimony these would simply appear to the court as an attack on a 'victim'.

The court also relied on Attorney Levine, as an officer of the court, who falsely claimed in one of three 2/28/18 motions that Mr. Dasler testified that he recorded Ms. Dasler after being ordered not to. This claim is not supported by the record, however, the court's findings state that it occurred simply because Attorney Levine falsely claimed it to be true.

Attorney Levine also falsely represented in the 7/19/17 motion (without signed affidavit) the child was returned from a visit with bruises and scratches that Mr. Dasler "did not explain" and used that as the basis to suspend visitation without a court order. 2 weeks later at the RFA Hearing Mr. Dasler remained silent pending his trial, and Ms. Dasler's testimony deviated significantly from the claims of the 7/19/17 motion after learning that Mr. Dasler had a recording of that child exchange.

Ms. Dasler has not heard that recording, but testified that Mr. Dasler told her the child slipped and fell in the bubble exhibit because he found the child's provided footwear to be inadequate (water shoes are all that was provided). It is clear that Ms. Dasler knew that the injury was explained, the photos don't support her claim of a "bruise" or "black eye". Mr. Dasler's recording also proves that Ms. Dasler's claim the he did not answer her questions is unequivocally false. The only question she asked was "did you change her diaper" and every piece of information he gave about the slip and fall was volunteered by him without prompting.

Even if Ms. Dasler lied to Attorney Levine prior to the 7/19/17 filing it is clear that Attorney Levine knew by the hearing 2 weeks later that the claim was false but she did not seek to correct it with the

court. Furthermore, the entire nature of that filing is clearly punitive as Attorney Levine's email presented in the Temporary Custody hearing shows she filed that motion directly in response to Mr. Dasler asking for makeup visitation as were most of the motions targeting PCC. Most of these motions fall within 2 business days of Mr. Dasler asking for makeup time.

By the time of the 2/16/18 Temporary PCC Hearing Ms. Dasler had refused every form of contact ordered after the Mediation Agreement. She admits to cancelling 8 of 70 visits without makeup time, she suspended all FaceTime contact, and rather than working to "normalize contact" she continued to work to undermine contact for 8 months. The 8/17/18 Final Order cites Ms. Dasler's exhibit 8 claiming she made "reasonable makeup time", which is an error. There are 8 cancelled visits and 7 visits that were moved. The 7 moved visit are not makeup time for the 8 cancelled visits and the exhibit makes that clear. This error combined with the court stating "normalizing contact" was "voluntary" and ignoring the refusal of FaceTime contact, the court whitewashes 8 months of repeated violations. It seems clear that the court is crediting Ms. Dasler as a genuine victim of domestic abuse and giving her the benefit of the doubt, allowing her to break these orders, however, the new evidence should substantially change that calculus illustrating instead a mother who is mentally unstable and will make false allegations at part of an extortion campaign to prevent Mr. Dasler from defending himself.

Ms. Dasler secretly recorded a FaceTime conversation on 5/30/17 prior to the 6/13/17 Mediation Agreement and subsequent court order. She then used the

5/30/17 recording in her 7/19/17 Motion to Suspend Visitation. In the 8/1/17 hearing Ms. Dasler claimed, among other things, that Mr. Dasler's calm tone in the recording was an implicit threat. This should not be any part of the basis to justify suspending visitation on 7/19/17 and again Attorney Levine is well aware of this. It further indicates that Ms. Dasler entered into the 6/13/17 agreement with the full intention of undermining that very agreement if Mr. Dasler did not sign away his parental rights as she demanded. She can offer visitation, but force him to see her to make exchanges. In doing so she can make more accusations to extend the extortion campaign.

Every significant aspect of the 7/19/17 Motion to Suspend Visitation accusations can be disproven, but in the subsequent 8/1/17 RFA hearing Mr. Dasler could not testify without waiving his 5th Amendment right, so the court didn't hear his recorded evidence (requiring him to authenticate) and it continued to give Ms. Dasler the benefit of the doubt even as the most significant aspects of the allegations were disproven. She never sought to prevail by presenting any evidence of the allegedly insulting, harassing, humiliating, or threatening communications from Mr. Dasler, although her counsel submitted into evidence more than 60 pages of emails/texts from Mr. Dasler over the course of litigation. None were provided from this period between the 6/13/17 Mediation Agreement and 7/19/17 Motion to Suspend Visitation, or other filings through 2/28/18 with similar claims of threatening or abusive communication.

The 7/19/17 Motion states "Ms. Dasler does not believe it is safe for either her or the minor child to continue to have contact under the circumstances"

but fails to establish any reasonable basis for this. By the time of the hearing 2 weeks later Ms. Dasler was aware that Mr. Dasler had recordings of child exchanges, which she previously was not aware of. Mr. Dasler's recordings can absolutely disprove any danger in these exchanges. Although Ms. Dasler had presented a secret recording to the Tomasi court in the 8/1/17 hearing she began complaining to the Harris court 4 months later (after judges rotated) that Mr. Dasler was recording exchanges. The court ordered Mr. Dasler to stop recording exchanges and held it against him in the final order.

Mr. Dasler's recording is the only thing that prevented Ms. Dasler from prevailing with her lie about the child's "black eye" in the attempt to suspend contact and get the child on an RFA. After this, Ms. Dasler's accusations became so vague it was impossible to provide a recording to disprove a single instance because no dates or specifics were provided. On 11/11/17, however, Ms. Dasler saw Mr. Dasler out shopping and attempted a very specific accusation of "stalking", which she presented to officers in both Hartford, VT and Lebanon, NH. Because Mr. Dasler does not feel safe anywhere so long as Ms. Dasler continues to attempt to frame him for crimes (and her parents often corroborate the lies) he collected evidence even as he was out shopping. Presumably Ms. Dasler thought Mr. Dasler would be vulnerable and not have recordings or evidence of him running errands, and only protected himself during child exchanges because by this time she had stopped making detailed, specific accusations about exchanges.

When Officer Dourado investigated Ms. Dasler's accusation on 11/11/17 Mr. Dasler had evidence to

disprove it and provided Officer Dourado with enough information for him to close the case without charges. He subsequently contacted Ms. Dasler after investigating. Although Ms. Dasler continued to immediately file panicky motions about things as trivial as Mr. Dasler allegedly walking down the stairs without holding the minor child's hand, she did not file a motion mentioning the stalking accusation until a month after, and it was only a foot note in the motion. Her affidavit also omitted the most serious aspects of her accusations, which seems to be an indication that she learned from the officer that the accusation could be disproven. The difference between Ms. Dasler's statement in an affidavit (1 month later) and the 2 police reports about the incident are notable.

The 2/28/18 Motions include the police reports from both Hartford, VT and Lebanon, NH and both reports mention Mr. Dasler allegedly going to Walgreens (across the street from the Kohls where Ms. Dasler was shopping). Her initial accusation to Officer Dourado claimed Mr. Dasler waited at Walgreens, then followed her on the interstate. Although both reports mention Walgreens, this is notably absent from Ms. Dasler's affidavit, which seems to be an indication that she now knows Mr. Dasler has evidence to disprove her accusations and instead relies on the reports of the officers to make these false claims rather than sign an affidavit and be disproven in court.

The upshot of all of this is that every significant accusation where Ms. Dasler provided any detail since 5/12/17 was disproven, yet she continued to get the benefit of the doubt while the court penalized Mr. Dasler for simply recording out of self-defense. Her

accusations fall into two basic categories, those where she provided detail and was subsequently disproven and those where she was so vague that no defense is really possible, such as claiming that at some point on an undetermined date something "threatening/ abusive" was said without indicating what was actually said.

Attorney Levine also continued to offer 50/50 contact to Mr. Dasler's counsel at the time throughout her involvement in the case. So her 7 motions seeking to interfere with Mr. Dasler's PCC (170 pages of filings) all occurred while she offered 50/50 PCC if Mr. Dasler signed away his PRR. She knew, as did Ms. Dasler, throughout the process that Mr. Dasler was not "abusive", or a "flight risk", and that visitation was not "dangerous" to the child or Ms. Dasler. It was simply extortion and a fraud that targets the very machinery of the court.

WHEREFORE: Mr. Dasler requests that the court:

A) Schedule a hearing on Relief from Judgement and Fraud Upon the Court

B) Provide relief from orders based upon the fraud of Ms. Dasler and her attorneys.

C) Require Ms. Dasler to pay Mr. Dasler's attorney fees for the current filing and Mr. Dasler's defense against her campaign of false allegations over the last 2 years.

Respectfully Submitted

/s/ Timothy Dasler
1/19/20