

App. 1

APPENDIX A

Order
Court of Appeals of the State of New York
May 10, 2023

State of New York Court of Appeals

BEFORE: HON. MICHAEL J. GARCIA, Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

Respondent,

MARC FISHMAN,

Appellant.

**ORDER
DISMISSING
LEAVE**

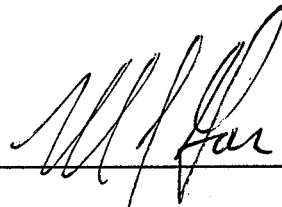
Ind. No. 6293/2018

Appellant having applied for leave to appeal to this Court pursuant to Criminal Procedure Law (CPL) § 460.20 from an order in the above-captioned case;*

UPON the papers filed and due deliberation, it is

ORDERED that the application is dismissed because the order sought to be appealed from is not appealable under CPL § 450.90(1).

Dated: May 16, 2023



Associate Judge

*Description of Order: Order of the Appellate Division, Second Department, dated February 17, 2023, dismissing an appeal on the Court's own motion from an order of Supreme Court, Westchester County, dated June 9, 2022, on the ground that the order is not appealable by right or permission.

APPENDIX B

Order

New York State Supreme Court, Appellate Division, Second Department
February 17, 2023

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

M287434
AFA/

MARK C. DILLON, J.P.
JOSEPH J. MALTESE
LARA J. GENOVESI
JANICE A. TAYLOR, JJ.

2022-05328

The People, etc., respondent,
v Marc Fishman, appellant.

DECISION & ORDER ON MOTION

(Ind. No. 6293/2018)

Appeal from an order of the Supreme Court, Westchester County, dated June 9, 2022.
Motion by the appellant, inter alia, to stay enforcement of the order, pending hearing and determination of the appeal.

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

ORDERED that on the Court's own motion, the appeal is dismissed on the ground that the order is not appealable as of right or by permission (*see* CPL 450.10, 450.15); and it is further,

ORDERED that the motion is denied as academic.

DILLON, J.P., MALTESE, GENOVESI and TAYLOR, JJ., concur.

ENTER:



Maria T. Fasulo
Clerk of the Court

February 17, 2023

PEOPLE v FISHMAN, MARC

APPENDIX C

Temporary Order of Protection
County Court of State of New York, County of Westchester
June 9, 2022

ORI No.:
Order No.:
NYSID No.: 14527226Q
CJTN No.

App. 6

Criminal Form 1 1/2014

At a Term of the Supreme Court, County of Westchester, at the
Courthouse, 111 Dr. Martin Luther King, Jr. Boulevard, White Plains,
State of New York.

ORDER OF PROTECTION
Family Offenses - C.P.L. 530.12

Present: HONORABLE DAVID S. ZUCKERMAN
ACTING SUPREME COURT JUSTICE

[] Youthful Offender (check if applicable)
Part: DZ
Docket No. 18-06293
Charges: Criminal Contempt 2^o

The People of the State of New York

MARC FISHMAN,

Defendant.

(Check box): [] Ex Parte
[X] Defendant Present in Court

Date of Birth: 08/21/1972

NOTICE: YOUR FAILURE TO OBEY THIS ORDER MAY SUBJECT YOU TO MANDATORY ARREST AND CRIMINAL PROSECUTION WHICH MAY RESULT IN YOUR INCARCERATION FOR UP TO SEVEN YEARS FOR CONTEMPT OF COURT. IF THIS IS A TEMPORARY ORDER OF PROTECTION AND YOU FAIL TO APPEAR IN COURT WHEN YOU ARE REQUIRED TO DO SO, THIS ORDER MAY BE EXTENDED IN YOUR ABSENCE AND THEN CONTINUES IN EFFECT UNTIL A NEW DATE IS SET BY THE COURT.

THIS ORDER OF PROTECTION WILL REMAIN IN EFFECT EVEN IF THE PROTECTED PARTY HAS, OR CONSENTS TO HAVE, CONTACT OR COMMUNICATION WITH THE PARTY AGAINST WHOM THE ORDER IS ISSUED. THIS ORDER OF PROTECTION CAN ONLY BE MODIFIED OR TERMINATED BY THE COURT. THE PROTECTED PARTY CANNOT BE HELD TO VIOLATE THIS ORDER NOR BE ARRESTED FOR VIOLATING THIS ORDER.

[X] ORDER OF PROTECTION - Whereas defendant has been convicted of: CRIMINAL CONTEMPT IN THE SECOND DEGREE.

And the Court having made a determination in accordance with section 530.12 of the Criminal Procedure Law,
IT IS HEREBY ORDERED that the above-named defendant observe the following conditions of behavior:
[Check applicable paragraphs and subparagraphs]:

- [01] [X] Stay away from [A] [X] [name[s] of protected person[s] or witness(es)]: JENNIFER SOLOMON (DOB: 12/24/1974), JONAH FISHMAN (DOB: 11/20/2005), JOANNA FISHMAN (DOB: 02/09/2004), AIDEN FISHMAN (DOB: 07/19/2008) AND SKYE FISHMAN (DOB: 07/19/2008 and/or from the
[B] [X] home of JENNIFER SOLOMON (DOB: 12/24/1974), JONAH FISHMAN (DOB: 11/20/2005), JOANNA FISHMAN (DOB: 02/09/2004), AIDEN FISHMAN (DOB: 07/19/2008) AND SKYE FISHMAN (DOB: 07/19/2008),
[C] [X] school of JENNIFER SOLOMON (DOB: 12/24/1974), JONAH FISHMAN (DOB: 11/20/2005), JOANNA FISHMAN (DOB: 02/09/2004), AIDEN FISHMAN (DOB: 07/19/2008) AND SKYE FISHMAN (DOB: 07/19/2008),
[D] [X] business of JENNIFER SOLOMON (DOB: 12/24/1974), JONAH FISHMAN (DOB: 11/20/2005), JOANNA FISHMAN (DOB: 02/09/2004), AIDEN FISHMAN (DOB: 07/19/2008) AND SKYE FISHMAN (DOB: 07/19/2008),
[E] [X] place of employment of JENNIFER SOLOMON (DOB: 12/24/1974), JONAH FISHMAN (DOB: 11/20/2005), JOANNA FISHMAN (DOB: 02/09/2004), AIDEN FISHMAN (DOB: 07/19/2008) AND SKYE FISHMAN (DOB: 07/19/2008),
[F] [X] other JENNIFER SOLOMON (DOB: 12/24/1974), JONAH FISHMAN (DOB: 11/20/2005), JOANNA FISHMAN (DOB: 02/09/2004), AIDEN FISHMAN (DOB: 07/19/2008) AND SKYE FISHMAN (DOB: 07/19/2008),
-----[X] except for contact, communication or access permitted by an existing or subsequent court order issued by a family or supreme court in a custody, visitation or child abuse or neglect proceeding.
- [14] [X] Refrain from communication or any other contact, directly or indirectly through third parties, by mail, telephone, e-mail, voice mail or other electronic or any other means with: JENNIFER SOLOMON (DOB: 12/24/1974), JONAH FISHMAN (DOB: 11/20/2005), JOANNA FISHMAN (DOB: 02/09/2004), AIDEN FISHMAN (DOB: 07/19/2008) AND SKYE FISHMAN (DOB: 07/19/2008).
-----[X] except for contact, communication or access permitted by an existing or subsequent court order issued by a family or supreme court in a custody, visitation or child abuse or neglect proceeding pertaining to child-in-common).
- [17] [X] Refrain from remotely controlling, monitoring or otherwise interfering with any electronic device or other object affecting the home, vehicle or property of: JENNIFER SOLOMON (DOB: 12/24/1974), JONAH FISHMAN (DOB: 11/20/2005), JOANNA FISHMAN (DOB: 02/09/2004), AIDEN FISHMAN (DOB: 07/19/2008) AND SKYE FISHMAN (DOB: 07/19/2008).
- [02] [X] Refrain from assault, stalking, harassment, aggravated harassment, menacing, reckless endangerment, strangulation, criminal obstruction of breathing or circulation, disorderly conduct, criminal mischief, sexual abuse, sexual misconduct, forcible touching, intimidation, threats, identity theft, grand larceny, coercion or any criminal offense against: JENNIFER SOLOMON (DOB: 12/24/1974), JONAH FISHMAN (DOB: 11/20/2005), JOANNA FISHMAN (DOB: 02/09/2004), AIDEN FISHMAN (DOB: 07/19/2008) AND SKYE FISHMAN (DOB: 07/19/2008);
- [15] [X] Refrain from intentionally injuring or killing without justification the following companion animal(s) pet(s) and, if available, name: ANY AND ALL;

[11] [] Permit [specify individual]: _____ to enter the residence at [specify]: _____ during [specify date/time]: _____ with [specify law enforcement agency, if any]: _____ to remove personal belongings not in issue in litigation [specify items]: _____;

[04] [] Refrain from [indicate acts]: _____ that create an unreasonable risk to the health, safety, or welfare of [specify child(ren), family or household member]: _____

[05] [] Permit [specify individual(s)]: _____ entitled by a court order or separation or other written agreement, to visit with [specify child(ren)]: _____ during the following periods of time [specify]: _____, under the following terms and conditions [specify]: _____

[12] [X] Surrender any and all handguns, pistols, revolvers, rifles, shotguns and other firearms owned or possessed, including, but not limited to, the following ANY and do not obtain any further guns or other firearms. Such surrender shall take place immediately, but in no event later than [specify date/time]: IMMEDIATELY AND NO LATER THAN FOUR HOURS AFTER THE ISSUANCE OF THIS ORDER TO THE ARRESTING AGENCY OR THE WESTCHESTER COUNTY POLICE. Note: If this paragraph is checked, a copy of this form must be sent to: New York State Police, Pistol Permit Section, State Campus Building #22, 1220 Washington Avenue, Albany, New York 12226-2252.


[] [] Promptly return or transfer the following identification documents [specify]: _____ to the party protected by this Order NOT LATER THAN [specify date]: _____ in the following manner [specify manner or mode of return or transfer]: _____
[Check box(es) if applicable]: [] Such documents shall be made available for use as evidence in this judicial proceeding.
[] (Jointly owned documents or documents in both parties' names only): the following document(s) may be used as necessary for legitimate use by the defendant [specify]: _____

[99] [X] Specify other conditions defendant must observe for the purposes of protection: NO CONTACT DIRECTLY, INDIRECTLY OR THROUGH THIRD PARTIES.

IT IS FURTHER ORDERED that the above-named Defendant's license to carry, possess, repair, sell or otherwise dispose of a firearm or firearms, if any, pursuant to Penal Law §400.00, is hereby [13A] [] suspended or [13B] [X] revoked (note: final order only), and/or [13C] [X] the Defendant shall remain ineligible to receive a firearm license during the period of this order. (Check all applicable boxes).

IT IS FURTHER ORDERED that this order of protection shall remain in force until and including April 29, 2023, less the defendant's jail time credit, which is to be computed by the applicable department of correction.

DATED: JUNE 9, 2022


HONORABLE DAVID S. ZUCKERMAN
ACTING JUSTICE OF THE SUPREME COURT

[] Order personally served on Defendant in Court _____

(Defendant's signature)

[X] Order to be served by other means [specify]: via defendant's email address at rentdriver@gmail.com and/or at counsel
[] Warrant issued for Defendant.
[] ADDITIONAL SERVICE INFORMATION: [specify]: Caner Demirayak at caner@canerlawoffice.co

The Criminal Procedure Law provides that presentation of a copy of this order of protection to any police officer or peace officer acting pursuant to his or her special duties shall authorize and in some situations may require, such officer to arrest a defendant who is alleged to have violated its terms and to bring him or her before the Court to face penalties authorized by law.

Federal law requires that this order be honored and enforced by state and tribal courts, including courts of a state, the District of Columbia, a commonwealth, territory or possession of the United States, if the person against whom the order is sought is an intimate partner of the protected party and has been or will be afforded reasonable notice and opportunity to be heard in accordance with state law sufficient to protect that person's rights (18 U.S.C. §§2265, 2266).

It is a federal crime to:

- cross state lines to violate this order or to stalk, harass or commit domestic violence against an intimate partner or family member;
- buy, possess or transfer a handgun, rifle, shotgun or other firearm or ammunition while this Order remains in effect (Note: there is a limited exception for military or law enforcement officers but only while they are on duty); and
- buy, possess or transfer a handgun, rifle, shotgun or other firearm or ammunition after a conviction of a domestic violence-related crime involving the use or attempted use of physical force or a deadly weapon against an intimate partner or family member, even after this Order has expired (18 U.S.C. §§922(g)(8), 922(g)(9), 2261, 2261A, 2262).

APPENDIX D

Order Denying Application for Reconsideration
Court of Appeals of the State of New York
July 25, 2023

State of New York Court of Appeals

BEFORE: HON. MICHAEL J. GARCIA, Associate Judge

THE PEOPLE OF THE STATE OF NEW YORK,

- against -

Respondent,

MARC FISHMAN,

Appellant.

**ORDER
DENYING
RECONSIDERATION**

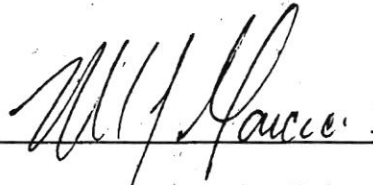
Ind. No. 6293/2018

Appellant having moved for reconsideration in the above-captioned case of an
application for leave to appeal dismissed by order dated May 10, 2023;

UPON the papers filed and due deliberation, it is

ORDERED that the motion for reconsideration is denied.

Dated: July 25, 2023



Associate Judge

APPENDIX E

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Section 1 of the Fourteenth Amendment to the United States Constitution provides as follows:

No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law[.]

2. Section 530.12 of the New York Criminal Procedure law provides as follows:

(1) When a criminal action is pending involving a complaint charging any crime or violation between...former spouses...the court...may issue a temporary order of protection...provided that the court shall make a determination, and shall state such determination in a written decision or on the record...provided further, however, that failure to make such a determination shall not affect the validity of such temporary order of protection...In making such determination, the court shall consider, but shall not be limited to consideration of, whether the temporary order of protection is likely to achieve its purpose in the absence of such a condition, conduct subject to prior orders of protection, prior incidents of abuse, past or present injury, threats, drug or alcohol abuse, and access to weapons;

* * *

App. 11

(3) The court may issue a temporary order of protection ex parte upon the filing of an accusatory instrument and for good cause shown.

* * *

(5) Upon sentencing on a conviction...the court may...enter an order of protection. Where a temporary order of protection was issued, the court shall state on the record the reasons for issuing or not issuing an order of protection.

* * *

(6) An order of protection or temporary order of protection...shall bear in a conspicuous manner the term “order of protection” or “temporary order of protection” as the case may be...

* * *

(8) In any proceeding in which an order of protection or temporary order of protection...has been issued...the clerk of the court shall issue to the complainant and defendant and defense counsel and to any other person affected by the order a copy of the order of protection or temporary order of protection...

* * *

(15) Any motion to vacate or modify an order of protection or temporary order of protection shall be on notice to the non-moving party.

App. 12

3. Section 510.20 of the New York Criminal Procedure Law provides as follows:

(1) Upon any occasion when a court has issued a securing order with respect to a principal and he principal is confined in the custody of the sheriff as a result of the securing order...the principal may make an application for recognizance, release under non-monetary conditions, bail, a reduction of bail, or imposition of non-monetary conditions in conjunction with bail or a reduction of bail.

* * *

(2) (b) Upon such application, the principal must be accorded an opportunity to be heard, present evidence and to contend that an order of recognizance, release under non-monetary conditions or, where authorized, bail, a reduction of bail, or imposition of non-monetary conditions...must or should issue, that the court should release the principal on the principal's own recognizance or under non-monetary conditions rather than fix bail or where bail has been imposed under this title, and that if bail is authorized and fixed it should be in suggested amount and form.

APPENDIX F

Letter from Petitioner Attorney to Trial Court dated July 5, 2022



300 Cadman Plaza W, 12 FL
Brooklyn, NY 11201
Fax: 646-679-2527

718-344-6048
caner@canerlawoffice.com

Via EDDS, E-mail and U.S. Mail

July 5, 2022

Hon. David S. Zuckerman, AJSC
Westchester County Court
111 Dr. Martin Luther King, Jr. Blvd
White Plains, NY 10601

**Re: 00191- People v Marc Fishman
6293-2018**

Dear Judge Zuckerman:

As you may be aware, this office represents defendant Marc Fishman in the criminal docket referenced above. I write to you regarding the June 9, 2022 final order of protection that was issued in the absence of myself or my client's presence.

I first received notice of this purported June 9, 2022 order of protection on July 5, 2022. Although the order states it was served on me via e-mail, I never received an e-mail. Additionally, this order of protection is procedurally improper as the defendant has not yet been "convicted." *See People v Garris*, 159 Misc. 2d 586 (N.Y. Dist. Ct. 1993). However, the text of the order of protection makes it seem he has been convicted of criminal contempt in the second degree. Yet, no mention of the conviction of attempted is made.

Additionally, the order of protection states that "defendant present in court." However, I was not present in court, and my client certainly was not. As such, this was nothing more than an *ex parte* order.

The issuance of this order of protection is now being used against defendant to prevent his ability to participate in 504 meetings with his children's school. In fact, the first notice defendant had of this order was when the school district advised defendant could not participate as a result of your June 9, 2022 order on July 5, 2022.

I respectfully request the court vacate this illegally issued order of protection and also request permission to file a motion to vacate or modify the order of protection. Your honor has previously issued an order preventing any motions to be filed by defendant or his counsel.

Very truly yours,


Caner Demirayak, Esq.

CC: Westchester County District Attorney

APPENDIX G

Letter from Clerk of Court of Westchester County dated December 1, 2022



App. 16
STATE OF NEW YORK
UNIFIED COURT SYSTEM
NINTH JUDICIAL DISTRICT
WESTCHESTER COUNTY SUPREME AND COUNTY COURT
RICHARD J. DARONCO WESTCHESTER COUNTY COURTHOUSE
111 DR. MARTIN LUTHER KING, JR. BLVD
WHITE PLAINS, NEW YORK 10601
CIVIL TEL: (914) 824-5300 FAX: (914) 824-5873
CRIMINAL TEL: (914) 824-5400 FAX: (914) 824-5065

HON. ANNE E. MINIHAN, A.J.S.C.
District Administrative Judge
Ninth Judicial District

JAMES M. McALLISTER
District Executive

LISA D'ANGELO
Chief Clerk

RONDA BROWN
Deputy Chief Clerk

JAMES SCULLY
Deputy Chief Clerk

December 1, 2022

Via email and regular mail

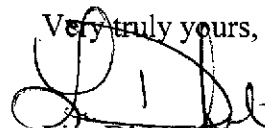
Caner Demirayak, Esq.
300 Cadman Plaza West
One Pierrepont Plaza, 12th floor
Brooklyn, NY 11201

Re: The People of the State of New York against Marc Fishman
18-06293

Dear Mr. Demirayak:

The court record for the above proceeding reflects that on June 9, 2022, Judge David S. Zuckeran, issued an Order of Protection with an expiration date of April 29, 2023. This letter confirms that there was no court proceeding held on this date and no transcript can be provided.

Very truly yours,


Lisa D'Angelo
Chief Clerk

Enclosures
cc: Marc Fishman via email (w/enclosures)

APPENDIX H

E-mails of July 5, 2022 Between Attorney for School District for
Petitioner's Son and Petitioner

App. 18

Caner Demirayak <caner@canerlawoffice.com>

Re: federal rights to attend a disabled special meeting (iep) for a disabled father 2022/Jonah Fishman son of Marc Fishman

marc fishman <rentdriver@gmail.com>

Tue, Jul 5, 2022 at 3:36 PM

To: Thomas Scapoli <tscapoli@ingermansmith.com>, Caner Demirayak <caner@canerlawoffice.com>, Michele O'Bryan <mobryan@nredlearn.org>, "De Godoy, Yulima (DHR)" <yulima.degodoy@dhr.ny.gov>, "Scott, Yonette (DHR)" <yonette.scott@dhr.ny.gov>, "Fenstermaker, Linda (DHR)" <linda.fenstermaker@dhr.ny.gov>, "Herrion, John P (DHR)" <john.herrion@dhr.ny.gov>, Jeffrer Oestericher Usdof Supervisor Southern District <jeffrey.oestericher@usdoj.gov>, "Schuller, Megan (CRT)" <megan.schuller@usdoj.gov>
Cc: Isabel Bolivar <isabel_bolivar2001@yahoo.com>

Dear Thomas:

Neither my attorney or myself have ever received the attached document.

Was not present in court June 9th. Nor was I told of a court appearance that day.

Never seen a marked up handwritten date on june 9th in black marker that does not match judges signature.

My signature is not on the document.

Was never sentenced as the da filed reply motion to dismiss one charge 11/12/21

Do not believe this document is authentic.

Who specifically sent to you? Please forward their cover letter or email to me.

Zuckerman never sentenced me in the case that is referenced on this order.

If a federal iep or section 504 meeting takes place that i am not invited to, it violates federal law and new york human rights laws. If your client new rochelle schools has a meeting without including me, Will have no choice but to amend my lawsuit 19-cv-00265 to include the school district and file a nys human rights complaint against New rochelle schools. Do not know why I was not invited to the iep and 504 meeting from 2019 to present for Joanna skye and jonah. Appears to be retaliation for my lawsuit against New rochelle and Westchester county for disability discrimination. Before the federal lawsuit in 2019 , received regular invites and report cards

That stopped after September 2019 after judge roman refused to dismiss my case.

Denying a disabled father access to education records and participating in a federal meeting violates the ada. Section 504 of the rehab act and nys human rights laws prohibit exclusion of the disabled.

Please include me and stop discriminating. I care about my kids and want to advocate for their federal rights to ada accommodations.

Please send me the records you promised. arrange call with Joanna's guidance counselor to discuss the 504 meetings and include me in the iep and 504 meetings in future. Will have no choice but to notify federal judge roman if you exclude me illegally again.

Thank you.

Marc Fishnan
Disabled Dad

C: nys human rights commission
Usdoj civil rights unit
Caner Demuriyak, esq.
New rochelle special ed

On Tue, Jul 5, 2022, 10:57 AM Thomas Scapoli <tscapoli@ingermansmith.com> wrote:

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Mr. Fishman:

Ms. Solomon's attorney just sent this order of protection to me. It is the attorney's position that this order of protection prevents you from participating in the CSE meeting because you may not communicate with Ms. Solomon by electronic means.

Was this discussed in court last week? Will your participation in the CSE subject you to arrest for violating the order of protection?

If you have any questions, please feel free to contact me.

Thomas Scapoli, Esq.



550 Mamaroneck Avenue, Suite 209

Harrison, New York 10528

914-777-1134 (phone)

914-777-1955 (fax)

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2 attachments



image001.png
17K

App. 20



image001.png
17K

APPENDIX I

Order of Protection, April 28, 2023 and E-mail



Caner Demirayak <caner@canerlawoffice.com>

Marc Fishmn

Ivy Ozer <iozer@nycourts.gov>

Fri, May 5, 2023 at 10:57 AM

To: Caner Demirayak <caner@canerlawoffice.com>

Cc: Victoria Salumn <vsalumn@nycourts.gov>

Mr. Demirayak:

Mr. Fishman's matter was transferred to Judge Capeci by the Supervising Judge of the criminal court for the limited purpose of extending the existing Order of Protection.

We have not been informed whether his case will be assigned to her going forward.

Ivy Ozer, Esq.

Principal Law Clerk to

Hon. Susan M. Capeci, A.J.S.C.

Westchester Supreme and County Courts

Direct (914) 824-5578

Chambers (914) 824-5857

Fax (212) 401-9117

From: Victoria Salumn <vsalumn@nycourts.gov>

Sent: Friday, May 5, 2023 8:18 AM

To: Ivy Ozer <iozer@nycourts.gov>

Subject: FW: Marc Fishmn

From: Caner Demirayak <caner@canerlawoffice.com>

Sent: Friday, May 5, 2023 6:26 AM

To: Victoria Salumn <vsalumn@nycourts.gov>

Subject: Re: Marc Fishmn

Thank you. Has this case been reassigned to Judge Capeci?

On Mon, May 1, 2023 at 8:22 AM Victoria Salumn <vsalumn@nycourts.gov> wrote:

Good morning,

Attached please find extend Temporary Order of Protection issued for the above mentioned defendant.

App. 23

Please forward same to your client.

Thank you,

Victoria Salumn

Senior Court Clerk to the Hon. Susan M. Capeci, A.J.S.C.

DV/IDVC Part

111 Dr. Martin Luther King, Jr. Blvd.

White Plains, NY 10601

914-824-5770

--

Caner Demirayak, Esq.

The Law Office of Caner Demirayak, Esq.

300 Cadman Plaza West

One Pierrepont Plaza, 12th Floor

Brooklyn, New York 11201

1-718-344-6048 (tel)

1-646-679-2527 (fax)

Please be CAREFUL when clicking links or opening attachments from external senders.

ORI No: NY059015J

Order No: 2022-000446

NYSID No: 14527226Q

CJTN No:

PRESENT: Honorable David S. Zuckerman

PEOPLE OF THE STATE OF NEW YORK

- against -

MARC FISHMAN,
Defendant

DOB: 08/21/1972

At a term of the Westchester County Supreme Court, County of Westchester, at the
Courthouse at 111 Dr. Martin Luther King, Jr. Blvd., White Plains, NY 10601, State of New
York

Susan
CapecciORDER OF PROTECTION
Family Offenses - C.P.L. 530.12☐ Youthful Offender (check if applicable)

Part: IAS

Case No. 06293M-2018

Defendant Present in Court

SCR-70088-18

NOTICE: YOUR FAILURE TO OBEY THIS ORDER MAY SUBJECT YOU TO MANDATORY ARREST AND CRIMINAL PROSECUTION WHICH MAY RESULT IN YOUR INCARCERATION FOR UP TO SEVEN YEARS FOR CONTEMPT OF COURT. IF THIS IS A TEMPORARY ORDER OF PROTECTION AND YOU FAIL TO APPEAR IN COURT WHEN YOU ARE REQUIRED TO DO SO, THIS ORDER MAY BE EXTENDED IN YOUR ABSENCE AND CONTINUE IN EFFECT UNTIL A NEW DATE SET BY THE COURT.

THIS ORDER OF PROTECTION WILL REMAIN IN EFFECT EVEN IF THE PROTECTED PARTY HAS, OR CONSENTS TO HAVE, CONTACT OR COMMUNICATION WITH THE PARTY AGAINST WHOM THE ORDER IS ISSUED. THIS ORDER OF PROTECTION CAN ONLY BE MODIFIED OR TERMINATED BY THE COURT. THE PROTECTED PARTY CANNOT BE HELD TO VIOLATE THIS ORDER NOR BE ARRESTED FOR VIOLATING THIS ORDER.

☒ TEMPORARY ORDER OF PROTECTION - Whereas good cause has been shown for the issuance of a temporary order of protection

☒ ORDER OF PROTECTION - Whereas defendant has been convicted of [specify crime or violation]:

PL 215.50 03 AM Crim Contempt-2nd: Disobey Crt, 1 count(s) of A Misd

And the Court having made a determination in accordance with section 530.12 of the Criminal Procedure Law,

IT IS HEREBY ORDERED that the above-named defendant MARC FISHMAN (DOB: 08/21/1972) observe the following conditions of behavior:

- [01] Stay away from [A] JOANNA FISHMAN (DOB: 02/09/2004), AIDEN FISHMAN (DOB: 07/09/2008), SKYE FISHMAN (DOB: 07/19/2008), JONAH FISHMAN (DOB: 11/20/2005) and JENNIFER SOLOMON (DOB: 12/24/1974) except for contact, communication or access permitted by a subsequent order issued by a family or supreme court in a custody visitation or child abuse or neglect proceeding;
- [B] the home of JOANNA FISHMAN (DOB: 02/09/2004), AIDEN FISHMAN (DOB: 07/09/2008), SKYE FISHMAN (DOB: 07/19/2008), JONAH FISHMAN (DOB: 11/20/2005) and JENNIFER SOLOMON (DOB: 12/24/1974) except for contact, communication or access permitted by a subsequent order issued by a family or supreme court in a custody visitation or child abuse or neglect proceeding;
- [C] the school of JOANNA FISHMAN (DOB: 02/09/2004), AIDEN FISHMAN (DOB: 07/09/2008), SKYE FISHMAN (DOB: 07/19/2008), JONAH FISHMAN (DOB: 11/20/2005) and JENNIFER SOLOMON (DOB: 12/24/1974) except for contact, communication or access permitted by a subsequent order issued by a family or supreme court in a custody visitation or child abuse or neglect proceeding;
- [D] the business of JOANNA FISHMAN (DOB: 02/09/2004), AIDEN FISHMAN (DOB: 07/09/2008), SKYE FISHMAN (DOB: 07/19/2008), JONAH FISHMAN (DOB: 11/20/2005) and JENNIFER SOLOMON (DOB: 12/24/1974) except for contact, communication or access permitted by a subsequent order issued by a family or supreme court in a custody visitation or child abuse or neglect proceeding;
- [E] the place of employment of JOANNA FISHMAN (DOB: 02/09/2004), AIDEN FISHMAN (DOB: 07/09/2008), SKYE FISHMAN (DOB: 07/19/2008), JONAH FISHMAN (DOB: 11/20/2005) and JENNIFER SOLOMON (DOB: 12/24/1974) except for contact, communication or access permitted by a subsequent order issued by a family or supreme court in a custody visitation or child abuse or neglect proceeding;
- [14] Refrain from communication or any other contact by mail, telephone, e-mail, voice-mail or other electronic or any other means with JOANNA FISHMAN (DOB: 02/09/2004), AIDEN FISHMAN (DOB: 07/09/2008), SKYE FISHMAN (DOB: 07/19/2008), JONAH FISHMAN (DOB: 11/20/2005) and JENNIFER SOLOMON (DOB: 12/24/1974) except for contact, communication or access permitted by a subsequent order issued by a family or supreme court in a custody visitation or child abuse or neglect proceeding;
- [17] Refrain from remotely controlling, monitoring or otherwise interfering with any electronic device or other object affecting the home, vehicle or property of AIDEN FISHMAN (DOB: 07/09/2008) by connection through any means, including, but not limited to, the internet, Bluetooth, a wired or wireless network, or other wireless technology.
- [17] Refrain from remotely controlling, monitoring or otherwise interfering with any electronic device or other object affecting the home, vehicle or property of JENNIFER SOLOMON (DOB: 12/24/1974) by connection through any means, including, but not limited to, the internet, Bluetooth, a wired or wireless network, or other wireless technology.
- [17] Refrain from remotely controlling, monitoring or otherwise interfering with any electronic device or other object affecting the home, vehicle or property of JOANNA FISHMAN (DOB: 02/09/2004) by connection through any means, including, but not limited to, the internet, Bluetooth, a wired or wireless network, or other wireless technology.
- [17] Refrain from remotely controlling, monitoring or otherwise interfering with any electronic device or other object affecting the home, vehicle or property of JONAH FISHMAN (DOB: 11/20/2005) by connection through any means, including, but not limited to, the internet, Bluetooth, a wired or wireless network, or other wireless technology.
- [17] Refrain from remotely controlling, monitoring or otherwise interfering with any electronic device or other object affecting the home, vehicle or property of SKYE FISHMAN (DOB: 07/19/2008) by connection through any means, including, but not limited to, the internet, Bluetooth, a wired or wireless network, or other wireless technology.
- [02] Refrain from assault, stalking, harassment, aggravated harassment, menacing, reckless endangerment, strangulation, criminal obstruction of breathing or circulation, disorderly conduct, criminal mischief, sexual abuse, sexual misconduct, forcible touching, intimidation, threats, identity theft, grand larceny, coercion, unlawful dissemination or publication of intimate image(s) or any criminal offense against JOANNA FISHMAN (DOB: 02/09/2004), AIDEN FISHMAN (DOB: 07/09/2008), SKYE FISHMAN (DOB: 07/19/2008), JONAH FISHMAN (DOB: 11/20/2005) and JENNIFER SOLOMON (DOB: 12/24/1974);
- [15] Refrain from intentionally injuring or killing without justification the following companion animal(s) (pet(s)) ANY AND ALL;
- [12] Surrender any and all handguns, pistols, revolvers, rifles, shotguns and other firearms owned or possessed, including, but not limited to, the following: ANY AND ALL and do not obtain any further guns or other firearms. Such surrender shall take place immediately, but in no event later than IMMEDIATELY at AND NO LATER THAN FOUR HOURS AFTER THE ISSUANCE OF THIS ORDER TO THE ARRESTING AGENCY OR THE WESTCHESTER COUNTY POLICE;
- [99] Observe such other conditions as are necessary to further the purposes of protection: NO CONTACT DIRECTLY, INDIRECTLY OR THROUGH THIRD PARTIES;

IT IS FURTHER ORDERED that the above-named Defendant's license to carry, possess, repair, sell or otherwise dispose of a firearm or firearms, if any, pursuant to Penal Law §400.00, is hereby [13B] revoked, and [13C] the Defendant shall remain ineligible to receive a firearm license during the period of this order.

IT IS FURTHER ORDERED that this order of protection shall remain in force until and including ~~04/29/2023~~ **4/25/24**

DATED: ~~06/09/2022~~ **4/28/23**

☒ Defendant advised in Court of issuance and contents of Order.

☐ Order to be served by other means [specify]: _____

☒ Warrant issued for Defendant

☒ Order personally served on Defendant in Court

(Defendant's signature)

☐ ADDITIONAL SERVICE INFORMATION [specify]: _____

The Criminal Procedure Law provides that presentation of a copy of this order of protection to any police officer or peace officer acting pursuant to his or her special duties shall authorize and in some situations may require, such officer to arrest a defendant who is alleged to have violated its terms and to bring him or her before the Court to face penalties authorized by law.

Federal law requires that this order be honored and enforced by state and tribal courts, including courts of a state, the District of Columbia, a commonwealth, territory or possession of the United States, if the person against whom the order is sought is an intimate partner of the protected party and has been or will be afforded reasonable notice and opportunity to be heard in accordance with state law sufficient to protect that person's rights (18 USC §§2265, 2266).

It is a federal crime to:

- cross state lines to violate this order or to stalk, harass or commit domestic violence against an intimate partner or family member;
- buy, possess or transfer a handgun, rifle, shotgun or other firearm or ammunition while this Order remains in effect (Note: there is a limited exception for military or law enforcement officers but only while they are on duty); and
- buy, possess or transfer a handgun, rifle, shotgun or other firearm or ammunition after a conviction of a domestic violence-related crime involving the use or attempted use of physical force or a deadly weapon against an intimate partner or family member, even after this Order has expired. (18 U.S.C. 922(g)(8), §§922(g)(9), 2261, 2261A, 2262).



Honorable David S. Zuckerman

Hon. Susan Capece

APPENDIX J

Excerpt of Order, County Court of the State of New York, County of Westchester
Barring any Future Motions Without Prior Leave of Court, December 1, 2021

for the most part, Defendant's motions have been completely devoid of merit. Consequently, each of the six motions have been summarily denied.

It is notable that, many years ago, due to Defendant repeatedly filing Petitions and/or motions which had no merit, Westchester County Family Court issued an Order precluding him from filing any such papers without prior permission of the court. Until now, this court did not take such drastic action. After entertaining Defendant's sixth meritless CPL §330.30 motion, however, with the concomitant almost two year delay in his sentencing, the court now specifically holds that Defendant has previously filed, in this and other matters, applications that are without merit as a tactic to gain advantage, whether delay or otherwise. Therefore, the court directs that Defendant is barred from filing any future motions in this matter without prior leave of the court.

Based upon the foregoing, it is hereby

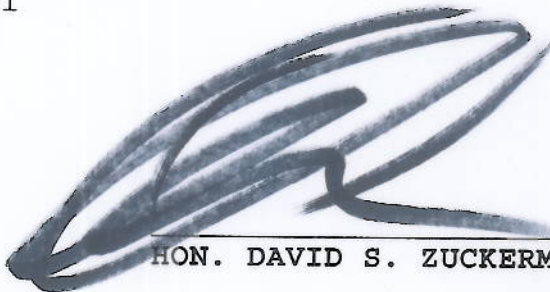
ORDERED, that Defendant's motion is summarily denied; and it is further

ORDERED, that Defendant is barred from filing any future motions in this matter without prior leave of the court; and it is further

ORDERED, that, as the court directed during previous proceedings, Defendant and all counsel must physically appear in this court on December 6, 2021, at 9:30 am, for sentencing.

The foregoing shall constitute the Decision and Order of the Court.

Dated: White Plains, New York
December 1, 2021

A large, stylized handwritten signature in dark ink, appearing to be 'D. S. Zuckerman', written over a horizontal line.

HON. DAVID S. ZUCKERMAN, A.J.S.C.

TO:
HON. MIRIAM E. ROCAH
District Attorney, Westchester County
111 Dr. Martin Luther King Jr. Blvd.
White Plains, New York 10601
BY: Joyce V. Miller, Esq.
Assistant District Attorney

CANER DEMIRAYAK, JR. ESQ.
Attorney for Defendant
300 Cadman Plaza West, 12th Floor
Brooklyn, NY 11201