

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 08-114

Complainant: No. 1335210739A

Judge: No. 1335210739B

ORDER

The commission reviewed the complaint filed in this matter as well as the recordings of the hearings, and found no ethical misconduct, bias, or discourtesy on the part of the judge. Therefore, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: September 10, 2008.

FOR THE COMMISSION

 /s\ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on September 10, 2008.

This order may not be used as a basis for disqualification of a judge.

April 22, 2008

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MAY 07 2008

Re: Miscarriage of Justice --

Your Honor:

My name is _____ and I am a party in the above referenced case. On _____ I was present in front of The Honorable _____ and it was nothing short of unprofessional.

First of all I present all necessary documents to more than prove my case as to who the child would be better off in the matter of custody in the form of frequent physician's visits every time the child is returned to me in addition to several signed and notarized statements documenting same. More times than not when I get my son back he is ill in one fashion or the other.

When the Hearing first started, Judge _____ started off stating that "she was bothered by the fact that my wife hadn't seen the child since _____. If the Hearing lasted an hour, she looked at, listened to and/or addressed me 15 minutes of it. It was more like she had her personal/female/maternal demeanor presiding over the Hearing versus her professional fair obligated judicial demeanor. She stated she hadn't read anything we present but everything she said relative to the case were things that my wife had presented, such as the _____ date, so I knew that was a lie. Actually she hadn't seen him since _____ when I picked him up and he was ill AGAIN.

I attempted to retain temporary custody of him through the Court prior to my decision to just keep him but I was denied and I personally feel that since Judge _____ denied it and I did it anyway, (as I was advised by legal counsel and the police that I could since there was no Order in place), that she was insulted in some way. It's not about insulting her or her feelings; it's about what's in the best interest of my child. At the end of the day when she goes home to her perfect family, the well being of my child is not on her mind and it's too late for oops or I made a mistake after the fact in the event some severe or fatal harm should come to him.

We were advised to put the Court and the other party on notice should we be presenting witnesses. My mother-in-law was present and not listed as a witness yet she CONTINUALLY made loud outbursts. I'm no attorney but my mother is a paralegal in addition to the fact that I watch many judge shows on television and I know that should have been Contempt of Court. Please check the minutes of the Hearing and if correctly transcribed you will see the many outbursts that were made.

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It got so bad at one point that the judge told her that only my wife and myself were supposed to be talking and if she had anything she wanted to say to say it to her daughter and then she could say it. That's not PROPER procedure. If she wasn't listed as a witness she had nothing to say in addition to the fact that her conduct was in contempt!

There was an issue of having my son's daycare changed to one on the west side of town as both parents live west now and the daycare he is in doesn't appear to be up to par as evidence by the fact that he came home bruised once, with a head fungus once, and after sending him back well he returns sick again so I don't know if it's from being around sickly children that are allowed to be at the in-home daycare or something the mother is failing to do. My wife agreed then suddenly, another loud outburst from her mother, "NO!". She likes the location because it's around the corner from her house but my concern is his health and safety and the ability to get to him quick in the event of an adverse situation. I wasn't even listed as an emergency contact, nor did I have any information about the site as far as location, phone number, provider's name, etc.; facts which were presented during the hearing. My wife stated she had her mother listed because she could get there quicker. The judge stated that the father should be listed and it didn't matter if the grandmother could get there faster. That was the one and only thing she said in my favor. She also ordered my wife to add my name by the following Monday and to present me with the daycare information. As of the initial date of this writing, which was _____, I had not received the information and as of the date of this writing I still have not received it. I was ordered to surrender the child immediately after the hearing and I did same but she has failed to follow the judge's order. Is that contempt also? I believe so.

The divorce was not granted and instead we were ordered to another mediation and given a new court date. For one, mediation did not and will not work as it is not a very cordial situation between us at this point and neither is changing their mindset. Secondly, there's no reason for it as there was enough information presented to make a fair, honest, professional decision on _____ and grant the divorce. Judge _____ said, "She didn't have enough information and didn't want to hear anything from the 'past'". There was more than enough information and if she doesn't want to hear anything from the past which is what makes the case as far as evidence and exhibits then what else does she need?

My wife and her family may have money and many connections, but the one thing I have is my integrity and although it can't be proven, it's my feeling that possibly they or someone they know talked to the judge and swayed her to favor my wife. When you go to court you go prepared. I was prepared, I presented my case, which was a good one yet I am told there's not enough, and the situation is prolonged?! My wife has gone on with life and lives with her new boyfriend. Due to my spiritual convictions I can't even date until I'm legally divorced so why prolong the situation. Nothing will be solved or resolved during the next mediation and it was unfair and uncalled for to schedule it.

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Since the judge ordered the every other week situation to commence again, my son has returned sick EACH time AGAIN. I even have a note from the doctor this time, copy enclosed, stating his frequency in visits every time he returns to me. When I got him back on he was ill and I had to schedule an appointment for him resulting in more antibiotics and when he returned on he was feverish, congested, had diarrhea and a runny nose. I self medicated him yet he didn't get better so I was in the emergency room with him the next day. MAKES NO SENSE. He has had so many treatments of antibiotics in his little system that if not already immune to them he soon will be. Regarding the head fungus he acquired while in her care, I had it completely gone by the time I released him to her on the night before he was to come back to me, my wife phoned and asked if I had the box the prescribed cream came in as she needed the prescription number to call in for a refill as the fungus had returned. I asked why should would wait until the day before he was to come back to advise me of same and/or to attempt to get the medication to treat it. How did it come back? Is he around someone who has it and it's active and/or untreated? I don't know, but I do know that she pays more attention to her life and relationship then she does the well being of our son!

I am asking at this time that the case be handled by someone other than Judge a decision made based upon the facts presented the initial court date in addition to the new enclosed information. I am aware of the filing of a blank pleading to ask to have the judge changed but I don't feel that it's fair that I should have to go through that. Someone in a higher position can rule on the case and put an end to this now. Since there is more than likely a long lasting professional, possibly personal, rapport with the judges in the system; by copy of this letter I will put other judicial individuals on notice of the situation in hopes that someone investigates and does something, preferably the right thing. I was going to attempt to ask for a temporary custody order again in view of the two new illness situations but I know Judge will just deny them again. It hurts my heart to see my son sick all the time, inactive, not eating, etc., and it's not fair that I don't get to enjoy my time with him when I have him. I spend my week nursing him, send him to her well, and then spend my time nursing him again. Addition to that fact, sometimes the illness is so bad that my mother and myself get ill too and that's not fair. My wife made the statement in court, "when he's with you he's just around you, your mother and her husband that's why he doesn't get sick; when he's with me and my family it's more people." That statement in itself says to me that he's around sickly people or exposed to things that make and keep him sick.

Now I know from personal experience of dating her for several years that her mother's house is the party house. There's always company, family and friends, and on most weekends there's a house full with people drinking, smoking, etc. That's a lot of people, a lot of activity and a lot of foreign germs from people who have been in contact with many other people. I'm not saying that to badmouth my wife, I'm just stating facts as they relate to my son.

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I'm not asking for child support from her just custody of my son. If it's law that it is ordered then so be it. I also would like to change my parenting plan to indicate that she can have him two nights a week and one over night the other week. I'm not trying to keep her out his life but until he gets of an age where he can better and more care and look out for himself, the best scenario would be with me. My mother has gone through and completed the necessary classes for a daycare provider and she keeps him while I work. Please help me to stop the injustice done to my son as a result of Judge personal-based ruling!!!

Respectfully Submitted,