

State of Arizona
COMMISSION ON JUDICIAL CONDUCT

Disposition of Complaint 10-181

Complainant: No. 1398910477A

Judge: No. 1398910477B

ORDER

The complainant alleged that a superior court judge issued incorrect decisions regarding custody and attorney fees. There being no allegations of a pattern of legal error or intentional disregard of the law, judicial decisions are within the legal discretion of the judge and outside the jurisdiction of the commission. The commission is not a court and cannot change judicial rulings. Accordingly, the complaint is dismissed pursuant to Rules 16(a) and 23.

Dated: September 15, 2010

FOR THE COMMISSION

/s/ Keith Stott
Executive Director

Copies of this order were mailed to the complainant and the judge on September 15, 2010.

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

2010-181

State of Arizona
 Commission on Judicial Conduct
 1501 W. Washington Street, Suite 229
 Phoenix, Arizona 85007

To whom it may concern,

On February 19, 2009 my now ex wife, (now Ms.) was arrested, taken into custody, charged, and spent time in the Santa Cruz County Jail for domestic violence against me and my then 14-year-old step daughter Ms. was arrested by the Santa Cruz County Sheriff's Department and was charged with, among other things, 13-3601 which is assault and she was charged with this because of the assault on my stepdaughter, case CR After Ms. was arrested, an order of protection (OP) was taken out in Santa Cruz County Justice Court # 2 including me and my stepdaughter as a protected person. It is interesting to note that during the original OP hearing, my stepdaughter asked the court if she could live with me, on a subsequent hearing to modify, she again reaffirmed this in front of the court and her mother. The JP court it will be noted did not allow the child to return with the mother after the hearing a week after the original hearing when the order was issued but placed her with the maternal grandparents in Sierra Vista. Ms. was cited for domestic violence in Santa Cruz County on July 3, 2006. Ms. and her daughter were living alone in 2007 during a marital separation and she was investigated by child protective services for hitting her daughter in the face. She reaffirmed this during a deposition in September of 2009. I have never been arrested, incarcerated, charged, or investigated for any act of domestic violence and have no criminal record at all (other than traffic violations).

Ms. filed for divorce in March 2009 and I filed a suit to get custody of my stepdaughter, believing that this would be in the best interest of the child and in line with what Lillian wanted. I had been the victim of domestic violence as had my stepdaughter (I actually now have two copies of the "domestic violence victims packet" given out by law enforcement, interestingly there are no resources in there for men). Subsequent to this, the biological father filed suit to get custody of his daughter and my suit was changed to en loco parentis, visitation. It is also important to note that I loaned the biological father the money for this legal action.

The biological father, lives in Florida and has had very little contact with his daughter except through my actions. In addition, he has very limited financial means. When I married Ms. in 2004, Mr. would call the house and Ms. would not pick up the phone if she saw it was Mr. on caller ID. She would also erase his messages that he left his daughter, and if did get to talk to her father, Ms. would stand in the open doorway of room monitoring the calls. After a time, Mr. learned to call when Ms. was not home in order to talk to his daughter and communicated with him by using my cell phone and e-mail and MySpace. I also sent him pictures of his daughter and attempted to facilitate their relationship as best I could. This was hard because of the continued -bordering on violent-opposition from Ms. against her daughter having any



contact with her father, Mr. [REDACTED]. Furthermore, when Ms. [REDACTED] and me separated in 2007 and [REDACTED] was not living with me, she had virtually no contact with her father and used MySpace for her communication to minimize her mother's interference. After [REDACTED] was placed by the Justice Court in Santa Cruz County with her grandparents in Sierra Vista after Ms. [REDACTED] 2009 arrest, Mr. [REDACTED] calls to his daughter were monitored by the grandparents who put his calls on speakerphone-when he could get through-which was not frequently. This was a situation where there was significant interference between the father and his daughter by entities who had no business interfering.

The legal proceedings were filed in Cochise County and we were assigned to Judge [REDACTED] court, Division Five, Cochise County Superior Court. While it is certainly not my intent to retry the cases here, I feel that the Court acted in a most capricious manner towards both myself and Mr. [REDACTED]. It is important to point out that in my case, I was found to stand in loco parentis to the minor child and was awarded visitation with her, which is what I was after (initially it was custody, this was modified to visitation). It is my understanding that my stepdaughter testified in chambers that she wanted to continue to have a relationship with me that she still loved me, that I was a good stepfather, and that she was under a lot of pressure from her family. She also stated that she was angry at me for not calling. At this point Judge [REDACTED] apologized to her stating that it was his fault. In fact, the en loco parentis issue was settled in very short order and a majority of the court's time was taken up by a lengthy fight over attorney's fees.

Interestingly, although it is true that my income is significantly higher than Ms. [REDACTED] she testified that she paid none of her own legal fees, that her father paid them "a gift of love"; she had no out of pocket expenses. She produced no promissory note, repayment schedule, and did not list this as a debt on her affidavit of financial information. Regardless, the court ordered me to pay \$10,000 of her legal fees in this matter offering in the court's ruling that the court felt "she was morally bound" to repay her family. The initial \$5000 was paid around July of 2009 and the last portion of \$5000 ordered in December of 2009. It is interesting to note that the court ordered me to pay the last \$5000 directly to her, not her attorney or her father. There was no award of spousal maintenance in this matter.

So as a repeated victim of domestic violence, I was ordered to pay a portion of the perpetrator's attorney's fees. On February 19, 2009 the three responding Santa Cruz County deputy sheriffs had significant reason to arrest Ms. [REDACTED] and remove her in handcuffs. The county attorney had sufficient reason to charge her, and even after the testimony of my stepdaughter in chambers, I was ordered by Judge [REDACTED] to pay her attorney's fees.

Mr. [REDACTED] original domesticated divorce decree and custody order from the State of Hawaii in 1996 says that he may apply for a modification of the order after he had his night terror disorder cleared by a doctor, a drug and alcohol screen, and taken a parenting class. Mr. [REDACTED] satisfied all of these requirements according to the court; Judge [REDACTED] ruled that he did satisfy the requirements as set forth in the Hawaiian decree and a hearing was scheduled. It is also interesting to note that there were several requests for an independent child custody



evaluation; each and every one of these was declined by Judge [redacted] There were also requests for a psychological evaluation of the mother and these were also declined.

During the custody hearing in early April, 2010, four witnesses testified for Mr. [redacted] (including Mr. [redacted] his wife Georgia, myself, and Mr. [redacted] 78 year old mother, [redacted]). Ms. Fisher had no witnesses and a substantial portion of her evidence consisted of documents relating to the original divorce decree and custody order from 1996 as well as older documents from Hawaii. Mr. [redacted] is a professional pyro technician, he does fireworks shows (concerts, festivals, this sort of thing) and has a permit by the Bureau of Alcohol, Tobacco, and Firearms for high explosives. Prior to getting this permit, he had to have a FBI and Department of Homeland Security background check and he is drug tested occasionally. In addition, Mr. [redacted] has remarried and has an approximately 18-month-old son.

The court ruled that there would be no change of custody and no modification of the order that has been in place since 1996 when [redacted] was 14 months old...she is now 16 years old. What this means is that Mr. [redacted] has to give 14 days written notice to see his teenage daughter, can only see her for six hours a day, no overnight visitation, three phone calls a week prior to 7 pm local time. Even after the evidence of domestic violence against the minor child with the subsequent arrest of the mother, and her being charged with 13-3601, the earlier domestic violence citation from 2006 and the CPS investigation in 2007, the court thought that it was in the best interest of the child to leave her with the person who abused her and not allow Mr. [redacted] any easier access to his daughter.

Furthermore, to add insult to injury, the court's ruling regarding legal fees in Mr. [redacted] case mentions my name and it seems the clear intent of the court to sanction me for this action although I was not a party to the proceedings. The court found that Mr. [redacted] attempt to change custody was unreasonable and ordered him to pay \$5000 of Ms. [redacted] legal bills. It is important to note that Mr. [redacted] year to date income is under \$10,000, significantly less than Ms. [redacted].

So in spite of Mr. [redacted] satisfying the requirements as set forth in the domesticated 1996 decree from Hawaii regarding the conditions necessary for a modification of that order, and despite what ARS 411 E states (below), and as well as his feelings that a change of custody would be the best for his daughter because of the domestic violence and that his daughter requested it, the court ruled that what Mr. [redacted] attempted to do was unreasonable and the court's intent seems to be to punish me for this as well.

What is the status of the situation now? I have had no contact with [redacted] in many months, my cell phone has been blocked by her mother, I have not had visitation with her since February, 2010 in spite of the court granting this. Mr. [redacted] phone is also blocked from his daughter's as well. I have the feeling that Ms. [redacted] has learned that she can pretty much do as she pleases without fear of sanction from the court and that [redacted] is at the mercy of her mother and family.



ARS 25-411 E. If after a custody or parenting time order is in effect one of the parents is charged with a dangerous crime against children as defined in section 13-705, child molestation as defined in section 13-1410 or an act of domestic violence as prescribed in section 13-3601 in which the victim is a minor, the other parent may petition the court for an expedited hearing. Pending the expedited hearing, the court may suspend parenting time or change custody ex parte.

As a result of the court's actions, that the court did not seem to uphold or apply the law, that there seems to be a lack of impartiality and fairness in these proceedings, I would like to file a formal complaint against judge James Cochise County Superior Court, Division Five. I feel that he violated, at the minimum, Rule 2.2, shown below.

RULE 2.2. Impartiality and Fairness

A judge shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.

A final note, I have included documentation to add evidence to my assertions. I have much more and if there are any documents that may be needed, please feel free to contact me. In addition, Mr. has signed and agreed for me to get information regarding his suit and this is on record with our attorney, Joseph Mendoza in Sierra Vista.

Thank you for your consideration of this matter,

