

COMMONWEALTH OF MASSACHUSETTS
COURT OF APPEALS
CASE NO. 2004-P-1496

KEVIN MICHAEL THOMPSON, Appellant

v.

THE MOTHER, Appellee

Appeal of a Judgment from the Lawrence Probate and Family Court on June 4, 2004, regarding the custody and support of Patrick Tiger Thompson. Debra P. Dow, Esq. represented (THE MOTHER) (hereinafter "the Mother") and Kevin Michael Thompson (hereinafter "the Father") was *pro se*. Justice Peter C. Digangi presided.

BRIEF OF APPELLANT

KEVIN MICHAEL THOMPSON

(Pro Se)

(Address Withheld)

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the Court, specifically Judge Peter Digangi, denied the Father his rights to due process and equal protection under the law by preventing the Father from presenting ANY of his 55 exhibits that he had prepared and pre-marked for the trial.
2. Whether it is possible for a competent and honorable Court to examine the transcripts from the February 25, 2004 hearing and June 4, 2004 trial and reach the slanderous conclusions about the Father expressed by Judge Digangi in his closing statement at the trial and in his "Findings of Fact" document.
3. Whether there was any credible testimony or evidence presented at the trial that would convince an impartial Court to ignore all of the Father's testimony and believe everything alleged by the Mother.
4. Whether it is possible for a fit father of a child born out of wedlock to obtain joint physical custody in Judge Digangi's courtroom when a less fit mother in a contested case simply chooses to not cooperate or communicate with the father.

5. Whether Judge Digangi's corrupt actions in this case to vilify and discredit the Father represent such a serious miscarriage of justice that they call for the immediate removal of this judge from the bench.
6. Whether the "one size fits all" arguments and presumptions referenced by the Courts to justify sole custody to mothers are gender-biased and, in effect, deny fathers due process and equal protection under the law.
7. Whether the Court's final order was reached without applying "strict scrutiny."
8. Whether the Court's final order denies the Father his fundamental, inalienable right to parent and support his child directly.
9. Whether it is ever in the best interests of a child to remove loving fathers from the lives of their children to be replaced with visitation hours and cash payments.
10. Whether it is legal to deny fathers their Constitutional right to a jury of their peers.
11. Whether Judge Digangi had the jurisdiction to give the Father's tax exemption to the Mother on alternating years.

STATEMENT

A. RELEVANT PROCEDURAL HISTORY OF THE CASE

September 30, 2002 The Mother files a complaint for custody, support, and visitation. The parties settle outside of the court system with a custody and support contract drawn up by the Father and made retroactive to September 1, 2002.

March 28, 2003 In response to the Mother's abuse of her role as sole custodial parent and her refusal to be flexible to changing circumstances, the Father files a complaint for joint legal and physical custody.

April 11, 2003 The Mother files a cross complaint for custody, support, and visitation.

May 28, 2003 After hearing, Judge Manzi enters a temporary order that awards sole custody to the Mother. The Father is ordered to pay \$615 per month, which is significantly more than the \$498 amount calculated when adhering to the Child Support Guidelines. (See Addendum A1)

August 22, 2003 The Father serves the maternal grandmother with a *subpoena* ordering her to produce her 2002 State and Federal Income Tax returns (documents that were initially requested on May 5, 2003).

October 8, 2003 After hearing, Judge Manzi orders the maternal grandmother to respond to the subpoena and submit copies of her 2002 State and Federal Tax returns to the Father within 21 days.

November 12, 2003 The Mother and grandmother conspire on a phony story of verbal abuse to justify a restraining order against the Father. The order is obtained within two weeks of the Court-ordered disclosure of the grandmother's 2002 tax returns, documents that expose the Mother and grandmother's history of tax fraud and perjury to the Court.

November 19, 2003 After hearing, the Honorable Judge Sahagian vacates the restraining order and orders the parties to come to

a stipulation agreement regarding
pick-ups and drop-offs for visitation.

December 30, 2003 At the pre-trial conference, Judge
Manzi orders completion of the
discovery within forty-five days and
for the parties to meet to pre-
mark evidence. The trial is scheduled
for June 3-4, 2004.

February 25, 2004 After hearing, Judge Manzi allows the
Mother's motion to withdraw counsel.
On the same day, Judge Digangi
partially corrects the child support
order and denies the Father's request
to move up the trial date.

May 12, 2004 Three weeks before the scheduled
trial date, a hearing occurs on the
Mother's motion to postpone the trial.
The motion is heard and denied by
Judge Manzi. At this time, the Father
expresses concern that the trial has
been changed from two to one day. Judge
Manzi assures the Father that the Court
will schedule a second day if the case

cannot be resolved in one day.

May 28, 2004

The Father calls the trial department one week prior to the trial to report the status of the case as was ordered in the pre-trial order. The Father informs the trial department that the Mother is in contempt of court for not disclosing her evidence and for ignoring several written requests over the previous three months to meet to pre-mark the evidence. The Father also notifies the trial department that he has pre-marked his evidence as un-objected evidence since the Mother would not meet to communicate otherwise. The trial department clerk assures the Father that this should not be a problem.

May 28, 2004

Later that same day, exactly one week prior to the trial, the Father receives the Mother's evidence and notification that she has hired an attorney, Debra Dow, to represent her at the trial.

Her new attorney conveys her objections to the Father's pre-marked evidence by using a copy of the Father's finalized evidence list to "highlight" evidence to which she objects.

June 4, 2004

On the day of the trial, the Court clerk, Ralph Finck, will not recognize the Father's evidence as pre-marked. He tells the Father and the Mother's attorney that they need to get together to "remark" the evidence before the judge will hear the case.

June 4, 2004

After trial, Judge Digangi enters his final order awarding sole legal and physical custody of the minor child to the Mother. The Father is given visitation hours and a support order.

B. STATEMENT OF FACTS

BACKGROUND INFORMATION

1. Kevin Thompson ("Father") and the Mother are the parents of a two-year old child, born March 20, 2002. The Father lives in Methuen and the Mother lives with

- the maternal grandmother in (city withheld). Both parents are teachers.
2. The Mother moved in with the Father three months after the child was born and moved out, without notice, two weeks later. At the time that the Mother moved out of the home, purchased by the Father to be the home for her and their son, they were engaged to be married.
 3. The parents have been fighting over custody of the child since. The Mother has demanded sole custody and the Father has proposed the compromise of 50/50 joint physical custody.
 4. The Father was Salutatorian of his class and a three-sport athlete at Central Catholic High School in Lawrence, MA. He attended the United States Naval Academy in Annapolis, MD for two years under a Vice Presidential appointment. The Father graduated magna cum laude from the University of Massachusetts-Boston with a Bachelor of Arts degree in physics. He received his Master of Arts degree from California State University-Los Angeles in educational administration and did his master's thesis on the effect of one-parent vs. two-parent homes on the

- behavior and academic success of high school students.
5. The Father has an impeccable professional record over a twenty-year career as a teacher and a coach. Excluding the Mother's attempts over the last two years to manufacture evidence for her case with false allegations, the Father has never been in trouble with the law.
 6. The Father does not drink, smoke, or take drugs. He has never, in any way, threatened the Mother or abused her verbally or physically. The Father is the oldest of three siblings. He grew up in a loving intact, two-parent home. His brother, Christopher Thompson, is a successful business owner with a wife and three children. His sister, Maureen Smith, is a wife and mother to four children.
 7. The Mother graduated from Haverhill High School and Merrimack College. She obtained her master's degree in elementary education from Endicott College.
 8. The Mother takes medication (Prozac) and sees a psychiatrist for chronic depression and problems with alcohol and an eating disorder. She has 148 absences over her five-year time of employment at (her current teaching job). A number of these absences were the

result of two complete nervous breakdowns.

9. There have been 19 documented police calls to the Mother's home in the first two years of the child's life. One of these calls was made by the Grandmother, who called the police on May 29, 2002 when she found the Mother passed out with their two-month old baby. Before the police arrived, the Mother took off drunk with the baby and came out of hiding over an hour later when the police left, still visibly intoxicated as witnessed by the Father's sister.
10. The Mother is a 39 year-old woman who has lived her entire life with the Grandmother in a single-parent home. The Grandmother also takes medication and sees a psychiatrist for depression. The Mother's brother, who recently moved off the property, has a history of drug problems and suffers from a bipolar disorder that has resulted in police-involved lockups at a psychiatric hospital.

COURT-RELATED FACTS PRIOR TO THE TRIAL

1. In the Father's first hearing in Family Court on May 28, 2003, the state-mandated child support guidelines were ignored, his request to present evidence was denied, and he was labeled by the Court

- as "rigid and demanding" for refusing to voluntarily give up his right to parent and his son's right to a balanced relationship with both of his parents.
2. A motion for modification of the child support order and visitation was eventually heard before Judge Digangi on February 25, 2004. Judge Digangi, who knew nothing at all about the case, bullied the Father in his first minute before the Court for referring to his son as "my" son instead of "our" son. (February 25, 2004 Transcript, pp.3-4)
 3. Judge Digangi refused to look at the Father's evidence and did not correct the support order so that it would adhere to the guidelines. Instead, he "winged it" with a support order that did not reference the Father's accurately completed child support worksheet (Add. A2) or his proof that the Mother had committed perjury when completing her Financial Statements.
 4. Although the Father was not in court on this day to present his evidence and arguments for joint physical custody, Judge Digangi shared his unsolicited opinion that the Father was wasting his time in court because there was no way that the court would give custody of such a young child, even joint physical custody, to

the Father. His word for word comment was, "Can we look at this case getting this issue of joint physical custody off the table? Because, quite frankly sir, no judge is probably going to entertain that or they'll hear your argument, but I don't think you'll get very far with it." (Id. p.19)

5. Judge Digangi commented further, "Read anything about the psychology of children, and this is where it comes from... a young child usually at this developmental stage of its life needs to be with the nurturance of his mother, if there's going to be a schism between two parents." (Id. pp.22-23)

TRIAL FACTS

1. The Mother ignored the Court order and several written requests to meet to pre-mark the exhibits during the three months when she represented herself pro se and she did not disclose her evidence to the Father until one week prior to the trial. This deliberate contempt was pardoned by the Court at the trial with a pleading from the Mother's attorney for some "indulgence" because she had "literally" come on to the case the previous week. (June 4, 2004 Transcript, p.3)
2. Judge Digangi sustained several objections expressed

- by the Mother's attorney that were without merit (Id. pp.22,25,31,33-35,38,44,91,93,94,98,112,128,131,133), he overruled the Father's two objections (Id. pp.19-20,95), and he repeatedly interrupted the Father and his one witness to question the relevance of testimony and questions (Id. pp.21,29,92,94,98).
3. It was relevant for the Mother to question the Father about an online personal ad, his discussions about the Family Court system, and an engagement ring that had not been listed as an asset on his Financial Statement (Id. pp.54-67), but it was irrelevant for the Father to submit documented evidence or question witnesses who could confirm the Mother's history of unstable behavior, alcohol abuse, immaturity, and perjury.
 4. The Father was not allowed to communicate anything that occurred prior to their son's birth (Id. 94), but the Mother falsely alleged that the Father refused to drive the Mother to the hospital when she had a miscarriage prior to their son's birth. This vile, outrageous lie was not only allowed, but included as "Fact #32" in the Court's "Findings of Fact" document.
 5. Judge Digangi did not allow the Father to present or submit ANY of his 55 pre-marked exhibits to the court.

The exhibits were numbered to #108 because the Father labeled every page of every document (Add.B). With the exception of tapes, photos, and a certified letter, the evidence was self-contained in a three ring binder prepared by the Father, with a copy for the Mother and the Court, chronologically numbered in the order that the Father intended to communicate his evidence.

6. The Father's evidence included conclusive proof of the Mother's perjury on Financial Statements submitted to the Court, her bad faith litigation, her lies under oath and contained in a DSS report, her tax fraud crimes, and her deliberate refusal to respond to discovery requests or meet prior to the trial to disclose and pre-mark the evidence.
7. Exhibits regarding the police record of calls to the Mother's home, the Mother's attendance record, teacher salary tables, clarifying charts, Federal tax code information relating to the dependent child deduction, and the tape from the initial May 28, 2003 hearing before Judge Manzi were among the pre-marked exhibits that are not part of the Court Record from the trial.
8. In a trial that was scheduled for 9:00 a.m. and concluded before 4:00 p.m., the Father did not call

- his first witness until 2:30 p.m. In defiance of Judge Manzi's assurance to the Father that a second day would be scheduled if needed, Judge Digangi announced that this was a one-day trial and the case was going to be resolved that day (Id. p.35).
9. Judge Digangi revealed time and time again that he was not listening to the Father's case. The Father asked his sister while on the stand whether she had ever seen the Mother "in a condition where she had been drinking too much." The witness was responding to that specific question by recounting the incident when the Grandmother called the police on May 29, 2002. The Mother's attorney interrupted the testimony with an objection. Judge Digangi sustained the objection with the comment, "not responding to the question, ma'am. The question was have you ever seen the mother drinking." (Id. pp.91-92).
10. Judge Digangi interrupted this witness several more times in mid-sentence and would not let her communicate comments expressed by the Mother's brother or communicate other episodes when she had seen the Mother intoxicated, claiming that these incidents were "highly irrelevant." (Id. pp.92-94).

11. During cross-examination, the Father asked the Mother why she had listed \$550 per month for rent on every Financial Statement submitted to the court after communicating in a May 9, 2003 letter that she does not actually pay rent to her mother, but pays her mother's real estate taxes and water bill in lieu of rent (Id. p.26).
12. Judge Digangi's inability to comprehend the simplest of arguments was evident when the Father attempted to submit this May 9, 2003 letter as evidence.
13. The Mother's attorney objected, feigning confusion about this pre-marked exhibit. For the record, this was a letter that had been disclosed to the Mother as evidence six months before the trial and listed as "exh.2" on the Father's finalized evidence list (Id. pp. 26-28, Add. B1). Further, the Mother's attorney admitted earlier in the trial that she had reviewed the Father's evidence prior to the trial (Id. p.3).
14. Judge Digangi made it clear that he was not listening to this cross examination when he attempted to clarify the letter to the Mother's "confused" attorney by explaining, "I think that's a letter that he (Father) sent to her (Mother). Is that correct?" After the

- Father told him that he was not correct and clarified the specifics of the letter for a third time (Id. 26,27), Judge Digangi made the statement, "Well, I don't know what this letter is that he's talking about. If it's a letter sent from her counsel to him, I'll accept it. You can present it to her and see if she's ever seen it or if it's fair and accurate as to her understanding." (Id. pp.28-29)
15. When the Father attempted to explain that this letter had already been seen by the Mother and her attorney because it was disclosed as pre-marked trial evidence months before the trial, Judge Digangi cut off the Father before he could communicate this explanation to say, "Sir, please don't interrupt me. This is the trial today. It's not evidence -- anything that you submitted to the court prior to today might have been submitted for whatever purpose you submitted it at that time. Today is the trial, so whatever other documents that are in the Court file are not necessarily evidence in this trial, sir." (Id. p. 29)
16. The Father contends that, throughout the trial, the more Judge Digangi bullied the Father, the more he masked his behavior with words like "please" and "sir"

so that a written transcript of these exchanges would not convey Judge Digangi's tone.

17. The only option that the Father was given to testify was to take the stand as his own witness without access to his notes and exhibits. When he pleaded with the Court that his son's future was too important to "wing it" and that the Mother's attorney was not required to take the stand, Judge Digangi responded, "You're acting as your own counsel. You put yourself in this predicament." (Id. p.99-103)
18. The Father objected to the Haverhill DSS report with the argument that it was based entirely on lies, hearsay, and on the assessment of a woman who had never met the Father or bothered to question him. It involved an announced visit to the Mother's home and the hearsay from individuals who barely know the Father, who were handpicked by the Mother for questioning. The DSS investigation was also initiated by the Father so the only relevant information from the report was that the concerns that the Father had expressed to a Lawrence DSS worker were unfounded. This objection was overruled. (Id. pp.19-20)
19. Third-hand hearsay when it was communicated by a DSS

- worker as a witness for the mother was allowable, but the Father and his one witness were not allowed to communicate comments that were made directly to them by the police and the Mother's brother.
20. During the Father's attempt to render the report credibly worthless, Judge Digangi interrupted, "The purpose of this investigation, sir, was not about you. It was about whether or not your allegations about the mother were justified. The purpose of this investigation by this witness was not to investigate you, sir, in any way. Bear that in mind." (Id. p.22)
21. Apparently, Judge Digangi did not "bear that in mind." After discouraging the Father from presenting his indisputable evidence that would have forced the Court to dismiss the report as a collection of false allegations and hearsay, Judge Digangi ambushed the Father in his concluding statement by elevating the status of the investigator and the significance of the report (Id. pp.148-149).
22. Judge Digangi's concluding statement included a self-righteous attack of insults primarily directed at the Father for having the audacity to seek joint physical custody in his courtroom; for holding the Mother

accountable for her criminal actions; and for attempting to communicate information that was critical of the Mother (Id. 149-150).

23. Included among the false allegations and baseless insults were the following: Judge Digangi accused the Father of "bullying" the Court (Id. p.150), he stated that "if you (Father) don't care what's fair to your child... then shame on you (Id. p.157)," "the way you people are acting right now, I bet you your two-year old child can make better choices (Id. pp.157-158), "in criminal court they say the bad guys are acting their best. In the probate court... the nicest people act their worst... I think I've seen you both hopefully at your worst (Id. 159)," "You only have one kid. I can't rip him in half...That's what you suggest I do...(Id. p.159)," "Your kid is at the bottom of the hill waiting for you both to roll down on him I suppose... (Id. p.161)." This slanderous and ignorant assessment of the Father's demeanor and behavior in Court completely contradicts the reality of what occurred.
24. Without the jurisdiction to make such a ruling, Judge Digangi added insult to injury by rewarding the Mother

for cheating on her taxes with a dependent child deduction every other year that only the Father is eligible to claim (Id. p.151). This was granted without examining the Father's pre-marked Federal Tax code information (See Add. C) or hearing any testimony during the trial on this topic.

25. In response to the Father's notice to appeal his ruling, Judge Digangi produced a wildly inaccurate, one-sided document (App. pp.49-58) to slander the Father and cover up for his unethical actions. The Father's Findings of Fact document (App. pp.24-38) was not referenced at all and was not included in the Record of Appeal, nor was the Father's Response to the Court's Findings of Facts. (App. pp.59-65).

ARGUMENT

A. Gender discrimination is illegal in this state and in this country.

1. It was Thomas Jefferson who wrote, "an equal application of law to every condition of man is fundamental. The most sacred of the duties of a government [is] to do equal and impartial justice to all its citizens. A free people [claim] their rights as derived from the laws of nature, and not as a gift

- from their chief magistrate." Thomas Jefferson: Rights of British America, 1774, ME 1:209, Papers 1:134
2. More recently, it was Chief Justice Marshall who wrote, "The Massachusetts Constitution affirms the dignity and equality of all individuals. It forbids the creation of second class citizens." See Goodridge v. Department of Public Health, Mass Supreme Judicial Court, 440 Mass. 312, 798 N.E. 2nd 941 (2003).
 3. "Each person has an identifiable, legally protected interest in not being treated as a second-class person." Lowell v. Kowalski, 380 Mass. 663, 670 (1980).
 4. The fundamental liberty interest of natural parents in the care, custody, and management of their child is protected by the Fourteenth Amendment. These protections must extend to all parents absolutely equally, or else the deprivations inherently become two other classes of civil rights violations under federal law - one under Equal Protection and the other under Gender Discrimination. Santosky v. Kramer, 455 U.S. 745 (U.S. Supreme Court, 1982).
 5. Judge Digangi's ruling was in error. It violated the prohibition against gender discrimination contained in

Article I of the Massachusetts Declaration of Rights, as amended by article CVI of the Amendments. With considerable help from a gender-biased Court, the Mother was able to overcome her significant shortcomings in stability, maturity, and integrity to steal the parental rights from a clearly fitter Father.

6. The law must be *applied* to men and women equally, not just *written* equally. Judge Digangi stated several times in court that the law looks to both parents as being equal. What is not equal in Judge Digangi's courtroom is his subjective interpretation of the law where the best interests of the child equate to sole custody for the mother. Article XXIX of the State Constitution states that it is essential to the preservation of every individual that there be an impartial interpretation of the laws.
7. "In making an order or judgment relative to the custody of the children, the rights of the parents shall, in the absence of misconduct, be held to be equal, and the happiness and welfare of the children shall determine their custody." G.L. c. 208, § 31 (1998). "The State's legitimate and compelling

interest in the welfare of children... does not confer on the State a power to mandate, over the objection of a fit, competent parent, anything that might be viewed as desirable for young people." Blixt v. Blixt, 437 Mass. 669 (2002).

B. The arguments used by the courts to justify their rulings are flawed

1. The Father contends that when the justification for the discrimination against fathers in family court comes under attack and is threatened by legitimate criticism, the Courts simply tweak the argument and change the name of the argument used to discriminate.
2. Judge Digangi's "tender years" opinion, which claims that mothers have this gender-exclusive ability to nurture, is outdated and no longer legally acceptable as a court argument. Current child psychology research not only contradicts Judge Digangi's opinion, but concludes that "children of *all* ages, *particularly boys*, are better off when raised by their fathers." Farrell, Father and Child Reunion, Tarcher/Putnam (2001).
3. The "tender years" presumption was the argument of choice for years until the Alabama Supreme Court, for

one, concluded that, "the tender years presumption is an unconstitutional gender-based classification that discriminates between fathers and mothers in child custody proceedings solely on the basis of sex."

Devine v. Devine, Supreme Court of Alabama, 398 So.2d 686 (1981).

4. The "best interests of the child" standard followed, a standard that is so vague that it gives judges the discretion to interpret its meaning as they see fit.
5. The Courts have subjectively interpreted the "best interests of the child" standard to mean removing loving fathers from the lives of their children and replacing them with cash payments and visitation hours. This is NEVER in the "best interests of a child" because there is not a more powerful predictor of future well-being than the significant involvement of BOTH parents in a child's life.
6. Troxel found visitation orders predicated solely on the determination of the child's best interests "constitutionally inadequate." Judge Sosman defined the visitation order as "legislation masquerading as interpretation in order to salvage an admittedly unconstitutional statute (Sosman, J. dissenting, with

- whom Ireland, J. joins)." Blixt v. Blixt, 437 Mass. 678 (2002).
7. Judge Sosman added, "Looking solely at the category of parents who were never married to each other and who are not presently living together, the court resorts to vague generalizations verging on pure stereotypes of families that are not intact to justify subjecting some parents, but not others, to the intrusive burdens of the visitation statute." Blixt v. Blixt, 437 Mass. 686 (2002).
 8. Critics of the "best interests of the child" standard have pointed out that "the open-endedness of this standard leads to the systematic imposition by courts of unnamed prejudices regarding what outcomes represent a child's best interests." Custody of Kali, 439 Mass. 841 (2003).
 9. "Mere invocation of the child's "best interest" does not, by itself, amount to compelling State interest and, standing alone, would not pass constitutional muster." Troxel v. Granville, 530 U.S. 67-68 (2000).
 10. The "primary caretaker" argument, referenced in both the ALI Principles and G.L. c. 209C, is another popular argument used in Family Court to deny fathers

their Constitutionally-protected rights. G.L. c. 209C § 10(a) specifically refers to the "primary caretaker" parent and suggests that the courts consider where and with whom the child has resided within the six months immediately preceding the proceedings.

11. This is an obvious Catch-22 obstacle for never married fathers because the "primary caretaker" will almost always be the mother, no matter how unfit she is. Even if the father is clearly the fitter parent, the mother will possess the child from birth onwards. Any legal means that the father has of trying to obtain custody will take longer than the six-month residency condition referenced in Section 10(a) of G.L. c. 209C.
12. The Father contends that the "primary caretaker" is a "Court-invented" label that does not exist in the intact family. In intact families, recognized by most as the optimal family unit, the parents are "co-caretakers." Parenting responsibilities are shared equally with each parent contributing gender-specific influences that uniquely enhance the child's physical, mental, and emotional development.
13. In Custody of Zia, Judge Brown and Judge LaStaiti rejected the "primary caretaker" interpretation of the

law. The unmarried father was awarded sole custody because the Court factored in the relative fitness of the parents and which parent was more willing to allow the child access to the other parent. Custody of Zia, 50 Mass. App. Ct. 237, 736 NE2d 449 (2000).

14. Many states factor in access for the child to each parent. California Family Code 3040(a) mandates that in custody determinations "the court shall consider, among other factors, which parent is more likely to allow the child frequent and continuing contact with the non-custodial parent and shall not prefer a parent as custodian because of that parent's sex."
15. As child expert, Dr. Joan Kelly, points out, "Courts have overemphasized providing geographic stability of residence for the child at the expense of the more important emotional stability of regular time with each parent. It has been thoroughly shown, by work done in the last decade and not in the 1970's, that the problems associated with movement of children between homes are less than those created by removing one parent from day-to-day connections with a child." Wallerstein and Kelly, Surviving the Breakup: How Children and Parents Cope with Divorce, Basic Books,

(1982).

16. Instead, the courts exaggerate the effect of two home bases so that this MINOR inconvenience illogically outweighs the very real problems with sole custody to the mother where a child is 5 times more likely to commit suicide, 32 times more likely to run away, 20 times more likely to have behavioral disorders, 14 times more likely to commit rape, 9 times more likely to drop out of school, 10 times more likely to abuse drugs, 9 times more likely to be institutionalized, and 20 times more likely to end up in prison.

U.S Census Bureau: The Official Statistics (2000).

17. The "most flawed" argument used by the Courts to deny a father his right to parent is that if one or both of the parents will not cooperate with the other or one parent will not agree to joint physical custody, then any form of joint custody is impossible. This subjective opinion eliminates any possibility of due process and equal protection for fathers in family court because mothers have the "gender-exclusive" power to "not cooperate" and "be hostile" to the father to ensure that joint physical custody is not even considered by the Court.

18. The Father contends that the "inability to cooperate" argument is the "most flawed" argument used in family court because, contrary to Court opinion, 50/50 joint physical custody is actually the MOST APPROPRIATE custody arrangement when the parents DO NOT get along.
19. Joint physical custody provides a clearly defined schedule that does not give either parent the power to intrude in the other parent's life, emotionally or financially. Neither parent is humiliated, devalued, or stripped of his dignity. Each parent has a more isolated influence on their child, independent of the whims and malice of the other parent.
20. The Father concedes that there are many Family Court cases that have justified their rulings with the flawed arguments described above, but "since the equal protection statute treats each parent alike and is unambiguous in this respect, there is no need to resort to legislative history." Silvia v. Silvia, 9 Mass. App. Ct. 339-340 (1980).
21. Citing flawed precedent and case law that has historically denied fathers their constitutional right to equal protection does not justify the continuation of this practice. The Fourteenth Amendment states

quite clearly that no state "shall deny to any person within its jurisdiction the equal protection of the laws."

22. If the Court must cite something to justify its custody rulings, then the Father suggests that the Court reference the landslide results from the Election 2004 ballot initiative where 85% of those people polled in the Commonwealth voted in favor of the presumption for joint legal and physical custody.

(See Addendum F1-2)

C. The Fourteenth Amendment's Due Process Clause protects against government interference with fundamental rights and liberty interests

1. The liberty interests of parents, protected by the Due Process Clause of the Fourteenth Amendment to the United States Constitution, are also protected by the State Constitution. See Youmans v. Ramos, 429 Mass. 774, 784 (1999).
2. "The Massachusetts Constitution is, if anything, more protective of individual liberty and equality than the Federal Constitution; it may demand broader protection for fundamental rights; and it is less tolerant of government intrusion into the protected spheres of private life (Marshall)." Goodridge v. Department of

Public Health, Mass Supreme Judicial Court, 440 Mass. 312, 798 N.E. 2nd 941 (2003).

3. The right to parent is a fundamental right. To even consider the theft of a citizen's fundamental rights requires the reviewing court to apply strict scrutiny. The court must show a necessary and compelling reason to justify its interference with a father's rights. See Aime v. Commonwealth, 414 Mass. 667, 673 (1993).
4. The least restrictive means possible is 50/50 shared parenting, not support orders and labels that reward the mother for the breakup of a relationship with outrageous benefits at the father's expense. "Under our free and constitutional government, it is only under serious provocation that we permit interference by the State with parental rights." Custody of a Minor (No. 3), 378 Mass. 732, 749 (1979).
5. The Due Process Clause does not permit a State to infringe on the fundamental right of parents to make child rearing decisions simply because a state judge believes a better decision could be made. Troxel v. Granville, 530 U.S. 72-73 (2000).
6. "Impinging on parental decision-making implicates a fundamental right. The interest of parents in the

care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests recognized by the Court." Troxel v. Granville, 530 U.S. 57, 65 (2000).

7. Fathers would get more justice if they were criminals in criminal court. In that setting, a father would be innocent until proven guilty and there would be something called a burden of proof that would be needed to justify as punishment the theft of his parental rights.
8. Fathers would also be entitled to a jury of their peers, a right specifically expressed in Article XV of the State Constitution and enacted to eliminate the tyranny of giving one judge the power to decide an individual's fate. It is the Father's opinion that fathers are denied their Constitutional right to a jury of their peers to entice mothers into a profit-driven court system where victory without compromise is guaranteed before these wildly-biased judges.
9. The Father's trial evidence was not to prove the Mother unfit. His evidence was to discredit the Mother's "word" and render her phony stories and false allegations as worthless. The Father contends that

pitting one parent against the other to prove who is slightly better or worse than the other is not only irrelevant, it is fundamentally wrong. If a parent is truly a danger to the child, evidence abounds and the offending parent should be accused of a crime and afforded due process of law like any other accused criminal.

10. While loving fathers are treated like criminals in family court, without a criminal's right to due process; mothers have the freedom to allege anything that they can dream up. If found guilty of making false allegations, they are not prosecuted nor held accountable. The Golden Rule for mothers in family court is, "If the facts and the evidence cannot justify your demands, a false accusation or two will suffice."

D. Judge Digangi's words and conduct in this case prove him to be incompetent, biased, and corrupt.

1. Before experiencing the corruption first hand, the Father contends that he went into family court confident that the court system would be honorable, that exhibits would need to be organized and pre-marked, and that his testimony and evidence would be

heard and examined. This expectation quickly turned to shock and outrage when the Court failed him and the Father discovered that he was pleading his case to a "kangaroo court" with a gender-biased agenda that did not include examining his evidence or hearing his arguments.

2. Judge Digangi's gender-biased ignorance creates a fool-proof strategy for Mother's seeking sole custody in his courtroom. The rules are simple:
 - (a) Bombard the court with slanderous stories about the father because, as the mother, Judge Digangi will believe whatever you say and not allow any evidence that would bring into question your credibility.
 - (b) Do not concern yourself with the consequences of lying under oath, committing perjury on legal documents, or ignoring court orders because Judge Digangi not only does not verify allegations or hold mothers accountable, but looks the other way and rewards them for their crimes.
 - (c) Most importantly, no matter how willing the father is to resolve the case short of a trial, refuse to communicate or cooperate with him. It

is not relevant that the mother is the only one with a financial motive to not cooperate, Judge Digangi will blame the father for the lack of communication and conclude that joint custody is not possible because the parents cannot "get along."

3. At both the February 25, 2004 hearing and June 4, 2004 trial, Judge Digangi disregarded the "Canons" of the Code of Judicial Conduct (Supreme Judicial Court Rule 3:09). He did not conduct himself in a way that would preserve the integrity and independence of the judiciary (Canon 1). He clearly conveyed the impression that the Mother and her attorney were in a special position to influence him (Canon 2). And he did not accord to the Father his full right to be heard according to law. Through both words and conduct, Judge Digangi expressed his prejudice toward both fathers and pro se litigants (Canon 3).
4. Judge Digangi's comments regarding the likelihood of failure for fathers in his courtroom at the February 25, 2004 hearing, before he knew anything at all about the Father's case, contradict Judge Digangi's own claim that "the law looks to both

parents as being equal" (February 25, 2004 Transcript, p.23) and the Massachusetts Bar Association's information site where it states that, "in the past, women were thought to be more capable of parenting young children, but now, the courts give equal consideration to both parents." Probate judges may not, impermissibly, take the gender of a parent into account when making their determinations. See Silvia v. Silvia, 9 Mass. App. Ct. 339-342 (1980).

5. The Father was aware that his hopes of resolving the case short of Appeals Court was not likely to happen before this judge. Judge Digangi proved to the Father at their first hearing that he was a dangerous combination of ignorance, arrogance, and incompetence who would insult him, bully him, and railroad him at the trial to instigate an emotional reaction and make his ruling easy. The Father also expected that Judge Digangi would distort the truth to vilify the Father if he could not generate a reaction.
6. Therefore, the Father was determined to conduct himself in a manner that would be beyond reproach and let Judge Digangi incriminate himself with slanderous comments about the Father that could not be supported

- with the court transcripts.
7. The recorded transcripts from the February 25, 2004 hearing and June 4, 2004 trial, when compared with Judge Digangi's "Findings of Fact" document, provide the Father with overwhelming evidence of Judge Digangi's incompetence, biased mind-set, and corrupt agenda.
 8. Ironically, in Judge Digangi's courtroom it benefits the mother to be unfit, unethical, and vindictive because Judge Digangi will misinterpret any attempt by the father to communicate such an ugly reality to the court as a malicious attack against the mother and proof that the father is hostile toward her and that he "devalues her." (See App. p. 58)
 9. Judge Digangi conveniently confused legal conflict with genuine conflict outside of court to justify his ruling. The Father contends that the parties were in court to present evidence that justified their proposed ruling. That scenario does not lend itself to "gushing compliments" about the other parent in a contested case.
 10. No one is sorrier than the Father that the Mother of his son is dishonest, unstable, and immature, but

those are the facts of the case and the Father was in Court to communicate the reality of the situation so that the Court could make an informed ruling that would uniquely benefit his son.

11. If Judge Digangi was sincerely concerned with the best interests of the child, as he claimed, then he would have been interested in hearing all of the information that both parents believed was relevant. The best interests of children and fundamental parent autonomy rights traditionally are "cognate and connected."

Parham v. J.R., 442 U.S. 584, 602 (1979).

12. Limiting the trial to a "he said, she said" game of hearsay and refusing to allow evidence that would bring into question the credibility of the Mother gave Judge Digangi the power to selectively believe what he wanted to believe. This agenda allowed Judge Digangi to ignore the Father's testimony and believe any allegations expressed by the Mother or one of her "hearsay" witnesses to justify a judgment that, the Father contends, was already pre-determined.

13. Judge Digangi ignored G.L. c. 208, § 31, which includes the mandate that "if the issue of custody is contested and either party seeks shared legal or

physical custody, the parties shall submit to the court at the trial a shared custody implementation plan and the court shall consider the shared custody implementation plans submitted by the parties." Judge Digangi did not review these plans because he did not collect them.

14. Judge Digangi attempted to justify his ruling by claiming that he was not going to take the child from the Mother and give him to the Father or "rip him in half." The Father contends that Judge Digangi was unable, or unwilling, to grasp the concept that the Father was requesting the compromise of 50/50 joint physical custody, which does not take the child from either parent, but balances the child's relationship with both parents.
15. What made the corruption so obvious in this particular case is that the Father is, without question, a fitter parent and a more credible witness than the Mother in this case will ever be. The fact that Judge Digangi could completely ignore the Father's testimony, accept everything alleged by the Mother as fact, and conclude that it is in the best interests of the child that the significantly less fit parent have sole custody is

such a blatant abuse of discretion that the Father cannot imagine a possible scenario in a contested case where a less fit mother does not leave Judge Digangi's courtroom with sole custody.

16. Judge Digangi's invidious agenda required that he prevent the Father from communicating evidence that would discredit the Mother. If the Father's documented, indisputable evidence had been admitted, then the Court would not have been able to give credence to the Mother's lies and hearsay and, consequently, Judge Digangi would have had no ammunition to vilify the Father to justify his pre-determined ruling.
17. Judge Digangi actions related to the DSS report are inexcusable. When the Father objected to the report, Judge Digangi ignored the rules of evidence regarding hearsay to deny the objection. When the Father attempted to attack the credibility and competence of the investigation, Judge Digangi advised the Father to move on, explaining that the report was not about him. Then, in Judge Digangi's final ruling, he referred to this report to insult the Father and justify his ruling, elevating the status of the investigator and

- the relevance of inadmissible allegations made by the Mother and Grandmother in the report that were "premeditated and fabricated." See Commonwealth v. Marshall, 434 Mass. 358, 363-365 (2001).
18. The Father contends that overestimating the evidential value of alleged expert testimony, fabricating evidence, and misdirecting the Father during the trial so that he would not continue with questioning that would have rendered the DSS report credibly worthless are blatant miscarriages of justice and grounds for a new trial before an honorable court.
19. The Court tapes when compared to the false "facts" and slanderous conclusions contained in Judge Digangi's "Findings of Fact" document (App. pp.49-58) provide the Father with overwhelming evidence of Judge Digangi's corrupt agenda. Judge Digangi did not have the undocumented situation, that the Mother enjoyed, to lie and distort the truth. Everything that Judge Digangi witnessed was recorded. To claim that the Father is "narcissistic," and "idealizes himself" (App. p. 58) is so completely baseless and unfounded that downplaying these malicious comments as a simple distortion of the truth would be criminally

inaccurate.

20. As to this evidence, the Father requests a standard of review that applies the substantial likelihood of a miscarriage of justice. Commonwealth v. Wright, 411 Mass. 678, 681-682 (1992). The Father contends that the review would also be properly preserved by applying the prejudicial error standard of review. Commonwealth v. Hallet, 427 Mass. 552-555 (1998).
21. The lopsided contrast in credibility between the Mother and Father makes Judge Digangi's fictional "Findings of Fact" that much more outrageous. The document indicates that Judge Digangi believed everything alleged by the Mother and nothing communicated by the Father. Judge Digangi exclusively referenced the Mother's Proposed Findings of Fact (App. pp.39-44) to produce his document and claimed the Mother's lies, inaccuracies, and distortions of the truth as his "facts." (See Addendum E)
22. Judge Digangi manufactured his own evidence to discredit the Father with item #43 in his "Findings of Fact" document (App. p.52). Judge Digangi claimed that the Father testified that certain items provided to Patrick were "borrowed from his family" and "not

for Patrick to keep" and that this testimony contradicted prior statements made by the Father that he purchased items with his own funds. The Father never made such a statement, nor is there any testimony that could possibly be misinterpreted to suggest such a claim (See Add. E2). The full set of transcripts will confirm that Judge Digangi committed perjury with this allegation.

23. The Father contends that this statement was not an innocent mistake, but a premeditated crime intended to paint the father in a negative, deceptive light to justify his unjust ruling and discredit the Father, who has filed a formal complaint against Judge Digangi with the Commission on Judicial Conduct.
24. Lastly, Judge Digangi rewarded the Mother for cheating on her taxes by giving her the Father's dependent child deduction on alternating years. This was granted without examining the Father's pre-marked evidence or hearing any argument on this issue during the trial. Furthermore, Judge Digangi has no jurisdiction to defy I.R.S. Federal tax law. For the same reason that the Father cannot claim the Mother's head of household filing status, the Mother cannot

claim the dependent child deduction. According to Federal tax law, the Father is the only parent who qualifies for this deduction as the father of a child born out of wedlock who provides more than 50% of the total support for his child. Federal tax code is very clear on this topic. (See Addendum C).

CONCLUSION

1. The Father's appeal of Judge Digangi's ruling and his motion for a new trial before an Honorable Court is a gamble that the corruption and discrimination against men and pro se litigants in the lower courts does not extend to Appeals Court.
2. Ideally, the Father requests that the Appeals Court carefully examine the Father's arguments expressed in his brief to overturn Judge Digangi's unjust ruling immediately without a new trial, and resolve the case with a 50/50 joint physical custody ruling as outlined in the Father's Proposed Order from the trial (App. pp.12-14).
3. If the Appeals Court cannot overturn the lower Court's ruling without examining all of the censored evidence and testimony, then the Father moves the court to order a new trial, preferably before an impartial jury

of his peers, pursuant to its broad power under G.L.
c. 278, § 33E.

4. The criminal conduct of Judge Digangi in this case has left the Father without any confidence in the integrity and impartiality of the Family Court system. The Father contends that Judge Digangi is either corrupt or he does not possess the competence and unbiased mind-set required to work as a judge in the Family Courts. Therefore, the Father calls for the removal of Judge Digangi from the bench. The Father cites Article XXIX of the State Constitution where it states that "it is essential to the preservation of the rights of every individual... that there be an impartial interpretation of the laws and administration of justice. Judges should hold their offices only as long as they behave themselves."

Respectfully Submitted,
Kevin Thompson (pro se)

Date: November 23, 2004