

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 (the minor child). Debra P. Dow, Esq. represented (name withheld) (hereinafter "the Mother") and Kevin Michael Thompson (hereinafter "the Father") was *pro se*. Justice Peter C. Digangi presided.

"REVISED" REPLY BRIEF OF APPELLANT

KEVIN MICHAEL THOMPSON

(Pro Se)

(Address withheld)

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	ii
INTRODUCTION.....	1
REPLY TO MOTHER'S NATURE OF THE CASE.....	4
REPLY TO MOTHER'S STATEMENT OF FACTS.....	5
REPLY TO MOTHER'S ARGUMENT #1: The Judge DID abuse his discretion and commit an error of law in awarding Mother sole physical custody of the minor child. The Judge's findings of fact and conclusions of law DO NOT support his decision.....	9
REPLY TO MOTHER'S ARGUMENT #2: The Judge DID commit an error of law AND abuse his discretion by alternating the income tax exemption for Patrick between Mother and Father.....	15
REPLY TO MOTHER'S ARGUMENT #3: Father WAS denied due process and equal protection because he was "NOT allowed" to present any evidence that he had prepared for the trial.....	16
REPLY TO MOTHER'S ARGUMENT #5: The Father's Appeal clearly articulates the legal grounds upon which his appeal is based.....	18
CONCLUSION.....	20
 ADDENDUM	
A. Chalk: "Merit-less Objections Sustained by the Court".....	A1-A5
B. Chalk: "Court Comments with Rebuttals".....	B1-B7

TABLE OF AUTHORITIES

Cases	Pages
<u>Blixt v. Blixt</u> , 437 Mass. 649 (2002).....	19
<u>Goodridge v. Department of Public Health</u> , Mass Supreme Judicial Court, 440 Mass. 309 (2003).....	19
<u>Troxel v. Granville</u> , 530 U.S. 57 (2000).....	19
 Statutes and Rules	
G.L. c. 209C, § 10(a).....	9-10
IRS Publication 17, <u>Your Federal Income Tax for Individuals</u> , Chapter 3 "Personal Exemptions and Dependents," p. 31.....	16

INTRODUCTION

It is in the best interests of the Father and his son and in the very worst interests of the Mother and the trial judge that the Appeals Court know everything about this case inside and out. Unfortunately, the trial record is grossly incomplete because the Court precluded the Father from presenting every one of the 55 exhibits that he had disclosed and pre-marked for the trial (See Addendum B1-B2 of Father's Brief).

Not only did the Father pre-mark a tremendous amount of physical evidence, which would have conclusively confirmed that the Mother has zero credibility, but he also "chalked" numerous lies contained in documents used by the Mother to slander the Father.

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 the Father attempted to reference the "verifiable" lies communicated by the Mother in a DSS report and contained in the Mother and maternal grandmother's restraining order statements; the Court, specifically Judge Peter C. Digangi, either interrupted the Father himself, sustained a merit-less objection voiced by the Mother's attorney (Add. A1-A5), or ordered the

Father to move on.

The Father has "chalked" some of the objections and interruptions from the Trial and Court comments from the February 25, 2004 Hearing and June 4, 2004 Trial (App. B1-B7) to provide the Appeals Court with some concrete examples of the ignorance, incompetence, and arrogance that the Father has experienced before Judge Digangi. The "chalked" items are attached as an addendum to this Reply Brief so that the Appeals Court would be as informed as possible prior to making its ruling.

The Mother's Brief simply repeats the false allegations that were blindly accepted as facts by a trial judge who was eager to believe anything that would support his pre-determined ruling. Judge Peter Digangi protected the credibility of the Mother's testimony and "hearsay" witnesses by refusing to hear any evidence that would have convinced an Honorable Court that the Mother is a pathological liar.

The Father contends that the truth does not lie somewhere between the two briefs submitted. The truth is EXACTLY what the Father communicated in his brief. He did not exaggerate or embellish.

The Mother's entire case is a lie and the Father has

the "precluded" evidence to prove it. What is most despicable about the Court's actions in this case is that Judge Digangi did not just look the other way, but rewarded the Mother for every one of her dishonest, unethical stunts.

Without the jurisdiction to make such an order, Judge Digangi rewarded the Mother for knowingly cheating on her taxes in 2002 *and* 2003 by giving her a dependent child deduction in alternating years that only the Father is eligible to claim (See Add. C1-C5 of Father's Brief).

For committing perjury on every one of her Financial Statements, the Court refused to look at the Father's evidence of perjury, but instead rewarded the Mother with a support order that ignores the state guidelines (See Add. A1-A2 of Father's Brief).

For not disclosing her evidence until ONE WEEK before the trial (FOUR MONTHS AFTER the court-ordered deadline for discovery to be complete) and for childishly ignoring the Father's requests to meet to pre-mark the evidence for the THREE-MONTH time period when the Mother represented herself pro se, the Court rewarded the Mother by not recognizing the Father's trial evidence as pre-marked, sabotaging the hundreds of hours that he had put in to prepare his case.

For using their son as a pawn to play vindictive games with the Father; for unilaterally deciding to not communicate with the Father by phone, email, or certified mail; and for fabricating slanderous stories about the Father's behavior and character; the Court rewarded the Mother with sole custody.

The Father requests that the Appeals Court carefully review every document submitted, listen to every word on the court-recorded cassette transcripts, and compare the reality of what occurred in court with Judge Digangi's baseless and slanderous conclusions, which are contained in his Findings of Fact document (App. 49-58) and conveyed in his closing statement from the trial (TTr. pp.147-163).

The Father apologizes for making this request. He knows that he should not have to ask an Honorable Court to examine the documents submitted. Unfortunately, his faith in the judicial system has taken a hit thanks to the unprofessional behavior and indifference that he has witnessed in the lower court before Judge Digangi.

REPLY TO MOTHER'S NATURE OF THE CASE (Appellee's Brief pp. 4-5)

Mother states that on November 12, 2003, she applied for and was granted a restraining order against Father.

Mother fails to add that the restraining order was vacated one week later (See Appendix p.3).

REPLY TO MOTHER'S STATEMENT OF FACTS (Appellee's Brief pp. 5-8)

The Mother does not respond to the Father's brief, she simply repeats the same lies and inaccuracies that are contained in the Court's Findings of Fact, a document that the Father contends is his proof that Judge Digangi is corrupt. (See Addendum E1-E6 of the Appellant's Brief).

Contrary to the Mother's claim, the Father has provided everything that his son has needed since the day he was born. The only expense that the Mother had prior to her return to work in September of 2002 was \$10 co-payments for their son's medical appointments.

The Father has always paid for his son's health insurance and provided in-kind support in the form of diapers, wipes, formula, clothing, cribs, changing tables, car seats, gates, and toys for the first six months of his child's life. When the Mother returned to work, the child support changed from in-kind support to \$615 support checks in September of 2002.

The Father only had to purchase diapers, wipes, and formula prior to the Mother's return to work because he is

fortunate to have a brother and sister with young children who generously offered the Father access to more baby items and quality clothing than three children could use. The Father transferred most of these items to the Mother, but kept some in the event that he gain joint physical custody of his son at a later point in time. The remaining items were transferred as a good faith gesture in early August of 2003 when a stipulation agreement was temporarily reached.

When the Mother reneged on the agreement three days before the hearing, scheduled to make the stipulation into an order of the Court, the Father asked the Mother to return ONLY the last transfer of clothing, which represented just a small fraction of the items that she had been given.

The Mother has made an issue out of the fact that the Father did not purchase most of the baby items. The Father contends that he is responsible for the support of his son. How that support is provided is irrelevant. It would have been financially irresponsible of the Father to throw away money to purchase items that were given to him.

Contrary to the Mother's opinion, child support is not a criminal sentence used to punish the other parent. It is not alimony either. The Mother wanted money so that she

could spend the excess on herself and not their son. Since the child support order far exceeds the costs to support their son, the Father contends that most of the support that he pays to this day is used to pay for the Mother's attorney.

Contrary to the Mother's allegation, the Father never refused to drive the Mother to the hospital when she had a miscarriage prior to their son's birth because he was never informed of the miscarriage until after she had returned from the hospital. The Father finds this lie particularly vile and requests that the Mother explain why she would ever stay with such a selfish and uncaring person AFTER such an incident.

Contrary to the Mother's allegation, the Father was very supportive and excited about having a child and attended every prenatal appointment that he knew about and was asked to attend.

Contrary to the Mother's claim that the Father has not paid child support to his son in California since February of 2004, the Father's check receipts confirm that he made a large advance payment in July of 2003 to stop a wage assignment order and purchased a \$10,000 Savings Bond in his son's name in September of 2004 to satisfy his

support obligation for the current school year.

Because the Father, on one occasion, had a prior commitment and could not attend a last minute brunch organized by his sister, the Mother distorted the truth to slander the Father with the claim that "the Father OFTEN did not attend his own family events." The Father challenges the Mother to reference just one other family event that the Father did not attend.

Contrary to the Mother's allegation, the Father has ALWAYS changed his son's diaper when it needs to be changed and his son has NEVER left his care with a dirty diaper. The Father believes that a child's diaper should be changed immediately after it is soiled or becomes wet.

Contrary to the Mother's allegation, the Father has NEVER stated or even thought that his son was fat. The Father points out that the Mother is the only parent of the child with an eating disorder. The Father has NEVER withheld food from his son and believes that when a child is hungry, he should be fed.

The Mother's immaturity is the reason why the parents do not communicate. The Mother ignores the Father's attempts to communicate and justifies this childish behavior with the baseless lie that the Father is verbally

abusive.

REPLY TO MOTHER'S ARGUMENT #1: The Judge DID abuse his discretion and commit an error of law in awarding Mother sole physical custody of the minor child. The Judge's findings of fact and conclusions of law DO NOT support his decision. (Appellee's Brief pp.8-15)

The "primary caretaker" argument that the Mother cites is not gender neutral as she claims. It is a gender-biased opinion masquerading as an interpretation of the law that assures unequal application of the "best interests of the child" standard. A father of a child born out of wedlock is particularly vulnerable to this "one size fits all" criteria because he would have to literally kidnap his child from the mother to be the "primary caretaker" prior to court intervention. 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 M.G.L. c. 209C.

The Mother also cites M.G.L. c. 209C §10 where it states that the court shall award joint physical custody only if the courts find the parents have successfully exercised joint responsibility for the minor child prior to the commencement of the proceedings, and have the ability

to communicate and plan for the best interests of the child.

The Father contends that this law is flawed and is an issue for Direct Appellate Review because it allows an unethical mother to abuse the system and, consequently, eliminate any possibility of due process and equal protection for fathers in family court. Mothers have the "gender-exclusive" absolute power to not cooperate and be hostile to the father to ensure that joint physical custody is not ordered by the Court.

The Father concedes that there would be no abuse of discretion in referencing M.G.L. c. 209C IF there was any truth to the testimony communicated by the Mother and her witnesses at the trial and IF the Mother had not purposely avoided communication with the Father.

Since the Court precluded the Father from presenting his evidence, the Court avoided hearing testimony that would have convinced an Honorable Court that the Mother is unstable, dishonest, and 100% at fault for the parent's inability to communicate or get along.

Limiting the trial to a "he said, she said" game of hearsay and refusing to allow evidence that would discredit the Mother gave Judge Digangi the power to believe what he

wanted to believe. This agenda allowed Judge Digangi to ignore the Father's testimony and run with any allegations expressed by the Mother or one of her "hearsay" witnesses to justify a judgment that was already pre-determined.

Contrary to the Mother's claim, overestimating the evidential value of alleged expert testimony is an abuse of discretion. Fabricating evidence, censoring evidence, and misdirecting the Father during the trial are blatant miscarriages of justice and grounds for the removal of this judge from the bench.

The Mother argues that "a joint physical custody arrangement would not in any way limit Father's interaction with Mother." The Father would agree that joint physical custody does not eliminate interaction, but it certainly reduces the amount of interaction when compared to the more intrusive sole custody arrangement.

Joint physical custody provides a clearly defined schedule that does not give either parent the power to intrude in the other parent's life. Neither parent is humiliated, devalued, financially ruined, or stripped of his dignity and each parent has a more isolated influence on their child, independent of the whims and malice of the other parent.

It is of no surprise that the Mother is going to try and defend Judge Digangi, because she was the litigant who benefited from the corruption and incompetence in his court.

A "chalk" of Judge Digangi's Court Comments with Rebuttals is attached to provide some examples of Judge Digangi's ignorance, arrogance, and incompetence at the Father's two court appearances before this judge (Addendum B1-B7).

Contrary to the Mother's claim, every conflict between the parents has been generated by the Mother. The Mother is the one who falsely accused the Father of assault and battery, the Mother is the one who falsely accused the Father of verbal abuse to get a restraining order, and the Mother is the one who falsely accused the Father of creating a hostile work environment on several occasions.

The Mother's proof that the Father has instigated conflict is that the Father accused the Mother of neglect. Contrary to the Mother's allegation, when the Father involved the DSS, he made it clear to the DSS worker that he was NOT accusing the Mother of abuse or neglect. Against his better judgment, he took the advice of the police, who were called to the Mother's home over this time

period, to request a home visit. The request was made because the Mother, who has a history of instability, was out of work for five straight days; because the grandmother was secretive about her daughter's condition, and because their son was visibly upset when the Father arrived on his two visitation days over this time period. If the Mother had simply answered the phone to address the Father's concerns, then there would have been no need for an investigation.

Contrary to her attorney's ignorant comment, the Father is very involved in his son's life, he has a very strong bond with his son, and he contributes everything he can to the parenting of his child during his scheduled visitation. The Father has ten hours of time with his son and makes sure that those are the ten most significant hours of his son's week.

Until the Father can get the current unjust ruling overturned, he will rely on quality over quantity. The Father contends that his son is exposed to more social interaction and stimulating activities in his ten hours with his son than what he gets with his Mother and maternal grandmother in the other 158 hours of the week.

The Mother conveys that the Father has complimented

her about her parenting and admits that she is fit. The Father was not in court to prove the Mother unfit. His evidence was to discredit the Mother who chose to slander the Father to prove that HE was unfit to justify her sole custody arrangement.

Although the Father is clearly the fitter parent, that fact is irrelevant since the child has two parents who should both be significantly involved in his life regardless of who is "better" than the other.

It is this "who's the best parent for the child" mentality and "winner take all" rulings that the family courts promote to generate the profitable, but destructive, legal conflict between parents.

The Father finds it curious that the only individuals in the Commonwealth who spin a Father's pursuit of a balanced relationship in his child's life as selfish are the racketeers working in the family court system who are profiting off the injustice.

If the Father's "approach" to custody were "all or nothing" as the Mother's attorney claims, then he would be pursuing sole physical custody. The only "all or nothing" arrangement is one that gives one parent all of the joys of a parental relationship with the child and orders the other

parent to finance this arrangement. Contrary to the hypocrisy that most lawyers, judges, and mediators in the family court system are selling to vilify fathers who refuse to be bullied out of their parental rights, joint custody IS a compromise and sole custody is not.

To conclude this "Argument," the Mother insists that the Father has been afforded equal protection under the law and the opportunity to parent his son. The Father suggests that since the Mother believes that visitation hours and support orders provide the opportunity to parent and since the Father disagrees, then transferring custody to the Father would apparently make everyone happy.

REPLY TO MOTHER'S ARGUMENT #2: The Judge DID commit an error of law AND abuse his discretion by alternating the income tax exemption for the minor child between Mother and Father. (Appellee's Brief p.15)

The Judge has no jurisdiction to give the Father's tax deduction to the Mother in alternating years because the tax deduction is not an ambiguous issue requiring court intervention.

The tax code only allows the parent of a child born out of wedlock to claim this deduction if he or she contributes more than 50% of the child's support. Since the Father provides 100% of his son's support, there is no

controversy. The Father pays \$250 more per month than the Mother to cover their son's medical coverage and is the only parent who pays taxes on the \$542 that he hands over to the Mother each month in child support.

The Mother claims that this issue should be waived on Appeal because it was not raised as an issue at the trial. This issue was not raised at the trial by either parent because the I.R.S. tax code is clear on this topic (see Add. C1-C5 of Father's Brief). The subject only came up in passing when the Father cross-examined the Mother about cheating on her taxes (TTr. p. 30-31).

Without any discussion on this topic, Judge Digangi ambushed the Father in his closing statement, at a time when the Father was not permitted to respond, by rewarding the Mother for knowingly cheating on her taxes in 2002 and 2003 with this tax deduction on alternating years.

REPLY TO MOTHER'S ARGUMENT #3: Father WAS denied due process and equal protection because he was "NOT allowed" to present any evidence that he had prepared for the trial. (Appellee's Brief pp.15-17)

Contrary to the Mother's claim, the Father was not given the forum to enter documents into evidence. Instead, he was forced to take the stand as his own witness without access to his evidence. The Court's rationale was, "I

think it's a proper way to present evidence at this time."
(TTr. p.103)

The Court would only allow the Father's questioning to reach a general, non-descript level. As soon as the testimony and questioning got more detailed and would lead to the submission of evidence, Judge Digangi would sustain a merit-less objection voiced by the Mother's attorney and order the Father to move on (Addendum A1-A5).

When the Father thought he would finally get the opportunity to testify with references to his supporting evidence, both the Court and the Mother's attorney ignorantly assumed that the Father intended to testify by reading a "prepared text."

At no time did the Father indicate any such thing. The Father's opening and closing statements were his "prepared texts." The Father requested access to his exhibits and notes so that he could present and submit his concrete evidence to the Court.

In documents and in court, the Mother's attorney has implied that the Father is a bumbling idiot to convince the Court to dismiss his claims. Her proof is that the Father is pro se. Therefore, according to the condescending stereotype which she suggests, the Father cannot possibly

understand what goes on in a courtroom or be "versed" in how to admit evidence.

The Mother's attorney does not specify anything from the trial to support this claim, she simply relies on the low opinion and contempt that the Court has toward pro se litigants to belittle the Father's legitimate claims.

The Father is convinced that lawyers are very aware of the negative attitude toward pro se litigants and use it to their advantage to demean the pro se litigant's case and threaten him with extortion.

Despite the fact that the Father is already paying for the Mother's lawyer with most of his child support payments and chose to NOT hire an attorney for himself, both attorneys, who have represented the Mother, have filed frivolous motions to extort from the Father their attorney fees. The Father has had to take these threats seriously since Judge Digangi proved to him that he will do anything if he thinks he can get away with it.

REPLY TO MOTHER'S ARGUMENT #5: The Father's Appeal clearly articulates the legal grounds upon which his appeal is based. (Appellee's Brief pp.18-20)

The Father has appropriately referenced numerous cases and statutes that support his issues. The Mother's attorney claims that the Father has cited cases that do not

apply to this matter. She specifically cites Blixt v. Blixt and Troxell v. Granville.

The Father contends that just because a particular case does not specifically rule on a never married father pursuing joint physical custody does not make a reference to that case irrelevant. The Father cited specific issues within each case that were applicable to his particular case. In fact, the Father would argue that his arguments are clearly more detailed and unique when compared to the "canned" template-responses expressed by the Mother's attorney in her brief.

Cases were cited and opinions quoted that were relevant to all citizens of the Commonwealth whether or not that individual is a never married father, a grandparent, or a gay couple looking to marry (see Goodridge v. Department of Public Health, Mass Supreme Judicial Court, 440 Mass. 309 (2003)).

The Father did not raise all of his issues at the trial that are stated in his "Statement of Issues" for the obvious reason that much of the corruption that he witnessed occurred DURING the trial and, therefore, did not afford the Father the opportunity to respond to these issues until AFTER the trial.

CONCLUSION

In response to the Mother's Brief, specifically her malicious request to extort from the Father double HER attorney fees and court costs, the Father respectfully requests that the Court hold the Mother accountable for her lies and crimes committed in this case.

Since the Mother's perjury in documents, lies under oath, false accusations, and contempt of court regarding the Order following the Pre-trial Conference contributed significantly to the need for an appeal and because the other person responsible for this appeal, Judge Peter Digangi, is immune from such action, the Father requests that his costs be assessed against the Mother. The Father herein states the costs to be \$1,036.26 based on the costs to file his appeal and transcribe the court-recorded cassette transcripts.

Respectfully submitted,
KEVIN THOMPSON, APPELLANT

Date: January 5, 2005

Kevin Thompson (Pro Se)