

Commonwealth of Massachusetts
Clerk of the Supreme Judicial Court
John Adams Courthouse
One Pemberton Square
Boston, Massachusetts 02108

RE: Appeals Court Case No. 2004-P-1496

THE MOTHER (Appellee)
vs.
KEVIN M. THOMPSON (Appellant)

APPLICATION FOR LEAVE TO OBTAIN FURTHER APPELLATE REVIEW

(1) This is the appellant, Kevin Thompson's ("Father's") request for leave to obtain further appellate review by the full Supreme Judicial Court. The Father is representing himself pro se.

(2) Statement of Prior Proceedings in the Case

May 28, 2003 After hearing, Judge Manzi enters a temporary order that awards sole custody to the Mother. The Father receives two days of visitation per week and a support order that does not adhere to the Child Support Guidelines.

June 4, 2004 After trial, Judge Digangi enters his final order awarding sole legal and physical custody to the Mother. The Father is given visitation hours and a support order.

June 28, 2004 The Father files a Notice of Appeal to request a new trial before an honorable court.

September 30, 2005 A three-judge panel of the Appeals Court (Judges Gelinas, Cypher, and Trainor) affirms the lower court's final order and claims that the Father's arguments raised in his appeal are "overall frivolous" and "have no basis in law or fact" to justify an award of double attorney fees and costs to the Mother. A petition for rehearing has been filed.

(3) Short statement of facts relevant to the appeal.

The Father filed a Brief and Reply Brief in support of his appeal. The Reply Brief was revised because the Appeals Court would not accept two addendum items

contained in his original Reply Brief with the claim that they were not part of the record on appeal. These addendum items were "chalks" of the lies contained in a DSS report and in two restraining order statements.

- (4) The Father requests Direct Appellate Review of M.G.L. 209C. The references to appropriate authorities of law are contained in the Father's Brief.

The Father also seeks Further Appellate Review of the appeals court opinion that the Father's case was "overall frivolous" and has "no basis in fact or law" to justify its allowance of the Mother's application for double attorney fees and costs.

- (5) **The Father's Statement of why Direct and Further Appellate Review is Appropriate**

Regarding M.G.L. 209C, the "primary caretaker" label, referenced in M.G.L. 209C, is the biggest obstacle for fathers in family court.

A father of a child born out of wedlock is particularly vulnerable to this "court-invented" label 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 joint physical custody will take longer than the six-month residency condition referenced in this law.

Section 10 of this law states that the court shall award joint physical custody only if it finds that the parents have successfully exercised joint responsibility and have the ability to communicate and plan for the child's best interests.

It is this section of M.G.L. 209C that is an issue for Direct Appellate Review because it allows an unethical mother to abuse the system.

It takes two to communicate and get along. Mothers have the "gender-exclusive" power to not cooperate and be hostile to the father to ensure that joint physical custody is not ordered by the Court.

The Father was aware that this law was the biggest obstacle for him to overcome which is the reason why he went into court with the evidence to prove that the Mother deliberately avoided communication with the Father and was 100% at fault for their inability to get along.

Since the Father knew that she would attempt to counter his evidence with lies about his character, the Father brought insurmountable evidence into court that would also prove that the Mother's word is not credible.

Regarding the Appeals Court ruling, what the Father has experienced in the Massachusetts court system is an **outrage**. The claim that the Father's appeal was "**overall frivolous**" to excuse the misconduct of Judge Digangi and justify an award of attorney fees and costs to the mother, to be doubled and extorted from the Father, **is without merit**.

For the Appeals Court to further claim that the Father's arguments "**have no basis in fact or law**," contradicts the two-page list of cases, statutes, rules, and other authorities cited in the Father's Brief to support his legitimate arguments.

Public interest and the interests of justice demand that this three-judge panel of the Massachusetts Appeals Court explain itself since the Father's contentions as communicated in his appeal are substantiated by Article I of the Massachusetts Declaration of Rights (as amended by Article CVI of the Amendments), Articles XV and XXIX of the Massachusetts State Constitution, the Due Process and Equal Protection Clauses of the 14th Amendment to the U.S. Constitution, Supreme Judicial Court Rule 3:09 (Code of Judicial Conduct), and numerous case law citations.

Moreover, there is ABSOLUTELY NOTHING frivolous about the Father's motion to the Appeals Court for a new trial before an honorable court.

Regardless of whether the appeals court agrees or disagrees with the Father's contention that Judge Digangi is corrupt, there is no dispute that the Father DOES BELIEVE this to be true and has submitted overwhelming evidence in his appeal to support such a claim.

Judge Digangi is not corrupt because he believes that custody to mothers is always the appropriate ruling. Certainly, everyone has a right to his or her opinion. The Father contends that Judge Digangi is corrupt because he manipulated the trial to sabotage the Father's case and, in effect, guarantee such a ruling.

Furthermore, substantiated criticism of a judge's conduct is NOT frivolous. The words used by the appeals court to justify the actions of Judge Digangi apply to the Father as well. To quote:

It was not the fault of (the Father) to draw reasonable inferences from the relevant evidence before him.

The appeals court opinion reveals that this three-judge panel disregarded EVERY contention expressed by the Father, ignored his supporting evidence and the information contained on the court-recorded tapes, and chose instead to believe ONLY what was communicated by Judge Peter C. Digangi. **On its own, this frightening agenda, which has destroyed the Father's faith in the integrity and impartiality of this state's judiciary, is a substantial reason affecting the public interest and the interests of justice.**

Since the words and actions of this three-judge panel of the Appeals Court indicate that it questions the Father's credibility, the Father challenges the court to reference any LEGITIMATE evidence on tape or in documents that would lead an impartial and honorable court to conclude that the Father's word is not credible.

The Father can confidently make such a challenge because he knows that he has not said a single word in court or in documents in the three years that this case has dragged on that was not 100% truthful.

To add insult to injury, with the \$300 filing fee, the hundreds of hours spent to prepare his appeal, and the mandatory costs to transcribe the court-recorded tapes and produce copies of his documents, the Father paid for the right to make an Oral Argument before the Appeals Court according to Massachusetts Rule 22 of Appellate Procedure. The appeals court reference to Rule 1:28 to justify denying the Father this opportunity does not apply since **there were substantial questions of law brought by the appeal.**

Oral argument or not, the Father contends that it IS NOT POSSIBLE for an honorable court to read the Father's Brief, his Reply Brief, the "chalks" contained in the addendums to these documents, and the court-recorded transcripts, and not agree that Judge Digangi discriminated against the Father in his courtroom and precluded the Father from presenting his evidence.

The appeals court opinion references a SINGLE inadmissible exhibit, the DSS report, to claim that there was "so much negative evidence" against the Father "that could not and should not have been ignored." This statement indicates that the Appeals Court completely ignored the Father's detailed rebuttal to this evidence and the information contained on court-recorded tapes, which confirms that Judge Digangi misdirected the Father during the trial to preserve the credibility of this wildly slanderous report.

Regarding the Court's denial of gender bias, contrary to the conclusion reached by the three-judge panel, there was overwhelming evidence to support the Father's claim of gender bias. Judge Digangi expressed his gender-biased opinion on several occasions that fathers are lesser parents than mothers with no chance of success in his courtroom.

To prevent the appeals court from "overlooking" this bias and claiming otherwise, the Father "chalked" a number of these comments into his Reply Brief (Addendum B).

Among the numerous gender-biased comments transcribed into the Father's documents include the following:

Can we look at this case getting the 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're going to get very far with it. (Addendum B3 of Reply Brief)

If no judge is going to entertain a joint custody arrangement, **which contradicts the opinion of 85% of the citizens polled in this Commonwealth**, then equal protection does not exist for fathers in family court. It is worth noting that a custody arrangement that is supported by 17 out of every 20 people in the state, is rejected by almost every employee in the family court system.

If the previous example is not specific enough to claim gender bias, then the Father offers another Judge Digangi court-recorded moment:

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 parents. (February 25, 2004 Tr. pp. 22-23)

Regarding the Court's Pro Se Argument, the Father takes exception to the Court's unsubstantiated claim that it was the Father's decision to represent himself that interfered with his submission of evidence. Contrary to the conclusions reached by the three-judge panel, the Father contends that he was well prepared for trial and researched what he needed to do to introduce evidence.

The Father concedes that, as a pro se litigant, his arguments may not be artistically drawn, but legitimate arguments may not be dismissed based on such a reason. This is particularly true where a defendant is not represented by counsel and in view of Rule 8(f) of the rules of civil procedure, 28 U.S.C., which requires that all pleadings shall be construed as to do substantial justice.

The Father further contends that he certainly knew more about his custody case than the "experienced and learned counsel" hired by the Mother one week before the trial who was hired only after the Mother ignored every court order and written request from the Father to meet to disclose evidence during the three month time period when she represented herself pro se.

The bottom line is that due process did not happen because of the double standard rules that were applied in Judge Digangi's courtroom and not because the Father improperly represented himself.

While the Mother was free to introduce inadmissible secondhand testimony and exhibits that were not pre-marked prior to the trial or disclosed within the time period ordered for discovery to be complete; the Father and his one witness were not allowed to communicate comments made directly to them by the police and the Mother's brother or communicate anything that happened prior to the birth of the two year old child (a time-frame restriction placed ONLY on the Father).

The court transcripts clearly reveal that Judge Digangi denied the Father the opportunity that any hired attorney in his courtroom would have been given to present evidence.

Specifically, Judge Digangi precluded the Father from presenting every one of his 55 exhibits that he had pre-marked for the trial by forcing the Father to take the stand as his own witness without access to his notes and exhibits in violation of the Father's Constitutionally-protected right to due process. When the Father protested the court's efforts to railroad him, Judge Digangi responded:

You're acting as your own counsel. You put yourself in this predicament.

By manipulating court procedure, Judge Digangi limited the trial to a "he said/she said" game of hearsay so that he could believe everything alleged by the Mother and disregard everything communicated by the Father.

To rationalize his actions, Judge Digangi claimed that he was not going to allow the Father to present his evidence by reading a "prepared text." As the Father wrote in Addendum B4 of his Reply Brief, which can be verified with the court transcripts, the Father never conveyed that he intended to read a prepared text. The only "texts" that were "prepared" for the trial were the Father's opening and closing statements.

Apparently, the Appeals Court disregarded the Father's rebuttal, since it included this specific reference to "reciting a prepared speech" in the text of the court's opinion to allege that the Father's pro se efforts were incompetent.

The Father made a calculated choice to not hire a lawyer. He was not guilty of a crime and he had all of the factual evidence on his side. What he was not going to do was forfeit that advantage by handing opposing counsel the "business as usual" power to litigate the Father into bankruptcy.

Lastly, if family courts sincerely cared about the best interests of the children as they claim, then they would be interested in hearing all of the information that both parents believe is relevant.

Regarding the DSS Report, Judge Digangi overruled the Father's objection to this exhibit without explanation. In the court transcripts from the June 4, 2004 trial (pp.19-20), the Father's objection included the statement:

I object to the report because it is based entirely on hearsay and on the assessment of a woman who has never met me. This woman's investigation involved an hour of time in Ms. Moran's company and hearsay from individuals who barely know me and were handpicked by Ms. Moran for questioning.

Furthermore, the DSS investigation was initiated by me. Therefore, the only relevant information from the report is that the concerns that I expressed to a Lawrence DSS worker were unfounded.

BOTH Judge Digangi and the Appeals Court overestimated the evidential value of this second and thirdhand testimony and referenced this ONE EXHIBIT to claim that Judge Digangi's ruling was "well supported." This contradicts the information on the Massachusetts Bar Association's online site where it states:

Another rule concerning the introduction of evidence prohibits the use of secondhand testimony. Under this rule, a witness cannot testify to something that he or she heard from someone else...The testimony would be inadmissible as evidence. It would be called hearsay testimony. The courts have decided that hearsay is usually not very reliable and, therefore, cannot be used as evidence in a trial.

The Mother's attorney has argued that DSS reports are an exception to the hearsay rule. This "loophole" argument is flawed since the court's reference to this report slandered the Father, who was not the subject of the investigation.

Judge Digangi himself is quoted as saying:

The purpose of the investigation by this witness was not to investigate you, sir, in any way. Bear that in mind. (June 4, 2004 Tr. pp.22-23)

Apparently, Judge Digangi and the Appeals Court did not "bear that in mind" since they both referenced this investigation in their findings.

The court-recorded statement, italicized above, was Judge Digangi's response to the Father's introduction of testimony and evidence that would have rendered the report worthless before an honorable court. Judge Digangi preserved the credibility of this slanderous report by interrupting the Father and ordering him to immediately move on.

The Father contends that Judge Digangi repeatedly interrupted and misdirected the Father during the trial to avoid hearing any testimony that would discredit the Mother and her witnesses.

The Father was prepared to rebut the DSS report with a chalk of 25 specific lies contained in the DSS report.

The chalk, which addressed these lies, was originally included in the Father's Reply Brief. The Father was forced to revise his Reply Brief because the appeals court would not accept several of the Father's addendum items, including his DSS-related chalk.

The court's explanation was that the Father could not reference the DSS report because it was not part of the record on appeal.

The Father questions why an exhibit that was not part of the record on appeal, precluding the Father from referencing it in his documents, could be so heavily referenced by the author of the three-judge panel in the written response to the Father's appeal.

Both Judge Digangi and the appeals court referenced three specific slanderous statements made about the Father in the DSS report. The Father did not learn of these statements until a week before the trial when he received the Mother's evidence. He was never given the opportunity to question these "witnesses" because they were not in court for the trial.

Aside from the fact that the entire DSS report is based on inadmissible secondhand testimony, the statements are wildly untrue and were denied, after the fact, by two of the three school officials credited with making them.

When the Father met with Dr. Charles P. Littlefield, the School Superintendent, and asked him how he could justify his DSS comment that the Father was "revengeful and hateful" to the Mother, since he had never met the Father prior to the day of this meeting, the Superintendent insisted that he never made such a statement and claimed that the DSS investigator only questioned him about the Mother's attendance record.

The Father has got to know the Superintendent since this meeting and does not give his denial credibility. The Father believes that the Superintendent did believe the slanderous information communicated to him by Union President Diane Dandreta and did communicate this secondhand hearsay to the DSS investigator. The Father believes that the Superintendent has since denied making these comments to avoid a lawsuit.

The Father has no doubt that Diane Dandreta lied to the DSS investigator as a friend of the Mother and did in fact slander the Father with the outrageous claim that she has seen the Father "out of control verbally at the school" and "fears him." It is for this reason that the Father has filed a character defamation lawsuit in Superior Court against this woman.

When the Father questioned Joe Harb, his department head, about how he could claim that he has seen the Father's "temper when reprimanded," since the Father has never been reprimanded by his department head in his eight years at the high school, Mr. Harb insisted that he was misquoted and that he simply conveyed to the DSS worker that he has seen the Father justifiably angry and upset in response to the Mother's chronic complaints of a hostile work environment. Mr. Harb's word IS credible and he is the only "school official" of the three individuals questioned who actually knows the Father well enough to comment.

Ironically, the DSS findings COMPLETELY CONTRADICT the findings reached by school officials in its formal investigation into the Mother's union-initiated complaints. The investigation, conducted by the high school principal, Arthur Nicholson, and the Father's department head, Joe Harb, concluded that the Mother's allegations that the Father was creating a hostile environment for her at their workplace were completely baseless and unfounded.

The results of this school investigation, conducted prior to the DSS interviews, is mysteriously missing from the DSS report.

The Mother's motive for these chronic false allegations was to manufacture phony evidence for her case. Apparently, this unethical strategy worked since the three-judge panel of the appeals court was duped to believe that there was "significant evidence" to support the lower court's findings.

Regarding the Court's Findings of Facts, among the lies and inaccuracies that were expressed by Judge Digangi in his Findings of Facts and referenced in the opinion from the Massachusetts Appeals Court are that "the Father believes that the child should have been put on a diet when he was an infant," that he is "unwilling to compromise," that he is "rigid," and that he has demonstrated "a lack of judgment."

Only in family court is sole custody a compromise but joint custody is not and only in family court are a father's efforts to protect his parental rights and the rights of his child to a balanced relationship with both parents considered rigid.

The Father wonders why the appeals court did not commit to this character assassination entirely and reference Judge Digangi's claim that the Father is "narcissistic" and "idealizes himself" since there would be as much truth to those descriptions as the lies that the appeals court did borrow from Judge Digangi's findings to vilify him. The Father challenges the appeals court to reference anything in documents or in the court-recorded transcripts that would support such slanderous statements about the Father.

The fact that all of the statements in Judge Digangi's Findings of Fact were addressed by the Father in his Brief (Addendum E1-E6) and in the Father's Appendix to the Brief (pp. 59-65), but still listed as facts to excuse Judge Digangi's actions and justify the Judgment from Appeals Court, proves that the Appeals Court did not read the Father's documents or simply ignored his claims and supporting evidence entirely.

To conclude, the Mother in this case perjured herself in legal documents, lied under oath, made false allegations against the Father to manufacture evidence, ignored the court order to meet with the Father to pre-mark the evidence, and did not disclose her evidence until she hired her attorney one week before the trial, months after discovery was to be complete; but it is the Father who is being ordered to pay for an attorney, who he did not hire, under a bogus charge that his appeal was frivolous.

If there was ANY truth whatsoever to the statements contained in Judge Digangi's Findings of Fact and if the Father had been given the opportunity to present his physical evidence, then the Father would not have spent the time and money to appeal his case.

If the response from the Appeals Court was not a blatant miscarriage of justice, then the Father would do what the court system is bullying him to do with merit-less extortion orders and go away.

The Father's application for further appellate review is a gamble that the unaccountable system of injustice and hypocrisy that the Father has experienced through the Appeals Court does not extend to the Supreme Judicial Court.

The bottom line is that the Father's family court case should have been resolved at the initial hearing three years ago with one question, "Do either of you intend to prove to the court that the other parent is unfit?" Since the answer to that question would have been "no" from both parents, then joint custody should have been ordered immediately.

Of course, such a simple solution is ignored in this state because it reduces the billable hours that the family courts create for lawyers and eliminates the need for a child support order, which brings federal monies into the state, gives all of the joys of a parental relationship with the children to the mother, and orders the father to finance that arrangement.

The Father requests that the Supreme Judicial Court apply strict scrutiny to examine every one of the Father's documents and supporting evidence and assess whether the Appeals Court decision to affirm the lower court's judgment, extort double attorney fees and costs from the Father, and reward the Mother for her bad faith litigation and contempt of court orders was, in any way, a just and honorable ruling.

Respectfully submitted,

Dated: October 18, 2005

Kevin M. Thompson