Parental Alienation

Turner v. Turner, 260 AD2d 95 (3rd Dept. 1999).

Matter of Burola v. Meek, 64 AD3d 962 (3rd Dept. 2009).

Matter of Shokralla v. Banks, 130 AD3d 1263 (3rd Dept. 2015).

Matter of Gerber v. Gerber, 133 AD3d 1133 (3rd Dept. 2015), 141 AD3d 901 (3rd Dept. 2016).

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Discusses different avenues of relief for parental alienation

2010 NY Slip Op 50931(U)

LAUREN R., Plaintiff,
v.
TED R., Defendant.

203699-02

Supreme Court, Nassau County.

Decided May 25, 2010.

ROBERT A. ROSS, J.

The continuing jurisdiction of the Supreme Court to modify or annul its custody and visitation judgments and orders, is set forth in Domestic Relations Law §240. Such authority is similarly provided to the Family Court pursuant to Family Court Act §467. In post judgment proceedings regarding a modification of custody and visitation, the standard is the "best interest of the child,"

when all of the applicable factors are considered. See, *Friederwitzer v. Friederwitzer*, 55 NY2d 89.

Parental access, commonly referred to as "visitation," is an important right of the non-custodial parent and the child. See, *Weiss v. Weiss*, 52 NY2d 170. In a scenario where one parent is demonstrated to have interfered with the custodial rights of a parent, a number of mechanisms exist [see, Scheinkman, New York Law of Domestic Relations, Second Edition, §23.14] to aid in the enforcement of custody orders and judgments, including:

1. Criminal Sanctions, pursuant to Penal Law §135.45 and 135.50;
2. Suspension of alimony or maintenance, pursuant to Judiciary Law §750,753;
3. Tort action for custodial interference;
4. Orders of Protection, pursuant to Domestic Relations Law §240.

While the most factually apparent ground to change existing custody arrangements involves physical danger, the act of alienating a child against a parent presents a nefarious form of conduct that must be met with careful consideration and immediate, comprehensive remediation by a Court (see, *Zafran v. Zafran*, 306 AD2d 468; *Lew v. Sobel*, 46 AD3d 893). A change in custody should not be permitted solely as a means for punishing a recalcitrant parent (see, *Lew v. Sobel*, supra), but always requires due consideration of all of the other custodial factors. See, *Robert T.F. v. Rosemary F.*, 148 AD2d 449.

While mindful of the consequential future effect of this determination (see, *Lauer v. City of New York*, 95 NY2d 95, 100), inasmuch as a Court's finding of willful interference "per se raises a strong probability that the custodial parent is unfit" (see, *Young v. Young*, supra; *Glenn v. Glenn*, supra), when a pattern of alienation by the custodial parent is proven in any prior proceeding, that alienating conduct *must* [emphasis added] be considered and addressed by the Court in any subsequent proceeding involving custody/parental access. See, *Audobon v. Audobon*, 138 AD2d 658; *Martin R.G. v. Ofelio G.O.*, 24 AD3d 305. Also, see CPLR §4213[b]; *Robert T.F. v. Rosemarie F.*, 148 AD2d 449.

The doctrine of *res judicata* bars the issue of whether alienation occurred in the subsequent change of custody hearing ordered herein. See, *O'Brian v. City of Syracuse*, 54 NY2d 353, 357; *Matter of Waldman v. Waldman*, 47 AD3d 638; *Braunstein v. Braunstein*, 114 AD2d 46, 53; *Town of New Windsor v. New Windsor Volunteer Ambulance Corps, Inc.*, 16 AD3d 403. Considering that parental alienation of a child from the other parent has been determined to be "an act inconsistent with the best interest of the child (*Bobinson v. Bobinson*, 9 AD3d 441; *Stern v. Stern*, 304 AD2d 649; *Zafran v. Zafran*, 28 AD3d 753; *Zeis v. Slater*, 57 AD3d 793), and that it has been proven in this contempt proceeding — the "strong likelihood of unfitness" becomes a "factor" that must be considered in the change of custody hearing ordered herein.

Protraction or delay in parental alienation cases often serve to reinforce the offending conduct and potentially undermine any remediation that a court could fashion with appropriate therapy, parent coordination, and/or, a change in custody. See, Steinberger, *Father? What Father? Parental Alienation And Its Effect on Children*, NYSBA Family Law Review, Spring 2006;

Johnston, J.R., *Children of Divorce Who Reject a Parent And Refuse Visitation: Recent Research & Social Policy Implications for the Alienated Child*, 38 Fam. L.Q. 757, 768-769.Under the circumstances of this case, this Court's finding of a willful violation of an existing order of custody in the form of parental alienation requires a prompt evidentiary hearing to determine whether the children's best interests, under the totality of the circumstances, warrant modification of the previously entered custody order. See, *Friederwitzer v. Friederwitzer*, 55 NY2d 89; *Corigliano v. Corigliano*, 297 AD2d 328; *Martin R.G. v. Ofelio G.O.*, 24 AD3d 305; *Carlin v. Carlin*, 52 AD3d 559.

PROCEDURAL HISTORY

By Order to Show Cause dated December 14, 2007, defendant sought an order to have the plaintiff held in contempt for her willful and deliberate failure to comply with the Stipulation of Settlement, dated October 30, 2003, in that she allegedly interfered with his right to frequent and regular visitation with and telephone access to the parties' children, D. and N.; and by alienating the children from the defendant through numerous acts of disparaging the defendant to the children. The Court granted defendant's motion by its Amended Decision and Order dated September 9, 2008, to the extent that a hearing was ordered. This contempt hearing was held before me on May 15, 21, July 13, 15, 16, August 3, 4, 5, 6, 17, 18, 19, September 17, 2009, January 4, 5, 6, 7, 8, 11, 12, 19, February 3, and 22, 2010.

The parties' Stipulation of Settlement was incorporated but not merged into the parties' Judgment of Divorce (Stack, J.). Pursuant to the unequivocal terms of the Stipulation, she was prohibited from "alienating the children from the defendant, plac[ing] any obstacle in the way of the maintenance, love and affection of the children for the defendant," or to "hinder, impair or prevent the growth of a close relationship between the children and their parents, respectively, or cause others to do so." Moreover, in sharing joint legal custody of the children, she was specifically required to consult with the defendant regarding decisions affecting the children's education, health and religion. That Stipulation also clearly provided that each of the parties was to "exert every effort to maintain free access and unhampered contact," "to foster a feeling of affection," and not to "do anything which may estrange the children from [the defendant] or injure the children's opinion as to the Father which may hamper the free and natural development of the children's love and affection for the [Defendant]." To sustain the defendant's application regarding contempt, he must demonstrate that the plaintiff has violated a clear and unequivocal court order which actually defeated, impaired, impeded or prejudiced the other party's rights (see, *Great Neck v. Central*, 65 AD2d 616) or were calculated to affect those rights (*Stempler v. Stempler*, 200 AD2d 733). The movant must meet this burden by clear and convincing evidence (*Bulow v. Bulow*, 121 AD2d 423). The Court may not hold a party in contempt where payment may be enforced by other enforcement procedures (*Wiggins v. Wiggins*, 121 Ad2d 534), unless such remedies would be an exercise in futility or ineffectual (*Farkas v. Farkas*, 209 AD2d 316). Upon a finding of contempt, the Court may impose a period of commitment to jail (*Powers v. Powers*, 86 NY2d 63) or fine, or both. In this instance, a lawful court order, in the form of a Judgment of Divorce incorporating the parties' stipulation of settlement, was in effect. The plaintiff was shown to have actual knowledge of its terms. *Ottomanelli v. Ottomanelli*, 17 AD3d 647; *Freihofner v. Freihofner*, 39 AD3d 465; *Kawar v. Kawar*, 231 AD2d 681, 682. This order of parental access was not only in effect before and during the hearing, but unsuccessful efforts

were made during the course of the hearing to utilize counseling and parenting coordination to remediate the alienating conduct of the plaintiff. See, *Lew v. Sobel*, 46 AD3d 893. See, also, Judiciary Law §753; *Massimi v. Massimi*, 56 AD3d 624.

CONTEMPT

The Court's findings here were based, in part, upon an assessment of the credibility of the witnesses and their character, temperament and sincerity. *Matter of Carl J.B. v. Dorothy T.*, 186 AD2d 736; see, also, *Klat v. Klat*, 176 AD2d 922; *Leistner v. Leistner*, 137 AD2d 499. I have also considered the extensive post-hearing submissions of each of the parties and the attorney for the children. Here, the defendant's burden of proof in this matter was met so overwhelmingly, as to exceed the burden of proof required (see, *Bulow*, supra). Instead, it was proven "beyond a reasonable doubt" [cf., *Rubackin v. Rubackin*, 62 AD3d 11]. The acts perpetrated by the plaintiff were not only in willful violation of the Stipulation of Settlement, as incorporated into the Judgment of Divorce, but such as to demonstrate a continuing and calculated effort to violate the parental access of the defendant to the infant issue. The movant here demonstrated that the plaintiff violated a clear and unequivocal Court order, thereby prejudicing his rights. See, Judiciary Law §753[A][3]; *Vujovic v. Vujovic*, 16 AD3d 490. The specific findings of fact are detailed herein, and considering the extent, nature, and continuing pattern of alienation perpetrated by the plaintiff, it is clear that plaintiff's conduct was calculated to and did, in fact, impair, impede or prejudice the rights and remedies of the defendant herein. See, *Silverman v. Silverman*, N.Y.L.J., 11-22-95, p. 26, col. 1; *McCain v. Dinkins*, 84 NY2d 216; *Hoglund v. Hoglund*, 234 AD2d 794.

FACTUAL FINDINGS

AND INSTANCES OF ALIENATION

Plaintiff intentionally scheduled their child's (N.'s) birthday party on a Sunday afternoon during defendant's weekend visitation, and then refused to permit defendant to attend. She demanded that N. be returned home early, in order to "prepare" for her party, but D., the other child, was enjoying the time with her father and wished to remain with him until the party began. Plaintiff castigated N. for "daring" to invite her father to take a picture of her outside her party. According to the plaintiff, "this doesn't work for me!" Plaintiff threatened to cancel N.'s party, and warned her that her sister, too, would be punished "big time" for wanting to spend time with her father. Plaintiff's taped temper tantrum, offered into evidence, vividly detailed one instance of how D. and N. have been made to understand that enjoying time with their father will be met with their mother's wrath and threat of punishment. Plaintiff conceded that when she completed N.'s registration card for XXX., she wrote that defendant is "not authorized to take them. I have custody. Please call me." At trial, she claimed to fear that defendant would retrieve the girls directly from school. However, she later admitted that defendant had never even attempted to pick them up at school. Her testimony at trial sharply contradicted her sworn affidavit dated January 23, 2008, in which she stated that "the defendant consistently attempts to pick up the girls unannounced from their schools and activities, which disrupts not only the girls, but those in charge of the aforementioned." In her sworn affidavit, plaintiff claimed that she completed the

registration card because defendant sought to attend the end of D.'s art class and then had the audacity to drive his daughter home. The art class "incident" occurred well after the registration card was completed by the plaintiff. Moreover, nothing in the parties' agreement prohibits the defendant from visiting the children at extra-curricular events or from driving them to or from such events. In point of fact, there was no dispute that D.'s Friday art class in Huntington ended as defendant's alternate weekend visitation commenced. Plaintiff wrote to Dr. L.[1] (then the XXX. principal) and Ms. T. (N.'s fifth grade teacher), demanding that they restrict their conversations with the defendant to N.'s academics, as plaintiff is "solely responsible for her academic progress and emotional well being. Notwithstanding the nature of their joint legal custody plaintiff insisted before me that, "I have custody, he has visitation." The plaintiff made/completed an application for admission to XXX on behalf of N. in October, 2007. On the application, she checked the box "Mother has custody," rather than the box directly below which says "Joint custody." She identified her new husband, R. L., as N.'s "parent/guardian," and she failed to mention the defendant. During cross examination, plaintiff insisted that she only omitted reference to the defendant for fear that his financial circumstances would adversely impact N.'s chances for acceptance. However, no financial information was requested anywhere on the application. Moreover, plaintiff acknowledged that none was required until after an applicant was invited to attend. By applying to XXX without defendant's knowledge — but with N. completely involved in the process, plaintiff orchestrated the decision to be made, as well as alienating the child. Had the defendant not consented to N.'s attendance at XXX, after the fact, N. would be angry with him for purportedly interfering with the enrollment, even if defendant's objections to a private school placement were sound. In no event was he consulted as to this educational decision. When asked how she might handle things differently now, plaintiff did not indicate that she would first discuss the possibility of a private school with the defendant, as she is obligated to do pursuant to the Stipulation. In a similar pattern of being advised "after the fact," defendant testified that there were countless times when plaintiff deliberately scheduled theater tickets, family events and social activities for the girls during his visitation, and he was compelled to consent or risk disappointing the girls. These occurrences continued even during the time span of proceedings before me. Plaintiff was forced to concede at trial that the defendant was prevented from enjoying his visitation rights after he returned with the girls from his niece's Bat Mitzvah until this Court granted defendant's emergency application to compel the plaintiff to allow the defendant to take D. and N. for the ski trip he had scheduled for his half of the Christmas recess. Plaintiff insisted that it was D. and N. who refused to see their father, because they were angry with the "choices" he had made on their behalf, including his objection to N. attending XXX. Defendant was made aware of the children's position because they parroted their mother's demands on several occasions. D. even read from a script during the brief dinners he was permitted. As plaintiff wrote in one e-mail when she was describing her role with respect to the children: "I am in charge here, not them. What I [sic] say goes. They may bring their shoes. You are responsible for the rest. End of story."

In vivid testimony, the defendant recalled how the plaintiff willfully prevented him from exercising his rights to visitation with the children from November 4, 2007 through December 21, 2007. I observed the plaintiff smirk in the courtroom as defendant emotionally related how he was deprived of spending Hanukkah with his children, and was relegated to lighting a menorah and watching his daughters open their grandparents' presents in the back of his truck at the base of plaintiff's driveway on a December evening. The fact that the children were as angry

as they were with the defendant in November and December, 2007, demonstrates, in my view, that efforts to alienate the children and their father were seemingly effective. The children demanded that defendant meet "their" demands before they would permit him to visit with them again. They demanded that defendant permit N. to attend F. A., that he withdraw his objection to their participation in therapy with their mother's therapist, and that he pay for 75% of D.'s Bat Mitzvah but limit his invitations to a handful of guests and have no role in the planning of the event. Plaintiff's contention that she had no involvement in these children's "demands" was belied by the very fact that the children had intimate knowledge of their mother's position on all of these issues. The children, in effect, were evolved into plaintiff's sub-agents and negotiators, having specific details of the financial demands of the plaintiff, and information as to the marital agreement. The mother alluded to the ambivalence of the children in seeing the defendant. But such abrogation to the children's wishes, under these circumstances, was in violation of the agreement. It was wholly improper for the mother to adhere to the children's wishes to forego visitation with their father (see, *Matter of Hughes v. Wiegman,* 150 AD2d 449). Plaintiff half-heartedly testified that she wants the children to have a relationship with the defendant. Her view of the defendant's role was a numbing, desired nominality, evident by her actions that were without any semblance of involvement by the defendant — notwithstanding the clear joint custodial provisions. At critical points in the cross-examination, plaintiff was noticeably off balance — hesitating and defensive — with answers that dovetailed to either narcissism, or, a poor grasp of the affects of her conduct. The plaintiff was dispassionate, sullen, and passively resistant to the alienating efforts of the plaintiff. The continued litany of instances of alienating conduct, turned repression of the defendant's joint custodial arrangement into farce. The endurance in recounting instance upon instance of alienating conduct herein, was as daunting as it was indefensible. Plaintiff relegated the defendant to waiting endlessly at the bottom of her long driveway. When defendant drove up her driveway on October 26, 2007, so that the children would not have to walk down with their heavy bags in a torrential rain, plaintiff ran down the driveway where she had left her car, drove up the driveway and blocked defendant's vehicle. The children watched as the police listened to their mother angrily demand that their father be arrested and, when the police refused, heard their mother scream that she is a taxpayer and the police work for her. She frequently disparaged the defendant in the presence of the children, calling him a "deadbeat," "loser," "scumbag" and "f____g asshole." On one particular occasion, while holding N. and D. in her arms, plaintiff said to the defendant, "We all hope you die from cancer." Just this past summer, when defendant insisted that D. retrieve her clothes from plaintiff's home in preparation for their visit to N. on her camp visiting day, plaintiff urged to defendant that "Judge Ross will not be around forever, d____." Before the beginning of each of defendant's vacations with the children, the plaintiff staged prolonged and tearful farewells at the base of the driveway, during which plaintiff assured the children that they will return to "their family soon," and if "things get too bad, they can always tell Daddy to bring them home." The crescendo of the plaintiff's conduct involved accusations of sexual abuse. Plaintiff falsely accused defendant of sexual misconduct in June, 2008, shortly after defendant moved to Huntington and the children's friends were enjoying play dates at defendant's home. Plaintiff testified that D. shared that she was uncomfortable when the defendant tickles her, and conceded that she knew there was nothing "sexual" involved. Undaunted by the lack of any genuine concern for D.'s safety, plaintiff pursued a campaign to report the defendant to Child Protective Services. To facilitate this, she spoke with W. M, the psychologist at the school D. attended. Plaintiff also "encouraged" D. to advise Dr. C. (the chidren's pediatrician) that defendant

inappropriately touched her — but he saw no signs of abuse. Plaintiff also advised Dr. A., Ms. M., Dr. R. (the children's prior psychologist) and family friends of the allegations and, ultimately, the Suffolk County Department of Social Services opened a file on June 3, 2008, and began an investigation. According to the Case Narrative contained in the New York State Case Registry, a complaint was made that "On a regular basis, father inappropriately fondles 13 year old D.'s breasts. This makes D. feel very uncomfortable. Last Sunday, Father hit D. on the breast for unknown reason . . ." When the caseworker and Suffolk County detectives interviewed D. on June 3, 2008, she reported only that her father tickles her on her neck and under her arms, and she categorically denied her father ever fondled her breasts. She admitted that her father was not attempting to make her uncomfortable, but that he still regards her to be a tomboy. The detectives closed their investigation. Thereafter, and significantly, when the CPS caseworker met with plaintiff on August 19, 2008, plaintiff was quick to state that her ex-husband "did it again." Plaintiff claimed that the defendant hugged D. too hard. According to the caseworker's notes, the caseworker repeatedly cautioned the plaintiff not to bring the children into her disputes with the defendant. This warning was contained in CPS records. Although unfounded child abuse reports are required to be sealed (see, Social Services Law §422[5]), such reports may be introduced into evidence "by the subject of the report where such subject ... is a plaintiff or petitioner in a civil action or proceeding alleging the false reporting of child abuse or maltreatment" (Social Services Law §422[5][b][1]). Allegations that defendant had injured the child were found to be baseless and, by making such allegations, plaintiff needlessly subjected the child to an investigation by Child Protective Services, placing her own interests above those of the child. This report was not made in "good faith" — rather, the investigating agency warned the mother not to re-utilize the allegations and her children in her custodial litigation with the defendant. The concern of a pending contempt proceeding did not affect the plaintiff's conduct. For example, knowing that defendant had parenting access with D. on July 3, 2009, plaintiff invited D.'s close friend, C. C., to a country club for a fireworks display and advised D. of this invitation. She then instructed D. to tell her father she was invited to a friend's party on that date. Another example occurred on June 13, 2009, when plaintiff quietly escorted D. from Alice Tulley Hall during the intermission, ignoring the instructions from the G. Y. Orchestra staff that everyone remain until the conclusion of the entire program. Plaintiff purported she was unaware that defendant attended this special program in Lincoln Center. Defendant, who was in attendance at the concert, was left waiting at the stage door with flowers for D. Plaintiff ignored his text messages questioning where his daughter was. The plaintiff, when confronted with the notion that she may have precipitously ushered her daughter away before her father was able to give her flowers, retorted to the Court that "it was not her responsibility to make plans for T." The evidence before me demonstrates a pattern of willful and calculated violations of the clear and express dictates of the parties' Stipulation of Settlement, incorporated but not merged into their Judgment of Divorce. The extensive record is replete with instances of attempts to undermine the relationship between the children and their father and replace him with her new husband, manipulation of defendant's parenting access, utter and unfettered vilification of the defendant to the children, false reporting of sexual misconduct without any semblance of "good faith," and her imposition upon the children to fear her tirades and punishment if they embrace the relationship they want to have with their father. The unfortunate history here also reflects the plaintiff's hiring and firing of three different counsel, expressed disdain towards the children's attorney, and utter disregard for the authority of the Court.

CHANGE OF CUSTODY PROCEEDING TO BE HELD

There was no request in the moving papers for a change of custody. During the course of the extensive hearing held before me, application was made by the defendant for an immediate change of custody. It is improper for a trial court to take action and grant relief without appropriate notice to one of the parties affected. Such notice during the course of the proceeding for undemanded relief does not constitute adequate notice, and could serve to prejudice the plaintiff. Siegel Practice Commentary, McKinney's Consol. Law of New York, Book 7B, CPLR 3017.6. The Court did not grant the relief for a change in custody in the course of the hearing for contempt. However, Domestic Relations Law §240 provides that upon an application, the Court may modify a previous direction with respect to the right of visitation "after such notice to the other party....and given in such manner as the Court shall direct." See, Domestic Relations Law §240. The request for a change in custody during the course of the contempt hearing clearly has provided adequate notice by which to schedule a hearing. The request during the hearing to amend the motion to conform to the evidence presented at this hearing, is now granted, to the extent of ordering a prompt hearing on a modification of custody. *Heintz v. Heintz*, 28 AD3d 1154; cf. *Sipos v. Kelly*, 66 AD2d 1022. See, also, *Fisk v. Fisk*, 274 AD2d 691. The parties are to appear before me on June 4, 2010 to be heard on selection of a forensic examiner and to be heard on allocation of fees. See, Uniform Rules §202.7; also see,

Ragone v. Ragone, 62 AD3d 772; Domestic Relations Law §237(d)(4). The scheduling of the modification of custody hearing will be facilitated at that time.

THE COURT'S ROLE IN ADDRESSING ALIENATION

Differing "alienation" theories promoted by many public advocacy groups, as well as psychological and legal communities, have differing scientific and empirical foundations. However, interference with the non-custodial parent's relationship with a child has always been considered in the context of a "parent's ability to encourage the relationship between the non-custodial parent and a child," a factor to be considered by the Court in custody and visitation/parental access determinations. See, *Eschbach v. Eschbach*, supra. Our Appellate Courts recognize such factor, as they have determined that the "interference with the non-custodial parent and child's relationship is an act so inconsistent with the best interests of a child, as to, per se, raise a strong probability that the offending party is unfit to act as a custodial parent." See, *Leistner v. Leistner*, 137 AD2d 499; *Finn v. Finn*, 176 AD2d 1132, 1133, quoting *Entwistle v. Entwistle*, 61 AD2d 380, 384-385, appeal dismissed 44 NY2d 851; *Matter of Krebsbach v. Gallagher*, 181 AD2d 363, 366; *Gago v. Acevedo*, 214 AD2d 565; *Matter of Turner v. Turner*, 260 AD2d 953, 954; *Zeiz v. Slater*, 57 AD2d 793. Where, as in the instant case, there is a finding of a willful violation of a court order demonstrated by a deliberate interference with a non-custodial parent's right to visitation/parental access, the IAS Court, as a general rule, must schedule an evidentiary hearing before making any modification of custody. See, *Glenn v. Glenn*, 262 AD2d 885. See, also, *Entwistle v. Entwistle*, 61 AD2d 380; *Young v. Young*, 212 AD2d 114; *Matter of LeBlanc v. Morrison*, 288 AD2d 768, 770, quoting *Matter of Markey v. Bederian*, 274 AD2d 816; *Matter of David WW v. Lauren QQ*, 42 AD3d 685; *Goldstein v. Goldstein*, 2009 NY Slip Op. 08995 [Dec. 1, 2009].

SENTENCE

An imposition of sentence upon a finding of contempt should contain a language permitting the contemnor an opportunity to purge. See, *Heyn v. Burr*, 19 AD3d 896; *Stempler v. Stempler*, 200 AD2d 733; *Cooper v. Cooper*, 21 AD3d 869. Under the circumstances here, where determination is made of a past violation of an order of parental access/joint custody, there can be no purge since it is no longer within the plaintiff's power to perform the act. See, *Kruszczynski v. Charlap*, 124 AD2d 1073; *Young v. Young*, 129 AD2d 794. Moreover, the use of remedial intervention — parenting coordination/counseling — during the course of the trial was unsuccessful, and even if re-utilized here, the Court cannot condition release from imprisonment upon future compliance. See, *Martinez v. D.S.S.*, 44 AD3d 945.

Accordingly, and after careful consideration of the circumstances of the nature and extent of the multiple instances of violation of the court order, the plaintiff is sentenced to a period of incarceration for six weekends, to be served on the first and third weekends of each month for the months of June, July and August, 2010. Prior to these weekends of the plaintiff's incarceration, she shall transport the children to the defendant's home to assure their continued care and well being. See, *Marallo v. Marallo*, 128 AD2d 710; *Gordon v. Janover*, 238 AD2d 545; *Munz v. Munz*, 242 AD2d 789; *Kruszczynski v. Charlap*, supra; *Barcham-Reichman v. Reichman*, 250 AD2d 609.

COUNSEL FEES

Given the finding of a willful violation of the Judgment of this Court (Stack, J.) Dated March 26, 2004 [erroneously dated as 2003], and given the fees requested ($134,352.92 for defendant's counsel, $11,287.50 for Attorney for the Children's fees, and $19,833.32 for Parenting Coordinator fees, shall be the object of a hearing to be held before me on June 4, 2010. While the parties consented to such determination on submission, the issues presented lend themselves to the Court's assessment of the parties' finances. To facilitate a complete record, a hearing is ordered herewith. See, Judiciary Law §773; *Gordon v. Janover*, supra. On the Court's own motion, this decision and order will be stayed until June 4, 2010 to afford the plaintiff an opportunity to seek Appellate Review, if so advised, and it is

ORDERED, that the plaintiff, L. R., is adjudged to be in civil contempt of the Judgment of Divorce dated March 26, 2004; and it is further

ORDERED, that the parties and their counsel shall appear before me for sentencing on June 4, 2010 at 9:30 a.m., which date may not be adjourned without written order of this Court; and it is further

ORDERED, that the plaintiff, L. R., is sentenced to a period of six weekends imprisonment in the Nassau County Correctional Facility, pursuant to the schedule set forth herein; and it is further

ORDERED, that this order and execution of this sentence shall be stayed until June 4, 2010; and it is further

ORDERED, that this decision shall be deemed an order and/or warrant of commitment pursuant to and in accordance with Judiciary Law §772; and it is further

ORDERED, that a copy of this Decision and Order shall be served upon the Sheriff of Nassau County and/or the Warden of the Nassau County Correctional Facility to facilitate the schedule of weekend incarceration, to be imposed as follows: Friday, June 11, 2010 at 6:00 p.m. to Sunday, June 13, 2010 at 6:00 p.m.; Friday, June 25, 2010 at 6:00 p.m. to Sunday, June 27, 2010 at 6:00 p.m.; Friday, July 9, 2010 at 6:00 p.m. to Sunday, July 11, 2010 at 6:00 p.m.; Friday, July 23, 2010 at 6:00 p.m. to Sunday, July 25, 2010 at 6:00 p.m.; Friday, August 6, 2010 at 6:00 p.m. to Sunday, August 8, 2010 at 6:00 p.m.; Friday, August 20, 2010 at 6:00 p.m. to Sunday, August 22, 2010 at 6:00 p.m; and it is further

ORDERED, that this Court finds that the conduct of the plaintiff was calculated to, or actually did, defeat, impair or prejudice the defendant's rights or remedies.

This constitutes the decision and order of this Court.

[1] This witness retired from his position, and returned to New York to testify at this hearing.