STATE OF INDIANA	)	RIPLEY CIRCUIT COURT
	) SS.	
COUNTY OF RIPLEY	)	GENERAL TERM 2011

MELISSA BREWINGTON	)	CAUSE NO. [redacted]
Petitioner,	)	
vs.	)	
	)	
DANIEL BREWINGTON	)	
Respondent,	)	
pro-se.	)	

MOTION FOR RELIEF

Comes Now, Daniel P. Brewington, Respondent, pro-se, and pursuant to the Court's Judgment and Final Order on Decree of Dissolution of Marriage and moves the Court for the following relief, to wit;

1. An order permitting the Respondent to exercise supervised visitation until the Court approves a Mental Health Care Provider submitted by the Respondent.

2. An order vacating the Court's order dated January 24, 2011 appointing Dr. Richard Lawlor as the evaluator of the Respondent as the appointment is inconsistent with the parties' Decree of Dissolution of Marriage.

3. An order permitting the Respondent to seek the services of a Mental Health Care Provider in the Greater Cincinnati area to evaluate the Respondent.

4. An order that specifically details what the Court requires for the mental health evaluation of the Respondent with a Mental Health Care Provider.

5. An order that eliminates the requirement of supervised visitation in a therapeutic setting unless the Mental Health Care Provider specifically requires the supervised visitation to occur in a therapeutic setting.

MEMORANDUM

The Respondent has been unable to visit his minor children since the entry of the decree of dissolution and has not spoken to his daughters since September 4, 2009. The Respondent acknowledges the authority of the Court to make decisions that are in the best interest of the minor children when the facts support the reasoned legal decision to protect the minor children. The Respondent has sought the services of a "Mental Health Care Provider" in this matter who is eminently well qualified to testify concerning the Respondent's mental health, the Respondent is prepared to present the testimony of qualified medical professionals to testify concerning the Respondent's ADHD and any other professionals necessary to refute the conclusions of an untrained individual[1] that the Respondent poses any risk to his children.

The Respondent is under the care of a licensed physician and a licensed therapist at the present time. The Respondent fully intends to introduce his medical records into evidence at the trial of this motion. The Respondent fully intends to require the attendance at the hearing on his motion the health care professionals who have provided care to the Respondent for the past eight years to demonstrate the Respondent poses no threat to the well being of his children. The Respondent believes the separation of the parent from the children poses a substantial risk of harm to the health and well being of the parties' daughters as the Final Decree of Dissolution essentially renders the daughters fatherless.

The Respondent has attempted to obtain a hearing on his original motion filed March 11, 2010 and more then eleven months have elapsed since the filing of the motion with little if any progress to reunite the Respondent with his children. The initial delay was on the part of Judge

[1] Judge James D. Humphrey acted alone in terminating the Respondent's parenting time. Neither the Petitioner nor Dr. Connor recommended or even suggested terminating the Respondent's parenting time with the minor children.

Humphrey who delayed the hearing on the motion until June 14, 2010, a full three months after the motion was filed. Judge Humphrey recused himself on June 9, 2010, approximately five days prior to the hearing, alleging there was an ongoing or pending investigation of the Respondent by persons or agencies unknown pertaining to Judge Humphrey

The Respondent has been unable to uncover who or what agency is conducting the "pending investigation" since Judge Humphrey's order dated June 11, 2010. Judge Humphrey's actions continued to delay the Respondent's reunification with his children since a new judge was required to be appointed as the result of Judge Humphrey's last moment recusal.[2] The delay in appointment of a new judge took approximately three months and it was not accepted by the assigned judge until September 3, 2010. The hearing was not set on the Respondent's original motion until November 24, 2010, which lasted approximately twenty minutes and resulted in the rejection of Dr. Waite because the Respondent met with Dr. Waite prior to obtaining court approval.

The rejection of Dr. Waite because the Petitioner objected to the Respondent meeting with Dr. Waite prior to approval by the Court ignores the Court's original ruling that implies, if not states, the Respondent requires evaluation by a mental health provider. The Respondent seeks the services of a mental health provider and the Respondent is now penalized because the Respondent consulted with the mental health provider in advance of obtaining approval from the Court. The Court clearly acknowledged that Dr. Henry Waite was qualified to perform the evaluation because the Court approved Dr. Waite as a mental health evaluator prior to

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[2] The obvious issue with Judge Humphrey's recusal is when did Humphrey become aware of the investigation and if he was the originating party who requested the investigation, why did he set the Respondent's motion for a hearing.

Petitioner's objections. Rather than having the Petitioner bear the burden of disproving the findings of the Respondent's choice of Mental Health Care Provider, the Court reversed its decision and deprived the Respondent of his right to present his own expert. The Respondent is now placed in a position where his medical care is being supervised by the Court and the selection of mental health providers is now being determined by the Court for the Respondent's care. The effect of the order is to chill the Respondent from seeking assistance from a mental health provider until approval from the Court which could take not less than 90 days and as long as ten months to secure a mental health provider for the Respondent. If the Respondent required a mental health provider, the Respondent could not employ or hire the individual until obtaining approval from the Court and the mental health provider's opinion, good or bad, is clearly suspect based on the recent court order because the Respondent did not obtain the approval of the Court.

The clear language of the court order, not the spirit, was the Respondent was required to undergo a mental health evaluation with a Mental Health Care Provider. The order did not require pre approval of the Mental Health Care Provider prior to consultation. In fact, the Court made it the responsibility of the Respondent to secure the services of a Mental Health Care Provider. The clear language of the court order also relied on Dr. Connor's testimony and custody evaluation report [Petitioner's exhibit 39]; both of which stated that the Respondent could continue to care for the parties minor children at least three days a week. Even the Petitioner's own witness, Dr. Edward J. Connor testified that he was not concerned with any safety issues with the parties' children. During the May 27, 2009 hearing, Dr. Connor gave the following testimony, "As far as I'm able to discern about the safety issues of the children, that seems to be fairly okay. My concerns are more so with the -- the -- with [Respondent's]

personality in trying to cooperate in any type of a joint custody arrangement. That is my primary concern."

The rejection of Dr. Waite without any basis on a lack of credentials, professional integrity, or some basis other then you didn't ask approval for Dr. Waite as the Mental Health Care Provider has nothing to do with Dr. Waite's qualification and it is more an indication of the continued desire to separate the Respondent from his children indefinitely. Judge Humphrey's last minute recusal and this Court's subsequent rejection have forced the Respondent to spend thousands of dollars in unnecessary legal fees. Now the Court is forcing Respondent to incur the costs of undergoing another mental health evaluation and the legal fees associated with presenting the evaluation to the Court. As such, the Respondent is no longer able to afford the costs of retaining a lawyer. Dr. Connor already confirmed that the Respondent did not present a danger to the parties' children and the Court dismissed those findings. Now the Court has placed the responsibility on the Respondent to pass another evaluation in which the Court has the discretion to disregard the findings of the mental health provider and further alienate the Respondent from his children.

The Court appointed an individual, Dr. Phillip Coons, who simply rejected the Court's appointment as the Mental Health Care Provider.[3] Dr. Coons stated he did not believe he was the person for such an evaluation and Dr. Coons asked to be relieved of the assignment.[4] The next individual selected by the Court was Dr. Lawlor who is located more than 120 miles from the residences of the Petitioner and the Respondent which places a financial burden on both

[3] There is no language in the original decree that states the Court will appoint the mental health care provider as the language clearly states the Respondent selects the mental health care provider and the Court will approve the individual.

[4] The Respondent was required to wait 49 days for the selection of Dr. Coons.

parties and separates the Petitioner from the children. The appointment of a mental health care provider more than 120 miles from the residence of the Respondent is one additional burden on the Respondent. Evidently Judge Humphrey thought an individual in the Greater Cincinnati area could supervise the visitation in a therapeutic setting. Why not a mental health care provider from the Greater Cincinnati area who would be closer to the parties to evaluate the Respondent? Why can't the Respondent submit a list of mental health care providers from the Greater Cincinnati area for selection by the Court? The Respondent is not attempting to control the selection. The Respondent is merely trying to obtain an evaluation from a professional within the Greater Cincinnati area rather than have to spend nearly five hours travelling to and from Dr. Lawlor's office. Since the Court expressed concerns about the Respondent's prescription use[5] and stated that the Respondent must follow the recommendations of the Mental Health Care Provider, it would only make sense that the Respondent should be evaluated by a Mental Health Care Provider who is a medical doctor.

The Respondent secured the services of Henry Waite, M.D., a psychiatrist, licensed in the State of Ohio, who is eminently well qualified to evaluate the Respondent concerning any alleged mental issues, including but not limited to "paranoia." The Respondent did not have a prior professional relationship with Dr. Waite at any time prior to the August 18, 2009 final decree. The Respondent secured the professional services of Dr. Waite by way of referral from the Affinity Center in Cincinnati, Ohio. The August 18, 2009 orders instructed the Respondent to obtain the services of a Mental Health Care Provider; yet now the Court is effectively punishing the Respondent for speaking to a Mental Health Care Provider prior to the approval of

[5] During the course of the entire trial, there was no evidence or testimony indicating that the Respondent ever stopped taking a prescribed medication, abused or misused any medications, nor was there any evidence or testimony indicating that the children would be negatively impacted if the Respondent were to stop taking medication.

the Provider. It would be unreasonable and unfair for the Court to expect the Respondent to spend time and resources in petitioning the Court to approve a professional without allowing the Respondent to first contact the professional to determine if the professional is qualified and/or interested in evaluating the Respondent. The Petitioner has the ability to cross-examine/impeach the Respondent's professional's report and conclusions. Under the current order, the Petitioner still has the ability to cross-examine/impeach the Court appointed professional. If the Petitioner is successful in discrediting the Court appointed expert, the Respondent would have to bear the costs of a second evaluation.

The Petitioner has been adamant about alienating the children from the Respondent even though her own expert, Dr. Connor, stated that Respondent should be able to continue caring for the children. The Petitioner's belief that Respondent is somehow capable of being able to "out-psych" a psychiatrist with over thirty years of experience is either an attempt to further alienate the children from the Respondent or unsubstantiated paranoia. Either way, the Court is giving the Petitioner the ability to challenge the appointment of a Mental Health Care Evaluator, challenge the findings of the Evaluator, and then repeat the process when it comes time for the Respondent to seek the Court approval of a Mental Health Care Provider to supervise the Respondent's parenting time in a therapeutic environment; even after the Petitioner allowed the Respondent to care for the parties' children at least three days a week during the course of the 2 ½ year divorce without filing any complaints about the children's safety and without petitioning the Court to modify parenting time. Now the Court is prohibiting the Respondent from obtaining any mental health evaluation and/or mental health treatment from anyone associated with Respondent's treating physician and therapist, based solely on Petitioner's unfounded belief that any professional from The Affinity Center or affiliated with The Affinity Center is incompetent

and/or will conspire to commit fraud upon this Court. As Judge Humphrey stated that "the Court is most concerned about [Respondent's] irrational behavior and attacks on Dr. Connor", any professional would be able to inspect the Respondent's internet writings concerning Dr. Connor to determine if any continued writings about Dr. Connor were irrational and/or harmful to the children.[6] If the review of the Respondent's writings reveal that the Respondent has not illegally threatened or harassed Dr. Connor and the writings are not dangerous to the children, then it is apparent that Judge Humphrey terminated the Respondent's parenting time to protect the conduct of Dr. Connor[7][8][9] and not the welfare of the parties' children. The Petitioner continues to make the argument that the Respondent's expert may be biased and/or unethical, while opposing counsel, Angela Loechel[10] and the Court have continued to communicate with Dr. Connor in the absence of the Respondent after the filing of the final decree. The Respondent should be able to retain his own expert without having to worry about Ms. Loechel developing an alternative relationship/communication line with the new Mental Health Care Provider as Ms. Loechel currently has with Dr. Connor. As the Respondent continues to publish information on www.danbrewington.blogspot.com and www.danhelpskids.com regarding the termination of

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[6] The Court held a hearing on Petitioner's motion for temporary restraining order on April 29, 2009. Judge Humphrey denied the Petitioner's request to force the Respondent to remove Respondent's internet writings as the writings were neither harassing nor dangerous to the Petitioner and/or the minor children.

[7] Dr. Connor was not licensed to practice psychology in the state of Indiana.

[8] Dr. Connor stated that the parties were entitled to the case file from the custody evaluation then on August 4, 2008; Dr. Connor claimed there were state and HIPAA laws that prohibited Dr. Connor from releasing the file.

[9] Dr. Connor sent a letter to the Court on September 10, 2008 stating that Connor's Office Policy Statement was not provided to Respondent but Connor stated the Office Policy Statement was an "adjunct document" to the custody evaluation. The Petitioner submitted the document during the June 13, 2008 hearing on the release of Dr. Connor's case file. On May 27, 2009, Dr. Connor testified that his office staff mistakenly provided the Petitioner with the Office Policy Statement to sign and claimed that the Office Policy Statement was NOT an adjunct document to the Court order; despite Dr. Connor making the opposite claim in Dr. Connor's September 10, 2008 letter to the Court.

[10] Angela Loechel has continued to communicate with Dr. Connor about the Respondent after the final hearing. On October 22, 2009, Ms. Loechel and the circuit court participated in communications with Dr. Connor without including the Respondent or Respondent's counsel. Prior to the November 24, 2010 hearing on the approval of Dr. Waite, Dr. Connor contacted Ms. Loechel to inform Ms. Loechel that the Respondent sat in on an unrelated court hearing in Campbell County, Kentucky. The Respondent is unaware of any agreement or court order that directs Dr. Connor to continue to report about the details of Respondent's private life to the Court and Ms. Loechel.

Respondent's parenting time with his daughters after the Respondent questioned the conduct of Dr. Connor and the Court[11], the Respondent should be able to obtain his own expert to determine if the writings are harmful to the children.

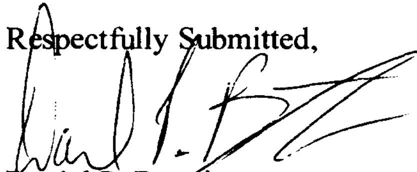
The Court should have no problem in granting relief from the August 18, 2009 orders and allowing the Respondent supervised visitation as Judge Humphrey acknowledged that the termination of Respondent's parenting time was not an emergency action. All evidence and testimony regarding the Respondent's parenting abilities were submitted to the Court during the final hearings on May 27, 2009, June 2, 2009 and on June 3, 2009. Judge Humphrey did not believe that Respondent presented an eminent danger to the children because Judge Humphrey allowed the Respondent to exercise regular unsupervised visitation in the time between the final hearing and the August 18, 2009 final decree. If Judge Humphrey suspected abuse or neglect, Judge Humphrey would have been required to initiate an investigation of the suspected dangers to the children. As the record is void of any neglect, abuse, injury, or reports to child protective services, there is no reason to believe that the children's safety would be compromised by supervised visitation with their father during the process of trying to approve a Mental Health Care Provider and subsequent evaluation of Respondent.

WHEREFORE, Daniel P. Brewington, Respondent, pro-se, requests this Court to vacate the Court's order dated January 24, 2011, re-approve Dr. Henry Waite to perform a mental health evaluation on Respondent OR allow Respondent to submit a list of other Mental Health Care Providers in the Greater Cincinnati Area, issue an order specifically detailing what the Court requires for the mental health evaluation of the Respondent, to grant relief from order and permit the Respondent to exercise supervised visitation until the Court approves a Mental Health Care

[11] Judge Taul recused himself on December 5, 2008 after violating Judicial Canon 3(8) re: ex parte communication.

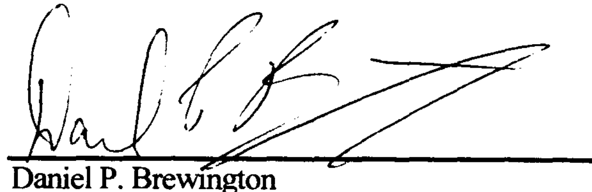
Provider in the Greater Cincinnati area, and to eliminate the requirement of supervised visitation in a therapeutic setting if the Mental Health Care Provider determines that Respondent is not a danger and that the Respondent is capable of caring for the parties' young daughters just as the Respondent had done until the filing of the final decree; and for all other just and proper relief.

Respectfully Submitted,



Daniel P. Brewington
Respondent, pro-se
[redacted]
[redacted]
[redacted] mobile
Email: dan@danhelpskids.com

I, Daniel P. Brewington, affirm, to the best of my recollection, under penalties of perjury that the foregoing representations are true.



Daniel P. Brewington

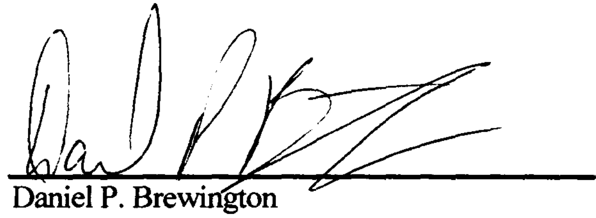
CERTIFICATE OF SERVICE

I, Daniel P. Brewington, certify that on the 16 day of February 2011, a true and exact copy of the foregoing was hand delivered and/or served by ordinary mail, postage prepaid on:

Angela Loechel, Attorney for Petitioner
310 West High Street

Lawrenceburg, IN 47025

Ryan P. Ray, former Attorney for Respondent
1512 N Delaware Street
Indianapolis, IN 46202



Daniel P. Brewington