

State of New Hampshire Supreme Court

IN THE MATTER OF
CRAIG CARSON
and
SARA MILEY

N.H. Sup.Ct. No. 2012-0036

MOTION FOR SUMMARY AFFIRMANCE

NOW COMES Craig Carson, by and through his attorney, Joshua L. Gordon, and respectfully requests this honorable court summarily affirm the judgment of the court below.

As grounds it is stated:

1. Craig Carson and Sara Miley were never married. Mr. Carson lives in Florida and works on the marketing staff for a large hotel chain. Ms. Miley lives in Derry, New Hampshire, works for a church, is a proprietor of a small business, and collects rental income. FINANCIAL AFFIDAVIT OF SARA MILEY (Nov. 1, 2011), *infra* at 10.¹ They have a child, Isaac, who was born in 2002 and is now 9 years old.

I. Ms. Miley has “Engaged in a Pattern of Parental Alienation and has Purposefully Delayed the Reunification Process”

2. When he was 22 years old, Mr. Carson became aware Ms. Miley was pregnant late in her term, but did not believe the child was his. The matter nonetheless weighed on his conscience so,

¹Documents included in the appellant’s notice of appeal or in the appendix to her notice of appeal are cited to those sources. Documents not included in the notice of appeal or its appendix but referenced here are attached to this pleading, and are cited to the page where they appear, “*infra*.” Sealed documents, such as financial affidavits, have been omitted from one copy of this pleading for the Court’s public file.

in his late 20s, he took a paternity test. When it came back positive, Mr. Carson expressed an interest in providing fatherly input, an impulse to which Ms. Miley has reacted coolly. She filed for termination of Mr. Carson's parental rights, but Ms. Miley withdrew it after a GAL recommended against termination and for establishment of a parenting plan instead. PRELIMINARY REPORT OF THE GUARDIAN AD LITEM (Dec. 17, 2009), *infra* at 7.

3. Mr. Carson had given Ms. Miley some money for child support, even before any court filings, but the payments were unstructured. In 2009 Mr. Carson filed a petition for a parenting plan, along with a request to establish his regular child support. PETITIONER'S PROPOSED ORDER ON PARENTING PLAN AND FINAL ORDER (Apr. 15, 2011), *infra* at 8 ("That child support be set in accordance with the child support guidelines"). During two years of negotiation, Mr. Carson still had not met Isaac.

4. Ms. Miley proposed she have sole decision-making, and sole residential responsibility. Her parenting plan proposal suggested no visitation with Mr. Carson, ever, except some unspecified supervised visits at the office of the child's therapist. PARENTING PLAN PROPOSED BY SARA MILEY (Nov. 17, 2011), *Appx.toNOA* at 47.

5. Mr. Carson proposed joint decision-making, with Isaac to reside primarily with Ms. Miley in New Hampshire. He proposed that he would make periodic trips to New Hampshire on annual holidays to visit Isaac. The only time Mr. Carson proposed in Florida would be one month during the summer. Mr. Carson proposed that he would pay for all his own and Isaacs's visitation transportation, except that Ms. Miley would split the cost of Isaac's one annual trip to Florida. Mr.

Carson understands he is to pay child support. PARENTING PLAN PROPOSED BY CRAIG CARSON (Oct. 26, 2011), *NOA* at 27.

6. The GAL proposed a therapist to aid in reunification, who has been engaged, and reunification has begun. GUARDIAN AD LITEM REPORT (Jan. 30, 2011), *Appx.to NOA* at 51.

7. The Derry Family Division (*Paul S. Moore, P.J.*) issued orders regarding discovery and information exchanges, with which Ms. Miley largely did not comply. After a hearing in April 2011, the court admonished Ms. Miley that she be “responsible for behaving appropriately,” “cooperat[e] with the Gardian *ad litem*,” “cooperat[e] with [Mr. Carson] relative to implementing telephone contact, Skype contact, e-mail contact, etc., between [Mr. Carson] and Isaac,” and “stay in compliance with all current Court Orders to include signing the necessary releases ... and utilization of the parenting notebook.” The court expressed it is “hopeful that [Ms. Miley] will move past her current animosity toward” Mr. Carson. ORDER ON FINAL HEARING (Apr. 19, 2011), *Appx.to NOA* at 34. The court issued no similar admonitions regarding Mr. Carson’s behavior or attitude.

8. The court held another hearing in October 2011 to decide a number of issues. In its resulting order (from which this appeal was taken) the court expressed its frustration at having to repeatedly admonish Ms. Miley about her failure to provide information to Mr. Carson and the court, and her inappropriate behavior at the hearing. The court held that Ms. Miley caused Mr. Carson unneeded time and expense by unreasonably breaking off mediation only moments after the parties gathered, and by refusing to cooperate with Mr. Carson him when he traveled from Florida to New

Hampshire to see Isaac. ORDER ON PENDING MOTIONS (Oct 27, 2011), *NOA* at 17. The court wrote it is

very concerned that [Ms. Miley] refuses to acknowledge that she has engaged in a well documented pattern of parental alienation and that her refusal to abide by this Court's orders, cooperate with the Guardian *Ad Litem* and cooperate with the procedures put into place by this Court relative to allowing [Mr. Carson] to reintegrate himself into Isaac's life has required [Mr. Carson] to retain the services of [an] Attorney, travel to New Hampshire, and experience a reduction in his wages.

ORDER, *NOA* at 21. The court further wrote:

This Court, in reviewing [Ms. Miley's] comments, is concerned [Ms. Miley] is continuing to perceive Isaac as "her" son and not the "parties' son and has been unnecessarily involving Isaac in the parties' litigation. ... The Court is troubled by the fact that [Ms. Miley] has engaged in a pattern where she has selectively interpreted the partes' Parenting Plan; and/or the Court's Orders; and/or comments by the Guardian *ad Litem* and then used her interpretation to raise an issue, to file a motion; and then use that "issue" as a means to create a waiting period while she waits to receive a response from the Guardian, this Court or [Mr. Carson's] Counsel; then to question the response received; then to request a clarification and take no action; and then attempt[] to delay any contact between [Mr. Carson] and Isaac.

ORDER, *NOA* at 23-24.

Based upon [Ms. Miley's] continued inappropriate conduct, this Court is entering a specific finding that [Ms. Miley] has continued to engage in a pattern of parental alienation and has purposefully delayed the reunification process and failed to follow this Court's Orders relative to contact between [Mr. Carson] and Isaac.

ORDER, *NOA* at 24.

9. Rather than quote further from the order, Mr. Carson urges the court to review the order from which this appeal is taken. It reflects a highly uncooperative mother who refuses to accept Mr. Carson's role in Isaac's life, and who consciously interferes with it.

10. After setting forth its view of the facts, the family court largely imposed Mr. Carson's

reasonable proposal: joint decision-making, Isaac to live in New Hampshire with Ms. Miley, Mr. Carson to travel to New Hampshire to visit on some holidays, one visit per year in Florida, regular phone and email contact, Mr. Carson to pay the bulk of the costs of visitation, and Mr. Carson to pay child-support in accord with the guidelines slightly reduced to take into account the cost of travel.

II. All Questions Posed for Review are Fact-Based and Within the Discretion of the Family Court

11. Ms. Miley purports to pose 14 questions for review. They devolve, however, into one simple allegation – that the outcome is not to Ms. Miley’s liking.

12. The questions are posed in pairs. In each pair an issue is raised; the first of the pair expresses the issue as a question of law; the second as a question of fact.

13. Questions 1 and 2 find fault with the parenting schedule and bemoan that the court did not take the GAL’s suggestion that parenting time be determined by the GAL and the child’s counselor. Questions 3 and 4 claim error that the court issued a final parenting plan that was different from the temporary plan. Questions 5 and 6 appear to restate questions 3 and 4 in different language. Questions 7 and 8 fuss about reducing child support to take into account the cost of Mr. Carson’s visitation travel. Questions 9 and 10 gainsay the court’s calculation of Mr. Carson’s income. Questions 11 and 12 appear to restate questions 9 and 10 in different language. Questions 13 and 14 protest the court having sanctioned Ms. Miley for her alienating behavior.

14. All of the questions are followed by a paragraph of argument regarding why this Court should exercise its discretionary review. None of the short arguments suggest a grand issue of public policy, an important controversy of constitutional stature, or even a “substantial question of law.”

SUP.CT.R. 25(1)(summary disposition). None are novel, of first impression, or are alleged to conflict with other rulings. All are merely complaints with the family court's discretion. It is suggested that this appeal, as the court noted was the motive behind many of her earlier pleadings, is just another attempt by Ms. Miley to delay implementation of the inevitable. Accordingly, Ms. Miley's appeal should be summarily affirmed.

WHEREFORE, Craig Carson respectfully requests this honorable Court to summarily affirm Sara Miley's discretionary appeal.

Respectfully submitted
for Craig Carson
by his attorney,

Dated: February 2, 2012

Joshua L. Gordon, Esq.
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I hereby certify on this 2nd day of February 2012, a copy of the foregoing is being forwarded to Andrew K. Wilson, Esq, and to, Jennifer A. Rackley, Esq., GAL.

Dated: February 2, 2012

Joshua L. Gordon, Esq.