

IN THE CIRCUIT COURT OF COOK COUNTY  
DOMESTIC RELATIONS DIVISION, 4<sup>TH</sup> DISTRICT

IN RE THE MARRIAGE OF )  
 )  
RUSS, Christine )  
Petitioner )  
and ) No. 01 D 79454  
 )  
BURGER, Jim )  
Respondent )

MEMORANDUM ORDER

This cause comes on to be heard on the petition of Mr. Burger, respondent, for a substitution of judge for cause.

Basic facts are as follows: Mr. Burger is the respondent to a petition seeking retroactive child support. The child in question became emancipated on March 20, 2002.

After the filing of the petition for support, Mr. Burger filed his petitions for visitation. A plenary order of protection was entered against Mr. Burger, after an evidentiary hearing held before Judge Fe Hernandez. That OP barred Mr. Burger from any contact with his daughter, by telephone or otherwise. It also prevented him from going to his daughter's school or obtain school records.

Notwithstanding the OP, Mr. Burger pressed his visitation petitions and all matters were transferred to Judge Lieb.

The hearing before Judge Lieb was 2 months before the child in question would be 18 years of age. The child did not want anything to do with her father, and the order of protection was still in place.

Judge Lieb attempted to have an agreement to allow telephone contact between Mr. Burger and the child, but no agreement could be reached. The court then ordered the child and mother to court to determine why telephone contact was not acceptable.

The next hearing with the child present was in mid February, and the child's 18<sup>th</sup> birthday was then only a month away. The child indicated in open court that she wanted nothing to do with her father. The court indicated that there would be no practical way to obtain

visitation prior to the child's emancipation and that Mr. Burger's press for a hearing was impractical, unrealistic, and with the OP in place, his success was improbable. Mr. Burger nonetheless pressed on.

The court wanted to move on with a hearing in regard to retro active child support without the delays envisioned by Mr. Burger's petition for relief that would soon become moot and that could not be conducted within a month's time. Ms. Russ was entitled to ask for discovery including depositions, motions for an attorney for the child and other relief that in the nature of things could stall the proceedings for the month that it would take before the child reached 18.

Mr. Burger filed numerous petitions alleging misconduct by Ms. Russ' attorney and other matters collateral to the petition for support, and he apparently wanted the court to give his motions and petitions priority. The court declined to give his petitions priority and indicated that they would be addressed at the conclusion of the trial on the support issues.

Mr. Burger then filed for an SOJ alleging such things as a conspiracy to protect what he called was a corrupt judge (Fe Fernandez) and a conspiracy against him by the Clerk's office. The petition for SOJ was either a means to further delay the trial for support, or was the honest belief by Mr. Burger that this court was prejudiced against him. This court declines to attribute to Mr. Burger any negative or devious purpose in his filing a petition for SOJ or by any of the other petitions and motions he has filed.

The petition for SOJ is based entirely on the transcript of proceedings over three court appearances. (The conclusionary statements concerning a conspiracy are discounted because it is unsupported by judicable facts.). The excerpts appearing in Mr. Burger's petition for SOJ are incomplete, and since the entire factual basis for the petition is in the transcripts, the entire transcripts are viewed to determine if a cause of action exists that would require sending the petition to any other judge for hearing.

In that regard, this court finds as follows:

1. The visitation issue:

A. The January 2002 report of proceedings clearly indicate that this court made every effort to obtain some relief for Mr. Burger even if only a telephone contact, and notwithstanding an order of protection that barred such contact.

Mr. Burger acknowledges that he was prohibited from all contact, including contacting his daughter's school. (Page 3 February RP)

B. Mr. Burger complains that the court did not advance his petition for visitation. Even if the order of protection, which barred his visitation, did not exist, the petition for visitation had no practical application.

The child in question was weeks short of her 18<sup>th</sup> birthday and she did not want anything to do with her father. The transcripts of proceedings clearly indicate that there

was obvious futility in affecting a visitation order when jurisdiction of the daughter would terminate in a matter of weeks.

The transcripts reveal that the court believed that Mr. Durger's position, in light of his nearly adult child's wishes and the existing plenary order of protection, and the advanced age of the child (just short of 18 years of age), doomed any practical or legal ability for him to prevail. His pressing of the issue caused economic burden upon the petitioner who was present with counsel, disturbance to his child, and use of court facilities to pursue a result that was futile.

2. The certification of the report of proceedings issue.

- A. There is nothing in the record to indicate that Mr. Burger followed the requirements of SCR 323 which is a precursor to the certification of the record by the court.
- B. The court did in fact indicate that the record would be certified. The court stated that it would consider certification after the case was over, unless there was an interlocutory appeal. (RP March 21, 2002 page 3).
- C. The fact that the court imposed its own time table for certification rather than piece-meal certification insisted by Mr. Burger is not evidence of prejudice.

3. Mr. Burger's claim that various petitions he filed were not heard.

Mr. Burger claims prejudice because his various petitions for rules to show cause against petitioner's attorney and other matters collateral to the underlying petition for child support, were not heard.

- A. The transcripts indicate that the court exercised its discretion to prioritize the many petitions and motions, and placed first the issues of the first filed petition for retro active child support.
- B. The Court firmly stated that all the collateral matters would be heard at the end of that trial. (March 21, 2002 RP page 6 and pages 8-9. It is not an indication of prejudice when a court determines the order in which it will hear evidence on various pending petitions.

Fundamentally, the mere fact that a judge believes that a litigant's position is untenable or unreachable, is not evidence of specific prejudice against that litigant. Court's, in bench trials, are called upon to make judgments and evaluations, and most times, one litigant or the other is not entirely satisfied.

4. Mr. Burger alleges that the court engaged in an ex parte conversation with Petitioner's attorney.

There are several aspects of Mr. Burger's allegation that there was an ex parte conversation with the Court while he was out in the court room hall.

1. First, the court reporter, who was hired by Mr. Burger, transcribed that Mr. Burger left the courtroom at the end of the hearing. Mr. Burger hired the same court reporter for each of the relevant court proceedings. In none of the other transcripts had she ever indicated when and who left the courtroom after a hearing concluded.

2. The court reporter, with no other business in the courtroom apparently stayed at the bench, with her machine ready, even after she believed the hearing ended and her client left the courtroom. (SEE HANDWRITTEN NOTE ON LAST PAGE OF THIS ORDER).

3. The transcript recites that the court heard from counsel after the initial hearing concluded and Mr. Burger left the courtroom. The judge then stated: "Get him (Mr. Burger) back in from the hall and let's see what we can do." January 2002 RP page 15).

What is curious is, how did the court know Mr. Burger was in the hall? If he left the courtroom, and a colloquy of apparent length took place in his absence, there would seem to be no explanation for how the court would know his whereabouts.

4. Finally, during the time Mr. Burger alleges he was not in the courtroom, the attorney did in fact assert that Mr. Burger touched his daughter's breast.

Mr. Burger, upon returning to the courtroom stated:

"Your honor, they claimed that..they made an accusation of improper touching, I believe it was. They never made that accusation. (in the petition for an OP). They make that now in court" (RP January 9, 2002 pages 14 line24, page15 lines 1-4)

What makes that statement interesting is that the transcript reveals that no mention was ever made pertaining to improper touching during the entire time Mr. Berger allegedly returned to the courtroom. The petition for order of protection which the court reviewed makes no mention of improper touching.

The only time improper touching was mentioned was during that period of time when Mr. Burger alleges he was not in the courtroom.

How Mr. Burger knew that the statement was made outside his presence is a mystery. Unless, of course, he really never left the courtroom, and therefore was present and heard the statement.

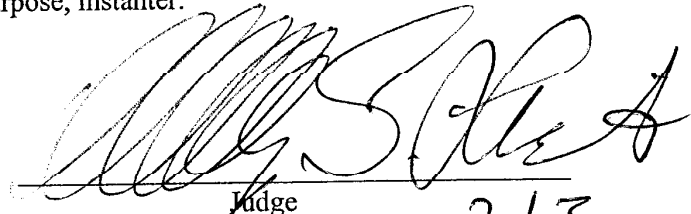
The court stated in the record that any statements of counsel is not taken as evidence, and the court acted only on evidence that which was presented by the litigants. (RP January 9, 2002 page 15)

Only the allegation of an ex parte conversation is subject to an evidentiary inquiry, especially along the lines set forth herein.

IT IS THEREFORE ORDERED:

1. All allegations except that of the alleged ex parte conversation are stricken.

2. Only the allegation in regard to an alleged ex parte conversation shall be submitted to hearing before a judge to be designated by the Presiding Judge, and the matter is referred for that purpose, instanter.



Judge

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MR. BURGER'S COURT REPORTER  
STATED IN OPEN COURT THAT THE  
ORIGINAL TRANSCRIPT FAILS TO  
HAVE A NOTATION AS TO WHEN  
MR. BURGER LEFT THE COURT  
ROOM, WHICH SHE ADDED IN THE  
TRANSCRIPTION

ENTERED  
MAY 16 2012  
DOROTHY BROWN  
CLERK OF CIRCUIT COURT