

FILED
U.S. DISTRICT COURT
DISTRICT OF COLORADO

2007 JAN 31 AM 8:25

GREGORY D. LANGHAM
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

07 - CV - 00225 LTB- MJW

Civil Action No.

(To be supplied by the court)

BY _____ DEP. CLK

Murry L Salby, Plaintiff,

v.

The State of Colorado, Defendant.

Hon Bill Ritter, Governor

COMPLAINT

PARTIES

1. Plaintiff Murry L Salby is a citizen of USA
who resides at the following address:
10698 Hobbit Lane,
Westminster Colorado, 80031

2. Defendant The State of Colorado
who is located at the following address:
136 State Capitol
Denver Colorado 80203

JURISDICTION

4. Jurisdiction is asserted pursuant to following statutory authorities:
Fourteenth Amendment: Due Process and Equal Protection of Law
Fourth Amendment: Unreasonable Seizure
Fifth Amendment: Seizure without Due Process

5. Introduction

The issues flow from a series of proceedings concerning a divorce and custody determination, heard by the 17th Colorado Judicial District (Case: 01 DR 1458). Plaintiff's ex-spouse (Mother), a foreign national, sought to force the minor child (age 9) to relocate overseas. A Special Advocate (SA), appointed by Defendant, interacted unilaterally with Mother. When Plaintiff (Father) disputed the SA's explanation for why the child was deteriorating, the SA threatened that, unless Father acceded to the SA's position, the SA would damage Father.

The SA filed a damaging report on Father, rife with false allegations which the SA made no attempt to verify. At the same time, the SA withheld key information which was incongruous with the SA's report but which was central to the child's well being. Among them was a police report on Mother that had been evoked by concerned citizens, a report to Social Services by the child's school, and expressions of suicide. The divorce proceedings were substantially tainted by the SA's report, which derived from unilateral communication with Mother.

During those proceedings, Father was denied the right to be heard: through representation by counsel and through summary curtailment of the proceedings, which excluded much of Father's case. Instead, the trial court ordered the SA's recommendations, which were left uncontested, including forcing the child into residence with Mother. The child then began a steady decline, documented in school progress reports that described a deteriorating emotional state and failing performance. Echoing the school's concerns, Mother subsequently advised the court that the child had become suicidal – because of Father. She moved to modify parenting. At Mother's encouragement, the SA submitted an unsolicited report. Through admissions therein, the SA was then discredited. The trial court belatedly recognized the pattern of unilateral communication. Expressing concern that the SA's duties could not have been fulfilled impartially, the trial court then terminated the SA. The damage, however, had been done.

The denial of Father's right to be heard left the trial court substantially uninformed on key elements of the parties' property, which Colorado law requires for the determination of financial considerations. Encouraged by the SA's report, the exclusion of Father's case also had devastating consequences for the child. School progress reports expressed concern over the child's emotional state and failing performance. Mother then moved to restrict contact with Father. An unsolicited report by a new SA acknowledged that, by then, the child's deterioration had become "critical". The SA proposed a psychological experiment: To reveal what was causing the child's deterioration, sequester the child - from Father. Colorado law prohibits such practice, protecting the welfare of children. It required the court to hear and rule upon Mother's motion not later than 7 days after its filing. Yet, to implement the SA's experiment (with child as subject), the court bifurcated the proceedings into a dozen brief appearances that continued for half a year.

The child's protracted isolation led to mounting complaints from his school over an alarming decline. School progress reports document the manifest impairment of his emotional and intellectual development, in contravention of Colorado law, which expressly protects those interests. As in earlier proceedings, these school complaints were withheld by the SA. With the SA unresponsive to the child's needs, the school contacted the child's MD directly. The MD diagnosed the child with reactive depression, derived from his environment, and at risk of suicide. The SA, who had divulged little, was then compelled to admit that, as a result of the protracted isolation, the child was "falling apart".

Half a year elapsed after the filing of Mother's motion to restrict parenting. After the SA's admission of the state to which the child had been reduced, it was incumbent upon the the trial court to lift the child's isolation, which had driven him to the brink of suicide. However, even then, the trial court maintained the child's isolation for another 2 months. Eventually, the court did lift the restriction of parenting, finding that the child's decline could not be ascribed to contact with Father – there had been none. On the contrary: Eliminating Father did not arrest the child's deterioration; it accelerated it. As to the child's steady decline since the original SA's recommendations were ordered, the court took no action. It thereby relegated the child to continued deterioration and physical risk, which, by then, were manifest and universally acknowledged.

Following five years of strife, including emergency calls to the police and accusations by Mother that threatened the child with criminal charges and appearance before juvenile court (accusations entered in police records as “unfounded”), Mother eventually evicted the child from her residence. She then relocated overseas, along with property that had been saved for the child's education. Within months of assuming residence with Father, the child rebounded sharply: His MD found him to be markedly improved. His school named him to the Dean's list.

**FIRST CLAIM FOR RELIEF
AND SUPPORTING FACTUAL ALLEGATIONS
Due Process and Equal Protection of the Law**

Right to be Heard and to Representation

6. Three days after the original SA's report was filed, the trial court truncated the divorce proceedings to 3 hours, from the full day for which they had been set. The parties were not notified.
7. The proceedings were then summarily abbreviated, over counsel's objection.
8. The impromptu curtailment of the proceedings excluded much of Father's case, including his response to the SA's report.
9. Father was also prohibited from representing his position, even through conference with counsel.
10. Rule 59 Motion for a new hearing was denied.
11. By preventing Plaintiff from presenting his case and from conferring with counsel, Defendant denied Plaintiff's right to be heard and to representation, which are intrinsic to due process, in violation of the Fourteenth Amendment. US Constitution
12. At the subsequent proceedings on Mother's motion to modify parenting, Father was again prohibited from responding to the SA's report – because, the trial court ruled, it had already been heard and decided upon at the divorce proceedings. Defendant again denied Plaintiff's right to due process, in violation of the Fourteenth Amendment.
13. Denial of Plaintiff's right to be heard left the SA's report uncontested and the trial court substantially uninformed on the matters before it.
14. On appeal, some elements of the divorce were reversed and remanded. Instructions from the Colorado Court of Appeals require the trial court to provide both parties with a full opportunity to present all relevant evidence. Remanded proceedings pending.
15. Other elements were either not ruled upon, affirmed, or dismissed.
Petition for *Certiorari* denied January 23, 2006.

Right to Due Process and Equal Protection

Count 1

16. The law governing this case was codified in final orders. It required parenting matters to be resolved outside of court - through mediation and, if necessary, a tie breaker. Colorado law also prohibited the modification of parenting for two years.
17. Mother did not comply with any of those provisions. Instead, alleging that the orders had failed, she carried her dissatisfaction with the orders directly back to court. Within months of the decree, Mother filed a motion to modify parenting.
18. With attorney's certification, Mother's improper motion caused Father to incur some \$40,000 in legal expenses.
19. Father moved for fees on grounds of *res judicata* and Rule 11 CRCP.
20. The trial court entered no findings on the matter.
21. Its failure to rule denied Father's right to due process and to equal protection of law, violating the Fourteenth Amendment.

Count 2

22. Colorado law on Mother's motion to restrict parenting required the trial court to hear and rule not later than 7 days after its filing.
23. In the face of manifest evidence that the protracted isolation had seriously damaged the child, it was, at a minimum, incumbent upon the trial court to restore contact with Father.
24. On review, the Colorado Court of Appeals declined to address the trial court's violation of Colorado law. It found the issue to be moot and, by implication, so too the attendant damage to the minor child. Petition for *Certiorari* denied April 2006.
25. The trial court's continuation of the restriction for half a year, despite repeated motions for contact to resume, denied Plaintiff's right to due process, violating the Fourteenth Amendment. It also violated the child's right to due process. Neither the Fourteenth Amendment nor the Bill of Rights is for adults alone. *In re Gault*, 387 US 1 (1967)

Count 3

26. The psychological experiment, unlawful that it was, led to a diagnosis of exclusion. There remained only one explanation for the child's deterioration, which ensued with the uncontested recommendations of the original SA: Forced residence with Mother, who sought to relocate the child overseas.
27. Colorado law required the trial court to hold the child's interests paramount and to protect his intellectual and emotional development.
28. Instead, the child's interests were repeatedly subordinated to those of others, of Mother and of the trial court's psychological support industry, who refused to admit error (at the expense of the child).
29. Failing to arrest the child's deterioration, through expanded residence with Father, was without substantive justification: No record of drugs, alcohol, or abuse.
30. Despite the manifest impairment of the child's development, well documented in the record, the recommendations of the original SA (ultimately discredited) were left undisturbed.
31. Defendant's failure to apply measures that were available to arrest the child's deterioration denied the right to due process and equal protection of the law, in violation of the Fourteenth Amendment. Even children are entitled to due process. *Gault Supra*

Right to Appeal

32. Prior to the decree, the court entered interlocutory orders of child support and maintenance. Like final orders, they were tainted by a preliminary report from the SA, who, only later, was discredited and terminated (see Par 41).
33. Upon the entry of final orders, the interlocutory orders were appealed. That appeal was dismissed by the Colorado Court of Appeals, on the grounds that the interlocutory orders expired with entry of final orders.
34. The dismissal denied Father's right to appeal, in violation of the Fourteenth Amendment. It does not meet the federal standard, which holds that any interlocutory order is appealable with the entry of final orders. *LA Coliseum v National Football League*, 1986 108 S Ct 92; *Firestone Tire & Rubber v Risjord*, 1981 101 S Ct 669 (675)

**SECOND CLAIM FOR RELIEF
AND SUPPORTING FACTUAL ALLEGATIONS
Right to Hold Property**

Count 1

35. Absent Father's position, the trial court was left with incomplete disclosure of the parties' property, which Colorado law requires for the determination of financial considerations.
36. The trial court divided Father's separate property in the US, which was held prior to marriage and, like separate property held by Mother overseas, remained titled exclusively in his name. The division of such property is in contravention of Colorado law, which requires separate property to be omitted from the division of the marital estate.
37. The trial court also divided only that component of the marital estate in the US, leaving intact the component overseas, which, through the exclusion of Father's case, remained undisclosed and under Mother's control.
38. Without full disclosure of the property of both parties, the trial court could not render a reasoned determination of what was separate property, what was marital property, and, hence, of how the marital estate should have been divided.
39. Nor did the trial court consider Mother's separate property overseas and its award of property to Mother under the divorce, which Colorado law likewise requires in the determination of child support and maintenance.
40. Divergent from Colorado law, Defendant's division of Plaintiff's separate property, its division of marital property only in the US, and, in its determination of child support and maintenance, Defendant's failure to account for Mother's assets overseas and those awarded to her through the divorce constitute an unreasonable seizure of Plaintiff's property and one conducted without due process, in violation of the Fourth Amendment and the Fifth Amendment.

Count 2

41. The interlocutory orders entered prior to the decree, on the basis of a preliminary report from the SA, required exaggerated payments to Mother. They could be met only by liquidation of Father's separate property.
42. Final orders eventually found that, even exclusive of Father's case, payments legitimately owed to Mother under Colorado law were only half of what had been required by the interlocutory orders during the preceding two years. The discrepancy amounts to an overpayment of some \$20,000.
43. The trial court's failure to remedy its interlocutory orders, bringing them into compliance with Colorado law, constitutes an indiscriminate seizure of Plaintiff's property and one without due process, in violation of the Fourth and Fifth Amendments.

Count 3

44. During the proceedings on Mother's motion to restrict parenting, the SA withheld from the trial court key information provided by the child's school, information that was crucial to the child's best interests. The SA then moved for fees - some \$10,000 worth. However, she refused to document the services that were purportedly provided for her claim of fees.
45. The SA's refusal violated the provisions of her appointment, which expressly required her to provide such documentation.
46. Father moved the trial court to order the SA to produce the required documentation and, if necessary, to hold a hearing on the matter.
47. Without evidence, let alone a hearing from the parties, the court summarily ordered payment to the SA plus fees, in violation of the Fourth and Fifth Amendments.
48. On attempted review, the Colorado Court of Appeals ordered the trial court to reduce its order to writing. The trial court did not comply.
49. Colorado Court of Appeals then preempted the opening brief, even the record, which remained at the trial court. Instead, it declared that the matter was already at issue and that a ruling would follow. The summary order was affirmed.
50. By circumventing the opening brief, let alone a review of the record, Defendant denied the right to due process, in violation of the Fourteenth Amendment.

REQUEST FOR RELIEF

51. Upon terminating the original SA, the trial court found as follows:

“If he doesn't have all the facts, he should be reluctant to be convinced.”

Had the same standard been applied at the divorce proceedings, many of the derived issues would have been averted. Not the least of which was the attendant damage to the minor child. The impairment of his development and the emotional damage that he sustained during his formative years, as a result of Defendant's chronic denial of due process, may never be offset.

52. Plaintiff requests the following relief:

- (a) Reversal of orders on the division of property.
- (b) Reversal of orders on child support and maintenance, as well as any orders predicated upon them.
- (c) Reversal of summary order of payment to the SA.
- (d) Change of venue for any subsequent matters concerning the child, so long as he is a minor.
- (e) Compensatory damages of \$125,000, inclusive of assets lost irreparably through the unlawful division of property, superfluous legal fees, unlawful child support and maintenance, and other costs incurred by Plaintiff, plus compensatory damages of \$150,000 for the child's emotional suffering and the impairment of his development, which resulted from Defendant's repeated denial of due process, the latter damages to be allocated to the child's education.

53. As elements of this case remain pending, Plaintiff requests an enlargement of time to enable those outstanding elements to reach closure at the state level. An amended complaint consolidating elements of this case will then be filed, under which this action can proceed.

54. Plaintiff is currently working overseas, where he will remain through summer of 2007. Accordingly, Plaintiff also requests that this court direct the US Marshals Service to perform service, with cost borne by Plaintiff. Alternatively, Plaintiff requests an extension for personal service until October 31 2007, when Plaintiff will have returned to the US and have access to legal resources.

WHEREFORE, Plaintiff demands judgment, via jury hearing, for the denial of his and the child's rights to due process and for the denial of Plaintiff's right to hold property free of unreasonable seizure and without due process, as well as judgment for the costs of this action and such other relief deemed to be just and equitable.

Date: January 23, 2007*

[Handwritten Signature]
(Plaintiff's Original Signature)

10698 Hobbit Lane
Westminster Colorado 80031
(Telephone Number) 303-410-0432

Signature witnessed on this day, Tuesday 23rd January 2007, in Hampton, Victoria, by me,

Valentina Velasco
e/34894

Valentina Velasko
Constable 34894
Sandringham Police
11 Railway Crs Hampton 3188

* January 22, 2007 in the US.

Certificate of Service

I certify that, on this 23rd day of January 2007, this COMPLAINT AND SUMMONS, accompanied by Civil Cover Sheet and USM 285 US Marshals Service Process Receipt and Return, was filed with the United States District Court for the District of Colorado by placing it in Registered Air Mail, postage pre-paid and addressed to the following:

Gregory C Langham, Clerk
Alfred A Arraj United States Courthouse
901 19th Street, Room A105
Denver CO 80294-3589


Murry L Salby