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F I L E D
Clerk of the Superior Court

NOV 03 2023

By: S. Galindo Camarillo, Deputy

SAN DIEGO SUPERIOR COURT OF CALIFORNIA
CENTRAL DIVISION

ANDREA SCHUCK,
PLAINTIFF,

vs.

ROB EMERT,
respondent

19FL010852N – family court

Motion to Stay Family Court Proceedings

Judge Robinson
Nov 9 2023 9AM

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I, Rob Emert, declare as follows:

I. Introduction

Respondent urgently requests this Court issue an order staying all proceedings in this family court matter, including the November 9th hearing, until resolution of the pending criminal case against Respondent for alleged violation of Penal Code 278.5(a).

As detailed below, the criminal case involves the same core issues and events surrounding child custody and the validity of this Court's prior orders that are still disputed in this case. Proceeding with family court hearings prior to adjudication of the criminal matter risks undue infringement of Respondent's rights and inconsistent judgments between the two intertwined cases.

A stay is warranted and necessary because the criminal matter, with Respondent facing felony charges, takes clear precedence over parallel civil proceedings. Any ruling by this Court on custody could improperly influence the criminal case in which Respondent has presented colorable challenges to the disputed orders that serve as the basis for the criminal charges.

Equity demands postponing civil proceedings to first allow Respondent's criminal defense and constitutional due process rights to be fully exercised without interference, before any further action in family court. This will avoid potentially inconsistent and contradictory results between the two matters involving the same parties, child, and issues.

II. Background

Respondent is currently facing criminal charges (SCD297230) of felony child abduction under Penal Code 278.5(a) based on allegations he violated the custody and visitation orders issued by this Court on November 29, 2021 that granted Petitioner full legal and physical custody of the parties' minor child, Bryce Emert who is over 16.5 years old and is kind and competent to address this court. For the court to ignore hearing from this young man who simply wants to go home is concerning.

The criminal charges stem from the same circumstances and events that are at issue in these ongoing family court proceedings. The validity and factual basis for the November 29, 2021 custody orders are still in dispute before this Court.

On August 3, 2022, Petitioner obtained an ex parte order from this Court with an RFO shortening time. However, Petitioner then waited until October 27, 2022 to file the RFO and did not serve

Respondent with notice until October 29, 2022 - less than 10 days notice for the November 9, 2022 hearing date set by the order shortening time.

In contrast, when Respondent applied in September 2022 for a hearing date to present his motion to set aside the November 29, 2021 default custody orders based on denial of due process, the earliest hearing date available from this Court was in February 2024. This represents close to a 5 month delay for Respondent.

Petitioner was granted an expedited RFO hearing in less than 3 months, while Respondent faces over 5 months delay to address lack of due process in entry of the custody orders that serve as the basis for his criminal charges. This disparity in scheduling clearly prejudices Respondent.

Parties' minor child, Bryce Emert, is now over 16 years old and has repeatedly expressed to both parties his desire to return to Respondent's primary custody after nearly a year living with Petitioner. Bryce states he has a strained relationship with Petitioner, who he feels has never made time for him, while he thrived in Respondent's custody.

Bryce's statements indicate the custody change has negatively impacted his emotional well-being and restored custody with Respondent would serve his best interests while the dispute over the November 29, 2021 orders continues.

Regarding Petitioners Nov 9 2023 RFO;

The trivial nature of restricting gift drop-offs does not rise anywhere near the level of importance compared to Respondent's matters. Petitioner wants to cut off her son's ties with his grandmother who he is very close with over a petty exchange of a gift drop off at Petitioner's front door. It would be inequitable to allow Petitioner's hearing to move forward while delaying Respondent's ability to challenge orders forming the very basis for criminal charges against him and further restricting Bryce's lifeline to the family he wants to be reunited with immediately. A matter impacting Respondent's liberty interests takes clear precedence over Petitioner's convenient scheduling of relatively inconsequential disputes.

Moreover, Petitioner's accusations that Respondent caused concerns with San Diego Regional Center are unfounded. In fact, Respondent had previously worked successfully with the Center to arrange therapy sessions with the children. It was Petitioner's attorney who threatened the Center with an injunction to stop therapy, in an obvious effort to suppress the truth. Any claims now by Petitioner related to the Center aim to mischaracterize Respondent's appropriate prior efforts to obtain services through proper channels. Rather than expedite petty and potentially misleading claims by Petitioner, equity demands prioritizing Respondent's matters where the ability to present the full truth has been actively impeded.

To resolve the criminal case, Respondent accepted a guilty plea despite maintaining innocence, with the understanding Bryce would be returned to Respondent's custody and Respondent would support Bryce mending his strained relationship with Petitioner. Upon release from jail, Respondent had a productive conversation with Petitioner about transitioning Bryce home, as evidenced by the transcript submitted concurrently as an affidavit. A second affidavit will also be concurrently filed which are Bryce's letters and witness statements of Bryce simply wanting to

come home. However, after conferring with her attorney Dave Schulman, Petitioner welched on the agreement.

III. Legal Argument

This Court has inherent authority to stay proceedings when required in the interests of justice, fairness, and judicial economy. "[T]he power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. N. Am. Co.*, 299 U.S. 248, 254, 57 S.Ct. 163, 81 L.Ed. 153 (1936).

It is well established that criminal matters take precedence over parallel civil cases involving the same subject matter and parties. As the California Supreme Court explained, "the pendency of a criminal prosecution may justly warrant suspension of civil proceedings arising from the same facts." *People v. Superior Court (Jayhill)*, 9 Cal.3d 283, 286 (1973). This avoids the "Severe and unnecessary burdens on the fair administration of criminal justice." *Id.*

Here, the pending criminal prosecution arises from the exact circumstances and events regarding child custody and violation of visitation orders that remain disputed in this civil matter. Any ruling by this Court on those same issues risks improperly influencing the related criminal case and interfering with Respondent's constitutional rights.

Additionally, allowing civil proceedings to advance during the criminal case raises significant self-incrimination concerns and infringement of Respondent's due process rights. Respondent should not have to choose between defending the civil custody matter and preserving the right against self-incrimination in the criminal case. This unfair burden can be avoided by staying civil proceedings during the criminal prosecution.

For these reasons, a stay is imperative to protect the integrity of both the civil and criminal matters and avoid undue prejudice against Respondent. Judicial economy will be best served by allowing the criminal case to reach final adjudication before taking any further action in these family court proceedings.

Additionally, the November 9th hearing Petitioner seeks to move forward with concerns only a petty disagreement between Petitioner and the child's grandmother over dropped off gifts. Petitioner should not be entitled to expedited resolution of such minor issues when Respondent faces lengthy delay for matters directly implicating his parental rights and custody of the child.

As evidenced by the trivial and potentially misleading nature of the matters Petitioner now seeks to expedite, as detailed in the Background, equity demands prioritizing Respondent's matters where the ability to present the full truth has been actively impeded.

IV. Conclusion and Request for Relief

For the reasons detailed above, equity and fairness demand staying these family court proceedings, including the November 9th hearing, until full resolution of the criminal matter.

The criminal matter carries greater precedence, implicates Respondent's constitutional rights, and involves the same core issues as this civil custody dispute. Further action by this Court risks improper interference and infringement of Respondent's rights.

Petitioner has already obtained expedited scheduling on trivial matters, while Respondent faces extended delays on issues central to parental rights and criminal defense. This disparity in access further supports postponing civil proceedings.

A stay is imperative to avoid potentially inconsistent judgments, undue burdens on Respondent, and waste of judicial resources. Only once the criminal prosecution has reached final adjudication should this Court move forward with civil proceedings related to the same parties, child, and disputed orders.

Therefore, Respondent respectfully requests this Court issue a formal order:

Staying all proceedings in this family court case, including the November 9, 2022 hearing;

Pending full resolution of Case No. SCD297230;

On grounds set forth in this Motion and Memorandum of Points and Authorities;

Granting any other relief deemed just and equitable

VERIFICATION

IT IS HEREBY certified that the facts in the foregoing is true and correct under penalty of perjury to the best of my knowledge and belief. Attachments to this are true and correct copies of the items they purport to be.

Dated this 3rd day November 2023

Robert Emert

By: _____

Robert Emert

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ELECTRONIC SERVICE

I, Glenda Emert, certify that on 11/03/23, I served the foregoing document electronically by email to the following:

Dave Schilman

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 11/03/23

glenda emert

Glenda Emert