

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

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In the Matter of

ORDER TO SHOW CAUSE
Docket No.: NN-19410-18

Margaret Malek

A Child Under Eighteen Years
of Age Alleged to be Neglected by

Part 6
Jacqueline Williams. FJC)

Robert Malek

Respondent

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Rosmil Almonte, an attorney duly admitted to the practice of law before the courts of the State of New York, affirms the following to be true under the penalties of perjury pursuant to CPLR § 2106 perjury pursuant to CPLR § 2106:

1. I am of Counsel to ALAN SPUTZ, ESQ., Special Assistant Corporation Counsel to JAMES JOHNSON, ESQ., Corporation Counsel of the City of New York, and as such, counsel for DAVID HANSELL, the Commissioner of the Administration for Children’s Services (“ACS”), the Petitioner herein.

I make this Affirmation in Opposition to the several motions filed by the respondent father.

Replay to Respondent’s Motion Numbers 22 and 25 Filed on January 14, 2020

2. Respondent Robert Malek filed an Order to Show Cause seeking the Court to issue a Judicial Subpoena for Manhattan District Attorney to provide any discovery in their position regarding an alleged child protective investigation involving the non-respondent mother from November 6, 2018. Petitioner now moves to squash said request.

3. Generally, the respondent Robert Malek is entitled to all matters material and necessary in the defense of an action. CPLR section 3120 governs the production of documents. Petitioners submits that the alleged documents requested by Mr. Robert Malek from the

Manhattan District Attorney Office is irrelevant in establishing a defense of child neglect. From the face of the subpoena, the documents requested by the respondent Mr. Robert Malek involve allegations against the non-respondent mother which is irrelevant to a proceeding against Mr. Malek for child neglect. The underlying allegation of the petition arise from Mr. Malek physical and emotional abuse of the non-respondent mother in the presence of the children. Mr. Malek seeking the production of records from Manhattan District Attorney Office is simply another attempt to menace and harass the non-respondent mother for speaking up about the physical and emotional abuse perpetrated by Mr. Malek.

Replay to Respondent's Motion Numbers 25 and 28 Filed on January 14, 2020

4. The respondent filed an Order to Show Cause for a subpoena seeking the production of all audio files from every call made SCR hotline regards to Margaret Malek, Robert Malek, Margaret Ingoglia a Joe Palomino.

5. Petitioner is not able to provide any audio files of the calls in the SCR as the calls are not recorded and as such no audio files are available. Petitioner is only able to provide for the calls requested by the respondent, the Oral Report Transmittal (ORT).

Replay to Respondent's Motion Numbers 26 and 23 Filed on January 14, 2020

6. The respondent filed an Order to Show Cause for a subpoena seeking that the company K-Mart produce recordings and videos from an alleged incident involving the non-respondent mother and the subject children in January 14, 2019. Petitioner objects to the court issuing such subpoena to the respondent father.

7. As previously stated by Petitioner, the respondent Robert Malek is entitled to all matters material and necessary in the defense of an action. According to the respondent's Order to Show Cause, on January 14, 2019, the non-respondent mother was caught shop lifting at a K-

Mark store with the subject children. The respondent is now requesting from the store K-mart to produce all audio, recordings, pictures and documents relating to that incident. Petitioner submits that the discovery requested by the respondent is not relevant and necessary for defense in a Child Protective Proceeding against the respondent. The alleged K-mark incident does not involve any of the allegations in the Article 10 petition filed against the respondent. The respondent is simply seeking to further harass and intimidate the non-respondent mother. It should be noted by the Court that based on the information in the Order to Show Cause filed by the respondent father, that the respondent father hired a private investigator Mr. Michael Ruggiero from the Beau Dietl and Associates to conduct surveillance on the non-respondent mother. This is a clear violation of the Order of Protection issued on behalf of the non-respondent mother and the subject children against the respondent father. The respondent father hiring a private investigator to conduct surveillance on the non-respondent mother and the subject child constitute contact via 3rd party which is a violation of the Order of Protection.

Replay to Respondent's Motion Numbers 26 and 29 Filed on January 14, 2020

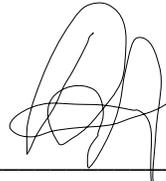
8. The respondent filed a Order to Show Cause on January 14, 2020 seeking that the Court vacate the ordered issued by the Court on October 16, 2018, which prohibits the respondent from recording the visits between the respondent and the subject child Margaret at the ACS field office.

9. Petitioner objects to the Court vacating that order. Family Court is a court of limited jurisdiction it cannot exercise powers beyond those granted to it by statute. See Pearson v. Person, 489 N.Y.S.2d 332 (1985). The separation of powers between the branches of government limit the authority of the Court to compel an executive agency like ACS in matters that deal with judgment, discretion and allocation of resources. The judicial branch of

government is not designed nor intended to assume the management and operation of an executive enterprise. See Matter of Tiffany A., 703 N.Y.S.2d 381(2000). It is an ACS policy that video or audio recording by any person visiting an ACS field office is prohibited. ACS's policy regarding video or audio recordings is management and operation decision and as such the Court cannot compel ACS to permit the respondent to record the visits at the ACS field office.

WHEREFORE, it is respectfully requested that the Court grant petitioner's request in its entirety, and grant such other and further relief as this Court deems just and proper.

Dated: July 6, 2020
Brooklyn, NY

A handwritten signature in black ink, appearing to read 'Rosmil Almonte', is written above a horizontal line.

Rosmil Almonte, Esq.