

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

PRESENT: The HON. SHARON LOVALLO, J.F.C.

In the Matter of

SOPHIA COULOUTE

**AFFIRMATION IN OPPOSITION OF
MOTION TO DISMISS**

File #: 204566

Doc #: NN-02494-17

A Child Under the Age of Eighteen Years
Alleged to be neglected by:

MATTHEW COULOUTE
LAUREN HAIDON

Respondents.

Lauren Creighton, Esq., being an attorney duly admitted to practice law before the Courts of the State of New York, affirms under penalty of perjury that the following, upon information and belief, is true.

- 1) I am the attorney of record for the Erie County Department of Social Services (hereinafter "Department") Office of Legal Affairs and as such am fully familiar with all papers and proceedings heretofore filed or had herein.
- 2) Mr. Couloute filed a Motion to Dismiss the neglect petition filed by Erie County Department of Social Services.
- 3) This Court is presiding over a remand hearing requested by Mr. Couloute. Day three of this remand hearing is scheduled for July 19, 2017.

- 4) The Department has alleged domestic violence between the respondents in the presence of the child and sexual abuse of the child by Respondent Couloute.
- 5) F.CA. §1012 (f)(i)(A)(B) defines a neglected child as a child:
 - a. [w]hose physical, mental or emotional condition has been impaired or is in imminent danger of becoming impaired as a result of the failure of his parent or other person legally responsible for his care to exercise a minimum degree of care
 - i. in supplying the child with adequate food, clothing, shelter or education in accordance with the provisions of part one of article sixty-five of the education law, or medical, dental, optometrical or surgical care, though financially able to do so or offered financial or other reasonable means to do so; or
 - ii. in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or a substantial risk thereof, including the infliction of excessive corporal punishment; or by misusing a drug or drugs; or by misusing alcoholic beverages to the extent that he loses self-control of his actions; or by any other acts of a similarly serious nature requiring the aid of the court; . . .
- 6) During the remand hearing, CPS worker, Amy Thuman, testified that Sophia mimicked humping and punching motions during a multi-disciplinary interview.
- 7) Ms. Thuman's further testified that Sophia stated that daddy plays the "dragon game" where his pee-pee is the sword. Sophia also stated that she saw mommy

and daddy yelling and hurting each other. This is where Sophia demonstrated punching.

- 8) *Matter of Enrique V. (Jose U.V.)*, 68 A.D.3d 427, 888 N.Y.S.2d 747(1st Dept. 2009), has held that, “No expert or medical testimony is required to show that the violent acts exposed the children to an imminent risk.”
- 9) Mr. Couloute has testified, in his own defense, that he was aware of Respondent Mother’s significant mental health issues. He stated in his testimony that when Ms. Haidon became unstable he would leave and take his son, Xavier, with him. Leaving Sophia in the care of her mother, who, by Mr. Couloute’s own admission, was mentally unstable and would have suicidal ideations.
- 10) Leaving Sophia in the care of a parent who the other parent knows to be mentally unstable places the child in imminent risk of danger.
- 11) Mr. Couloute testified and conceded that the family generally lived above their means, which led to the instability in housing. Mr. Couloute went further and stated that on or around October 2016, he moved to Georgia, leaving Ms. Haidon and Sophia in Connecticut. Mr. Haidon testified that he often had to give money to Ms. Haidon to assist them with food and bills, until he came to get them to move Sophia and Ms. Haidon back to Buffalo, New York.
- 12) Merrill Sobie’s commentary regarding §1012(f)(i)(A) states, “Providing adequate food, clothing and shelter entails multiple direct parental acts. The necessities of life do not magically appear. Child support also entails a financial obligation; food, clothing and shelter must be purchased. Hence the inclusion in Section

1012(f)(i)(A) of the clause limiting parental liability to situations where the parent neglects to provide necessities although ‘... financially able to do so.’”

- 13) Mr. Couloute testified that he moved to Georgia for the purposes of better employment. He has not testified to providing any form of financial support to Ms. Haidon for the purposes of taking care of Sophia while he was away.
- 14) As this Court is aware, domestic violence can take on many forms. Domestic violence is not limited to physical violence but also takes the form of controlling the victim.
- 15) Through both Mr. Couloute’s and Mr. Patrick Haidon’s testimony, Mr. Couloute had threatened to not return Sophia to Erie County after a visit in Connecticut. Given Mr. Couloute’s own admission that he was aware of Ms. Haidon’s mental health condition, he knew or had reason to know the maelstrom of emotions this would have caused Ms. Haidon.
- 16) Mr. Haidon testified that as result, the family put into motion a plan in case Mr. Couloute did not return Sophia. They had New York State Troopers on hand at the drop off site to have an amber alert ready to go. They attempted to contact Mr. Couloute to see if he was returning Sophia and Mr. Couloute’s response was, “talk to your lawyer.”
- 17) Mr. Couloute did end up returning Sophia to Erie County, but he returned Sophia to an emotionally charged drop-off that he created. He created a situation where New York State Troopers were at the drop-off, where Ms. Haidon was emotional, where Sophia was watching the chaos. He followed up this drop off with an email

to this attorney, where he shifts the blame entirely on Ms. Haidon and the family.
[See Attached].

- 18) Mr. Couloute continues to craft situations where he controls Ms. Haidon by using her mental illness as a means to control her and then use her mental illness to his advantage, when he chooses to exercise parental control over Sophia.
- 19) It is important to note that this Court still does not know where Mr. Couloute lives. He continues to play games regarding jurisdiction and residency. He has an address in Connecticut, but by his own testimony, moved to Georgia in October 2016. His other child, Xavier, goes to school in Georgia. Mr. Couloute, originally attempted to change venue to Connecticut, and is now consenting to this Court's jurisdiction, while continuing to stay silent as to where he lives or his ability to take care of Sophia's needs.
- 20) Mr. Couloute's own Motion to Dismiss lists his location as Cumming, Georgia.
- 21) FCA §1051(b) states, "If the proof does not conform to the specific allegations of the petition, the court may amend the allegations to conform to the proof; provided, however, that in such case the respondent shall be given reasonable time to prepare to answer the amended allegations."
- 22) Merrill Sobie explains the purpose for this section, "Subdivision (b) authorizes the court to 'amend the allegations to conform to the proof'. The subdivision is derived from CPLR 3025(c), which provides that 'the court may permit pleadings to be amended before or after judgment to conform them to the evidence.' The amendment of an Article 10 petition is fairly common, given the nature of complex, ever-changing family situations and parent-child relationships, and,

unfortunately, hastily drafted petitions prepared by an overburdened petitioning agency or counsel.”

- 23) Mr. Couloute has notice to any amendments that this Court makes to the Department’s petition, since he has participated in, and opened the door to, all evidence that this Court has heard during the remand hearing.
- 24) Mr. Couloute’s actions have taken place in Erie County, while the child is placed in Erie County, and therefore, gives this Court jurisdiction to hear this Article 10 proceeding.

WHEREFORE, for all of the above reasons, your Affiant respectfully requests that the Court deny Respondent’s Motion to Dismiss.

DATED: July 12, 2017

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From: [Matthew Couloute](#)
To: [Creighton, Lauren](#)
Subject: Drop off
Date: Saturday, May 13, 2017 10:43:34 AM

Attorney Creighton:

As promised, Sophia was dropped off this morning at the arranged meeting place. Unfortunately, Mr. Haidon again brought a state trooper whose presence scared Sophia. Ms. Haidon, was hiding in a car with 2 friends that were video taping the exchange. Then, from somewhere in the parking lot, a process server appeared and attempted to serve me all while I'm trying to get Sophia situated in Mr. Haidon's car. Lauren then appeared from her friend's car for whatever reason saying something that was unintelligible. Here are the pictures from what again the Haidon's turned into a fiasco.

This behavior by both Mr. Haidon and Ms. Haidon is unacceptable and is contrary to the courts orders once again. Ms. Haidon is out of control and her father is enabling her as Sophia watches and continues to be harmed.

Thank you.

Matthew Couloute