DOCKET No. FBT-FA19-6088163S	**SUPERIOR COURT**
CHRISTOPHER AMBROSE	**JUDICIAL DOCKET OF FAIRFIELD**
V.	**AT BRIDGEPORT-RFTD AT MIDDLETOWN**
KAREN AMBROSE	**SEPTEMBER 14, 2021**

MEMORANDUM OF DECISION RE: DEFENDANT'S MOTION TO VACATE COURT ORDERS AND DISMISS PLAINTIFF'S EMERGENCY EX-PARTE MOTION TO MODIFY CUSTODY(#225.00)

In the midst of a long and contentious pendente lite period in this case, counsel for the defendant filed a motion to vacate court orders and dismiss the plaintiff's emergency ex parte motion to modify custody of the minor children and request temporary sole legal and physical custody, filed on March 20, 2020 (#167.00). The aforesaid motion was granted by the court on April 16, 2020 (*Grossman, J.*) (#167.10) and a hearing was scheduled for April 24, 2020. At that hearing, testimony was given by the court appointed evaluator, Jessica Biren-Caverly, Ph.D. After hearing Biren-Caverly's testimony, the court entered orders (#192.00) continuing the hearing to another date and ordering, until further orders were entered , that the plaintiff was to have the sole legal and physical custody of the three minor children regarding this matter. The parties were also instructed that all other orders entered on April 16, 2020 (#167.10) would be continued.

Both parties were represented by competent and experienced family law practitioners and the best interests of the children were being protected by a Guardian Ad Litem ("GAL") who was also a well respected family law attorney and an experienced guardian. Additional court time was used to continue the April 24th hearing over the next several months. Early in June, the parties filed a request for approval of a temporary agreement without court appearance (#197.00) seeking approval of a pendende-lite stipulation signed by the parties on June 2, 2020, and filed on June 22, 2022 (##197.00, 198.00). Said

stipulation requested the court to refrain from scheduling further hearings on the immediate custody issue, to allow the parties to continue in their efforts to resolve the matter on their own. The stipulation (#198.00) also requested a status conference in 45 days. The aforementioned stipulation was approved and ordered by the court, *Grossman, J.*, (##197.10, 198.10). Furthermore, on June 10, 2020, the court, *Grossman, J.*, entered a more detailed order (#196.00) to clarify and supplement the court's approval of the stipulation, as well as its prior orders related to the plaintiff's custody motions. The court also ordered the hearing to be continued to a date assigned by the court unless the parties were able to reach an agreement on the issue by July 1, 2020.

Later in June, the parties filed another stipulation with the court (#200.00) which was approved by the court, *Grossman, J.* (# 200.10). In said stipulation, the parties agreed that the defendant would begin to have supervised telephone contact with the minor children, to be supervised by Robert Horwitz, Ph.D., and that prior to such a call, the supervisor and the defendant would meet to establish a protocol for the telephone contact. Upon "successful telephone contact with the minor children," the stipulation called for "gradually expanded supervised phone access . . . with the goal of moving toward reunification of the Mother and the children . . . ."[1]

On August 11, 2020, another pendente-lite stipulation was filed with the court (#202.00).The aforementioned stipulation notified the court that a further hearing which had been scheduled for the next day, August 12, 2020, would not be necessary as the parties had resolved an immediate issue, by the June stipulation (#200.00), regarding who was going to be the supervisor for the telephone contact between the defendant and the children. The parties stated that they had "agreed to a supervisor and no longer require

[1]See Stipulation Pendente Lite, ¶ 6 (#200)

a hearing in court regarding the supervisor."[2] As a result of that stipulation, no further hearings on the plaintiff's relevant motions were scheduled.

The defendant alleges, in her trial brief submitted to the court on July 26, 2021 (#352.00), two flaws with the August 11 stipulation (#202.00). Addtionally, on her motion to vacate court orders (#225.00), the defendant claims that the plaintiff's ex parte emergency order (#167.00) should be vacated because it failed to comply with several statutory requirements, including General Statues § 46b-56f. The court will address the alleged flaws and then the statutory claims.

First, we address the defendant's claims that she never signed the stipulation. The defendant claims that it was signed only by the attorneys for the two parties and the GAL and that the court never officially approved the stipulation. Both of those two allegations are true; however, it does not mean that the order does not exist and that the defendant was denied her due process by having an end to the pendente lite hearing of the ex-parte motion. The court does not accept that argument.

A pleading signed by a party's attorney is valid and is evidence of the party's approval even if the party did not sign the document. Practice Book § 7-6 requires only that a document filed by the clerk must be signed by the party's counsel or a self-represented party. See Practice Book § 7-6 "Filing papers" ("No document in any case shall be filed by the clerk unless it has been signed by counsel or a self-represented party. . . ."). See also *Housing Authority of Hartford* v. *Collins*, 38 Conn. Supp. 389, 392, 449 A.2d 189 (1982) ("A pleading shall not be filed in court unless it is signed by counsel.") citing Practice Book § 4-2 "Signing of Pleading" ("[e]very pleading and other paper of a party represented by an attorney shall be signed by at least one attorney of record in the attorney's individual name. A party who is not represented by an attorney shall sign his or her pleadings and other papers.").

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[2]Stipulation Pendente Lite (#202)

The presiding judge, *Grossman, J.*, who had handled virtually all of the hearings and proceedings in this case while it was still in the Bridgeport court, prior to it being transferred to the Regional Family Trial Docket in Middletown, certainly understood that the August stipulation (#202.00) was a valid order of the court. In September, the court issued an order stating: "The agreements of the parties #200 and #202, approved as court orders on 6/24/20 and 8/11/20 . . . ." (*Grossman, J.*) (#216). The defendant points to the fact that the request for approval of that stipulation was never approved by the court. The record shows that the parties filed two different requests for approval of two different stipulations on the same day[3] and they followed in quick succession as items #202.00 and #203.00. It is correct that the court, *Grossman, J.*, signed only one of the two requests, the one related to the financial stipulation, but it is clear that it was a simple error made by a very busy presiding judge of a very busy docket. It was an oversight and everyone in the case including the judge, the parties, the attorneys, and the GAL went forward as if the stipulation was a signed court order. The defendant did not object to #202.00 and based on her conduct that summer and early fall, she effectively waived any objection to the lack of a formal signature on the request form.

We have a somewhat similar set of facts in *Garvery* v. *Valencis,* 117 Conn. App. 578, 173 A. 3d 51, aff'd, 177 Conn. App. 578 (2017). The plaintiff appealed the trial court's decision in granting an emergency ex-parte order denying the plaintiff visitation rights. Id., 580. One of the plaintiff's arguments was that the trial court violated her constitutional rights by allowing a postdeprivation hearing to span 112 days following the entry of the ex-parte emergency order. Id., 592. The court found that the plaintiff waived her right, by conduct, to object to the length of the hearing given her consent to the four scheduled postponements and continuance, in addition to her conduct over the 112 days that the hearing took to

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[3] The other stipulation was not related to custody issues and dealt with financial matters only. See pleading #203.00.

complete. Id., 595. The court cites to several instances in which the plaintiff's conduct demonstrated her consent to the court's orders, and waive of her right to object, including the parties' agreement for the dates that the hearings were going to take place. Id., 595-97. The court held that "mandatory time limitations must be complied with, absent an equitable reason for excusing compliance, including waiver or consent by the parties. . . . In order to waive a claim of law it is not necessary . . . that a party be certain of the correctness of the claim of its legal efficacy. It is enough if [she] knows of the existence of the claim and of its reasonably possible efficacy." (Citations omitted; quotation marks omitted.) Id., 595.

"Waiver does not have to be express, but may consist of acts or conduct from which waiver may be implied. . . . In other words, waiver may be inferred from the circumstances if it is reasonable to do so." (Internal quotation marks omitted.) Id. Finally, the court concluded that "our Supreme Court has long held that [a party] may not pursue one course of action at trial for tactical reasons and later on appeal argue that the path he rejected should now be open to him." Id. In *Walsh* v. *Walsh,* 190 Conn. 126, 459 A.2d 515 (1983) the Supreme Court found that "If counsel has full knowledge of improper conduct (or what he perceives to be improper procedure) he cannot remain silent, hoping for a favorable ruling, and then be heard to complain when the order is unsatisfactory. It remains counsel's responsibility for full and fair disclosure, for a searching dialogue, about all of the facts that materially affect the client's rights and interests". (Citations omitted; quotation marks omitted.) Id., 132. The defendant was represented by counsel at the time the stipulation was filed and, in fact, the attorney signed the stipulation. While it is true that the defendant changed attorneys shortly thereafter, her new counsel who appeared on her behalf on August 27, 2020 did not file her motion to vacate until November 2, 2020 (#225.00) more than sixty days after her appearance and even longer after the court, *Grossman, J.*, affirmed the presence of her order approving the stipulation in question, in her order on September 11, 2020 (#216.00).

As for the failure of Judge Grossman to actually sign the stipulation order in dispute herein, that too has little merit given the circumstances of this matter. Even if stipulation (#202.00) was not formally entered by the court, "[t]he absence from the case file of a signed order is by no means conclusive evidence on the face of the record that the Superior Court judge never heard or acted upon the motion to refer the case. The record in its totality indicates either that the Superior Court judge overlooked signing his order of reference or that [the] signed order has been inadvertently misplaced. Such oversights are not . . . defects for the purpose of collateral attack on a judgment." *Monroe* v. *Monroe*, 177 Conn. 173, 185, 413 A.2d 819, cert. denied, 444 U.S. 801 (1979). To argue that an error made by a busy judge that led to an absent signature given the facts of this case is to promote form over substance.

Next, we address the defendant's claim that the court lacked statutory authority to enter the temporary orders that it did, due to the failure of the plaintiff and the court to adhere to the requirements of General Statutes §§ 46b-56f (b) and (c).[4] The first claim is based on the fact that the hearing on the ex

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[4] General Statutes § 46b-56f provides, in relevant part: "The application shall be accompanied by an affidavit made under oath which includes a statement (1) of the conditions requiring an emergency ex parte order, (2) that an emergency ex parte order is in the best interests of the child, and (3) of the actions taken by the applicant or any other person to inform the respondent of the request or, if no such actions to inform the respondent were taken, the reasons why the court should consider such application on an ex parte basis absent such actions. . . . The court shall order a hearing on any application made pursuant to this section. If, prior to or after such hearing, the court finds that an immediate and present risk of physical danger or psychological harm to the child exists, the court may, in its discretion, issue an emergency order for the protection of the child and may inform the Department of Children and Families of relevant information in the affidavit for investigation purposes. The emergency order may provide temporary child custody or visitation rights and may enjoin the respondent from: (1) Removing the child from the state; (2) interfering with the applicant's custody of the child; (3) interfering with the child's educational program; or (4) taking any other specific action if the court determines that prohibiting such action is in the best interests of the child. If relief on the application is ordered ex parte, the court shall schedule a hearing not later than fourteen days after the date of such ex parte order. If a postponement of a hearing on the application is requested by either party and granted, no ex parte order shall be granted or continued except upon agreement of the parties or by order of the court for good cause shown." General Statutes §46b-

parte motion was continued several times before being closed, based on the agreement of the parties that no further hearing was required at that time; however, the agreement did not restrict the parties from filing motions regarding the agreed supervision by Dr. Horwitz or "to address any other issue concerning this case" (#200.00, ¶ 8). As mentioned previously, in the stipulation signed by both parties and their respective counsel on June 2, 2020 (#198.00), the parties requested the court to refrain from scheduling further hearings, to allow the parties to continue on their attempt to resolve the matter. The stipulation was approved by the court, *Grossman, J.*, (#198.10). On June 22, 2020, the parties submitted another stipulation (#200.00), signed by both parties and their respective counsel, agreeing, among other things, to allow the defendant to have supervised telephone contact with the minor children, under the supervision of Robert Horwitz, P.h.D. The court declined to schedule further hearings based on the agreement of the parties.

The second challenge relates to the allegation that the required affidavit was not filed in support of the ex parte motion. The defendant argues that the affidavit filed by the plaintiff was insufficient. Additionally, the defendant, in her trial brief, points to the court's order issued on April 15, 2020 directing the GAL to provide the court with a "statement . . .articulating her opinion as to whether or not the children are at immediate risk of physical or psychological harm. The court will rule on the plaintiff's ex parte request for emergency custody upon receipt of the GAL's statement." (Grossman, J.) (#173.00).
The defendant some how views the court's order regarding the GAL affidavit as dispositive in deciding the ex parte emergency order and as a requirement to meet § 46b-56f(b). It is not. "Section 46b–56f(b) merely provides that the applicant submit an affidavit detailing the conditions requiring an emergency ex parte order, stating that the emergency ex parte order is in the best interests of the child, and stating the actions taken to notify the respondent, or if no actions were taken to inform the

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56f (b) and (c).

respondent, explaining why the court should consider such an application on an ex parte basis absent such notification efforts." See *Garvery* v. *Valencis,* supra, 117 Conn. App. 585. The plaintiff had indeed filed the required affidavit (#168.00).

The balance of the defendant's allegations and claims are based on disputed facts in which the court is currently hearing evidence. As the court has advised the defendant many times during the pendency of this trial, that the court will not issue any new custodial orders until it has heard and considered all of the evidence presented. If at that time, changes in those orders are appropriate, the court would will enter such new orders. That time has not yet arrived.

The defendant's pendente lite motion to vacate #225.00 is denied.

ADELMAN, J.T.R.