

At _____, of the United States District Court, Southern District of New York, County of New York, State of New York, held at the United States Courthouse located at 500 Pearl Street, Room _____ at 9:30 a.m. on the ____ day of May, 2004

P R E S E N T:

HONORABLE: _____
DISTRICT COURT JUDGE

-----X
BRIDGET MARKS, individually and on behalf of her infant children AMBER LYNN AYLSWORTH and SCARLET LEE AYLSWORTH, and all those similarly situated,

Plaintiffs,

- against -

JOHN AYLSWORTH, STATE OF NEW YORK, ELLIOTT SPITZER as the Attorney General of the State of New York, NEW YORK STATE UNIFIED COURT SYSTEM, LAWYERS FOR CHILDREN, Inc., as the appointed Law Guardian for the infant children named herein as Plaintiff-Petitioners, MOLLY MURPHY, Esq. as the attorney appointed to act as Law Guardian by Defendant-Respondent Lawyers for Children, ARLENE D. GOLDBERG, as the presiding Justice of the Family Court assigned to this proceeding, DR. STEPHEN B. BILLICK, in his capacity as the Court appointed forensic psychiatrist for the infant children named herein as Plaintiff-Petitioners, JOHN & JANE DOES 1 - 100 whose identities are currently unknown but necessary parties to these proceedings, ABC CORP.'S 1 - 100 those entities whose identities are currently unknown but necessary parties to these proceedings.

Defendant,

Docket:
Purchased: 6/1/04

**ORDER TO
SHOW CAUSE**

JURY DEMANDED

UPON READING AND FILING of the Emergency Affirmation of Thomas D. Shanahan dated May 31, 2004, Affirmation of Thomas D. Shanahan dated May 31, 2004, Affidavit of Bridget Marks dated May 26, 2004 and May 31, 2004, Affidavit of Celia Blumenthal dated May 31, 2004 and exhibits annexed hereto:

LET THE DEFENDANTS show cause at before the Honorable _____, District Court Judge, Room _____, to be held at the United States Courthouse, 600 Pearl Street, New York, New York, on the ___ day of May, 2004 at 9:30 o'clock in the forenoon of that day or as soon after as Counsel can be heard, why an order should not be entered herein:

(1) Pursuant to F.R.C.P. 65(b) entering a preliminary injunction staying compliance with the decision and order of the Honorable Judge Arlene D. Goldberg dated May 21, 2004 transferring custody of the infant children Amber Lynn Aylsworth and Scarlet Lee Aylsworth on June 1, 2004 at 12:00 p.m. (noon) of that day pending the issuance of the final order of Judge Goldberg at some unknown point in the future;

(2) Permitting the Court to interview the infant children named herein in camera to determine their desires as to residence pending an appeal of the Order to Judge Goldberg dated May 21, 2004.

PENDING A HEARING on the aforementioned provisional relief:

(2) Pursuant to F.R.C.P. 65(a) pending oral argument or hearing on the aforementioned application, defendants and their agents or others acting on their behalf are hereby stayed and restrained from executing on the order of the Honorable Judge Goldberg dated May 21, 2004, including but not limited to the transfer of the infant

children at issue pending the issuance of the final decision of Judge Goldberg as indicated in her decision dated May 21, 2004 or further order of this Court.

SUFFICIENT CAUSE APPEARING THEREFORE, let personal service upon the defendants named herein or their attorneys of record in the family court proceeding captioned John Aylsworth v. Bridget Marks, Supreme Court of the State of New York, County of New York, Docket V-01744-5/03, on or before the ____ day of June, 2004 be deemed good and sufficient service.

J.D.C.

Thomas D. Shanahan, Esq.
SHANAHAN & ASSOCIATES, P.C.
545 Fifth Avenue, Suite 1205
New York, New York 10017
Phone (212) 867-1100
Fax (212) 972-1787
tom@shanahanlaw.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BRIDGET MARKS, individually and on behalf of her
infant children AMBER LYNN AYLSWORTH and
SCARLET LEE AYLSWORTH, and all those
similarly situated,

Plaintiffs,

- against -

JOHN AYLSWORTH, STATE OF NEW YORK,
ELLIOTT SPITZER as the Attorney General of the
State of New York, NEW YORK STATE UNIFIED
COURT SYSTEM, LAWYERS FOR CHILDREN, Inc.,
as the appointed Law Guardian for the infant children
named herein as Plaintiff-Petitioners, MOLLY
MURPHY, Esq. as the attorney appointed to act as
Law Guardian by Defendant-Respondent Lawyers for
Children, ARLENE D. GOLDBERG, as the presiding
Justice of the Family Court assigned to this proceeding,
DR. STEPHEN B. BILLICK, in his capacity as the
Court appointed forensic psychiatrist for the infant
children named herein as Plaintiff-Petitioners,
JOHN & JANE DOES 1 - 100 whose identities are
currently unknown but necessary parties to these
proceedings, ABC CORP.'S 1 - 100 those entities
whose identities are currently unknown but necessary
parties to these proceedings.

Defendant,

Docket:
Purchased: 6/1/04

**EMERGENCY
AFFIRMATION**

JURY DEMANDED

Thomas D. Shanahan, an attorney admitted to practice before this Court, does hereby affirm under penalty of sanction:

1. I am counsel for Plaintiff in this action and submit this affirmation in light of the emergency nature of the application. I was retained on Saturday, May 29, 2004 over the holiday weekend.

2. The decision of Judge Arlene Goldberg dated May 21, 2004 is not appealable as she indicates in her decision that a final order explaining the basis of her decision will be entered at some point in the future. See Exhibit A, B.

3. The Appellate Division has refused to consider a stay pending entry of the final decision in the matter and set a control date for July 5, 2004 for the application. There is no guarantee that a decision will be rendered by that date. See Exhibit B.

4. The annexed Affidavit of the last therapist who treated the children, Celia Blumenthal, M.D., confirms the irreparable harm that will occur should the infant children be turned over on June 1, 2004. Plaintiff is entitled to a right to appeal and for good cause shown, a stay on implementation of the decision pending the appeal. Should the decision be reversed, the children will be shuffled back and forth between different parents, schools and residences pending resolution of the custody dispute. This would irreparably damage the children psychologically. The only home they have ever known is the their current home with their mother.

4. I attempted to reach counsel for Mr. Aylsworth via telephone on May 31, 2004. I left a phone message with her office with my cell phone number. I also faxed the papers filed herein without exhibits to her office

5. I attempted to reach the Chambers of Judge Arlene D. Goldberg via telephone on May 31, 2004. I left a phone message with Chambers with my cell phone number. I faxed the papers filed herein without exhibits to her office.


6. I attempted to reach the Law Guardians via telephone on May 31, 2004. I left a phone message with their office which includes my cell phone number. I faxed the papers filed herein without exhibits to her office.

7. As no money damages are sought in the Verified Complaint, we respectfully request that the Court dispense with the posting of a bond for purposes of the granting of a Temporary Restraining Order or Preliminary Injunction. We also request that the bond be dispensed as a limited window exists for the pendency of the provisional relief sought herein, i.e., the issuance of the final order of Justice Goldberg at some undetermined point in the future.

8. As Judge Goldberg ordered the transfer to take place at noon on June 1, 2004, this application is made on an emergency basis.

9. The relief requested herein has not been sought at any other Court aside from the relief sought in annexed Exhibit B.

Dated: New York, New York
May 31, 2004


Thomas D. Shanahan

7. I base this opinion on the following factors:

a. It is always traumatic to remove children from their primary care taker, even if it is shifting them between one parent and another. The basis for removal should be the presence of severe neglect or abuse, none of which is immanent here.

b. The children are of young age, little able to understand what is occurring; none of what is occurring is within their control. This is increasing their anxiety.

c. Children have little sense of time and to them everything seems endless. It would be cruel to send them to their father telling them it is a 'temporary' move, and that at some point in the future, they will move back to New York City to see their mother again. Because of their poor sense of time, it will seem endless and create terrible anxiety.


If they are to be moved, it should be to a new "permanent" home in New York City, so continuity of contact with their mother can be maintained. This seems to be implicit in Judge Goldberg's ruling as she gave Mr. Aylsworth custody with the understanding that he would move to New York.

d. Children do best with stability in their lives. Ms. Marks is (minimally) an adequate caretaker. Even if she has influenced the children against their father, she has not severely neglected or abused them. Whether or not they should ultimately be left in her care, they should certainly be left with her until this case, and its appeals are fully settled. This will disrupt the children's lives as little as possible, and this is certainly what is best for them psychiatrically.

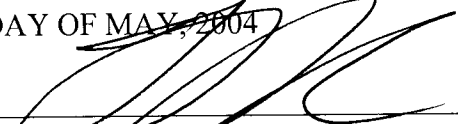
e. Without obtaining my advice, the children were ordered to stop psychiatric treatment during the course of the trial. Whether or not they were abused, they are very anxious about their parent's conflict, and need therapy. They should be placed in therapy in New York City, ASAP (whether with me or someone else). They will then have the benefit of therapy while the case is

being settled; they will be better able to process transfer to their new home, or whatever other life adjustments befall them as a result of the court's decision. This will only be possible if they remain in New York while the case is settled,

Dated: New York, New York
May 31, 2004


Celia Blumenthal M.D.

SWORN TO BEFORE ME THIS 31st
DAY OF MAY, 2004


Notary Public

THOMAS D. SHANAHAN
Notary Public, State of New York
No. 02SH5083105
Qualified in Richmond County
Commission Expires August 4, 2009

Thomas D. Shanahan, Esq.
SHANAHAN & ASSOCIATES, P.C.
545 Fifth Avenue, Suite 1205
New York, New York 10017
Phone (212) 867-1100
Fax (212) 972-1787
tom@shanahanlaw.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
BRIDGET MARKS, individually and on behalf of her
infant children AMBER LYNN AYLSWORTH and
SCARLET LEE AYLSWORTH, and all those
similarly situated,

Plaintiffs,

- against -

JOHN AYLSWORTH, STATE OF NEW YORK,
ELLIOTT SPITZER as the Attorney General of the
State of New York, NEW YORK STATE UNIFIED
COURT SYSTEM, LAWYERS FOR CHILDREN, Inc.,
as the appointed Law Guardian for the infant children
named herein as Plaintiff-Petitioners, MOLLY
MURPHY, Esq. as the attorney appointed to act as
Law Guardian by Defendant-Respondent Lawyers for
Children, ARLENE D. GOLDBERG, as the presiding
Justice of the Family Court assigned to this proceeding,
DR. STEPHEN B. BILLICK, in his capacity as the
Court appointed forensic psychiatrist for the infant
children named herein as Plaintiff-Petitioners,
JOHN & JANE DOES 1 - 100 whose identities are
currently unknown but necessary parties to these
proceedings, ABC CORP.'S 1 - 100 those entities
whose identities are currently unknown but necessary
parties to these proceedings.

Defendant,

-----X

Docket:
Purchased: 6/1/04

**AFFIDAVIT OF
PLAINTIFF**

JURY DEMANDED

made as I have provided my children with a stable loving home.

8. My children have a high I.Q. level and are able to verbalize to the Court their desires and wishes. Judge Goldberg refused to meet with the children and I request this Court meet with the children to ascertain what is in their best interests.

9. To the best of my knowledge, Mr. Alyswoth maintains a studio apartment in New York. That is not an appropriate residence for two young children. The Court has not even required Mr. Alyswoth to submit proof of residence and a showing of adequacy for two young children as a condition of the transfer.

10. As Mr. Alyswoth resides in California with his wife. His two grown children also reside in California. He is a busy executive running casinos in and around St. Louis, I cannot fathom how he can also be the primary custodial parent for the children.

11. For the reasons stated in the Verified Complaint, we will prevail in the underlying action. Furthermore, we will also prevail on appeal.

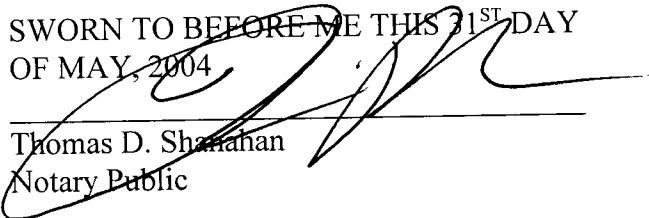
12. Numerous procedural and other errors occurred at trial which we will appeal once Judge Goldberg issues her final order.

WHEREFORE, I pray for an order staying enforcement of the order of Judge Goldberg dated May 21, 2004 and the additional relief sought in the emergency Order to Show Cause filed by my attorney in this action.

Dated: New York, New York
May 31, 2004

Bridget G Marks
BRIDGET MARKS

SWORN TO BEFORE ME THIS 31ST DAY
OF MAY, 2004


Thomas D. Shanahan
Notary Public

THOMAS D. SHANAHAN
Notary Public, State of New York
No. 02SH5083105
Qualified in Richmond County
Commission Expires August 4, 2006

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION : FIRST DEPARTMENT

-----X

JOHN AYLSWORTH,

Petitioner-Respondent,

-against-

BRIDGET MARKS,

Respondent-Appellant.

-----X

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

**AFFIDAVIT IN SUPPORT
OF RESPONDENT'S
APPLICATION FOR A
STAY**

Docket No. VO1744/03

BRIDGET MARKS, being duly sworn, says

I am the Respondent-Appellant (hereinafter referred to as "Appellant") in the above-entitled action. I submit this affidavit in support of my instant application for a stay of enforcement of the Order and Decision of the Honorable Arlene Goldberg, dated May 21, 2004 (Exhibit "1"). A Notice of Appeal has been filed from that Order (Exhibit "2").

I had an affair with a much older, married man who lived in California, which resulted in the birth of now 4-year old twin girls. The girls have lived with me continuously since their birth. They have never stayed with Petitioner-Respondent (hereinafter referred to as the "Respondent") more than a week at a time, and, indeed, the father, by his own choice, has now not seen or asked to see the children for ten (10) weeks other than one twenty-four hour visitation.

As the facts will unfold before the court on the appeal itself, and as will be explained in more detail hereafter, the Respondent, together with his wife, basically presented a sham to the court. The court prevented me from showing that at the same time they presented themselves as a happy, close-knit family, there was actually a divorce proceeding on file between the two of them in California and, further, the Respondent is involved in yet another affair with a woman in St. Louis (where the Respondent runs a gambling casino) who lost her own children because of her drug addiction.

It should be noted as hereinafter set forth in more detail that there has been no application that I have been other than a good mother.

Unless the Order is stayed, there will be irreparable harm since my two girls will be shuffled back and forth, first to California, and then to his hypothetical New York home.

Accordingly, I am seeking an Order of this court staying enforcement of the Order dated May 21, 2004 pending the appeal from that Order.

PERTINENT BACKGROUND

The salient facts and circumstances surrounding this matter and mandating the granting of my instant application are hereinafter set forth.

The Respondent, age 54, while married, had an affair with me which resulted in the birth of twin children: Amber Lynn and Scarlett Lee, born September 8, 1999. We have never lived together

either prior to or after the birth of the children. The Respondent refused to sign an acknowledgment of paternity. Accordingly, the children have resided with me on a continuous basis since their birth four years ago although there was no formal custodial order to that effect.

Respondent, who resides in California, would sporadically visit with the children. At best, he has had a transient relationship with them. The children have never spent more than one week continuously in his care. Prior to the initiation of this action, there was no Order which fixed his right of visitation. Respondent continues to reside in California with his wife of approximately 34 years.

In or about October, 2002, three years after their birth, the Respondent, for the first time, sought to establish paternity and visitation rights with regard to the children. In July, 2003, Respondent changed his petition and sought an award of custody of the children. At the trial he focused exclusively on why he should be awarded custody and "assumed" because he lived in California, that the children should also live in California.

I vigorously opposed his application for custody.

However, on May 21, 2004, Judge Goldberg issued a Decision (see Exhibit "1") in which she found that custody be awarded to Respondent provided he establish a residence in New York.

This determination was not based on any finding that I was unfit as a mother. Indeed, Dr. Billick, the court appointed psychiatrist, testified that I was "a good enough mother".

The court predicated its decision solely upon its determination upon the erroneous conclusion that I had fabricated allegations of abuse against the Respondent and therefore, had failed in my affirmative duty to nurture the children's relationship with the Respondent.

The court made the award of custody to the Respondent, notwithstanding its determination the "the mother has been the custodial parent since the children were born and the change in custody will be a stressful and traumatic experience for the children".

It further made a direction that the award would be conditioned upon the Respondent living within 40 miles of the New York area, although there has been no testimony, (nor have I received information) that Respondent has established New York residence, other than maintaining a studio apartment in which he sporadically resides during visitations with the children. In fact, the Decision specifically states, " The petitioner testified he would be willing to move to New York to obtain custody." (emphasis added)

Finally, and I am advised, most unusually, the court's Decision is not complete since Judge Goldberg, in a footnote stated, "An expanded version of the decision, fully detailing the evidence, will be provided to the parties at a later date." It

appears that Judge Goldberg has issued a partial Decision, but nevertheless in this partial Decision directed, that custody be transferred without fully explaining her reasons and findings.

It is for these reasons that I am seeking a stay of the Order pending a determination upon appeal.

**PHYSICAL EXCHANGE OF THE CHILDREN ON
JUNE 1, 2004 WILL CAUSE THEM IRREPARABLE HARM**

As previously stated, the court noted in its Decision that "the mother has been the custodial parent since the children were born and the change in custody will be a stressful and traumatic experience for the children" (emphasis added)

I have been the custodial parent for Amber and Scarlett since their birth and have provided the only home that they have ever known.

Conversely, the Respondent has only had intermittent contact in their life. He has spent only one week with the children, twice in their lives. Moreover, he has never disclosed to the court what arrangements he would make to take care of them in New York. His testimony as to custodial arrangements is limited as to what would happen if the children moved to California.

At this point, the only thing that is known about Petitioner's home is that it is a studio apartment in New York. He has actually resided in California for the past 20 years. He continues to work in St. Louis running a gambling casino. He never testified as to what arrangements, if any, he has made for the care of the children in New York. Where will they reside? Where will

they go to school? Will they have a separate bedroom? Who will take care of them when the Respondent is away at work in St. Louis?

Obviously, it is respectfully submitted that the abrupt shift in the custody of the children will cause them trauma and irreparable harm.

Under these circumstances, it is respectfully submitted that an application for a stay of this portion of the Order should be granted. If, on appeal, it is determined that the custody award was improvident, or alternatively, that further hearing is required as to what arrangements have been made and the suitability of those arrangements, then an unnecessary transfer of custody will have occurred because the children will concededly undergo a stressful and traumatic experience which will probably cause them irreparable harm.

**I HAVE NEVER BEEN FOUND TO BE
A DANGER OR DETRIMENTAL TO THE CHILDREN**

Dr. Billick, the independent forensic psychiatrist appointed by the court, testified that I was "a good enough mother". The determination to award custody is not predicated upon any unfitness on my part insofar as my engaging in acts which would be detrimental to the children. The award is predicated upon the court's belief that I falsely accused the Respondent of sexually abusing the children and, therefore, that I failed in my affirmative duty to protect and nurture Amber and Scarlett's relationship with the Petitioner.

Thus, if the children remain in my custody pending the determination of the appeal, they are not in any danger.

Significantly, the post-trial memoranda was submitted on February 9, 2004. Judge Goldberg did not render her decision until May 21, 2004. In this intervening period, Judge Goldberg made no attempt to modify my right of custody or to direct that my care of the children be supervised or monitored or to impose restrictions in any manner thereby tacitly conceding that I presented no danger to the children and indeed, was an appropriate parent.

Accordingly, it is respectfully submitted that there would be no harm done if the children remain in my custody, while there would be significant harm if an immediate transfer of custody occur before the appeal is heard.

**THE DECISION ISSUED BY THE
COURT IS NOT A FULL DECISION**

In a footnote to the first page of the Decision, Judge Goldberg states, "An expanded version of the Decision, more fully detailing the evidence and the findings, will be provided to the parties on a later date". Accordingly, the Decision from which I am appealing which directs the transfer of custody is not the full Decision. Therefore, this court may not even have a full Decision to review which I am advised, in and of itself, is reversible error. Nevertheless, within the context of this vague Decision, the court has directed the physical transfer of custody should occur. I am advised that this, in and of itself, may constitute a reversal of the Decision. Judge Goldberg directs that my visitation and telephone contact with the children be monitored and supervised. However, there is no discussion within the Decision as to why this is necessary. If a stay is not granted, then the

transfer would have occurred, which would have caused harm to the children. This harm would have occurred on the basis of the Decision that does not fully set forth the reasons and evidence upon which it is based.

MY REQUEST FOR A STAY OF THE ORDER DATED MAY 25, 2004

Under the circumstances hereinbefore set forth, it is respectfully submitted that a stay be granted pending the hearing and determination of the appeal. In the event that Judge Goldberg's Order is reversed and a stay is not granted, the children will be irreparably prejudiced since a transfer of custody will have occurred from the only home which they have known since their birth. Moreover, the transfer will have occurred to a home which may or may not suitably provide for their needs since no testimony was elicited as to the physical arrangements regarding the Respondent's New York residence, nor what constitutes New York residence or what arrangements he would make for the care of these children.

Conversely, in the event that a stay is granted, Respondent will not be prejudiced. At worst, if the appeal is denied, he can then proceed to obtain physical custody and presumably some disclosure will have been made in the interim period concerning the arrangements, if any, have been made to take care of the children.

Accordingly, it is respectfully requested that a stay is fully appropriate pending the hearing and determination of the appeal.

No prior application for the relief requested herein has been made to this or any other court.

WHEREFORE, it is respectfully requested that an Order be granted staying the enforcement of the Order dated May 21, 2004 pending the hearing and determination of the appeal and for such other and further relief as may be just and equitable in the premises.

Bridget Marks
BRIDGET MARKS

Sworn to before me this
26th day of May, 2004

Dorothy Kreindler

DOROTHY KREINDLER
Notary Public, State of New York
No. 01KR6062638
Qualified in New York County
Commission Expires August 13, 2008

Bridget G Marks
Bridget Marks

Sworn to before me this
26th day of May 2004

Thomas D Shanahan

c:\f\Affidavit.24 Marks.525

9

THOMAS D. SHANAHAN
Notary Public, State of New York
No. 02SH5083105
Qualified in Richmond County
Commission Expires August 4, 2006