

STATE OF NEW YORK COUNTY OF ESSEX
SUPREME COURT

MARSHA FINNAN, PLAINTIFF
-AGAINST-
TERENCE FINNAN, DEFENDANT

Index No. 403-03

RJI No. 15-1-2003-0167

Answer to Plaintiff's NOTICE OF MOTION and DEMAND FOR A CHANGE OF
VENUE

State of New York, County of Essex, ss:

Terence Finnan, being duly sworn deposes and says:

Part I - Defective notice ignoring the standing rules before Justice Dawson

1. On September 1, 2005, I was served the Notice of Motion which is returnable on September 9, 2005 and argued on September 16, 2005. This Notice of Motion violates your (Judge Dawson's) published "2005 Rules Governing Motion Practice -Supreme Court"

Your rules state that it is the return date which governs the time for the service and filing of papers pursuant to CPRL 2214, not the oral argument date." CPLR 2214(b) states the notice of motion, along with supporting papers, are to be served at least eight days prior to the date is noticed to be heard. The General Construction Law calculates the number of days as meaning the number of days exclusive of the calendar day of reckoning and excluding Saturday, Sunday and public holidays. Only 5 days (Sept 1, Sept 2, Sept 6, Sept 7 and Sept 8) count in calculating the time of service. The middle dates (Sept 3, Sept 4 and Sept 5) are excluded as Saturday, Sunday and "Labor Day". Five days is not the eight days required by CPRL2214(b).

2. The notice of motion also violates your standing Motion Practice Rules which require argument to be held two weeks after the return date and this Notice allows only 7 days between September 9 and September 16.

3. Using the fact that the Notice of Motion was not addressed or copied to Mr. Scaglione, I believe this motion was not served upon Mr. Scaglione in the timely manner.

4. **The short improper notice seriously affected the health of the Defendant and made an adequate reply impossible to render.** The Plaintiff knows the following to be true since she accompanied me to my visits to Dr. DeMuro and the plaintiff was with me during hospital visits and my leg, hand and other surgeries before we separated.

A) I had two heart attacks, open heart surgery, severe arteriosclerosis, problems with heart rhythms, high blood pressure, and other cardiac problems

B) I had a stroke.

C) I have serious loss of functionality with my legs, feet and hands. I received Physical Therapy for years with Nicky Kimball at our home and that Marsha was present for most of these sessions.

D) Marsha expected me to commit suicide as a result of her actions following our separation.

E) Marsha told others that she had to kill me to get rid of me.

5. Exhibit A is the letter of Dr. DeMuro concerning my health.

WHEREFORE, the court should dismiss this motion without prejudice and the court need not consider the answer or the demand for a change of venue until the initial motion is properly served according to the Rules of the Court.

Part II - Continuing perjury and fraud upon the court by Plaintiff

1. The plaintiff has perjured every affidavit that she has submitted to this court. These perjuries were deliberate material frauds upon the court. They began in her first affidavit dated July 10, 2005 in which she falsely and knowingly lied about the State Police intervening on July 7, 2003 in order to obtain temporary custody. The State Police never intervened between Marsha and me at any time. The perjuries in the affidavit supporting this motion are described below.

Part III- Re: DOCUMENTS in Plaintiffs affidavit

1. In "a) 3., Marsha falsely swears that I would not produce documents when I have offered to produce those documents which I have at a neutral place that is not her attorney's office. When the deposition ended May 17, 2005, Marsha and her attorney asked me to stay to discuss a settlement. Within one minute of the reporter leaving, Marsha jumped up and said let's call the bailiff and have him arrested. I immediately left. In fact, I left the courthouse with the court reporter, who was still slowly walking out. Such conduct demands that I avoid all contact with Marsha or her attorney unless independent witnesses are present. Exhibit B is the letter sent to Asadourian. I will produce documents at a neutral place. I not will be the victim of false assault or other charges. The letter also refers to documents which will be part of the criminal probe into Marsha's Medicaid and Tax Fraud which Marsha may attempt to destroy.

Part IV Re: BOAT in Plaintiff's affidavit

1. Deceitful swearing by Marsha. Marsha has acknowledged over \$25,000 in "value added" to the boat during the marriage by my labor and expense. This makes the boat marital property. Marsha admits that in violation of your order, "I have attempted to sell the boat through a Yacht Broker." The attempted sale was thwarted when the Broker became aware of the court order.

2. More deceitful swearing by Marsha. Andre Klein, an owner of the Marina, has told both Marsha and me that he will not attempt to sell the boat and that his letter (Plaintiff's Exhibit C)

does not reflect his current position and that no attempt by the Marina would be made to collect storage or other fees during the pendency of the divorce. The plaintiff has adequate money in the \$111,000 of marital assets that she has taken for personal use to pay these fees.

3. The plaintiff's oldest daughter, a religious fanatic, demanded that the boat be sold and the money be given to said daughter as her part of her compensation. **The court cannot allow the plaintiff to pay off this blackmailer.**

4. Whether or not, either Marsha or I, receive the boat as part of the distribution of marital assets is before the court. It is possible that Marsha may not obtain a fault divorce. The Defendant has not asked for a fault divorce. The defendant will sign the Separation Agreement that was part of his affidavit dated Jan.3, 2005 which divided marital assets 50/50.

5. The distribution of the boat must follow the trial.

Part V Re: TAXES in Plaintiff's affidavit

1. The Plaintiff diverted various tax bills to her separate address by falsely filing a changes of address for me with various government agencies including the IRS, NYS Income tax, local property tax agencies. Multiple letters to both her attorney and Marsha asked about what Marsha was doing with the tax bills? Was Marsha planning to pay them? Marsha refused to forward the bills to me. Marsha claims the property as her separate asset. **Marsha salivated when her attorney at the Deposition said Judge Dawson can give her 98% of marital assets.** I paid the property taxes for the prior year and Marsha paid nothing on property which she claims is her separate property. I have paid the property insurance for two years and Marsha has paid nothing.

Part VI Re: ACCOUNTING in Plaintiff's affidavit

1. This money was withdrawn prior to any order of the court. This withdrawal was made before Marsha ever indicated that she was seeking a divorce.

2. Marsha has submitted two perjured affidavits of Net Worth both of which leave out her new Subaru automobile, her TIAA life insurance, her Chemical Bank pension accounts. Her Net Worth Statements do not include her various debts and expenses and the money used to repay them, her true income, nor all of her financial accounts. Her Net Worth Statements do include any of the fees paid to all of her many attorneys that were required to be disclosed. No attorney fees at all are disclosed in either of her two Net Worth Statements

3. At the Deposition on 5/17/2005, her attorney disclosed that Marsha received an inheritance in May 2003 that was not disclosed on her Net Worth Statement. Said inheritance, which was received before the divorce action began, was not deposited into any account disclosed in her Net Worth Statement.

Marsha asks in this Motion that I produce "Documents on the \$5,000 given to the plaintiff by her stepfather", when in fact, I do not have such documents and only learned of this

inheritance by phone calls to New Bedford, Massachusetts and Boca Raton, Florida. To avoid traveling to New Bedford, I expected to have Marsha to admit this inheritance at her deposition. Her attorney only revealed this inheritance at the deposition and then asked me to produce the records that I had concerning it.

The court must note that Mr. Asadourian admits in the deposition on May 17, 2005 that **the undisclosed inheritance was received by Marsha before the divorce was filed**. An exact copy of the deposition follows:

Asadourian. "Did there come a time in May 2003 that Marsha received a \$5,000.00 inheritance from her late husband's father?"

Defendant, Terence. " Did Marsha receive it?"

Asadourian. "Yes."

Part VII Change of Venue

If the court chooses to accept this motion of the Plaintiff which is filed in violation of the rules, then the Defendant must demand that a change of venue be granted.

1. The court has accepted all the perjuries and criminal actions of the Plaintiff described in the Defendant's affidavits of April 15, 2004 and 1/10/2005 which are filed with this court in this action without a hearing. (Exhibit C of this affidavit is the defendant's affidavit of April 15, 2004 filed with this court.) (Exhibit D of this affidavit is the defendant's affidavit dated 1/10/2005 filed with the court.)
2. The Plaintiff had sworn that the Discover CD was marital property in one affidavit and then separate property in another. Although, this alone would be perjury, the court ignored the evidence which was not refuted by the Plaintiff that the copies of checks which were submitted to the court in motion papers showed the funds to be marital property. See Exhibit C: defendant's affidavit dated 4/15/2004
3. The Plaintiff, in an affidavit dated 6/6/2005 and filed with this court, falsely swore that a certain Darla Breckenridge was licensed in the State of New York. The Plaintiff was previously told this was false and but she then knowingly swore to this falsehood. Exhibit E is the affirmation of the Clerk in The NY State Department of Education.
4. In the above motion, the Plaintiff makes more false or deceitful sworn statements.
5. The court was made aware of various criminal actions of the Plaintiff in the affidavits of Exhibits C and D and accepted it.
6. The court knowingly accepted perjured Net Worth Statements from the Plaintiff which did not include the required section concerning attorney fees, or her new Subaru Automobile, or

Chemical Bank Pension or TIAA insurance.

7. The court accepted and condoned the behavior of David E. Rutgers who unethically disclosed privileged attorney/client information in order to unethically protect himself from liability.

7. The court actions described below on May 18, 2005 concerned a motion before the court on that date make me very unlikely to receive impartial treatment.

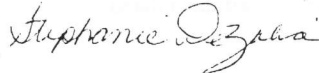
- A. I demanded everything be on the record. It was not.
- B. I gave you medical evidence which was refused to be accepted.
- C. I demanded to bring up the false filings of Asadourian and the court refused to hear it.
- D. I demanded that I bring up the fraud of Marsha Finnan but the court refused to hear it.
- E. I was excluded from the court on 5/18/2005 while the Plaintiff and her attorney remained before the court

WHEREFORE, the defendant requests that a change of venue be granted



Terence Finnan
PO Box 354
Keene NY 12942
Phone 518-576-9734

Sworn to and subscribed to before me this 7th day of September 2005.



Stephanie DeZalia
Notary Public, State of New York
No. 04DE6115156
Residing in the County of Essex
My Commission Expires August 30, 08

*Elizabethtown
Community
Health Center*

66 Park St.
Elizabethtown, N.Y. 12932-0277

Rob DeMuro, MD, Medical Director
Jac Lyn Burke, RPA-C

Phone # (518) 873-6896
Fax # (518) 873-6578

March 18, 2005

RE: Terrence Finnan
DOB: 10/10/43

To Whom It May Concern,

Terrence Finnan, a patient of the Elizabethtown Community Health Center, has a history of coronary artery disease status post coronary artery bypass graft X 1 in 1982. He did suffer a heart attack at that time. He also has a history of hypertension and probable stroke with visual changes. He has required lifelong anticoagulation with Coumadin because of these illnesses. The Coumadin is monitored regularly because of its risks, such as bleeding ulcers and hemorrhagic stroke.

Regards,



Rob DeMuro, M.D.

RD:lac

Exhibit A

Elizabethtown Community Hospital

August 9, 2005

Ara Asadourian, Esq.

RE: *Finnan v Finnan*

Dear Mr. Asadourian,

I told you last month that I had noted Tax Fraud and Medicaid Fraud by Marsha in some of the papers which you had requested. It has been over two years since your client left. I owe your client nothing but disdain. I have already reported those frauds to the proper authorities.

We still have to deal with the deposition of Marsha and others. You had requested various papers but since that disgraceful scene by your client after my deposition it is neither wise, nor safe for me to be anywhere near either of you two without independent witnesses and protection. I am also informing you due to the fact that a criminal probe might begin in regard to the Medicaid and Tax Frauds of Marsha, I cannot at this time provide you with access to any papers that might be needed in any criminal action because of Marsha's very real likelihood of destroying evidence which I will not facilitate.

Please write and tell me when you wish for Marsha's deposition to held for two days in Essex County Courthouse so that arrangements for recording can be made. Please also tell me what possibilities exist for the copying of documents you requested which would protect my person and the documents.

Is your client ready to correct all her perjured documents? Please explain to Marsha that she can only swear to things that are true.

Is your client ready to talk about a Separation agreement? Is your client ready to discuss a settlement of all issues? The Marina has contacted me about Marsha's delinquent account.

Sincerely yours,


Terence Finnan

Exhibit B

Exhibit A -page 7



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY,
NY 12230

OFFICE OF THE PROFESSIONS
DIVISION OF PROFESSIONAL LICENSING SERVICES
Public Information Unit
Tel (518) 474-3817 EXT: 330
Fax (518) 473-0578
E-mail: DPLSDSU@MAIL.NYSED.GOV

STATE OF NEW YORK)
 SS:
COUNTY OF ALBANY)

In accordance with the Civil Practice Law and Rules Article 45, Rule 4521 and 4540, I, Connie F. Mitchell, Clerk II in the Division of Professional Licensing Services of the New York State Education Department, have caused this certificate to be prepared. I further state that I have legal custody of the official records of the Division of Professional Licensing Services and I attest that a diligent search of the records of my office has been made and there has been found **NO** record of entry in the name of DARLA K BRECKENRIDGE as having received a license to practice **MENTAL HEALTH COUNSELING** from the New York State Education Department.

Witness my hand and the seal of the New York State Education Department this 6 August, 2005.

Connie F. Mitchell

Connie F. Mitchell, Clerk II
Professional Licensing Services

DATED
08/06/2005

Exhibit I