

PROCEDURAL HISTORY

On April 11, 2011, the New Jersey Division of Youth and Family Services ("DYFS") filed a Verified Complaint and Order to Show Cause against Amy Webber and Keith Yonos alleging that Amy Weber had committed a violation of Title 9 against her son a minor child by coaching him to make false allegations against his father. (Da 1-54).

The matter was tried over the course of 14 days. (Da 261).

On October 4, 2012, the trial court ruled that Amy Weber had violated Title 9 by committing emotional abuse against her son. (Da 261-285). At the trial, Keith Yonos represented himself and Amy Weber was represented by Michael McAuliffe, Esq.

On March 28, 2013, the lower court entered an order for "Best Interests, Counsel Fees and Costs." (Da 286). The order terminates all therapeutic visitation for Amy Weber until she complies with psychiatric counseling sessions. (Da 299-300).

Amy Weber filed a Notice of Appeal appealing the case on May 6, 2013. (Da 259).

PRELIMINARY STATEMENT

The trial court ignored every corroborative warning sign of sexual abuse. This case started when Amy Weber accused her ex-husband Kieth Yonos of sexually abusing KA. After a long and drawn out investigation by DYFS, DYFS basically found nothing and told Amy Weber to forget about the allegation.

KA is a child that was hyper-sexual and the only reason that the court found him to be hyper-sexual was that they found that Amy Weber had 'coached' him to make up stories. All of the expert testimony is self serving and does not prove that Amy Weber coached the child and/or caused emotional abuse to the child.

Neither DYFS, the trial court or any of the experts who testified could explain the child's behavior. Even when custody of the child was transferred to Kieth Yonos the child continued to be hyper-sexual. Notwithstanding, the actions of KA after the transfer of custody, Amy Weber continued to be blamed for the actions of KA. Amy Weber was described as paranoid and delusional, because she could not stand to see her son asking people to stick a finger in his anus and to eat his penis.

Our case law indicates that prime corroborative evidence of sexual abuse is the actions of the child. Notwithstanding our case law and the actions of the child in this case that corroborate the allegations of Amy Weber, the trial court ignored everything and bent over backwards to find Amy Weber guilty of neglect and child abuse.

In essence, the finding of the trial court has destroyed the mother child bond between Amy Weber and KA.

It is respectfully requested that the Court find that the legal conclusions of the trial court be overturned and that the matter be immediately remanded for further investigation, and visitation with Amy Weber be commenced immediately. Moreover, if it is found that Yonos is molesting the child, KA, then custody should be immediately transferred.

STATEMENT OF FACTS

I. THE ALLEGATIONS OF ABUSE AND HISTORY OF THE CASE

This case is nothing short of an absolute travesty and an injustice, where a mother lost custody of her child on pure conjecture, uncorroborated statements and speculation as to why a minor child was acting completely erratic.

There were sufficient reasons for Amy Weber the mother of Keith Alexander Yonos ("KA") to suspect that her child was being sexually molested by KA's father Keith Yonos ("Yonos"). It appears that KA is by all means a mentally ill child that makes up stories and/or was molested by Yonos thus leading the child to what was described at trial as a hyper sexualized child.

The matter was commenced by the New Jersey Division of Youth and Family Services ("DYFS") on April 11, 2011, by way of an Order to Show Cause and Verified Complaint. (Da 1-54). The allegations of the Complaint, although numerous, basically allege that Amy Weber abused her child KA by causing emotional harm in violation of N.J.S.A. 9:6-8.21(c)(4). Id. In essence, DYFS claimed that Amy Weber made multiple false allegations that Yonos was sexually molesting and/or physically abusing KA. (Da 261).

All of the facts indicate that Yonos is an individual capable and able to sexually molest a child. The evaluation of Yonos is quite disturbing. According to the testimony, Yonos was found to be an individual that probably suffered from sexual abuse himself as a

child, is estranged from his eldest daughter, and most likely committed domestic violence against Amy Weber. (4T 145-148). None of this was explored by the trial judge. Yonos by his own admission slept naked with his child in the same bed on numerous occasions. (8T 58:7-25; 59:1-6). KA himself complained to his father that he did not want to sleep naked in the bed with him. (8T 59:1-3). Despite the pleas of KA, Yonos would continue to sleep with the child naked in the same bed, sneaking into bed naked at night when the child was supposedly asleep. (8T 59:19-25). In addition to sleeping with the child naked, Yonos often showered with the child where both were fully naked. (8T 64:9-21). Yonos's testimony was carefully crafted at the trial when he indicated that he "never wash(ed) his private parts." (8T 64:20). It is incredulous to believe that a person bathing his son would not wash his private parts.

As if sleeping nude with a child and showering with him were not major red flags and sufficient indicators to rouse the suspicions of the ordinary person that Yonos was capable of sexually molesting KA, it should be noted that Yonos had previously been arrested for sexual assault and drunken driving. (8T 61-63). The allegations of the sexual assault were ultimately dismissed, but the record is void of any substantial evidence as to the basis for the sexual assault and DYFS never conducted an investigation to determine whether the allegations against Yonos had any merit.

Amy Weber is a well-educated woman. (Da 269). According to Dr.

Milano, Amy Weber does not suffer from delusions, impaired insight or judgment. (Da 57-58). "Ms. Weber presents no psychiatric pathology..." (Da 59). Amy Weber categorically denied making up the allegations against Yonos. (Da 61). Dr. Gentile also opined that Amy Weber has "no evidence or symptoms of schizophrenia, psychotic depression, psychosis or grandiosity associated with bi-polar disorder..." (Da 62).

On or about July 8, 2009, Amy Weber called the DYFS hotline to report that KA had told her that KA had been touching his private parts for over one year. (Da 270). Amy Weber became more concerned when the child indicated that his father told him to eat his pee pee. Id. The court found that this allegation was false based on the fact that it occurred about a week after Yonos filed for sole custody. The trial court never considered the fact or the possibility that the timing was purely coincidental. Id. The trial court judge never looked at all the corroborative evidence that suggested that KA had been sexually abused.

It was also revealed that KA said that his father made him eat his pee pee. (131-132). KA was immediately interviewed by a DYFS caseworker and disclosed to the case worker that he had kissed Yonos's buttocks. (Da 270). KA also pulled his pants down and asked the caseworker to kiss his buttocks. Id. After the incident, Yonos was interviewed by the Hudson County Prosecutor's office and admitted that his child spoke of "eating pipi." (Da 270). The matter was

ultimately investigated by DYFS and determined unfounded.

After the July 8, 2009 incident, Yonos's visitation was suspended in lieu of therapeutic visitation at the Children's Aid and Family Service ("CAF") and supervised visits with his mother and friend, Rosa Vega. (Da 270). It should be noted, that when Amy Weber first made the allegations, she could not believe the allegations and believed that her son had made up the allegation. (3T 69:4-10). In fact, Amy Weber believed that her son, KA, was telling stories. (3T 70:1-25).

The allegation against Weber arises, because, despite the supervised visits the allegations of sexual abuse continued and were determined unfounded by DYFS. As such, it was determined by DYFS that "Ms. Weber had coached Keith into making allegations of physical and sexual abuse by his father which was detrimental to his psychological and emotional well being." (1T 58:6-14). Other than conjecture, there is no evidence that Amy Weber coached her child to make the allegations.

On March 31, 2011, in an uncorroborated statement, KA allegedly told workers at CAF that "his mom had told him to lie..." (4T 115:13-17). On cross examination, Dr. Anthony Vincent D'Urso, DYFS's expert witness ("D'Urso") admitted that there were no reports where KA said that his mom told him to lie. (4T 128:15-18; 4T 129:3-7; 4T 130:12-17; 4T 131:11-24). D'Urso made a blanket conclusion that KA was coached by his mother and stated "but after six months of therapy

with this boy, it was clear that the direction he was getting for the allegations were from his mother." (4T 129:15-18). As a result of the latest allegation, KA was removed from his mother and custody was transferred to Yonos. Ibid. Additionally, Weber's custody was limited to therapeutic visitation.

In or about early January 2012, CAF recommended that Amy Weber have expanded visits with her son, because the visits were going well. (12T 40:12-22). However, on January 26, 2012, there was an incident at the visit where KA took down his pants and told his mother to put his penis in his mouth. (12T 44-46). After this incident, CAF recommended suspending all visits between KA and Amy Weber, despite the fact that the visits were going well and there was a recommendation to expand the visits.

There are three important things to note about the January 26, 2012 incident. First, KA was in the custody of his father since April 2011, thus the incident occurred during his 'watch' and his custody. CAF suggested that he had regressed since the custody transfer. (135). Secondly, Amy Weber had complained to CAF that her therapist, Rachel Polan, had a conflict of interest because she was the therapist to both Yonos and Weber. (5T 42-45). As a result of the complaint, CAF took the draconian approach and terminated therapeutic supervised visits between Amy Weber and KA, which the lower court compelled CAF to resume, as the lower court acknowledged the conflict. (5T 84:17-20). The hearing where the lower court

mandated CAF resume supervision of the visits occurred on December 2, 2011. A little over a month later, Amy Weber's visitation is completely cut off as a result of the child acting in a sexual fashion, because Amy Weber apparently cannot understand how her actions impact KA. (11T 61:22-25; 11T 62:1-11). It appears that there is a clear correlation between Amy Weber's complaints and the actions of CAF in reacting quickly by terminating visitation and blaming Amy Weber for the actions of the child.

II. EMOTIONAL PROBLEMS OF THE CHILD, KA

The lower court never properly determined if the child, KA was at fault for these allegations. The lower court simply focused on Amy Weber and never properly ruled out that the child was making the incidents up and then relaying them to his mother. From the trial it appears that KA may be severely emotionally disturbed, either naturally or from some type of trauma, none of which is clear and none of which was explored by any of the therapists.

KA was a hyper sexualized child, with a series of emotional problems. (11T 13:1-25). On various occasions KA acted strangely and bizarrely making up stories. On one occasion KA cut his own hair. (1T 52:2-9; 3T 198: 7-21). A more serious issue occurred when KA hit a DYFS worker and then lied about it, and said that the supervisor had hit KA. (1T 67, 87; 4T 219). KA told a case worker to stick a finger in his buttocks. (1T 140). KA was known to tell unbelievable stories, and stated on various occasions that his father

ran him over with a car. (3T 247-250). KA told CAF that his father had a gun. (12T 86:1-5). KA was described as a child with an active imagination who would make things up. (3T 253:1-25). KA also told CAF that he dreamed the allegations that he would talk about in sessions. (4T 119:19-25; 4T 120:1-4; 4T 133:14-24). KA identifies himself as a "girl." (4T 164:1-25). KA is afraid of snakes and he believes his buttocks is a snake. (4T 167-168). Regarding the incident of January 26, 2011, KA blatantly lied about the incident. (12T 44:17-25; 12T 45:1-25). KA lied about a gun, and told his mother that his father had a gun. (12T 87:14-25; 12T 88:1-5). The child had loose boundaries and was hugging and kissing often since the beginning of therapy. (13T 110:10-25). KA was disassociated, preoccupied about guns, threatening to kill the social worker, had erratic behavior and talked to ghosts. (13T 113:20-25; 13T 114:11-12).

Therapy notes indicate that KA was aggressive, spitting, and played rough. (Da 113). Other notes indicate that KA has a "pattern of telling lies." (Da 117). On one occasion, KA imagined that he was breaking his mother's legs with a doll. (Da 160). At one of the visits with his mother KA told everyone that he hurt his head and his father hurts his head. (Da 167).

For all intensive purposes, there was no attempt by the lower court to rule out the very real possibility that KA was emotionally disturbed and making many of the allegations up or the victim of

sexual abuse whether by Yonos or someone else. Further, there is no evidence that Amy Weber invented the allegations and that KA did not relay the allegations to her, thereby causing her to report the allegations of abuse. As set forth above, KA made numerous allegations, including to third parties other than his mother, most of which were not true, and many that involved sexual behavior. The lower court failed to properly take these allegations into account and solely blamed the mother without basis.

III. DYFS AND THERAPISTS CANNOT EXPLAIN THE CHILD'S BEHAVIOR

The main evidence, which is purely speculative at best, is the testimony of D'Urso, the expert witness who testified on behalf of CAF that Amy Weber was the problem with KA. However, there is no explanation by CAF as to why KA acted in a particular fashion and alternatively if Amy Weber was coaching the child what impact if any that coaching had on the child. It logically follows that if DYFS and the therapists at CAF cannot explain KA's behavior then they cannot blame Amy Weber for KA's behavior as there is no nexus for which to blame Amy Weber. Of great import is the fact that the behaviors by KA did not stop when custody was transferred to Yonos.

At the outset D'Urso could not testify as to why KA was acting out, particularly after custody was transferred. There is no report that suggests that Amy Weber coached her son to lie to DYFS or any other party. (4T 129:1-25; 130: 1-25; 131: 1-25; 132: 1-25).

However, even if Amy Weber coached the child there is no

evidence that this impaired the child in any way. D'Urso testified "those false statements, I presume, were meant to impair his ability to have a relationship with his father..." (4T 121:12-14). D'Urso goes on to state "The harm we saw as the embedding of false memories, the anxious responses, the deregulated responses he showed in therapy. He -his affect changed in some of the therapy sessions. After he made the allegation, then he was able to move on into the session." (4T 121:19-24).

D'Urso further speculates and states that KA's "relationship with his father wasn't impaired. But it was our judgment that that continued pressure to make those allegations was going to be psychologically damaging." (4T 122:7-11). D'Urso when asked what effect if any the visits to the emergency room would have as a result of alleged false allegations states the following:

Q: Okay. The visits to the emergency room, would they have any psychological effect on KA?

A: Well, again, we're bringing a child for unnecessary examination. We're asking, in the case of sex abuse, we're asking for kids' examinations to be centered on their genitalia.

Young kids are not going to make that distinction. They're going to-- the idea is that we try to help kids-- they understand that there are body parts that feel better than others. We don't, certainly, want them to pay attention to those parts.

And so any provocative behavior that he might have done with mom was it a function of abuse? Was it a function of being centered on, told? Those things could not be distinguished early on. (4T 215:9-20).

Nothing in the opinion of D'Urso suggests that Amy Weber caused any

emotional harm. The best case that D'Urso could come up with is that perhaps it would alienate the child from his father, but there is nothing in the entire record that would indicate what harm, if any that would have on the child. Further, there is nothing in the record, to suggest what harm if any the allegations of 'coaching' had on the child. Lastly, there is nothing in the record to suggest that the alleged false allegations would in fact alienate KA from his father. Accordingly, there is no basis for a finding of emotional harm, as DYFS could not substantiate its case.

Another issue D'Urso and the court gloss over, is the fact that KA regressed after his custody was transferred to Yonos. In August 2011, during a visit with his mother, which was observed by Rachel Polan, KA's play is described as "increasingly aggressive and rejecting of his mother, both within the play and as directed at his mother as well." (Da 168).

STANDARD OF REVIEW

A reviewing court is bound by a trial court's findings of fact "when supported by adequate, substantial, credible evidence." Cesare v. Cesare, 154 NJ 394, 411-12 (1998). Generally the Appellate Court gives particular deference to the Family Part, because it "possess[es] special expertise in the field of domestic relations." Id. At 412. A trial judge's credibility determinations are entitled to great deference as they "are often influenced by matters such as observations of the character and demeanor of witnesses and common human experience that are not transmitted by the record." State v. Locurto, 157 NJ 463, 474 (1999).

However, "[t]here is an exception to th[e] general rule of deference: Where the issue to be decided is an alleged error in the trial judge's evaluation of the underlying facts and the implications to be drawn therefrom, we expand the scope of our review." N.J. Div. Of Youth and Family Servs. v. G.L., 191 N.J. 596, 605 (2007). And, when the issue presented turns on a legal conclusion derived from the Family Part's fact-finding, "we are not required to defer." N.J. Div. Of Youth and Family Servs. v. A.R., 419 N.J. Super. 538, 542-43 (App. Div. 2011). By the same token, the Appellate Court is not bound by a trial court's construction of legal principles, or its application of the law to the facts. Manalapan Realty v. Twp. Comm. Of Manalapan, 140 NJ 366, 378 (1995); In re Adoption of a Child by PS, 315 NJ Super. 91, 107 (App. Div. 1998). The Appellate Court reviews issues

of law de novo and owes no special deference to the trial court.
M.S. v. Millburn Police Dep't, 197 N.J. 236, 246 n. 10 (2008).

LEGAL ARGUMENT

I. THERE IS ABSOLUTELY NO EVIDENCE THAT KA WAS SUBJECTED TO EMOTIONAL HARM BY AMY WEBER OR THAT AMY WEBER CAUSED ANY HARM

A parent's right to enjoy a relationship with his or her child is constitutionally protected. In re Guardianship of KHO, 161, N.J. 337, 346 (1999). Few consequences are so grave as the severance of natural family ties. N.J. Div. Of Youth and Family Servs. v. A.W., 103 N.J. 591, 600 (1986). The right of parents to be free from governmental intrusion is not absolute. Ibid. This is because the State, as *parens patriae*, has a responsibility to protect the welfare of children. Id.

N.J.S.A. 9:6-8.21(c) (4) defines and abused or neglected child as follows:

a child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent or guardian, as herein defined, to exercise a minimum degree of care (a) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so, or (b) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment; or by any other acts of a similarly serious nature requiring the aid of the court; (Emphasis Added).

N.J.A.C. 10:129-1.3 provides that an abused or neglected child is one that suffers due to their parent's failure to exercise minimum care in providing the child with proper supervision or guardianship. A finding of abuse or neglect must be based upon a preponderance of the

competent, material and relevant evidence. N.J.S.A. 9:6-8.46b; Div. Of Youth and Family Servs. v. P.W.R., 205 N.J. 17, 32 (2011). [P]revious statements made by the child relating to any allegations of abuse or neglect [are] admissible in evidence; provided, however, that no such statement, if uncorroborated, shall be sufficient to make a fact finding of abuse or neglect." N.J.S.A. 9:6-8.46a(4); (Emphasis Added).

Our Courts have routinely held that a case must be proven by a preponderance of the evidence and that a child's viewing of a coercive behavior does not in and of itself equate to a finding of neglect under Title 9. Div. Of Youth and Family Serv. v. S.S., 372 N.J. Super. 13 (App. Div. 2004).

The lower court failed to properly evaluate the evidence presented before it, in light of the child's behavior and in light of the father's behavior of sleeping naked, showering naked and his history of domestic abuse and history of criminal allegations. The lower court states in its opinion "there is no evidence to support Ms. Weber's contention that Mr. Yonos sexually abused KA. However, there is substantial credible evidence to support a finding that Ms. Weber emotionally...harmed the child." (Da 285). The finding of the lower court completely ignores the fact that a grown man was subjecting his minor child to sleeping with him naked and multiple nude showers. The same man who was accused of sexual assault when he was young.

The only evidence in the record that Amy Weber may have coached her son is that on March 31, 2011, KA allegedly told workers at CAF that "his mom had told him to lie..." (4T 115:13-17). On cross examination, Dr. Anthony Vincent D'Urso ("D'Urso") admitted that there were no reports where KA said that his mom told him to lie. (4T 128:15-18; 4T 129:3-7; 4T 130:12-17; 4T 131:11-24). There is no corroborative evidence that Amy Weber did anything wrong. The statements of the child are uncorroborated and therefore should not have been utilized as a basis to suggest that Amy Weber coached the child. The lower court failed to properly weigh the evidence that the child, KA, may have fabricated a series of allegations.

Obviously, Amy Weber did not tell the child at the January 26, 2011 supervised visit to take his pants down and tell his mother to eat his penis. The visit was supervised. The visit occurred while the child was in the custody of his father, Yonos. Further, CAF admits that they have no basis to understand why this happened. CAF also acknowledges that after custody was transferred from Amy Weber to Yonos, the child started to regress after making significant strides. How is a child's regression after custody is transferred Amy Weber's fault? If the child was acting inappropriately with his mother, the lower court should have explored the possibility that the child was also acting inappropriately with the father. The lower court did not view the child as part of the overall problem and simply blamed Amy Weber based on an uncorroborated statement. There

is no room for error in the lower court's opinion. The lower court basically ruled that Amy Weber coached the child because the incidents could not have been occurring while the father was supervised with KA. The premise that the incidents could not occur while Yonos was supervised, still presumes that the child was not making the inappropriate statement to his mother, which is wholly possible as the child's behavior was abnormal on numerous occasions even when not in the presence of his mother.

Of further import, is the fact that neither CAF or DYFS can elaborate how any of this impacted the child. There is speculation that the child was impacted through false memories, but there is no evidence the child's memories are false or that they were even implanted by Amy Weber.

As a result of the total lack of evidence, the Court should overrule the decision of the trial court or remand this matter for further proceedings to determine the nature of the child's problems.

II. THE LOWER COURT'S ORDER TERMINATING CUSTODY UNTIL AMY WEBER OBTAINS PSYCHIATRIC TREATMENT WAS BEYOND THE SCOPE OF TITLE 9 AS THERE IS NO EVIDENCE TO SUGGEST THAT SUPERVISED VISITS WERE ENDANGERING THE CHILD

As the Supreme Court observed in New Jersey Division of Youth and Family Services v. M.C. III, 201 N.J. 328, 346 (2010), Title 9 is a comprehensive legislative scheme designed to protect the welfare of children in New Jersey, wherein the safety of the children is of paramount concern. N.J.S.A. 9:6-8.8.

N.J.S.A. 9:6-8.58 provides that in cases where

the opinion of the court, an individual found to have abused or neglected a child appears to be in need of therapeutic services, the court may order the individual to accept such services or evaluation for such services, including, but not limited to, homemaker services, functional education, group self-help programs, and professional therapy; provided...The court shall determine the ability to pay and the method of payment for the care, as it orders.

In or about early January 2012, CAF recommended that Amy Weber have expanded visits with her son, because the visits were going well. (12T 40:12-22). As such, if it was recommended that Amy Weber have expanded visits with her son, then those visits were working and not a danger to the child. The only reason the court and CAF suspended the supervised visits is due to the incident of January 26, 2012, when KA took his pants down during a visit and told his mother to eat his penis. That incident is the unexplained incident, that is blamed on Amy Weber for reasons unknown and unexplained by the record. The child was in the custody of his father and the visit was supervised.

As such, if the visits were working and not dangerous to the child, then the lower court's order should have provided that the visits should continue after the allegation of abuse against Amy Weber was substantiated. The lower court originally found that "the need for therapeutic intervention between mother and child continues." (Da 285). The original finding that intervention was necessary was done on October 4, 2012, in the lower court's fact finding. (Da 261). A month after the lower court's fact finding Dr.

Donna LoBiando, Ph.D. recommended suspension of all contact between the mother and the child. (Da 290). On March 28, 2013, the lower court basically terminated Amy Weber's visitation based upon the recommendation of Lobiando and the trial findings and entered an Order that provides that the Father shall continue with the child's therapy with a plan of mother-child re-introduction and when appropriate the child's therapist will recommend re-introduction. (Da 299-300).

In addition to cutting off Amy Weber's visitation where said visits were not dangerous, the lower court failed to take into account the ability to pay for such services and did not make determinations as to how same should be paid. All therapy notes indicate that visitation was successful and that visits with KA and Amy Weber were generally "good" and KA enjoyed the visits. (Da 118-171). The same therapy notes indicate that Amy Weber had a good relationship with KA, and that KA missed her, although KA often acted aggressively. Ibid.

The determination by the trial court was overly broad and the Court should at minimum grant Amy Weber supervised visits until all her treatment is completed as there is no danger to the child.

III. THE COURT FAILED TO TAKE INTO ACCOUNT THE CHILD'S BEHAVIOR, PARTICULARLY WHERE SAME WOULD CORROBORATE THE ALLEGATIONS OF AMY WEBER, WHERE THE CHILD WAS ACTING IN A SEXUALLY INAPPROPRIATE MATTER

The Court in New Jersey Division of Youth and Family Serv. v. ZPR and WAR, 351 N.J. Super. 427 (App. Div. 2002), found that

corroborative evidence of sexual abuse can be seen in the behavior of a child. The Court in ZPR and WAR stated:

the admission of "precocious sexual knowledge," *id.* at 620, as well as "abnormal and sexualized behavior as corroborative of children's hearsay statements regarding abuse." *Id.* at 621; see also Adoption of Arnold, 50 Mass.App.Ct. 743, 741 N.E.2d 456, 464, review denied, 434 Mass. 1102, 751 N.E.2d 419 (2001); Matter of Tracy V. v. Donald W., 220 A.D.2d 888, 632 N.Y.S.2d 697, 698 (1995); Matter of Guy UU, 200 A.D.2d 852, 606 N.Y.S.2d 830, 831 (1994). It is well accepted that such age-inappropriate behavior is one of the behavioral signs associated with child sexual abuse. State v. J.Q., 130 N.J. 554, 563-64, 617 A.2d 1196 (1993). In State v. D.R., 214 N.J. Super. 278, 298, 518 A.2d 1122 (App.Div.1986), rev'd on other grounds, 109 N.J. 348, 537 A.2d 667 (1988), we noted as one of the facts militating in favor of the reliability of out-of-court statements of child sex abuse victims was "the child's exhibiting knowledge of sexual practices beyond her reasonably anticipated imagination[.]"

Thus, we have no doubt that evidence of age-inappropriate sexual behavior could provide the necessary corroboration required by N.J.S.A. 9:6-8.46a(4). The corroborative evidence need not relate directly to the alleged abuser, it need only provide support for the out-of-court statements.

In this case, Amy Weber claims that her son told her that Yonos made KA eat his pee pee. In addition, to that claim there were other allegations made by KA to DYFS workers and his mother.

The trial court completely ignored all the evidence pointing to Yonos as having committed sexual abuse against KA. The corroborative evidence suggests that Amy Weber was telling the absolute truth about the allegations.

KA was a hyper sexualized child, with a series of emotional

problems. (11T 13:1-25). On various occasions KA acted strangely and bizarrely making up stories. On one occasion KA cut his own hair. (1T 52:2-9; 3T 198: 7-21). A more serious issue occurred when KA hit a DYFS worker and then lied about it, and said that the supervisor had hit KA. (1T 67, 87; 4T 219). KA told a case worker to stick a finger in his buttocks. (1T 140). KA was known to tell unbelievable stories, and stated on various occasions that his father ran him over with a car. (3T 247-250). KA told CAF that his father had a gun. (12T 86:1-5). KA was described as a child with an active imagination who would make things up. (3T 253:1-25). KA also told CAF that he dreamed the allegations that he would talk about in sessions. (4T 119:19-25; 4T 120:1-4; 4T 133:14-24). KA identifies himself as a "girl." (4T 164:1-25). KA is afraid of snakes and he believes his buttocks is a snake. (4T 167-168). Regarding the incident of January 26, 2011, KA blatantly lied about the incident when he pulled his penis out and asked his mother to eat it. (12T 44:17-25; 12T 45:1-25). KA lied about a gun, and told his mother that his father had a gun. (12T 87:14-25; 12T 88:1-5). The child had loose boundaries and was hugging and kissing often since the beginning of therapy. (13T 110:10-25). KA was described as disassociated, preoccupied about guns, threatening to kill the social worker, had erratic behavior and talked to ghosts. (13T 113:20-25; 13T 114:11-12).

The trial court basically ignored all of the warning signs of sexual molestation in lieu of blaming Amy Weber. Of course the the psychological reports on Weber claim she is paranoid and delusional. When Amy Weber spoke up about what her son told her and how he was acting, no one listened and she was even abandoned by the judicial system that was designed to protect her son and her. The course of conduct that occurred in this case would make anyone paranoid and delusional.

A child who is described as hyper-sexualized, who asks his own mother to eat his penis, who sleeps next to a naked man and showers with him is clearly the subject of what appears to be child molestation. KA has all the classic signs of child molestation as set forth in our jurisprudence. How the trial court ignored all of this and sought to blame Amy Weber is a great injustice that should be immediately overturned.

IV. THE LOWER COURT IMPROPERLY GRANTED LEGAL FEES TO A PRO SE LITIGANT

The lower court granted legal fees to Yonos, when he was acting in a pro se capacity and has no legal education. The undersigned could find no case where a pro se was awarded legal fees.

The lower court improperly found that R. 5:3-5(c) governs the case as it pertains to a pro se litigant. (Da 293). In so finding the court erred on a number of basis when it determined that Yonos

had incurred substantial legal fees as a result of "possible criminal charges" and the "matrimonial matter." The court granted Yonos 82.5 hours of fees at a rate of \$250.00 per hour. (Da 297). The trial court tries to couch the award of legal fees for work Ira Kaplan, Esq. Completed prior to the trial. However, it was further error to award fees for what was done prior to the trial. (Da 297). Mr. Kaplan was not the attorney who handled the instant matter, Yonos handled the matter pro se the majority of the time. As such, it is plain error by the court to make such a finding. It appears that Yonos only had counsel before the trial. (Da 290).

Pursuant to R. 5:3-5(c) an award of attorney's fees may be made by the trial court on a final determination to be paid by any party to the action, including, if deemed to be just, any party successful in the action, on any claim.... relating to family matters. In making the determination to award legal fees, the court should consider the following factors: (1) the financial circumstances of the parties; (2) the ability of the parties to pay their own fees or to contribute to the fees of the other party; (3) the reasonableness and good faith of the positions advanced by the parties both during and prior to trial; (4) the extent of the fees incurred by both parties; (5) any fees previously awarded; (6) the amount of fees previously paid to counsel by each party; (7) the results obtained; (8) the degree to which fees were incurred to enforce existing orders or to compel discovery; and (9) any other factor bearing on the

fairness of an award.

The Tax Court in K (redacted) S (redacted) v. Director of Tax, Docket No. 019582-2012 (Tax Ct. 2013) found that a pro se litigant is not entitled to legal fees for the simple reason that they are not an attorney. (Da 301-306).

The trial court in this matter awarded Yonos legal fees in the sum of \$20,625.00. (Da 297). This award is wrong for a number of reasons. First, the action was not commenced by Amy Weber but was commenced by DYFS against Yonos and Weber. Secondly, Yonos is not an attorney. Yonos did not incur legal fees and has no legal training other than being a litigant in a number of trials. Being a litigant by itself does not entitle you to legal fees. As such, the legal fees should be denied as to Yonos because a. he is not an attorney and b. the matter was commenced by DYFS not Amy Weber, and thus awarding fees to Yonos to defend against DYFS should not be allowed.

CONCLUSION

It is respectfully requested that the Court find that the legal conclusions of the trial court be overturned and that the matter be immediately remanded for further investigation, and visitation with Amy Weber be commenced immediately. Moreover, if it is found that Yonos is molesting the child, KA, then custody should be immediately transferred.

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