

FAMILY COURT OF THE STATE OF NEW YORK
ONONDAGA COUNTY

Adrienne Phillipson, Petitioner

-- against --

John Murtari, Respondent

TRIAL AFFIDAVIT

Docket No. F-00540-98/05I

FF# 24467

1. I would like to submit this sworn statement in my defense for a trial currently scheduled for January 19th. At present it is likely that I will not be present.
2. At this point I would like to include the affidavit and exhibits dated November 5th, which were earlier submitted to the Court as part of my objections to an initial order.
3. I hope to show here very clearly that there is no contempt involved regarding any failure of mine to pay support in the manner ordered by the Court.
4. I have tried to follow good conscience and do what is best for my family and especially my son, Domenic (12), the subject of the support order. There is no contemptible behavior here and certainly nothing deserving of jail time. I have kept his best interest paramount and as this affidavit demonstrates, events have affirmed these were correct decisions.
5. The civil financial sanctions used by the Support Collection Unit have devastated by personal finances. I can't keep a bank account and my credit history is a disaster. I approach retirement age with very few resources. Certainly, these consequences should satisfy any misdirected desire to 'punish'.

Objections

6. I have a very sick mother who requires constant care of in Lyons where our home is located. The Court has suspended my drivers license and refused to grant even temporary relief so that I could travel.
7. My ability to have witnesses and conduct a meaningful defense has been denied by finding venue at a location over one hour away and a different County.
8. Neither the Petitioner nor I have lived in Onondaga County for over five years and it appears the decision for venue was simply made for the

convenience of Ms. Walsh, a local attorney.

Personal Background

9. I was born and raised in Lyons. Many people know my family and me. My father, Domenico, was blessed with a son at the age of 64. He loved me very much and while we did not have a lot of money, he did everything he could for me and was always there for me. My parents raised me on limited social security income. We did not have a phone till I was in high school. We did not own a car till I learned how to drive. They had no money to pay for college, but they were always there for me. I was there only child.
10. I was fortunate as a child and stayed out of serious trouble and did well in school. My parents had no money for college, but I won an appointment to the Air Force Academy. I graduated Cum Laude from there with a degree in Astronautical Engineering and went on to Pilot Training and became an Instructor Pilot. I served my country well and was honorably discharged. I voluntarily ended my Air Force career because of my aging parents.
11. At that time many told me not to worry about them, to live my life. That may be fine for some, but it was not for me. I had a responsibility and duty to my parents and I was happy to help them.
12. I love my son Domenic, born in 1993, very much. Being a parent was a great blessing for me. When he was born I started my own business with the goal of having more time to devote to family.
13. An unwanted divorce changed everything. In 1996 a Judge ordered a child support level (\$120/week) based on twice my actual income and ordered me to change jobs so I could make more money. I quote from the Divorce judgment:

“The Court finds that Defendant is capable of earning income in excess of \$40,000.00 per year and, as such, the Defendant shall pay child support in the sum of \$120.00 per week, retroactive to October 1, 1995, plus a pro-rated share of child care and uncovered medical and dental costs for Domenic.”

“The evidence shows that the Defendant has voluntarily chosen to decrease his income in an attempt to start his own business and to be in a position to spend more time during the day with Domenic. At the present time, his business income is unable to support his family obligations. The Defendant rejected job opportunities in the Spring of 1995, to continue this business which has proven to be an inadequate source of income. At this time the Defendant teaches part-time at Onondaga Community College and performs volunteer work. The time spent on volunteer work, no matter how commendable, could be better used producing income to support his financial obligations to the family. The

Defendant must adjust his priorities in order to adequately provide for his family.”

14. Domenic and I were always very close. He was terrified by the changes and being left with strangers. I had him every other weekend, Thursday-Monday and every Sunday for church (the Judge did recognize how close we were). My business gave me the flexibility to spend all day with him and not need a sitter. I was paying \$60/week, which was realistic based on my actual income, but I was falling behind.
15. In 1998 I petitioned for a support change with inexperienced counsel. It was denied. I had the impression it was because I was involved in a family business and they ‘guessed’ I must be cheating on income. I was not. In that same year my former spouse petitioned the Court to relocate to California to work on her third college degree. She found a degree program only offered at schools west of the Mississippi. Again, with inexperienced counsel, I tried to stop the move. It was granted and no change was made to support levels. The Judge did give me a ‘visit’ for one weekend per month, Spring break, Christmas break, and six weeks in the summer.
16. I feared alienation from my young child as my former spouse blocked written and phone communication. Her family was very wealthy and Domenic was not in need for material things, but he loved seeing Daddy! I exercised my visits as much as finances would allow. To have a home environment we would rent a cabin near the mountains, even my mother, in her 80’s would make the trip. Each weekend was almost \$1000, between plane tickets, renting a car, a cabin for four days, food and some entertainment (Dom loves put-put golf!).
17. I made two weekend trips in the Fall, and two in the Spring: \$3000-\$4000. When Domenic would come to Lyons for Christmas, Spring Break, and the Summer I would fly out both for pickup and return. That turned into three round-trip tickets, hotel for a night, and a car – another \$1000 each trip. \$6000-\$7000/year out of my limited income which was in a range of \$16,000-\$22,000/year (gross). I had to borrow money and also maxed out two credit cards. This has been going on since 1999.
18. My support payments during this period have averaged only \$50/month which put me even farther behind. In the year 2000 my former spouse brought a violation proceeding against me. I explained my situation to my assigned counsel. He told me, “Just pay the money, you’ll see your kid when he’s 18.” That was not acceptable and the Judge only cared about the payments. I served six months in jail, including Christmas.
19. In 2001 I made another two attempts to get the support level modified and was told there was ‘no cause of action’. Even though my son had relocated

since the original order. In the past two years I was ready to try again and paid \$1000 to an attorney, but nothing was accomplished.

20. The money paid on travel has been well spent. Domenic and I have a very strong relationship. Now he is old enough to call me on the phone and we can exchange email. During our visits we have a great time and I'm able to share my experiences with him. We are able to visit family and friends. He certainly has no doubt how much I love and care for him.
21. At the end of August, my mother, Caterina (now 89), became seriously ill. She spent almost two weeks in the hospital and came home on a stretcher in an ambulance. She was diagnosed as terminally ill and some nurses told me I should send her to a nursing home. I did not want to do that. I remember her great care and love when I was a child. Because I worked at the business I had started years ago, I had the flexibility to work out of home and give her full time care over the past few months. She is now in the Hospice program, but the nurses say she has made a great recovery from where she was two months ago. My mom is happy; she is with family and in her own home. If I had chosen to abandon my business, per the Judges order, this would not have been possible.
22. My mother and I have lived very frugally and any extra money is spent for Domenic. Right now I am driving an 88 Dodge Caravan with 260,000 miles. I try to take good care of the vehicle – there is certainly no money for a new car. I am now 49 years old and have nothing saved up for retirement. It is something I can accept, but now the threat of being turned into a jailed criminal is an indignity.
23. I have worked hard my entire life and been willing to help the community and others. I volunteered weekly visits for many years at a geriatric center, and also made monthly visits to bring food to a homeless shelter, the Oxford Inn located in Syracuse. Recently Domenic and I have begun to bring food to that same shelter during holidays.
24. I serve as a Lector at my local Church, St. Michael's. I was very honored to be among the parishioners appointed to lead a Sunday Celebration if a Priest could not be present.
25. This experience caused me to become deeply involved in an effort to recognize and protect the Civil Rights of parents to raise their own children. I started a group called AkidsRight.Org – that has slowly grown to over a thousand registered members nationwide. We have a web site, <http://www.AKidsRight.Org/>

26. So many parents become very bitter and angry after a divorce or an experience with Child Protective services. The group tries to take a Faith filled and positive approach and emulate the examples in NonViolent Action most recently made by Gandhi and Martin Luther King. Working for reform does not require hatred or anger, but love and personal sacrifice. As part of my peaceful efforts I have been arrested and jailed on many occasions (the web site has details). But I have earned the respect of almost all the people who met me.

Supporting Financial Evidence

27. Due to an unpaid Federal penalty I was subject to a complete financial examination by the US Attorney for the Northern District of New York, Syracuse. I delivered to them complete financial and personal records. I was also subject to a two-hour deposition regarding my finances on June 7th, 2005.

28. Petitioner makes an unfounded allegation that I 'manipulate the books' at a family business to show reduced income. There is simply no foundation for that and it is certainly not true. There is no hidden money and Federal officials were able to confirm that after a thorough examination. The business does not handle cash and a complete accounting can be made of financial records.

29. Asst. US Attorneys Mr. William Pease (Chief of the Civil Division) and Mr. Richard Southwick (Criminal Division) conducted the deposition along with a paralegal. A Court reported produced a complete transcript. I give my consent to the release of that material.

30. I believe if called and allowed to testify the attorneys would state that:

Mr. Murtari is not hiding money or concealing resources. He is spending a significant portion of his income on travel to see his son in Colorado, and also to bring his son to New York for Christmas, Spring break, and New Years. Travel alone is approximately \$5000/year. He has been arrested and prosecuted many times at the Syracuse Federal building in an attempt to get Senator Clinton to meet with parents from his group. His actions have always been peaceful and without any display of anger or hostility.

Relief Requested

31. I ask the Court at the conclusion of this hearing to restore my driver's license (at least until my mother's death & burial). As I have said and documented earlier, I am the sole child of my Mother and I am providing her care in our home. She is in the Hospice program due to terminal illness. The ability to drive is essential. She is unable to care for herself and if I were arrested and jailed – she would end up alone in a nursing home.
32. While no one should feel above the law. The law should also respect my rights and the imperatives of individual conscience and personal responsibility – especially in issues of family. I believe I have a sincere and well formed conscience regarding my obligations to my family; following any 'order' to do what I do NOT think is right – does not relieve me from moral responsibility.
33. I too join people who detest 'deadbeat' parents – people who give no thought to their children and care about only themselves. These people should be thrown in jail for failure to care for their children. But they should also be given the protections of criminal procedure, the protection of a jury, and an opportunity to explain what happened. Most importantly, their Civil Right to be an equal & fit parent in the lives of their children should also be recognized.

John Murtari
34 Franklin St.
Lyons, NY 14489
315-430-2702 (cell)

Sworn to this 13th day
of January 2006

Notary Public