

STATE OF MICHIGAN
IN THE 24TH CIRCUIT COURT OF SANILAC COUNTY
FAMILY DIVISION

(rape victim),
Plaintiff,

17-037305-DP
Hon. Gregory S. Ross

vs.

CHRISTOPHER MIRASOLO,
Defendant.

REBECCA KIESSLING (P51817)
Attorney for Plaintiff
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CHRISTOPHER MIRASOLO
Defendant
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**PLAINTIFF'S OBJECTIONS TO THE CUSTODY AND PARENTING TIME
PROVISIONS OF THE JUDGMENT OF FILIATION AND
MOTION TO SET ASIDE PROVISIONS OF THE JUDGMENT OF FILIATION**

NOW COMES Plaintiff, by and through her attorney, REBECCA KIESSLING, and in support of her objections to the parenting time provisions granted by the Judgment of Filiation and in support of her motion to set aside provisions of said Judgment, states as follows:

1. On September 22, 2017, this Court awarded parenting time and joint legal custody to a convicted sex offender who forcibly raped and threatened to kill the minor child's mother when Plaintiff was 12 years of age and Defendant was 19 years of age.
2. A "Consent Judgment of Filiation" was entered by this Court on September 22, 2017, with a finding that: "The Court has not held a best interest hearing. This order is based solely

on consent.” Plaintiff’s consent, however, was *never* obtained. No one ever even conferred with the Plaintiff regarding the “consent judgment,” she did not sign the “consent judgment,” nor was the Plaintiff afforded legal representation in the matter.

3. Pursuant to the Paternity Act, MCL 722.717(1) and (2), an order of filiation is to have a finding of paternity, provide for the support of the child, and provide for the payment of the necessary expenses connected to the mother's pregnancy and the birth of the child. However, the Judgment of Filiation, entered by this Court, awarded joint legal custody, restricted the child’s domicile and residence, granted parenting time, disclosed Plaintiff’s address to Defendant, and ordered payment of a birth record fee (presumably to place Defendant’s name on the birth certificate) — *all without Plaintiff’s consent or any opportunity to be heard.*
4. Pursuant to MCL 722.714(6) “A proceeding under this section is conducted on behalf of the state and not as the attorney for any other party.” Therefore, the prosecuting attorney could not have been representing Plaintiff in regard to custody and parenting time, and this was *ipso facto* not a judgment borne from consent. In fact, Plaintiff has never, does not, and will never consent to Defendant being afforded parental rights.
5. Pursuant to MCL 722.717b, if there is no dispute regarding custody and parenting time, then the court may enter an order establishing custody and parenting time. If there is a dispute, then the court is to issue a temporary order pending a further hearing, and the prosecuting attorney “shall not be required to represent either party regarding that dispute. In this case, there was and is a dispute regarding custody and parenting time.
6. On the date the minor child was conceived, Sept. 6, 2008, Plaintiff/Mother was 12 years of age and Defendant was 19. Defendant used physical force to penetrate Plaintiff, then

threatened to kill her if she told anyone. Just by her age alone, Defendant's actions — penetration of a minor under the age of 13 — constitutes Criminal Sexual Conduct in the First Degree. *See* MCL 750.520b(1)(a).

7. The sentence for Defendant's offense against Plaintiff "for a violation that is committed by an individual 17 years of age or older against an individual less than 13 years of age" should have been "imprisonment for life or any term of years, but not less than 25 years." MCL 750.520b(2)(b).
8. One month after Defendant raped Plaintiff, Plaintiff missed her period, realized she was pregnant, told her mother, and reported the rape to law enforcement.
9. Despite Plaintiff being only 12 years of age and being pregnant, Defendant was arrested for "attempted" Criminal Sexual Conduct, in the First Degree. The Prosecutor subsequently charged the Defendant with attempted Criminal Sexual Conduct in the Second Degree. The Defendant plead guilty to the reduced charge of attempted Criminal Sexual Conduct in the Third Degree — a plea bargain quickly executed before the minor child was born in order that DNA could not be obtained to prove penetration.
10. Plaintiff did not consent to said plea bargain and was not provided with an opportunity to be heard at sentencing.
11. Defendant served 6-1/2 months in county jail for a crime which demanded 25 years to life in prison.
12. On or about March 19, 2010, Defendant sexually assaulted another minor-aged victim -- this time, between the age of 13 and 15. On November 15, 2010, Defendant pled no contest to two counts of Criminal Sexual Conduct, MCL 750.520(D)(1)(A) and MCL 750.520(E)(1)(A)-(A). Defendant spent four years in prison for said crime.

13. Defendant is a registered sex offender with the state of Michigan.
14. Upon information and belief, Defendant, is not actually residing at the registered address with his father. Instead, and in violation of Defendant's probation, Defendant is residing across the street from a school with his mother.
15. Hence, this Court granted joint legal custody and parenting time to a convicted sex offender who, according to the state legislature, should still be in prison throughout the duration of the minor child's childhood.
16. Pursuant to MCL 722.25(2), "if a child custody dispute involves a child who is conceived as the result of acts for which 1 of the child's biological parents is convicted of criminal sexual conduct as provided in sections 520a to 520e and 520g of the Michigan penal code, 1931 PA 328, MCL 750.520a to 750.520e and 750.520g, or a substantially similar statute of another state or the federal government, or is found by clear and convincing evidence in a fact-finding hearing to have committed acts of nonconsensual sexual penetration, the court shall not award custody to that biological parent." MCL 722.27a has the same mandatory language with regard to parenting time.
17. Furthermore, under MCL 722.25(3): "An offending parent is not entitled to custody of a child described in subsection (2) without the consent of that child's other parent or guardian." Plaintiff has not and will not consent to her rapist sharing joint legal custody or exercising parenting time with her son.
18. Besides DNA testing establishing, and Defendant acknowledging, that Defendant is the biological father of the minor child, the only fact-finding necessary is Plaintiff's age and Defendant's age at the time the minor child was conceived in order to find "clear and

convincing evidence” that the child was conceived as a result of nonconsensual sexual penetration.

19. Alternatively, under MCL 722.1443 and 722.1445, Plaintiff has the option of filing a motion in this case requesting that the Order of Filiation be completely set aside, since “the child was conceived as a result of nonconsensual sexual penetration.”
20. At this time, Plaintiff is in need of child support, not having received any financial assistance from Defendant for nine years since becoming pregnant.
21. Plaintiff does not want her rapist’s name appearing on her child’s birth certificate, and wants to continue to enjoy her life free from contact with her rapist or restrictions from the Court on where she may reside with her child.
22. Due to Defendant’s actions of criminal sexual conduct against her and other minor children, Plaintiff continues to remain in fear for her life, for her own safety, and for the safety of her minor child.
23. Defendant is unfit to be a parent.
24. It is *not* in the best interest of the child to award the Defendant joint legal custody or parenting time, even on a temporary basis.
25. Plaintiff and the minor child’s rights have been violated by the entry of the Order of Filiation. Plaintiff never consented to sexual intercourse with Defendant, never consented to his plea bargain, never consented to her address being provided to her rapist, and never consented to any of the terms in the Judgment of Filiation.
26. Plaintiff has been the sole caregiver of the minor child since his birth and is a fit and proper person to continue enjoying sole legal and physical custody of the minor child.

NOW THEREFORE, Plaintiff respectfully requests:

- a. The Court find by clear and convincing evidence that the minor child was conceived as a result of nonconsensual sexual penetration;
- b. The Court award Plaintiff sole physical and legal custody of the minor child;
- c. The Court remove the joint legal custody provisions, parenting time provisions, domicile provisions, and birth record provisions from the Judgment of Filiation, or in the alternative, set aside the Judgment of Filiation pursuant to statute; and
- d. Any such further relief as the Court deems appropriate.

Respectfully submitted,

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VERIFICATION

I declare under penalty of perjury that the above statements are true to the best of my information, knowledge and belief.

Plaintiff