

# OCA Opens Files to Counter Judge's Critics

**John Caher, New York Law Journal, 11-02-2005**

ALBANY — An upstate judge has found himself in the middle of a high-profile, emotional custody battle, with woman's groups blasting the jurist for shifting custody from a mother to a father.

The attack on Rensselaer County Surrogate Christian F. Hummel yesterday prompted the Office of Court Administration to take the unusual step of releasing documents in the case, which is the only way the judge can be defended. Those documents, made available with Judge Hummel's approval, serve to counter the allegations of critics who claimed in a demonstration yesterday that there was no basis for the judge's decision.

Chase v. Chase, observers say, is illustrative of an increasingly common tactic by advocacy groups to gain attention for their cause by attacking a judge who, because of the rules of judicial conduct and the fact that many records in Family Court are sealed for privacy reasons, usually has no way of defending himself.

But yesterday, with the help of the OCA, Judge Hummel indirectly went on the offensive, providing the media and public with at least some means of understanding his rationale.

The case is a particularly bitter custody battle involving John and Kristin Chase. Court records show that Ms. Chase was initially awarded full custody of their 5-year-old son, and retained that custody even after a two-week trial in which 41 witnesses testified and Judge Hummel concluded that Ms. Chase's allegations of abuse were unsubstantiated.

It was only after Ms. Chase skipped a court proceeding to address Mr. Chase's visitation rights and apparently orchestrated new sex abuse charges that Judge Hummel signed an ex parte emergency change-of-custody order awarding custody to Mr. Chase. Ms. Chase then absconded with the boy for about two weeks, informing the media of her situation and discussing the sex abuse allegations publicly.

After Appellate Division, Third Department, Justice Karen K. Peters refused to disturb Judge Hummel's emergency custody order, various groups publicly attacked the judge who, under the rules of judicial conduct, cannot respond.

Yesterday, Ms. Chase's supporters staged a protest in downtown Troy in which they denounced Judge Hummel's decision and carried signs claiming that the judge had turned a child over to an abuser.

That tactic, attacking a largely defenseless judge, is increasingly common in the emotion-laden arena of Family Court litigation, observers say. And it is one used by activists for both mothers and fathers.

"The idea is to put pressure on the judge," said George Courtney, president of the Capital District chapter of the Fathers' Rights Association, whose organization has sponsored similar rallies. "The only thing that hurts the judge is adverse publicity."

Mo Therese Hannah, a psychologist and chairwoman of the Battered Mothers Custody Conference, one of the groups protesting yesterday, said a public demonstration against an adverse judicial opinion is also a vehicle to raise awareness of a broad problem that might not otherwise come to light. Chase v. Chase, she said,

is prototypical of a national trend in which judges, with no basis, are shifting custody from mothers to fathers.

"This problem is becoming so pervasive," Ms. Hannah said. "Mothers who allege child abuse or domestic violence are being accused of fabricating, of making false allegations, accused of these bogus syndromes like 'parental alienation syndrome' and 'malicious mother syndrome' that have little or no scientific evidence to support them."

Ms. Hannah acknowledged that she has repeatedly discussed the matter with Ms. Chase, but never interviewed Mr. Chase "because that would not be my role. I am serving as an advocate for a protective mother." She also said she has "intimate knowledge of the court record" and would not "go around willy-nilly advocating for a woman" without a firm conviction that the evidence supported her position. Others at the demonstration seemed to have little if any direct knowledge of the case.

For instance, Susan Weber, who held a sign declaring that "Judge Hummel gives children to abusers," said she knew nothing more of the matter than what she read in a local newspaper.

Marcia Pappas, president of the National Organization for Women — New York State, said Judge Hummel was wrong "to take a child from a mother," but said she has not seen court documents or attempted to get the other side of the story. Ms. Pappas, however, said she has spoken with someone who has seen the court record, but declined to identify that individual.

Meanwhile, Mr. Chase and his attorneys suggested NOW and other groups are attempting to exploit the case for their own agenda.

"They don't know anything about this case," said Mr. Chase, an unemployed financial consultant in Manhattan. "And they really don't care what the truth is. It is just outrageous, totally outrageous."

Mr. Chase is represented by Michael R. Varble of Mohegan Lake, Westchester County, and Pamela J. Joern of Albany. Both said the attack on Judge Hummel is unjustified.

"I think it serves to diminish the respect that especially this judge is entitled," Ms. Joern said. "If anybody ever thinks doing this sort of thing is going to impress a judge, they are absolutely wrong. The judicial system has integrity and you need to treat it with respect."

David Bookstaver, spokesman for the Office of Court Administration, said public attacks on Family Court judges have become fairly common, an "unfortunate by-product" of cases which, by their nature, arouse exceptional passion.

"A couple months ago, it was the fathers' rights groups," Mr. Bookstaver said. "Now it is the mothers' rights groups. In any of these cases, half of the litigants think an injustice was perpetrated on them. The judge is the easiest target, especially when it is somewhat difficult for the public to gather the facts. That is why what the OCA can do, in some instances, is get the facts out."

Yesterday, Mr. Bookstaver's office disseminated more than 40 pages of documents and transcripts from an Oct. 13 hearing.

One of the documents is a recommendation of the law guardian, Ann M. Weaver of Red Hook, who in August recommended that Ms. Chase be awarded sole custody, based partially on what she termed "substantiated evidence" of domestic violence

perpetrated by Mr. Chase. Another is an order by Judge Hummel in which he holds Mr. Chase in contempt for failure to pay the mortgage on the marital residence, as ordered by the court, and for failure to pay about \$3,000 in child support. And the third is a 39-page exhaustive decision in which Judge Hummel chronicles the shortcomings of both parents and, "with great hesitation," awards custody to Ms. Chase.

In his opinion, Judge Hummel said the allegations of sexual abuse were "tainted" by Ms. Chase's "repeated and leading questioning of the child," behavior which he said she continued to engage in "even after being specifically told not to." Judge Hummel also said that Ms. Chase refused to cooperate with a forensic evaluator and would not provide tape recordings she made with the child in which the sexual abuse allegations were discussed.

But Mr. Chase's own pattern of ill-advised conduct, which includes excessive drinking and a threat to kill a sheriff's deputy and his family with anthrax, led Judge Hummel in September to grant Ms. Chase custody of the child. He altered that arrangement only after Ms. Chase ignored a court date and apparently refused to cooperate with the court regarding Mr. Chase's visitation rights, with the issue to be revisited in yet another hearing on Friday.

A transcript of the hearing at which Judge Hummel temporarily shifted custody shows that both the court and the law guardian were concerned with Ms. Chase's refusal to follow court directives.

Judge Hummel also referred to a psychological report raising "grave concerns regarding the psychological health and well-being" of Ms. Chase, and he said she was responsible for a family offense petition "which would generously be termed disingenuous." The judge said at the hearing that Ms. Chase had no intention of abiding by a court visitation order and has engaged in "forum shopping" in an effort to find a judge who will rule her way.

Meanwhile, Judge Hummel yesterday was picketed outside the Rensselaer County Family Court, although he was some 65 miles away hearing cases in Ulster County. Demonstrators displayed signs denouncing the judge and granted media interviews in which they criticized him and called for court reform.

New York State Bar Association President A. Vincent Buzard of Harris Beach in Rochester said his organization recognizes that there is a First Amendment right to comment on a judge's decision. But he also said "it is counterproductive to the legal system to attack judges personally without cause, and to comment on decisions when they don't have all the facts."

"People need to exercise great care before they comment on a judge's decision, and they need to do so with some restraint," Mr. Buzard said. "Any comments that degrade a judge or the judiciary or judicial independence is something we are very concerned about."

The facts of the Chase case notwithstanding, the matter does follow a familiar pattern, according to sociologist Amy Neustein, author with attorney Michael Leshner of "From Madness to Mutiny" a book published this year that portrays a cycle in which protective mothers feel compelled to violate court orders, often leading to a loss of custody.

Ms. Neustein said that there is the equivalent of a judicial backlash against the relatively few cases in which false allegations of child abuse are advanced to gain leverage in a custody matter. A review of more than 1,000 cases nationwide

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suggested that a woman who makes a sexual abuse claim that cannot be verified — even if it may be true — is in serious jeopardy of losing custody. Faced with a loss of custody, Ms. Neustein said, a woman struggling to protect her child is provoked into violating the law or a judge's order, which increases the odds that she will indeed lose custody.

"It is a vicious cycle. I would say in this case — as a sociologist, not as an advocate pleading the mother's case — that what happened is you had a mutinous reaction on the mother's behalf, which provoked a reaction on the part of the judge by penalizing her with loss of custody because she didn't show," Ms. Neustein said. "Why penalize the child for the rebellious, untoward actions of the mother?"

Judge Hummel, in his decision, said that he was acting in the best interests of the child, as is required, and not taking vindictive action against Ms. Chase.

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