

CHAPTER 5: IS A JUDGE ABOVE THE LAW?

In the previous chapters, I shared a few examples of the many false statements made by Justice Shern to demonstrate a clear pattern to his fabrications. However, the lack of impartiality was not the only problem I encountered during the proceedings. Justice Shern actually went further than that and fundamentally changed a final order given by another judge in the pre-trial motion to further reduce my time with my children significantly.

A final order is final. The only way to change a final order is through a process that has special steps and procedures. This process is called “motion to change”. A final order cannot simply be changed by another judge in a motion and there is a good reason for that. Final orders are issued after very long court processes that can sometimes take years. Another judge is not allowed to fundamentally change this final order in a one- or two-hour motion. It is illegal, but Justice Shern did just that.

In September 2015, after I lost my job, we reached a settlement agreement regarding custody and access, as mentioned already. It was a very unfavourable agreement for me but I had to accept it for reasons I will explain in the next few chapters.

That September agreement turned into a final order and based on it, I would have had the children for a total number of five days every two weeks. So, I was to have the children for one day in the first week on a Wednesday to stay overnight, then the next Wednesday and after that, the subsequent weekend from Friday to Monday on alternate weekends. After this final order

was given, the trial was scheduled for January 2016 to finalize financial matters still under dispute.

Before the trial started, we attended a relatively short session called a settlement conference with a judge named Justice Fabozzi. It was by far the most inhumane treatment I have ever received in my life. He would not let me speak. He would only address me in the third person and did not give me a chance to defend myself. He seemed quite irritated by the fact that I was there and that I existed. The court session was very much like a one-on-one meeting between him and Emily's lawyer.

If I tried to talk, Justice Fabozzi would interrupt me to say that he had read my documents and didn't need me to repeat them. One of Emily's accusations against me was that I was responsible for bruises on my eldest daughter's arm and back. When I told him that Emily and her lawyer had not disclosed photos of the bruises, something that is required by law, he did not even let me finish my sentence or even ask for an explanation from Emily's lawyer, making it clear to me that I had no rights. He, instead, insisted that the children didn't need to see "him", which presumably referred to

me. He said that he has grandchildren and that he only talks to them through video, which has been more than enough for bonding with his grandchildren. I didn't point out that my daughters are not my grandchildren and yes, they do need to see their father, but, instead, I said that Emily did not even let me talk to the children through video, even though it is in the court order. After Emily's lawyer confirmed that, in fact, she does not let me talk to the children through video, he said: "I don't know what to say." He couldn't bring himself to say something that was not degrading to me in case it would suggest to Emily that she should respect the court order and thus let me speak with my daughters through video at least once during the week I was not scheduled to see them.

Before the settlement conference, I'd prepared some documents to show the court that the outcome of the September agreement was unjust and that I was forced to sign that agreement because I had just lost my job. They told me that the final order could not be changed. However, strangely enough (and shortly after explaining to me that I cannot change the final order), Emily's lawyer said that they wanted to make changes to

the final order and the judge had no problem granting a pre-trial motion only four days before the trial. He then gave me less than two days to prepare my defense material for that motion.

The change Emily was seeking was reducing my time with the children significantly to teach me a lesson. She wanted me to know that she was upset that I was going to trial and not accepting her demands. As in the past, she made sure to dole out a punishment if I ever did something she didn't enjoy. The saddest part was that now the children had to be deprived of time and attachment with their father due to her abusive behaviour.

She again invented some false facts, knowing that the court wouldn't question the authenticity of her allegations. She alleged that I had kept the children home sick when they should have attended school and that I had picked up the children from school about half an hour earlier on a number of days. The pre-trial motion was with Justice Shern the morning before the trial.

The strangest part was that the requested change was not even related to the allegations, but instead to

significantly reduce my time with the children. The most important change was that I had to return the children at 9:15 a.m. to Emily, regardless of whether they are sick or not. That meant that I would lose almost three days with the children over two weeks during school holidays and summer vacations. The summer of 2016 was one of the most damaging experiences my two daughters have had so far. We struggled to stay connected, and I was devastated. They could only see me every other weekend from Friday at 3:45 p.m. to Monday at 9:15 a.m.. On Wednesdays, Emily would drop them off in the afternoon, and she would make sure they were extremely tired and often half asleep on those days. I had to return them again on Thursday morning before 9:15, often before they had had a chance to have breakfast.

I explained to Justice Shern that Ariana, who was in senior kindergarten at the time, was only sick for two days during the six months of school. I showed him the children's school report cards and proved that for the same period of time the year before, Ariana had been sick for 12 days. I showed him Emily's affidavit dated March 6, 2015 from the previous year, where she states,

that Ariana had been home at least one to two days a week because she had been sick.

I also explained that the allegation that the children were not sick when they stayed home is completely false and that the poor children were, in fact, sick and had fevers on the days that they weren't able to go to school. I also explained to Justice Shern that the requested change to the final order would significantly reduce my time with the children on the days that there was no school, such as during summer holidays.

Would you think there was any chance for me to convince Justice Shern that the allegations were untrue and were going to hurt the children? Are not the changes abusive and a punishment for the children only because they were sick and missed two days of school when they were at Junior and Senior Kindergartens?

For the most part, Justice Shern's behavior in the court resembled that of a second lawyer for Emily. For instance, on December 3, 2015, both Ariana and Paige were sick and unable to go to school. Emily called the police around noon and two officers came to my house to check on the children. They talked to both the children

and me, and I explained why they had missed school and then they left.

On December 2, 2015, there had been an outdoor Christmas light show at the parliament buildings in Ottawa, and the newly elected prime minister and his family were to attend. After I picked up the children from school, I asked Ariana and Paige if they wanted to go downtown to see the light show. They were beyond excited. They had dinner and then dressed up for the occasion. They kept changing their clothes and asking me if they looked good. The show would start at 7 p.m. and we needed to drive to downtown, find parking and then walk to the Parliament Buildings. Downtown was packed and Ariana and Paige were ecstatic – they were talking non-stop with excitement.

The crowd, the Christmas lights, and the downtown scene filled my two daughters with joy and happiness. I was quite emotional seeing them so happy, and everyone around us was filled with joy watching my two little children. I taught them both about government structure and we talked about the prime minister. They were fascinated by the idea of a big boss at the top of the

government. I had them both on my shoulders the whole time, and they were mesmerized by the light show. Once the show came to an end, we had to walk a relatively long distance to get back to our car and then drive home. By the time we got home it was already late, but then they were so excited that they couldn't sleep. It was a cold night and we had been outside for quite a while. In the morning, I woke up early as usual to pack up their lunches and prepare their breakfasts before trying to wake them up. That morning, they would not wake up. I forced them to the breakfast table but they couldn't eat and were super-tired. I realized they were not able to go to school that day and I followed the court order and kept them home; at the time, they were both in junior and senior kindergarten, respectively.

That day, around noon, Emily came to my house and banged on the door violently. At first I did not know who it was. I looked out through the window and realized it was her. I did not open the door as I had no idea why she was there and all three of us were alarmed. She then texted me after she realized that I was not going to open the door and said: "The girls have a dentist

appointment and I hear you in the house. I will call the police because you are violating the order.” (December 3, 2015; 11:57 a.m.)

On the one hand, I didn't believe her because I knew our dentist's office is always closed from 12 to 1, and on the other hand, I found it strange that she had not given me advance notice of the appointment in order to get the children dressed and ready for a cold winter day. It was only weeks before our court date, and I suspected that she was staging an incident for the court proceedings, as this had become a bit of a pattern. By our trial in January 2016, there had been at least two police calls by Emily before all of our court appearances.

Emily called the police. I explained the whole situation to them and told them that I didn't know why Emily was at my house, and that, had she told me there was an appointment, I would have made sure the children were dressed and ready to go to the dentist. I showed them all the text messages. They then talked to the children briefly and left.

At court, Justice Shern insisted that the police report stated that the children were not sick and that they

were quiet when they visited them in my house. However, the police officers did not examine the children, and their report did not contain such information, so the judge seemed to be lying about what the police had said. His comments were alarming, but his intentions were clear. He didn't seem to care that the court session was being recorded because he knew well that I would have no chance of defending myself afterward.

Before the pre-trial motion, Justice Shern also mentioned that a final order cannot be changed in a motion; this clearly shows that he was aware of the illegality of what he later proceeded to do. Nonetheless, Justice Shern did change the final order, which punished the children and I for their having missed two days of kindergarten even after I told him the story of the light show and how happy Ariana and Paige had been to attend it.

During the summer, Emily would take the children to her boyfriend's house to swim in his pool all day. Then she would drop them off at 3:45 pm, when they were exhausted and almost half asleep. I had to

move them to the couch and let them rest before giving them dinner and putting them to bed. The next morning, I had to rush them back to her house before 9:15 am. This was while they slept in during summer holidays, and it was quite uncomfortable and stressful to get them out of the house at the same time as during the school year. This also meant that the children and I lost a significant amount of quality time together.

Ariana, who was six years old at the time, started sleeping with two additional stuffed toys from my house. The visitation change really bothered her. Paige was lost. She didn't know why she wasn't allowed to spend time with me. They started losing their grip on Farsi, as they basically only had to speak the language every other weekend. Emily did not seem bothered by any of that; in fact, she seemed quite satisfied that she had punished me again for proceeding to trial. In one of her emails she told me, "This is why you decided to go to court".

I was devastated. I love and cherish my two daughters. This new schedule meant that I had no chance to have quality time with my daughters. My parents and sisters, who would come every summer from Iran to

spend time with Ariana and Paige, were likewise unable to see them and have, thus, been punished in this process, too.

I attempted numerous times to negotiate a more suitable drop-off and pick-up time for the children for when there was no school by sending emails to Emily and letters to her lawyer, to no avail. I went back to the court and they told me that I had to start a motion to change the process. I prepared an affidavit and provided all my evidence and proof. With more than four hundred pages of evidence, I told them my story.

Not only was there no support for my pleas for help, the judges seemed quite upset that I had gone back to court so I experienced even more discriminatory treatment, which I will return to in subsequent chapters.

During that time, I had regular conversations with Ariana's teacher, who was an amazing person as well as an inspiring and comforting voice in our lives. She was quite dismayed by the proposed changes and once told me: "Ariana is a sad child. She wouldn't miss anything in senior kindergarten if she leaves half an hour early, and I believe Ariana would benefit more from spending

more time with her father.” On another occasion, she told me that Ariana never laughed, except when I came to pick her up from school.