Inns of Court

Evidence

I. Subpoena Duces Tecum
- a. CPLR 2301 -2307
- B. Dss records
  - A. See example
- c. MH records
  - A. 33.13
- d. Alcohol/ substance records
  1. MH 33.13 33.16,
  2. 42 USC 290dd-2 42 CFR 2.64 d
  3. Matter of Maximo 186 Misc 2d 266 (FMCT. Kings Co. 2000)
- E. Business records exception - CPLR 4518
  1. Multi-tiered hearsay
     - A. Johnson v Lutz 253 NY 124 170 NE 517 (1930)
     - B. NYLJ article
     - C. Introduction en mass
       1. Mtr. Of Leon RR 48 NY2d 117 421 NYS 2d 863 (1979)
- f. Certification of Business records CPLR 3122(a)
- G. Privilege - CPLR 4504, 4507, 4508
  1. Perry v Fiumano 61 Ad2d 512, 403 NYS 2d 382 4th Dept 1978)
- H. HIPPA
  1. Keshecki v St Vincent's Hospital 5 Misc 2d , 785 NYS 2d 300 (Sup Ct Richmond Co. 2004)

At a term of the Family Court held in and for the County of Genesee at Batavia, New York on the day of)

PRESENT: HONORABLE ERIC R. ADAMS
Genesee County Family Court Judge

STATE OF NEW YORK : COUNTY OF GENESEE
FAMILY COURT

In the Matter of a Custody/Visitation Proceeding

Petitioner,

-v-

Respondent.

ORDER

Docket No.
File No.

STATE OF NEW YORK)
COUNTY OF GENESEE) ss:

Upon the application of the Petitioner seeking the issuance of Subpoena Duces Tecum in the above captioned matter, and upon the consent of the parties, the Court finds that:

1. Social Services Law §422 (4)(A)(e) provides that such records may be released to a Court upon a finding that the information in a record is necessary for the determination of an issue before the Court.

2. The Court does find that the information in the record is necessary for the determination of an issue before the Court.

NOW THEREFORE, it is hereby,

ORDERED that the Subpoena Duces Tecum shall be granted with respect to indicated reports and it is further

ORDERED that the Genesee County Department of Social Services shall cause a certified copy of the records to be delivered to the Court with regard to the indicated reports, and it is further

ORDERED that the record shall be maintained in the Court's chambers or the Clerk's office for an in camera inspection by the Court and Counsel for the parties only, and it is further

ORDERED that the records shall not be removed from the chambers or the Clerk's office and shall not be photocopied except by the Court for purposes of redaction if necessary.

HONORABLE ERIC R. ADAMS,
GENESEE COUNTY FAMILY COURT JUDGE

344-8820

At a Term of the Family Court of the State of New York, held in and for the County of

PRESENT: HON. , County Family Court Justice

Petitioner

vs.

Respondent

ORDER TO SHOW CAUSE

Docket No.

Upon the annexed Affidavit of , attorney for the petitioner, , sworn to on the day of November, 2001, and all papers and proceedings herein and on motion of , ESQ.;

Let the respondent, , by his attorney, , ESQ., and the Law Guardian, , ESQ., and CHILD PROTECTIVE SERVICES OF COUNTY, show cause at a term of this Court to be held at County Family Court, Batavia, New York on the **16th day of November, 2001 at 10:00 a.m.** or as soon thereafter as counsel can be heard, why an Order should not be made pursuant to Social Services Law Section 422(4)(e) and CPLR 2307, directing that this Court determine whether the information in the Child Protective Services' record regarding the conduct and/or discussions had between Child Protective Services and the respondent prior to and during the Child Protective Services' supervised visitation commencing June of 2001 to the date at which time this matter will be set down for a hearing is necessary for a determination of an issue before the Court; and further that the subpoenas be issued for the appearance of to testify regarding same; it is

ORDERED, that petitioner having shown the necessity for a determination of an issue before the Court regarding information contained in Child Protective Services records from

June 2001 to the date set down for a hearing; it is further

ORDERED, that pursuant to CPLR 2307, let the Court issue a subpoena duces tecum regarding such records contained in the County Child Protective Services file and that Child Protective Services worker, be present and prepared to testify on the date of the hearing regarding same.

SUFFICIENT REASON APPEARING THEREFORE, let personal service by regular mail of a copy of this Order together with the papers upon which it was granted, upon counsel for the respondent, Law Guardian, , Esq., and the Department of Social Services, on or before the day of November, 2001, shall be deemed good and sufficient service.

DATED:

ENTER

HON.

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF

Petitioner

vs.

Respondent

ORDER

Docket No.

Upon reading and filing of the Order to Show Cause and Affidavit of Esq., attorney for petitioner, sworn to on the day of November, 2001, previously submitted herein, and having heard and considered the argument of , Esq., attorney for respondent, and by Assistant County Attorney, Esq., counsel for the Department of Social Services, and of having further heard and considered the argument of Esq., Law Guardian for the minor child at issue; it is

ADJUDGED, that the petitioner has established the necessity for disclosure of the Child Protective records of County Department of Social Services, as they pertain to case notes from June of 2001 to the date at which time this matter will be set down for a hearing regarding conduct and/or discussions had with Child Protective Services prior to and during periods of said visitation and therefore, it is

ORDERED, that the County Child Protective Services shall be authorized pursuant to Social Services Law Section 422(4)(e) and CPLR 2307 to disclose to this Court and to , Esq., on behalf of the petitioner, any and all case notes pertaining to discussions and/or conduct of Mr. having had with the Child Protective Services from June of 2001 to the date at which time this matter will be set down for a hearing; and it is further

ORDERED, that an appropriate employee of the aforementioned Child Protective Services Agency, namely, , be present and be prepared to testify at said hearing regarding the aforementioned reason, pursuant to the subpoena duces tecum issued herewith.

DATED:

ENTER

HON. JAMES P. PUNCH

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FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF GENESEE

IN THE MATTER OF A PROCEEDING UNDER ARTICLE 6 OF THE FAMILY COURT ACT

Docket No. V-

File No. 02

Petitioner,

vs.

Respondent.

NOTICE OF MOTION

TO, ESQ., Assistant County Attorney
Q., Attorney for Respondent.
ESQ., Attorney for Petitioner.

PLEASE TAKE NOTICE, that upon the annexed affidavit of Jacqueline M. Grasso, Esq., sworn to on the 14 day of August, 2006, and upon the proceedings heretofore had herein, a motion will be made at this Court at the Genesee County Courts Facility, One West Main Street, Batavia, New York, on the 24th day of August, 2006, at 2:45 p.m., or as soon thereafter as counsel can be heard, for an Order directing compliance with the annexed Judicial Subpoena Duces Tecum, and for such other and further relief as to the Court may seem just and proper.

Dated: August 14, 2006.

Yours, etc.

Jacqueline M. Grasso, Esq.
Law Guardian
104 Bank Street
Batavia, NY 14020
Tele. (585) 343-3090

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At a Term of the Family Court of the State of New York, held in and for the County of Genesee, at Batavia, New York, on the 19th day of August, 1999.

PRESENT: HON. CHARLES F. GRANEY,
Justice, Family Court

Petitioner,

vs.

Respondent.

ORDER TO SHOW CAUSE

Docket No. V-

File No.

Upon the Affidavit of Jacqueline M. Grasso, Esq., the Law Guardian herein, and upon all prior papers and proceedings herein, it is hereby

ORDERED, that the Genesee County Department of Social Services show cause before this Court at a term to be held at the Genesee County Court Facility, Batavia, New York, on the 30th day of August, 1999, at 9:00 A.M., why an Order should not be entered directing compliance with the annexed Subpoenas Duces Tecum.

Let service on a copy of this Order and the papers on which it is based by ordinary mail to Esq., Attorney for Petitioner; Patricia D. Pope, Esq., Attorney for Respondent; and s, Assistant County Attorney, on or before the 25 day of August, 1999, be deemed sufficient service thereof.

Dated: August 19, 1999
Batavia, New York

ENTER

HON. CHARLES F. GRANEY

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF GENESEE

IN THE MATTER OF A PROCEEDING UNDER ARTICLE 6 OF THE FAMILY COURT ACT

Docket No. V-[illegible]

File Nr

[illegible],

Petitioner,

vs.

AFFIDAVIT

[illegible],

Respondent.

STATE OF NEW YORK)
COUNTY OF GENESEE) SS.:

JACQUELINE M. GRASSO, being duly sworn, deposes and says:

1. I am the Law Guardian herein. I make this Affidavit in support of my application for an Order directing the Orleans County Department of Social Services to comply with the attached Judicial Subpoenas Duces Tecum.

2. This is a custody proceeding involving the parties' child, [illegible] 5, 2001).

3. Upon information and belief, the Petitioner-Mother is the subject of one more indicated reports concerning this child or concerning one or more of her younger children.

WHEREFORE, Deponent requests an Order directing compliance with the annexed Subpoenas Duces Tecum.

Jacqueline M. Grasso

Sworn to before me this 14th day of August, 2006.

Notary Public

JOAN M. WOOD
Notary Public, State of New York
QUALIFIED IN GENESEE CO.
Commission Expires Jan. 31, 2010

At a term of the Family Court held in and for the County of Genesee at Batavia, New York on the day of)

PRESENT: HONORABLE ERIC R. ADAMS
Genesee County Family Court Judge

STATE OF NEW YORK : COUNTY OF GENESEE
FAMILY COURT

In the Matter of a Custody/Visitation Proceeding

Petitioner,

-v-

Respondent.

ORDER

Docket No.
File No.

STATE OF NEW YORK)
COUNTY OF GENESEE) ss:

Upon the application of the Petitioner seeking the issuance of Subpoena Duces Tecum in the above captioned matter, and upon the consent of the parties, the Court finds that:

1. Social Services Law §422 (4)(A)(e) provides that such records may be released to a Court upon a finding that the information in a record is necessary for the determination of an issue before the Court.

2. The Court does find that the information in the record is necessary for the determination of an issue before the Court.

NOW THEREFORE, it is hereby,

ORDERED that the Subpoena Duces Tecum shall be granted with respect to indicated reports and it is further

ORDERED that the Genesee County Department of Social Services shall cause a certified copy of the records to be delivered to the Court with regard to the indicated reports, and it is further

ORDERED that the record shall be maintained in the Court's chambers or the Clerk's office for an in camera inspection by the Court and Counsel for the parties only, and it is further

ORDERED that the records shall not be removed from the chambers or the Clerk's office and shall not be photocopied except by the Court for purposes of redaction if necessary.

HONORABLE
GENESEE COUNTY FAMILY COURT JUDGE

RECEIVED
2006 AU 15 AM 11:15
GENESEE COUNTY
FAMILY COURT

At a term of the Family Court held in and for the County of Genesee at Batavia, New York, on the 24th day of August, 2006.

PRESENT: HONORABLE ERIC R. ADAMS,
Genesee County Family Court Judge

IN THE MATTER OF A CUSTODY/VISITATION PROCEEDING

ORDER

[redacted],

Petitioner,

Docket No. V-00331-01/06N
File No. 692

vs.

[redacted],

Respondent.

STATE OF NEW YORK)
COUNTY OF GENESEE) SS.:

Upon the application of the Law Guardian seeking the issuance of Subpoena Duces Tecum in the above captioned matter, and upon the consent of the parties, the Court finds that:

1. Social Services Law §422(4)(A)(e) provides that such records may be released to a Court upon a finding that the information in a record is necessary for the determination of an issue before the Court.

2. The Court does find that the information in the record is necessary for the determination of an issue before the Court.

NOW, THEREFORE, it is hereby,

ORDERED that the Subpoena Duces Tecum shall be granted with respect to indicated reports, and it is further

ORDERED that the [illegible] artment of Social Services shall cause a certified copy of the records to be delivered to the Court on or before September 1, 2006,with regard to the indicated reports, and
it is further

ORDERED that the record shall be maintained in the Court's chambers or the Clerk's office for an in-camera inspection by the Court and counsel for the parties only, and it is further

ORDERED that the records shall not be removed from the chambers or the Clerk's Office and shall not be photo copied by the Court for purposes of redaction if necessary.

ENTER.

Dated:

[illegible],
Family Court Judge

FAMILY COURT OF THE STATE OF NEW YORK
COUNTY OF GENESEE

IN THE MATTER OF A PROCEEDING UNDER ARTICLE 6 OF THE FAMILY COURT ACT

Docket No. V

File No

Petitioner,

vs.

JUDICIAL SUBPOENA DUCES TECUM

Respondent.

TO: I

GREETINGS:

YOU ARE HEREBY COMMANDED to appear before the HON. ERIC R. ADAMS, Genesee County Family Court, located at Genesee County Courts Facility, One West Main Street, Batavia, New York, on the 1st day of September, 2006, at 9:00 a.m., in the above proceeding; and

YOU ARE HEREBY COMMANDED, to bring with you at that date and time any and all indicated CPS records concerning Jessica N. Jackson currently in your possession.

FOR YOUR FAILURE TO APPEAR YOU MAY BE LIABLE TO A FINE not to exceed $50.00 and to be determined in contempt of Court, together with damages to be sustained by reason of your failure to comply.

Dated: August ___, 2006

Hon. Eric R. Adams,
Family Court Judge

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At a Special Term of this Court held
At 50 Delaware Avenue, Buffalo,
New York on the 22nd day of April, 1999

SUPREME COURT: STATE OF NEW YORK
COUNTY OF ERIE

Plaintiff

ORDER TO SHOW CAUSE

VS.

INDEX NO. SF 1998/000000

Defendant

Upon reading and filing the Affidavit of SUZY DOGOOD, Designated Law Guardian for the children of the above-captioned parties, and accompanying Subpoenas Duces Tecum; and due deliberation having been had thereon,

NOW, on motion of SUZY DOGOOD, ESQ., Designated Law Guardian, it is

LET, BOBBY DOWNEY, The Defendant represented by Hopeless Causes, Esq.; WORTHLESS MIRACLES, INC., DR. MAKE-U-HAPPY and DR. SPRINGROLL Show Cause at a Special Term of this Court to be held at Supreme Court, 50 Delaware Avenue, Part 23, 8th Floor, Buffalo, New York on the 27th day of April, 1999 at 9 o'clock in the forenoon on that date or as soon thereafter as counsel can be heard, why an order pursuant to 42 CFR Part 2, Subpart E, Section 2.63 (a)(1) and Section 2.63 (a)(3) should

not be entered as follows:

1. Directing that a Judicial Subpoena Duces Tecum be issued to the Administrator or other person keeping agency records for WORTHLESS MIRACLES, INC., DR. MAKE-U-HAPPY and DR. SPRINGROLL

2. Directing that all requested patient records be sealed from public scrutiny at all times including during and upon the conclusion of this proceeding, together with such other and further relief as may be just in the premises.

_____

HON. DUDLEY DORIGHT

GRANTED

SUPREME COURT: STATE OF NEW YORK
COUNTY OF ERIE

T[illegible] DOWNEY
Plaintiff

VS

[illegible]
Defendant

AFFIDAVIT

File No: SF 1998/000000

STATE OF NEW YORK)
COUNTY OF ERIE) ss.:
CITY OF BUFFALO)

SUZY DOGOOD, being duly sworn, deposes and says:

1. I am an attorney at law duly licensed to practice my profession in the State of New York, at offices at 379 Psychotic Road, Buffalo, New York, and am associated with the Center for Hope.. I have continuously represented the three infant children of the above captioned parties, Sarah, Moses and Noah, since the Fall of 1998 in regard to custody and visitation.

2. That the Plaintiff's complaint and moving papers set forth a pattern of alcoholism on the part of the Defendant which has required treatment and has impacted upon the welfare and well-being of my clients. In fact, my clients have been actively involved in the Defendant's issues concerning the use of alcohol-for example in August, 1998, during an incident immediately preceding the inception of this matter, my eldest client, Sarah, discovering her father in a drunk and intoxicated condition and, threw away beer belonging to him. That action provoked a general fracas during which the Defendant, in a drunken condition, assaulted Sarah and Moses and verbally abused the entire family, including my youngest client, Noah.

3. That subsequent to the August incident, Child Protection Services were contacted by

the Caring Police, who arrested the Defendant in connection with the melee. Deeply Felling was the investigating caseworker. Upon information and belief, he would testify that the effect of Defendant's alcoholism upon the children was so dramatic as to constitute neglect as a matter of law. Upon further information and belief, he would testify that if the Plaintiff had resumed residence with the Defendant after the August incident, without Defendant receiving effective treatment for his alcoholic condition, that Feeling would have been compelled to file a neglect proceeding against the Plaintiff for allowing the children to be further exposed to Defendant's disease.

4. Defendant denies the abuse of alcohol and explains away each and every incident involving the use of alcohol without credible explanation. For example, after the August incident Defendant was arrested and held overnight prior to being arraigned in the Caring City Court. However prior to the arraignment, upon information and belief, he suffered convulsions and was admitted to Worthless Mircales, Inc., where he was treated for symptoms of advanced alcoholism for approximately one week. Defendant's explanation of that incident was that he fainted from hunger and that he was incorrectly medicated at Worthless, which caused a coma.

5. Upon information and belief, Defendant's records from inpatient and out patient treatments at Worthless Miracles, Inc., and with Dr. Make-U-Happy and Dr. Springroll will reveal child neglect in that Defendant was, and until effectively treated, a chronic alcoholic in advanced stages of that disease, and as a result will be unable to properly care for the children and expose them to danger as a result of his abuse of alcohol.

6. Although Federal Regulations generally protect disclosure of confidential communications in federally assisted drug and alcohol treatment programs, 42 CFR Section 2.63 permits disclosure of confidential communications when there are "circumstances which

constitute suspected child neglect". It is respectfully submitted to this Court that the Defendant's treatment of the children to this proceeding constitutes neglect as anticipated by the regulation and disclosure of his records is therefore permitted upon the Order of this Court.

7. At a minimum, I would request that this Court conduct an in-camera inspection of the requested patient records and if it is determined that they contain information material and relevant to protect the children, including circumstances which would constitute suspected child neglect or abuse, such records should then be made available as evidence in this proceeding. 42 CFR Part 2, Subpart E, Section 2.64 (c)

8. I would also point out that the Defendant in this proceeding is seeking unsupervised access to the children, having asserted upon many occasions, both in writing and verbally, his inability to understand why supervised visitation was ordered by this Court. By so seeking unsupervised access, in light of the substantial allegations, he has placed in the status of his physical and mental condition at issue for the consideration of the Court in determining what is in the best interest of the children.

9. Furthermore, in the event the Defendant, at trial or otherwise, offers testimony or other evidence pertaining to content of the records herein requested, I request that the Court order a disclosure of those records pursuant to 42 CFR Section 2.63 (a) (3) which states that a Court order may authorize such disclosure when the patient testifies or offers other evidence pertaining to the content of those records.

WHEREFORE, it is respectfully requested that this Court issue an Order:

1. Authorizing the disclosure of the Defendant's records from Worthless Miracles, Inc., Dr. Make-U-Happy and Dr. Springroll, and

2. Authorize the issuance of a Judicial Subpoena to the "Administrator or other Person" who

keeps agency records at Worthless Miracles, Inc., and to Dr. Make-U-Happy and Dr. Springroll, and

3. Such other and further relief as to this Court seems just and proper, including but not limited to the sealing of Defendant's records.

SUZY DOGOOD, ESQ.

Sworn to me before this
day of , 2001.

Notary Public