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DAVID GOLDMAN, Plaintiff, v. BRUNA B. GOLDMAN, Defendant(deceased) v. RAIMUNDO RIBEIRO FILHO and SILVANA RIBEIRO Third Party Defendants.	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION-FAMILY PART MONMOUTH COUNTY DOCKET NUMBER FD-13-0395-05 OPINION

Decided: February 17, 2011

Counsel: Patricia E. Apy, Esq., Paras, Apy & Reiss, attorneys for the plaintiff, David Goldman

Gary N. Skoloff, Esq., and Johnathan W. Wolfe, Esq., Skoloff & Wolfe, P.C., attorneys for the third party defendants.

Michael A. Guadagno, P.J.F.P.

Silvana Bianchi Ribeirio and Raimundo Ribeiro Filho, the maternal grandparents of Sean Goldman, have filed a complaint seeking visitation with their grandson pursuant to the Grandparent Visitation Statute (GVS), N.J.S.A. 9:2-7.1. Sean's father, David Goldman, has agreed to allow visitation under certain conditions but the grandparents have rejected these conditions and seek to compel visitation over David's objection. For the reasons that follow, the grandparents' complaint is dismissed.

I.

David Goldman and Bruna Bianchi Goldman first met in Milan, Italy in September 1998. Bruna was a Brazilian citizen pursuing a master's degree in fashion design while David was working temporarily in Italy as a fashion model.

They began dating and continued their relationship after David returned to his home in Eatontown, New Jersey. During 1999, Bruna visited David twice in the United States and in September 1999 learned that she was pregnant. On December 17, 1999, David and Bruna were married in New Jersey and on May 25, 2000, Bruna gave birth to a son, Sean Richard Goldman, in Riverview Hospital in Red Bank, New Jersey.

After Sean's birth, David and Bruna purchased a home in Tinton Falls. Bruna's parents, Silvana Bianchi Ribeiro and Raimundo Ribeiro, who lived in Rio de Janeiro, purchased a condominium in Sea Bright where they stayed when they visited the Goldmans.

In January 2001, Bruna took a part-time job teaching Italian at Brookdale Community College. She began to teach full-time at St. John Vianney High School in September 2001.

According to Bruna,[1] the marriage began to deteriorate after Sean's birth. She claimed that they slept in separate rooms and grew apart from each other. Marriage counseling failed to resolve these issues. David has never acknowledged that problems existed in the marriage and has maintained that he enjoyed a loving relationship with Bruna and was unaware of her unhappiness until after she departed for Brazil.

In March 2004, Bruna began planning a trip to visit her family in Rio de Janeiro after the school year ended. On June 16, 2004, David drove Sean, Bruna and Bruna's parents, who had been visiting them, to Newark airport for their flight to Brazil. Bruna and Sean had tickets to return to Newark on July 11, 2004. David had given Bruna written permission to take Sean with her to Brazil for twenty days, until July 18, 2004, and had every expectation that Bruna would be returning with Sean on July 11. The family had even booked a trip to Turnburry Island in Florida beginning on August 15, 2004, to celebrate Bruna's thirtieth birthday.

According to David's certification, Bruna called him on the morning of June 17, 2004, after her arrival in Rio and told him she loved and missed him. She gave no indication that she was

[1] Bruna died in 2008. The statements attributed to her are contained in her certification dated September 19, 2004.

considering any changes to her plans to return on July 11. However, on June 18, 2004, Bruna called and told David to cancel the Turnburry vacation because she wanted to spend her birthday in Brazil. Later in the conversation Bruna gave David the first indication that she was not happy in their relationship. On the following day, June 19, 2004, Bruna told David that he should come to Brazil to meet with her attorney to sign papers. She said she wanted to end the marriage and intended to stay in Brazil. In response to David's pleas to return home to New Jersey, Bruna said that Brazil was her home. She also insisted that Sean would remain in Brazil, offering David monthly visits if he came to Brazil. Over the next few days, Bruna pressed David to come to Brazil. Her entreaties alternated from appealing to his emotions ("Sean misses you"), and degrading him ("For once in your life be a man"). After consulting with counsel, David learned that travelling to Brazil would have subjected him to the jurisdiction of the Brazilian courts and may have resulted in his detention there.

On July 8, 2004, Bruna filed an *ex parte* application for custody of Sean in the State Family Court of Rio de Janeiro. Bruna had registered Sean's birth at the Brazilian consulate in New York on October 6, 2000, and he was subsequently issued a Brazilian passport and a Brazilian certificate of citizenship.[2] On July 27, 2004, a Brazilian court granted Bruna temporary custody of Sean.

[2] It is not clear from the record whether David was aware of or consented to these actions by Bruna.

Although David spoke with Bruna and her parents over sixty times during June and July 2004, they never informed him of Bruna's *ex parte* custody application or the entry of the custody order. David did not learn that Bruna had been granted custody of Sean by the Brazilian court until December 2004.

The New Jersey Litigation

On August 23, 2004, David filed an order to show cause in the Family Part, Monmouth County, seeking the return of Sean to New Jersey and for sole legal and physical custody of him. In his complaint, David named both Bruna and her parents. On August 26, 2004, Hon. E. Benn Micheletti signed an order requiring Bruna to immediately return Sean to the United States and the State of New Jersey. The order was based on the court's finding that Sean was a citizen of the United States of America and a resident of the State of New Jersey; that he had resided with his parents in New Jersey since his birth; that, as a result, New Jersey was his "home state" pursuant to N.J.S.A. 2A:34-29-31;[3] and pursuant to New Jersey law and Article 15 of the Hague Convention, Bruna's "continued retention and stated intent to refuse to return the minor child to the United States, has and may continue to be considered 'wrongful' in accordance with the applicable provisions of the law of the child's habitual residence, New Jersey." The order also imposed

[3] The order referenced the Uniform Child Custody Jurisdiction Act which was repealed and replaced by the New Jersey Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), N.J.S.A. 2A:34-53 to 95, effective December 13, 2004.

temporary restraints on bank accounts held by the grandparents; placed a *lis pendens* on their condominium in Sea Bright; and permitted David to sell a 2000 Toyota titled in his name to defray costs of the litigation.

On September 19, 2004, Bruna executed an affidavit in support of a motion to dismiss the complaint. She argued *inter alia* that the New Jersey court lacked jurisdiction under N.J.S.A. 2A:34-34, and that New Jersey was an inconvenient forum under N.J.S.A. 2A:34-35. Even though she contested the jurisdiction of the New Jersey courts, she sought an order pursuant to N.J.S.A. 2A:34-23 preserving marital assets. In her affidavit, Bruna denied that she had abducted Sean and maintained that she and Sean were citizens of Brazil and her marriage to David was "legally registered" in Brazil. She argued that the Brazilian courts should decide the issue of Sean's custody and other related matters.

On January 21, 2005, the parties appeared for oral argument on David's motion before Judge Kapalko. David filed an amended complaint on February 4, 2005. He again sought custody of Sean but also alleged interference with custody and intentional infliction of emotional distress. He claimed that Bruna and the grandparents conspired to wrongfully remove Sean and sought compensatory and punitive damages. In his certification, David alleged that in sworn

pleadings filed in Brazil,[4] Bruna and the grandparents admitted to discussing their move to Brazil prior to their June 16, 2004, departure. David also alleged that the grandparents supported Bruna's efforts to remain in Brazil with Sean and funded the Brazilian litigation. On February 4, 2005, the grandparents filed an answer to David's August 23, 2004 complaint.

On February 8, 2005, Judge Kapalko entered an order denying Bruna's application to dismiss David's complaint, finding that she had filed an *ex parte* application for custody of Sean in Brazil on July 7, 2004, after Sean had been in Brazil for only 21 days. He also found, and the defendants conceded, that no service had been made or even attempted on David until December 22, 2004. Judge Kapalko found that Brazil was not the "home state" of Sean and:

> the continued exercise of jurisdiction by the Brazilian Court, which could not serve as the "home state" of the minor child, to render an initial child custody determination can not be done in substantial conformity with the jurisdictional requirements of the Uniform Child Custody Jurisdiction and Enforcement Act. N.J.S.A. 2A:34-29-31, et seq.[5] Further, since physical retention of the minor child in Brazil, is a unilateral action on the part of the Mother, with neither the consent nor acquiescence of the Father, nor the permission of the Court, the continued exercise of jurisdiction by the Brazilian Court would not be consistent with the underlying policies of the Uniform Child Custody Jurisdiction and Enforcement Act.

[4] Portions of the Brazilian pleadings are included in the court file but most have not been translated into English.

[5] The statutory reference mistakenly cites the UCCJA and not the UCCJEA which had replaced the UCCJA and was in effect at the time of the order. See fn. 1 infra.

The order further provided:

> Pursuant to New Jersey Law, specifically N.J.S.A. 9:2-4 and N.J.S.A. 2C:13-4 as well as N.J.S.A. 2A:34-31.1 in aid of the application of Article 15 of the Hague Convention or the Civil Aspects of International Child Abduction, 25 October 1980, codified at 42 U.S.C. 11601 et seq. the defendant mother's continued unilateral retention and stated intent to refuse to return the minor child to the United States, has and may continue to be considered "wrongful" in accordance with the applicable provisions of the law of the child's habitual residence, New Jersey.

The order awarded David sole legal and physical custody of Sean and found that Bruna's continued retention of Sean violated both New Jersey law and the Hague Convention. It permitted David or his designee to facilitate the immediate repatriation of the minor child to the State of New Jersey, pursuant to N.J.S.A. 9:2-4 and 9:2-2; N.J.S.A. 2C:13-4 as well as N.J.S.A. 2A:34-31.

Of significance to the current petition, Judge Kapalko denied the grandparents' motion to dismiss the complaint for lack of personal and subject matter jurisdiction.

Finally, the order provided:

> IT IS FURTHER ORDERED that both parties are aware that a violation of any custody and/or visitation order issued by this court could constitute the continued wrongful retention of the minor child, and a violation of United States Federal law on International Parental Kidnapping Crime Act (IPKCA) 28 U.S.C.S. 1204(A) as well as prohibitions contained in Interference with Custody, contained in, N.J.S.A. 2C:13-4.

On February 16, 2005, Bruna filed an answer to David's August 23, 2004, complaint with counterclaims. While she did not object to the jurisdiction of the New Jersey court, she raised the affirmative defenses of Articles 13B and 20 of the Hague Convention.[6]

On March 10, 2005, the grandparents filed an answer to the Amended Complaint. While they acknowledged that "the orders of New Jersey [contradict] the orders of the Country of Brazil," they failed to contest the New Jersey court's jurisdiction and actually filed a counterclaim seeking damages and objecting to the seizure of some bank accounts and their Sea Bright condominium.

On May 24, 2005 a case management conference was held where counsel for all parties appeared. Discovery was ordered to be completed by August 2005. On June 10, 2005, the grandparents filed a motion to dissolve the restraints on the real and personal property.

On July 5, 2005, David moved to hold the defendants in contempt of the August 26, 2004 and January 21, 2005 orders and requested that a default be entered if Sean was not returned. On August 19, 2005, Judge Kapalko entered an order finding Bruna in contempt of the August 26, 2004 and January 21, 2005 orders and further ordered

[6] As a general rule, the Hague Convention provides that a wrongfully removed or retained child must be returned. There are six exceptions. Article 13b requires a showing that there is a grave risk that the child's return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. Article 20 requires a showing that the return of the child would not be permitted by fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms. 42 U.S.C. 11603(e)(2)(B). See also Mendez Lynch v. Mendez Lynch, 220 F. Supp.2d 1347, 1357-58 (M.D. Fla. 2002).

that if Sean was not returned within thirty days he would dismiss her answer and counterclaim and enter default. He also ordered economic sanctions against Bruna of $1,000 per week pending Sean's return. He dismissed Bruna's affirmative defenses under the Hague Convention for failure to state a claim. As to the grandparents, he ordered a plenary hearing which was adjourned twice to allow the parties to attempt to resolve the issue.

On December 13, 2005 the grandparents moved for summary judgment pursuant to Rule 4:46-1. On March 10, 2006, Judge Kapalko denied the motion without prejudice.

On December 8, 2006, Judge Kapalko entered an order allowing the Sea Bright condo to be sold upon the payment of $150,000 to satisfy David's claims against the grandparents.

The Litigation in Brazil

David was not served with a copy of the *ex parte* order granting Bruna temporary custody of Sean until December 15, 2004. Unaware of this order, on September 3, 2004, David filed an application with the United States Department of State for transmission to the Brazilian Central Authority[7] seeking the immediate return of Sean pursuant to the International Child

[7] On June 21, 1999, Brazil promulgated the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption. On April 14, 2000, Brazil promulgated the Hague Convention on the Civil Aspects of International Child Abduction. Additionally, on September 16, 1999, Brazil issued a decree which designated the Central Authorities in charge of carrying out the duties imposed by the Hague Convention on Protection of Children and Cooperation in Respect of Inter-Country Adoption; instituted the National Program on Cooperation on International Adoption; and created the National Council of Brazilian Central Administrative Authorities.

Abduction Remedies Act, (ICARA), 42 U.S.C. 11601-11610. By November 17, 2004, no action had been taken by the Brazilian courts on David's petition and he was compelled to hire counsel to file a petition in the Brazilian federal court. After being served with Bruna's custody order in December, David filed his response to her action in the Rio de Janeiro family court on February 1, 2005.

On October 13, 2005, the lower Brazilian federal court found that Sean was a resident of the United States and that, under the Hague Convention, Bruna had wrongfully removed him to Brazil. However, they refused to order his return based on their finding that, due to the length of time that had elapsed since the child's removal, he was "settled" in Brazil. David filed an immediate appeal of this ruling.

In January 2005, Bruna and Sean moved in with Bruna's Brazilian paramour, João Paulo Lins e Silva. In documents filed with the Brazilian court, Lins e Silva indicated that his relationship with Bruna began six months before they moved in together, which means that Bruna began dating him shortly after her arrival in Brazil with Sean in June 2004. Bruna filed for divorce from David on July 25, 2006 and on July 31, 2007, obtained a Brazilian divorce from David. David was not served with either the complaint for divorce or the final order. Shortly after her divorce from David, Bruna married Lins e Silva.

On August 22, 2008, Bruna died during childbirth. David was not told of Bruna's passing and only learned of her death through a newspaper account. Immediately after Bruna’s death, Lins e Silva, a prominent Brazilian attorney, filed for custody of Sean falsely claiming that the child had been "abandoned." Apparently oblivious to the fact that Sean's biological father was not only alive but seeking custody of him in that very court, the family court in Rio de Janeiro granted custody of Sean to Lins e Silva on August 28, 2008. After David learned of Bruna's death he travelled to Brazil in an attempt to arrange for Sean's return. He did not learn that Lins e Silva had been awarded custody of his son until after his arrival.

On September 25, 2008, David filed an amended application with the Brazilian Central Authority, alleging that Lins e Silva and the grandparents were wrongfully retaining his son. On the following day, the Central Authority filed a complaint against Lins e Silva claiming he was unlawfully withholding Sean from David. On October 18, 2008, Lins e Silva moved to dismiss the federal petition and transfer the matter back to the state court. The federal court issued an order permitting immediate visitation between David and Sean. David again flew to Brazil anticipating the first contact with his son in four years but Lins e Silva took Sean out of town and refused to make him available. The Brazilian authorities failed

to enforce the court order and after 10 days of trying futilely to see his son, David returned home.

On February 4, 2009, United States Congressman Christopher Smith introduced House Resolution 125 calling on the Central Authority of Brazil to immediately discharge its duties under the Hague Convention by facilitating the return of Sean to his father. H.R. Res. 125, 111th Cong.(2009). Shortly thereafter, David returned to Brazil, this time accompanied by Congressman Smith, and on February 7, 2009, after a lengthy session before a Brazilian federal judge, David was permitted to see Sean for the first time since June 2004.

On June 1, 2009, Hon. Rafael DeSousa Pereira Pinto, a Federal Alternate Judge for Rio de Janeiro, issued a written opinion ordering the immediate return of Sean to the United States and reunification with David. In his lengthy opinion, Judge Pinto made several findings which inform this court's decision.[8]

Judge Pinto found as an "undisputed fact" that Sean was a resident of New Jersey when he left for Brazil on June 16, 2004, and that David was exercising his "full rights of custody" when he agreed to allow Sean to accompany his mother to Brazil for a vacation. He went on to find that Bruna's retention of Sean in

[8] Comity cannot be afforded to the rulings of the Brazilian family court that first awarded custody of Sean to Bruna and then to Lins e Silva, as the orders deliberately disregarded the laws of New Jersey and were contrary to the clear terms of the Hague Convention. See Innes v. Carrascosa, 391 N.J. Super. 453, 490 (App.Div. 2007). However, Judge Pinto's order respects and reinforces the public policy of New Jersey with regard to parental rights and is therefore entitled to recognition by this court. Ibid.

Brazil was a violation of New Jersey law where Sean "habitually resided." He concluded that there was "no doubt" that the retention of Sean in Brazil after the twenty day period agreed to by David was "unlawful" under the Hague Convention.

Judge Pinto went on to find that this case was distinguishable from most if not all of the cases involving international child kidnapping under the Hague Convention because Bruna's "illegal child retention" was followed by her death and then a second illegal retention by Lins e Silva. Because Bruna's initial retention of Sean in Brazil was illegal, he reasoned that Lins e Silva's continued retention of him was also improper and his application for custody of Sean in Brazil was tantamount to "benefit[ing] from an illicit act," which he described as "inconceivable."

Judge Pinto also found that, even under Brazilian law, Sean's rightful domicile after the death of his mother was with David:

> In the case of a minor, such as Sean, it is basic that his legal representatives are, as a rule, the parents themselves, and, in the absence or prevention of one of them, the other exercises it with exclusivity.

Judge Pinto found that the "illicit detention" and refusal to return Sean to David after Bruna's death violated the Hague Convention. He flatly rejected the defendant's contention that David abandoned Sean:

> Mr. David Goldman, the only living parent of Sean, has never abandoned him (although the defendant tried, without success, and without evidence, to say the opposite) wants and is capable of exercising parental power over his child.
>
> And a father, it should [be] repeated to exhaustion, who never abandoned him. On the contrary, he never gave up on having him again under his custody. And to that end, he did not measure, and still does not measure, his efforts despite the difficulties that were and that continue to be confronted. The records are full of evidence to that effect.
>
> Accordingly, it is undeniable the incessant legal battle that he has been fighting for years to get his son back, a battle, by the way, rather expensive, which in itself shows the absence of the alleged abandonment. There are, likewise, recordings of telephone calls kept by the father with the child, after his arrival in Brazil. There are dozens of electronic messages exchanged. There is evidence of the sending of presents to Sean. It is possible to go beyond.

Judge Pinto also discussed Lins e Silva's attempts to thwart court-ordered visitation between David and Sean and his subsequent disingenuous explanations to the court for his conduct:

> In the first decision granted by this Court it was awarded, to Mr. David Goldman, the right to visit his child, and set up a regimen of interim visits to the child, until further decision to the contrary. In learning that the father of the child was on his way to Brazil to exercise the right to see his own son, the defendant immediately appealed against that decision to the Dist. TRF of the 2nd Region, to revoke the dismissed, withdrawn, again, of Mr. David Goldman, the right to see his son. It was argued, in such appeal, under the title of a threat of irreparable harm to the minor, with a demand for a suspensive effect, the simple fact

that the father of SEAN would be in Brazil "(…) unannounced, to impose its presence on a minor who did not see him for more than four years, already at the end of this week (October 17, 18 and 19)" The suspensive effect was partially granted, but only in order to postpone the start of the visitation, passing from the Friday night to the morning of the Saturday following.

Thus, unable to stop by legal means, the effectiveness of the decision, the defendant decided, forcibly, to thwart the encounter between father and son. At the day and time judicially determined, the Defendant was not to be found with the minor at the due place (his residence), disobeying, thus, flagrantly, two judicial decisions. The one of this Court and of the one of the TRF of the 2nd region.

Days later, entered with a simple petition, in which he presented a badly explained, and poorly rehearsed a story, based on a supposed trip "to the mountains," an explanation full of inconsistencies and contradictions, all seeking to justify the absence of SEAN from what would be the awaited reunion between a child and his father, the latter, incidentally, who had traveled more than ten hours for such.

The facts above yielded the conviction of defendant for litigating in bad faith, given the deliberate change in the truth of the facts, and also for an act harmful to the exercise of jurisdiction, in addition to the routing of documents to the Federal Public Ministry, through practice, in theory, of a crime of disobedience, in view of the deliberate breach of two judgments.

Judge Pinto also rejected the defendant's claim that to reunite Sean with his father was not in Sean's best interests:

It is inconceivable . . . that the principle of best interest of the child-often cited by the defense-be interpreted as intended there; in

> other words, that the best solution for Sean is to be to "condemn him," after the irretrievable loss of his mother, to now also lose, forever, the father he still has, turning him into, almost, an orphan of father and mother!
>
> Moreover, contrary to what the defendant claims, denying the right of Sean to live and be raised by his father - his only living parent! - that would be a flagrant violation of the principle of human dignity. After all, the right to live with, and be raised by, one's father is a fundamental element of human dignity! That is the reality.
>
> The claim in this dispute, that a constitutional principle as important as the best interest of the child, be construed so poorly and distorted, in such a way as to legitimize the perpetuation of an illegality rather evident, with all due respect, cannot, under any angle, be given a seal by the Judiciary Branch.

Judge Pinto found that since all of the requirements of the Hague Convention had been satisfied that it was "absolutely imperative" that Sean be returned to the United States immediately. He added that further delay would benefit the defendant finding that it was an "undeniable fact that the time factor, in this case, is on the side of whom is wrong." He also rejected the argument that Sean had "adapted to Brazil" finding that it was "unfounded" and that it gave continuity to Bruna's actions in "taking advantage of this situation."

More importantly, for this court's analysis, Judge Pinto found that there was an "urgent need to order the immediate return of the child to the United States" because the court-appointed experts had

"clearly and convincingly" demonstrated that "Sean has been subjected to a pernicious process of parental alienation." He found that Sean had suffered "psychological damage" that was related to "his stay here in Brazil" and that a return to the United States was necessary to limit that damage to Sean which would continue if he remained in "the possession and custody of the defendant...[and] the other maternal relatives."

Judge Pinto found that the parental alienation that Sean was subjected to would further "deteriorate" his relationship with David to the point where Sean would not even recognize David as his father. This alienation was "thoroughly detrimental to the child" and only the immediate "cessation of this process" will "comply with the principle of the best interest of the child."

Judge Pinto again expressed the need for urgency in returning Sean and the likelihood of further damage if there was additional delay:

> The greater the delay in the execution of jurisdictional protection, greater could be the damage inflicted to this small individual, as well as greater also will be the time that the father of Sean will continue to be deprived-illicitly-of the company of his son and, moreover, that this same son will remain alienated-also illicitly-from the company of his father. This situation needs to be ended. And an immediate end, as soon as possible. It is therefore vital that the child Sean be returned with the most brevity possible to the custody of his father, so that his re-adaptation to his paternal family can also be restarted immediately.

Judge Pinto emphasized three benefits of returning Sean to David and found that it would put an end to that harm that Sean has suffered:

> One-the pernicious process of parental alienation, that unfortunately this minor has been subjected to, would be stopped, as demonstrated, in a clear and unequivocal way, in the psychological expert report produced into the records.
>
> Two-it would enable Sean to reestablish affective ties with his other relatives, on his paternal side, which, it must be stressed, are no less important than the maternal family.
>
> Three-Sean will resume contact with his first culture, North American, to which he is, also, undeniably entitled to. They are, in fact, inalienable aspects of his personality.

Judge Pinto ordered that Sean be returned to David on June 3, 2009, at the American Consulate in Rio de Janeiro. So concerned was Judge Pinto that Lins e Silva would attempt to flaunt this court order as he had done when visitation was ordered in 2008, that he ordered the federal police to "adopt all possible and necessary measures, aimed at the immediate location and monitoring of the child in question, as well as obstruct the removal of this child from the City of Rio de Janeiro."

Unfortunately Judge Pinto's order was not executed within the time frame ordered and Sean's return was delayed for another six months while the matter continued to drag through the Brazilian

court system in spite of the clear, well-reasoned and unambiguous findings of Judge Pinto.

On December 22, 2009, Brazilian Supreme Chief Justice Gilmar Mendes finally awarded full custody to David. For the first time in over five years, David and Sean were reunited on Christmas Eve, 2009, and flew back to the United States shortly thereafter.

The Grandparents' Complaint

On March 30, 2010, Raimundo Ribeiro Filho filed an order to show cause on behalf of himself and his wife, Silvana, seeking immediate visitation and regular telephone contact with Sean. On April 1, 2010, Hon. Honora Kilgallen denied the order to show cause, finding that there had been no showing of irreparable harm. Apparently, Judge Kilgallen allowed the matter to proceed as a contested motion without requiring any additional filings.

On April 27, 2010, David filed a notice of motion[9] to seal the court records in anticipation of continued litigation by the grandparents seeking court-ordered visitation. On June 1, 2010 Silvana filed a 28 page certification in opposition to David's motion and in support of her "cross motion" seeking visitation with Sean.

[9] Although Judge Kilgallen denied the grandparents' request for relief on April 1, 2010, finding that an order to show cause was not the "proper mechanism to begin this inquiry," she nevertheless signed the order to show cause and set a return date of May 7, 2010. That date was subsequently adjourned. As a result, there was some confusion in the clerk's office as to whether David's filing on April 27, 2010, was a motion or cross-motion.

The matter was scheduled for oral argument on July 1, 2010, when the Ribeiros requested an adjournment. In the interim, the matter was reassigned to this court. When this court learned that David was not flatly opposing visitation but merely seeking to impose conditions for the protection of Sean, a conference was held and it was suggested that the parties attempt to resolve this matter without further litigation. During September and November 2010, the parties exchanged correspondence but on November 30, 2010, counsel for plaintiff informed the court that, as a result of the Ribeiros' unwillingness to terminate litigation in Brazil, they were withdrawing the offer and the court would have to decide the matter.[10]

II.

A.

Before discussing the merits of the grandparents' application, the court is prompted *sua sponte* to determine whether the petitioners appear before this court with clean hands. The clean hands doctrine is "an equitable principle which requires a denial of relief to a party who is himself guilty of inequitable conduct in reference to the matter in controversy." Glasofer Motors v. Osterlund, Inc., 180 N.J. Super. 6, 13 (App. Div. 1981). In

[10] In Wilde v. Wilde, 341 N.J. Super. 381, 397 (App.Div.2001), the Appellate Division required that grandparents attempt to amicably resolve visitation disputes before initiating litigation. Although these negotiations occurred after the filing of the Ribeiro's complaint, the court finds that under the maxim "better late then never," there has been substantial compliance with Wilde.

Untermann v. Untermann, 19 N.J. 507 (1955), our Supreme Court provided the following guidance as to the doctrine's applicability:

> It is the effect of the inequitable conduct on the total transaction which is determinative whether the maxim shall or shall not be applied. Facades of the problem should not be examined piecemeal. Where fraudulent conduct vitiates in important particulars the situation in respect to which judicial redress is sought, a court should not hesitate to apply the maxim.
>
> [Unterman supra, 19 N.J. at 518]

If the grandparents have disregarded orders of this court or acted in a fashion that constitutes contempt for its authority in this matter, the maxim might compel the dismissal of their complaint without adjudication on the merits.

In her certification, Silvana maintains that after she and Raimundo learned of Bruna's plan not to return to the United States with Sean in June 2004, she and her husband "encouraged [Bruna] to come back to New Jersey to work out her differences with David." There is not a flyspeck of credible evidence in this case to support her statement. Rather, all of the grandparents' actions buttress a contrary conclusion. In her deposition, Silvana testified that from the time Bruna arrived in Brazil she was totally supported by the Ribeiros until her marriage to Lins e Silva. This included paying[11] for Sean's private school, setting Bruna up in a business and paying her substantial legal fees in

[11] Both grandparents have maintained that all money given to Bruna, including large sums of cash for her Brazilian lawyers, were "loans."

both the Brazilian state and federal litigation as well as the litigation in the United States. As of October 28, 2005, these fees were estimated by Raimundo to exceed $200,000(US). This, of course, is before current counsel to the Ribeiros entered the case. Simply put, the Ribeiros' claim that they opposed Bruna's decision to remain in Brazil with Sean lacks any semblance of credibility. They fully supported and more importantly, completely financed the long and costly legal battles in both countries to keep Sean in Brazil even after Bruna's death.

Moreover, the Ribeiros were heavily involved in every phase of the Brazilian litigation after Bruna's death. Ricardo Zamariola Junior, who represented David in much of the Brazilian litigation, stated in a March 3, 2010, certification that on June 1, 2009, ten months after Bruna died, Silvana filed a writ of habeas corpus under her own name before the 2nd Level Federal Court of Rio de Janeiro in an attempt to overturn the ruling by the 1st Level Federal Court of Rio de Janeiro ordering Sean's return to the United States. On June 16, 2009 Silvana and Raimundo filed an appeal of the lower court decision under their own names. Over the next six months they filed five more petitions in various Brazilian courts seeking to keep Sean from returning to his father. On August 27, 2008, five days after Bruna died, they signed a declaration supporting Lins e Silva's stealthy petition for custody of Sean and

to have David's name stricken from Sean's birth certificate and replaced by Lins e Silva's.

Even after Sean was returned to David, the grandparents continued an unrelenting barrage of litigation in the Brazilian courts, which continues to this day, all seeking Sean's return.

In addition, the Ribeiros ignored numerous lawful orders of this court with impunity. They were named defendants in David's August 23, 2004, order to show cause seeking Sean's return. Judge Kapalko found that the New Jersey courts had jurisdiction over them which continued even after the portion of David's action seeking money damages was settled. After they were ordered to return Sean, their actions in supporting and financing Bruna's and then their own efforts to keep Sean in Brazil not only violated the New Jersey orders but displayed a contempt for this court's authority that is both flagrant and undeniable.

The contemptuous actions of the grandparents do not automatically disqualify them from seeking relief in the court whose orders they defied. While it is not typical for a miscreant to have the audacity to seek affirmative relief from a court of equity, the maxim has its limitations. Hageman v. 28 Glen Park Assoc., L.L.C., 402 N.J. Super. 43, 55 (Ch. Div. 2008).

The consequences of dismissal of their complaint must be scrutinized as they allege that Sean will be harmed if their petition is denied. The grandparents complain that their

relationship with Sean, which was nurtured during the five years when he was wrongfully retained by them, their daughter and her second husband, has been interrupted. While the incongruity of this position is glaring, the application will be decided on the merits, as the issue of the welfare of the minor child has been raised. Thus, the grandparents' complaint will not be dismissed on the basis of their unclean hands.

B.

As amended in 1993, the Grandparent Visitation Statute (GVS), N.J.S.A. 9:2-7.1 provides:

> a. A grandparent or any sibling of a child residing in this State may make application before the Superior Court, in accordance with the Rules of Court, for an order for visitation. It shall be the burden of the applicant to prove by a preponderance of the evidence that the granting of visitation is in the best interests of the child.
>
> b. In making a determination on an application filed pursuant to this section, the court shall consider the following factors:
>
> (1) The relationship between the child and the applicant;
>
> (2) The relationship between each of the child's parents or the person with whom the child is residing and the applicant;
>
> (3) The time which has elapsed since the child last had contact with the applicant;
>
> (4) The effect that such visitation will have on the relationship between the child and the

child's parents or the person with whom the child is residing;

(5) If the parents are divorced or separated, the time sharing arrangement which exists between the parents with regard to the child;

(6) The good faith of the applicant in filing the application;

(7) Any history of physical, emotional or sexual abuse or neglect by the applicant; and

(8) Any other factor relevant to the best interests of the child.

c. With regard to any application made pursuant to this section, it shall be prima facie evidence that visitation is in the child's best interest if the applicant had, in the past, been a full-time caretaker for the child.

[N.J.S.A. 9:2-7.1]

As the result of the Supreme Court's decision in Moriarty v. Bradt, 177 N.J. 84 (2003), cert. denied, 540 U.S. 1177 (2004), the scope of the statute was significantly curtailed. In Moriarty, the Court held, as a matter of constitutional law, that grandparent visitation could not be ordered without a showing that the child would be harmed without such visitation:

> Because the Grandparent Visitation Statute is an incursion on a fundamental right (the right to parental autonomy), [under Watkins v. Nelson, 163 N.J. 235 (2000)], it is subject to strict scrutiny and must be narrowly tailored to advance a compelling state interest. Our prior jurisprudence establishes clearly that the only state interest warranting the invocation of the State's *parens patriae* jurisdiction to overcome the presumption in favor of a parent's decision and to force grandparent visitation over the

> wishes of a fit parent is the avoidance of harm to the child. When no harm threatens a child's welfare, the State lacks a sufficiently compelling justification for the infringement on the fundamental right of parents to raise their children as they see fit. However, when harm is proved and the presumption in favor of a fit parent's decision making is overcome, the court must decide the issue of an appropriate visitation schedule based on the child's best interests.
>
> [Moriarty, supra, 177 N.J. at 114-15.]

The Court in Moriarty, citing Watkins v. Nelson, decided three years earlier, held that custody disputes between a parent and any third party require a two-step analysis in which the court must first find exceptional circumstances such as harm to the child and then must weigh the best interests of the child with respect to the issue of custody. Id. at 253-54. Absent a showing of exceptional circumstances, the Court held that there is no basis to interfere with the parent's constitutional right to the "'custody, care and nurture of the child.'" Id. at 254, quoting Ginsberg v. New York, 390 U.S. 629, 639 (1968).

The Court then applied the Watkins analysis to the GVS claim:

> Thus, in every case in which visitation is denied, the grandparents bear the burden of establishing by a preponderance of the evidence that visitation is necessary to avoid harm to the child. The grandparents' evidence can be expert or factual. For example, they may rely on the death of a parent or the breakup of the child's home through divorce or separation. In fact, many of the fifty grandparent visitation statutes specifically recognize the potential for harm

> when a parent has died or a family breakup has occurred and visitation is denied. In addition, the termination of a long-standing relationship between the grandparents and the child, with expert testimony assessing the effect of those circumstances, could form the basis for a finding of harm. (citations omitted).
>
> If the court agrees that the potential for harm has been shown, the presumption in favor of parental decision making will be deemed overcome. At that point, the parent must offer a visitation schedule. If the grandparents are satisfied, that will be the end of the inquiry. If not, a second step will be undertaken--an assessment of the schedule. The presumption in favor of parental decision making having been overcome, the court should approve a schedule that it finds is in the child's best interest, based on the application of the statutory factors. See N.J.S.A. 9:2-7.1 (listing statutory factors); Watkins, supra, 163 N.J. at 254,(noting that once "exceptional circumstances" are found, court should award custody based on child's best interests).
>
> [Moriarty, supra, 177 N.J. at 117-18]

In Moriarty, the Court approved a trial court's decision to permit grandparent visitation, where the children's mother had died, and the grandparents had spent considerable time with the grandchildren and had a closer than usual relationship with the grandchildren. Id. at 118. According to the Court, the trial court's "most critical findings" were "'the death of the mother and the fact that it is extremely important that the children continue a bond with their mother's side of the family. And the experts all agreed on that.'" Id. at 121. In other words, "visitation with the

grandparents was necessary to avoid harm to the children." Id. at 122.

At first blush, it might appear that the similarities of this case involving the death of the mother and long residence with the grandparents place it squarely within the Moriarty precedent but before the court can consider whether preventing future contact with his grandparents may cause Sean harm, the question that begs resolution is whether the grandparents have already caused harm to the child.

In Segal v. Lynch, 413 N.J. Super. 171, cert. denied, 203 N.J. 96 (2010), the Appellate Division, held that a father failed to state a legally cognizable action for intentional and negligent infliction of emotional distress based on claims that the mother attempted to poison his relationship with his children. The father alleged the mother established a residence with the children without his knowledge or consent, blocked all forms of communications between him and the children, and enrolled the children in a local school district under her surname. While the court found that this conduct did not constitute a cause of action for intentional infliction of emotional distress, it did not foreclose the possibility that a cause of action may be brought alleging facts that are "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized

community." Id. at 192. The court then gave two examples of conduct that might constitute such outrageous conduct: "cases involving prolonged parental abduction, where children are intentionally removed to foreign jurisdictions for the purpose of frustrating the innocent parent's custodial rights, or intentional false accusations of parent/child sexual abuse." Ibid.

Under Segal, the conduct of the Ribeiros qualifies as outrageous under either example. First, like the mother in Segal, Bruna and the Riberos acted in concert to keep Sean in Brazil for the purpose of frustrating David's parental rights. As to the second example, although the Ribeiros did not concoct allegations of sexual abuse, their fabrications that David had abandoned Sean were so outrageous and so extreme as to go beyond all possible bounds of decency.

Nor, can there be any question that these contemptible actions caused harm to Sean, who had enjoyed a secure, stable and intimate relationship with his father for the first four years of his life only to have that bond severed, all contact cut off, and his young and impressionable mind filled with complete fabrications and misrepresentations as to why his father was no longer in his life. It is difficult to conceive of a more dramatic example of emotional abuse of a young child. This conduct by the Ribeiros can not be ignored when evaluating their current application under the GVS.

In an attempt to establish that Sean had developed a close bond with his maternal grandparents, Silvana Ribeiro's certification indicates that she and Raimundo had daily contact with Sean for his entire time in Brazil. Raimundo picked Sean up after school each day; they spent weekends with him at their summer home and took him on trips to Argentina and France. Silvana provides numerous photographs of Sean with the Ribeiros, his step-sister and other family members. For purposes of this application, the court accepts the grandparents' position that Sean developed a strong bond with them.[12] It is a "common sense notion" that a nine-year old child would have developed a bond with the grandparents he saw on a daily basis for over five years. See New Jersey Div. of Youth & Family Servs. v. I.S., 202 N.J. 145, 182 (2010). I.S. involved a lower court decision terminating a father's parental rights based, in part, on the fact that the child had bonded with his foster parents during the lengthy period of litigation. Justice Rivera Soto, writing for the majority, conceded that the child had bonded with his foster parents but rejected the findings of the trial court that the bonding satisfied the fourth prong of the best

[12] It is more difficult to accept Silvana's claim in her certification that she and Raimundo are seeking visitation with Sean because "We want Sean . . . to know that we love him, [and] to know that he has not been abandoned" given that she, Bruna and Raimundo were the ones who first introduced the concept of abandonment to Sean through their misrepresentations that he had been abandoned by David. The court also finds no support for Silvana's claim that after Sean learned of the death of his mother she and Raimundo "did everything that we could to help him recover from the loss of his mother." Everything, that is, except reuniting Sean with his surviving parent and telling him the truth as to why he had not seen his father in five years.

interest test of N.J.S.A. 30:4C-15.1(a), because the bonding resulted from the failure of the Division of Youth and Family Services to "[satisfy] its statutory obligations in a meaningful manner and [engage] in substantive reconciliation efforts on behalf of defendant and his son." I.S., supra, 202 N.J. at 182. The Court held that the inadequate visitation plans offered by DYFS, standing alone, should have caused the rejection of any application seeking the termination of defendant's parental rights. Ibid.

The bond molded by the Ribeiros with their grandson is tainted by a similar infirmity, as it was achieved as a result of Bruna's wrongful retention of Sean and their continued illicit efforts after her death. To allow the Ribeiros to rely on a bond that was formed through their flagrant contempt of the laws of this state and the orders of this court is contrary to every concept of sound and rational jurisprudence. As Judge Pinto found, to accept the Ribeiros' position would permit them "to benefit from an illicit act" and "signify...that illicit acts entail rights, which, as it is very well known, is inconceivable."

In support of their position that denial of visitation will cause harm to Sean, the Ribeiros retained Mathias R. Hagovsky, Ph.D. to conduct a forensic psychological evaluation in this matter. In preparation for his evaluation, Hagovski reviewed:

1. a letter brief dated May 28, 2010, submitted by counsel for the Ribeiros; and

2. two letter briefs, dated June 21 and June 24, 2010, submitted by David's counsel.

There is no indication that Dr. Hagovsky reviewed or is even aware of the volumes of materials generated in both the Brazilian and New Jersey litigation. Nor, is there any indication that Dr. Hagovsky interviewed anyone; not the Ribeiros, not David and certainly not Sean. His recommendation for increased grandparents' contact with Sean, "to avoid harm to Sean", is apparently based solely of review of these three documents prepared by the attorneys in this case. There is no indication that Dr. Hagovsky reviewed the reports of the three Brazilian psychologists that had been completed and were available to him at the time he performed his forensic evaluation.

Dr. Hagovsky's report displays little comprehension of the actual issues of this case and provides no reliable insight as to their appropriate resolution. It appears that he has expressed opinions about Sean that were not based upon information and techniques sufficient to substantiate his findings.[13]

After providing an abbreviated and sanitized history of this case which completely ignores the damage that Sean suffered as a result of the efforts of Bruna and the Ribeiros to alienate him from his father, Dr. Hagovsky provides several simplistic

[13] See American Psychological Association, Code of Conduct, Standard 9.01, requiring that psychologists base the opinions contained in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony, on information and techniques sufficient to substantiate their findings.

observations that are completely untethered to the facts of this case: "Hypothetically, the psychological principals likely to be at play in this situation are those of attachment and bonding;" and "the psychological bond Sean has with [his grandparents] should have been protected and titrated[14] to his relationship with his father" and finally, not allowing contact between Sean and his grandparents was a "virtual 'third strike' in the loss column for this child."

N.J.R.E. 703, which governs the basis of expert opinion, provides that while qualified expert opinion may be submitted to assist the court in resolving the type of issues presented in this case, “there must be a factual and scientific basis for an expert's opinion.” Jimenez v. GNOC, Corp., 286 N.J. Super. 533, 540 (App. Div. 1996) (citing Rubanick v. Witco Chem. Corp., 242 N.J. Super. 36, 45 (App. Div. 1990), modified on other grounds, 125 N.J. 421 (1991)), certif. denied, 145 N.J. 374 (1996). Based upon this rule, “[a]n opinion lacking in foundation is worthless." Jimenez, supra, 286 N.J. Super. at 540. Dr. Hagovsky's report is of no value to this court.

Even assuming that a bond existed between Sean and his grandparents, that is only one of eight factors under the GVS that

[14] Titration is defined in the Merriam-Webster dictionary as a method or the process of determining the concentration of a dissolved substance in terms of the smallest amount of a reagent of known concentration required to bring about a given effect in reaction with a known volume of the test solution. If titration enjoys a significance in the world of psychology, Dr. Hagovsky did not share that with us in his report.

must be established by a preponderance of the evidence showing that the granting of visitation is in Sean's best interests. Of far greater concern is prong four of the GVS, where the court must consider the “effect that such visitation will have on the relationship between the child and the child's parents or the person with whom the child is residing."

It must be again noted that David has not foreclosed visitation with the Ribeiros. After his arrival in the United States, David facilitated their contact with Sean through email and photographs. Instead of accepting David's parameters for contact, the grandparents attempted to communicate with Sean without David's knowledge by setting up a coded email account. Even after discovering that the Ribeiros told Sean not to tell his father about the account, David was still open to visitation. In a letter dated January 5, 2010, David's counsel wrote to the grandparents' prior counsel setting conditions for their visits:

1. the immediate end to all litigation in Brazil which contests the repatriation of Sean to the United States or David's role as Sean's sole legal guardian; and
2. the Ribeiros will not make public appearances challenging the prior court determination; and
3. the timing and duration was to be directed by Sean's psychologist; and

4. all communications by the participants would be confidential and not disclosed.

It should also be noted that David did not reject the Ribeiros' request that Sean be allowed to return to Brazil for visitation; he simply took the position that such visitation was premature at the time.

Rather than accept David’s conditions and begin visitation immediately with their grandson, the Ribeiros chose to initiate this litigation and continue their relentless and quixotic court battles in Brazil in an attempt to overturn the decision that reunited Sean with his father. Given the documented harm that the Ribeiros have caused Sean in the past, David's visitation conditions were eminently reasonable. The Ribeiros penchant for incessant litigation seems to have eclipsed their professed desire to see their grandson. Their persistence in seeking Sean’s return through the Brazilian courts, sustains their contempt for this court’s authority and bears directly on the sixth factor of the GVS, whether they are bringing this application in good faith.

Also of concern, is the behavior of the Ribeiros when they have been allowed contact with Sean. On Christmas Eve 2010, David voluntarily arranged a phone call between Sean and his grandparents and sent them digital photographs of Sean. During the conversation, Silvana Ribeiro repeatedly indicated to Sean that they were “fighting in the courts” to get him back and reassured him that

they would be successful. This persistent and determined attempt by the Ribeiros to undermine Sean's relationship with David and inject instability into the child's life is a continuation of the well-documented harm they have caused the child since his arrival in Brazil.

Dr. Charles Diament, Ph.D., began treating Sean in January 2010, shortly after his reunification with David. In a report dated June 21, 2010, Dr. Diament found that, although Sean has made a "remarkable" adjustment and has become very attached to his father, "he remains very emotionally fragile and is still trying to adequately integrate his experiences in Brazil with his new life here in America." Dr. Diament expressed "significant concerns" about involving Sean, directly or indirectly, in additional litigation. Although Dr. Diament's report was provided to the Ribeiros and presumably they have read and understand it, they continue their attempts to convince Sean that their litigation in Brazil will result in his return to Brazil. No clear-thinking person can fail to appreciate that this kind of conversation will impair Sean's adjustment and contribute to his distress.

The three court-appointed Brazilian psychologists found that the Ribeiros caused harm to Sean by participating in alienating him from his father. In their report dated April 3, 2009, they found that soon after Sean's arrival in Brazil he would ask about his father and that, after time, his inquiries stopped. The trio

attributed this to the maternal grandparents' efforts to alienate Sean from David by providing “disagreeable" information to him in an attempt to implant false memories and erase Sean's true memories of his father.

As mentioned earlier, Judge Pinto accepted the findings of these psychologists and found that Sean had been harmed by the continuous efforts at parental alienation begun by Bruna and continued by the Ribeiros and Lins e Silva. In ordering Sean’s immediate return to the United States, Judge Pinto found that the initial retention of Sean was unlawful and the continued retention, which was supported wholeheartedly by the Ribeiros, was a “new illicit act."

The Ribeiros continue to pursue several different actions in the Brazilian courts against David. Currently, they are seeking reversal of the Brazilian Supreme Court's decision to return Sean to the United States in accordance with international law. Lins e Silva also continues to file applications seeking the reversal of the decision and the return of Sean.

The continuing litigation combined with the Ribeiros’ statements to Sean reasserting their efforts to return him to Brazil, reaffirm the reasonableness of David's position that dismissal of all litigation in Brazil is a non-negotiable condition before any visitation will be permitted. While it might be tempting for David to ignore the Brazilian litigation based on the

unlikelihood of success, he is aware that if order of the Brazilian Supreme Court is overturned, it would create a safe haven and even an incentive for the wrongful removal and return of Sean to Brazil. Thus, David is compelled to engage Brazilian counsel to oppose the efforts to overturn the decision.

Under Moriarity, this court can not exercise it's *parens patriae* jurisdiction to overcome the presumption in favor of David's decision to place reasonable conditions on the Ribeiro's contact with Sean absent a showing that such visitation is necessary to avoid harm to the child. Moriarty supra, 177 N.J. at 114-15. The Ribeiros have not established that denying them visitation with Sean would wreak a particular identifiable harm, specific to Sean, to justify interference with David's fundamental due process right to raise his child free from judicial interference and supervision. Conversely, David has established that granting the Ribeiros the type of unconditional visitation they seek will likely allow them to continue their efforts to undermine and destabilize his relationship with his son and further traumatize the child with suggestions that he may again be separated from his father and returned to Brazil. The GVS was never meant to facilitate this type of manipulation and abuse.

While the complaint of the grandparents will be dismissed, they continue to hold the keys to the portal of visitation with their grandson. Compliance with the fair and reasonable conditions

established by David will allow them to again enjoy the special relationship recognized by the legislature when it enacted the GVS.

III.

Sealing of the Record

On April 27, 2010, David moved to seal the record in this case pursuant to Rule 5:3-2(b) and prohibit its public dissemination by the parties. He also sought to conduct all hearings in private pursuant to Rule 5:3-2(a). As there will be no hearing, the second part of David's application is moot. However, the issue of whether the proceedings in this case should be sealed remains unresolved.

"'[T]he presumption of openness to court proceedings requires more than a passing nod. Open access is the lens through which the public views our government institutions.'" Verni ex rel. Burstein v. Lanzaro, 404 N.J. Super. 16, 28 (App. Div. 2008) (quoting Lederman v. Prudential Life Ins. Co. of Am., Inc., 385 N.J. Super. 307, 323 (App. Div. 2006)). "An open and transparent court system is an integral part of our democratic form of government. In a democratic society, the public has a right of access not only to our courts, but also to court records." Report of the New Jersey Supreme Court Special Committee on Public Access to Court Records § 2.1.1 (Nov. 29, 2007). "The presumption of public access...attaches to all materials, documents, legal memoranda and other papers 'filed' with the court that are relevant to any material issue involved in the underlying litigation...regardless of whether the

trial court relied on them in reaching its decision on the merits." Lederman, supra, 385 N.J. Super. at 316-17.

David claims misuse by the Ribeiros of the information submitted in this case and that, without a protective order, it is impossible for him to set forth all of the information he would "normally share." He has not identified with any specificity what kind of materials he has been prevented from submitting. Moreover he candidly concedes that, given the history of the Ribeiros contempt for prior orders of this court, the only person likely to follow such an order is him.

Rule 1:2-1 directs that all proceedings in the courts of this State shall be conducted in open court. The rule provides that no record of any proceeding may be sealed except on a showing of good cause. Our Supreme Court has acknowledged that the First Amendment, the history of this State, and our court rules require that civil proceedings shall be open to the public unless "an important state interest is at stake." New Jersey Div. of Youth & Family Servs. v. J.B., 120 N.J. 112, 127 (1990).

The enormous press coverage that this case has received has benefitted David. Congressman Christopher Smith has stated publically that he became involved in this matter in January 2009 after watching the story of Sean's abduction with his wife on Dateline NBC. At his wife's prompting, Congressman Smith decided to get involved in the case even though David did not reside in his

legislative district. Congressman Smith's involvement appears to be a critical turning point in this case.[15] It was not until the Congressman accompanied David to Brazil that he was allowed to visit with Sean. From that point forward, David's case, which had languished for years in the Brazilian court system, began to gain momentum.

NBC continued their involvement with the Goldman case and provided a private jet to fly David and Sean home from Brazil in December 2009. After their return, the NBC Today Show featured an exclusive interview with David followed by a two-hour Dateline Special later that week. The Goldman case generated tremendous public interest. As our Supreme Court recently explained, "Members of the public simply cannot attend every single court case and cannot oversee every single paper filing, although clearly entitled to do so. Thus, it is critical for the press to be able to report fairly and accurately on every aspect of the administration of justice, including the complaint and answer...." Salzano v. North Jersey Media Group Inc., 201 N.J. 500, 520 (2010). Even when a case does not generate interest of this magnitude, the public has a

[15] According to the National Center for Missing and Exploited Children, more than 350,000 family abductions occur in the United States each year. The latest Report on Compliance with the Hague Convention on the Civil Aspects of International Child Abduction indicates that during fiscal year 2009, the United States Department of State received 1,135 new requests for assistance in the return of 1,621 children to the United States from other countries as the result of alleged abductions. Twenty-four of these cases involved Brazil. While it is possible that Sean would have eventually been returned to the United States if the glaring Klieg lights of the media had not been trained in this matter, it is apparent from the facts in this case that it would have not happened with such dispatch.

right of access to court documents filed in civil lawsuits. See Hammock v. Hoffmann-LaRoche, Inc., 142 N.J. 356 (1995); Zukerman v. Piper Pools, Inc., 256 N.J. Super. 622, 628-29 (App.Div.), certif. denied, 130 N.J. 394 (1992).

Finally, in his February 10, 2011, certification David has indicated that he expects to publish a memoir telling his story of Sean's return. He candidly admits that he hopes to realize some financial gain from the sale of this book to help defray some of the debt accumulated as a result of the Brazilian and New Jersey litigation. David has not presented sufficient justification for sealing this record.

IV.

Counsel Fees

Decision has been reserved on all of David's requests for counsel fees in this matter. Under Rule 5:3-5(c), a complaint filed under the GVS is a claim relating to a family type matter. Thus, counsel fees and costs may be awarded. See Wilde v. Wilde, 341 N.J. Super. 381, 399 (App. Div. 2001). In determining whether to award counsel fees, the court will consider the factors set forth in Williams v. Williams, 59 N.J. 229 (1971). David's counsel will provide a complete certification of services and may submit proposed findings addressing the Williams factors including: (1) David's financial need; (2) the financial ability of the Ribeiros to pay counsel fees; and (3) David's good faith in defending the

action or whether the Ribeiros have acted in bad faith. Williams, supra 59 N.J. at 233. David's submission is due on or before March 4, 2011. Counsel for the Ribeiros may also make submissions in opposition which will be due on the same date.