IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SIOHVAUGHN FUNCHES-WADE and NADGEE ALARCON, Plaintiffs, vs. DETECTIVE V. GARRETT (#916), DETECTIVE THOMAS CLEMMONS (#921), SGT. POCHIE (#55), OFFICER HOLMES (#255), LT. DAVID CAPELLI, UNKNOWN DOLTON POLICE OFFICERS, VILLAGE OF DOLTON, COOK COUNTY SHERIFF THOMAS DART, JAMES PRITIKIN, BEERMAN PRITIKIN MIRABELLI & SWERDLOVE, LLP, and MAYOR TIMOTHY BALDERMANN, the COUNTY OF COOK, Defendants.	)	Case No. 14-cv-4509

BRIEF IN SUPPORT OF DEFENDANT JAMES PRITIKIN AND BEERMAN PRITIKIN MIRABELLI & SWERDLOVE, LLP'S MOTION TO DISMISS

Defendants James Pritikin and Beerman Pritikin Mirabelli & Swerdlove, LLP (collectively referred to herein as "Pritikin" or "Defendants"), by and through their attorneys Wilson Elser Moskowitz Edelman & Dicker, LLP, for their Memorandum in Support of their Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6), state as follows:

I. INTRODUCTION

Despite being arrested for, and found guilty of, a child visitation abuse violation, Plaintiffs attempt to bring a federal complaint sounding in false arrest, conspiracy, defamation, intentional infliction of emotional distress and malicious prosecution against Pritikin based on his phone call to the police, informing them of the child visitation abuse violation. As discussed

herein, the Cook County Circuit Court Order, entered on July 9, 2012 ("Court Order"), expressly found that Plaintiff Funches-Wade was guilty of a child visitation abuse violation that occurred on June 16, 2012, and that such violation was willful and without justification. Notably, all of the claims against Pritikin in Plaintiffs' First Amended Complaint ("Amended Complaint") arise out of the June 16, 2012 incident. However, based on the Court Order, Plaintiffs' claims against Pritikin are baseless and should be dismissed.

In addition, the Amended Complaint fails to plead any interaction at all between Pritikin and the Plaintiffs and fails to plead any of the specific facts necessary to support any of the claims. Under the Federal Rules of Civil Procedure, such non-specific pleading is insufficient to support the claims stated and this Court should dismiss the Amended Complaint in its entirety against Pritikin.

II. FACTS ALLEGED IN COMPLAINT

At the outset, it is important to note that Count I, Count II, Count V and Count VIII of Plaintiffs' First Amended Complaint are against the Defendant Officers: Detective Garrett, Detective Clemmons, Sergeant Pochie, Officer Holmes and Lieutenant Capelli, in their scope of employment and in their capacity as agents of Cook County (collectively referred to as "Defendant Officers"), solely. (See Plaintiffs' First Amended Complaint, a copy of which is attached hereto as **Exhibit A**). With respect to these counts, Plaintiffs assert that the Defendant Officers arrived at Plaintiff Funches-Wade's residence on June 16, 2012 in response to a call regarding a possible violation of a child visitation court order by Plaintiff Funches-Wade. See Ex. A, ¶¶ 15, 19. While at her residence, Plaintiffs allege that the Defendant Officers placed Plaintiff Funches-Wade under arrest for violation of the child visitation court order, and placed Plaintiff Alarcon under arrest for obstruction of justice when she attempted to intervene in the

arrest of Plaintiff Funches-Wade. See Ex. A, ¶¶ 19-22. Plaintiffs allege that no such child visitation court order existed. See Ex. A, ¶ 19. Plaintiffs further allege that the Defendant Officers caused Plaintiff Funches-Wade physical and mental injuries during her arrest. See Ex. A, ¶¶ 16-19.

In addition, Plaintiffs allege that there was no probable cause to support their arrests or the charges brought. See Ex. A, ¶ 28. As support for this argument, Plaintiffs assert that they were both found "not guilty" at a single bench trial, but fail to provide any specifics, including failing to attach the alleged court order finding them "not guilty." See Ex. A, ¶ 31. Accordingly, based on their belief, Plaintiffs brought four (4) causes of action against the Defendant Officers solely: Count I: Excessive Force; Count II: Failure to Intervene; Count V: Indemnification; and Count VIII: Assault and Battery. See generally, Ex. A.

Furthermore, Plaintiffs allege that Defendant, James Pritikin ("Pritikin"), in his capacity as an attorney for Funches-Wade's ex-husband, "initiated a call to the Defendant Officers to effectuate the false arrests of both Plaintiffs." See Ex. A, ¶ 26. Plaintiffs assert that by making a call to the police, Pritikin "actively conspired in joint action with Defendant Officers to deprive the Plaintiffs of their constitutional rights" and have them falsely arrested. See Ex. A, ¶¶ 25. Based solely on this alleged phone call to the police, Plaintiffs bring five (5) causes of action against Pritikin: (1) False Arrest; (2) Section 1983 Conspiracy to Deprive Constitutional Rights; (3) Defamation Per Se; (4) Intentional Infliction of Emotional Distress; and (5) Malicious Prosecution. See generally, Ex. A.

Finally, Plaintiffs initiated this action on June 16, 2014, when they filed their original Complaint. See Docket Entry ("D.E.") #1. Notably, on July 3, 2014, this Court dismissed Plaintiff Alarcon as a party. See D.E. #8. Plaintiff Alarcon was dismissed without prejudice and

instructed that if she wanted to "proceed with her case, she must file a separate action and pay a separate filing fee." See D.E. #8. Plaintiff Alarcon has failed to file a separate action. On August 23, 2014, Plaintiff Funches-Wade and Plaintiff Alarcon filed their First Amended Complaint against Pritikin. See D.E. # 26.

III. LAW AND ARGUMENT

A. Standard of Review

A motion under Federal Rule of Civil Procedure 12(b)(6) tests whether the complaint states a claim on which relief may be granted. *Richards v. Mitcheff*, 696 F.3d 635, 637 (7th Cir. 2012). Under Rule 8(a)(2), a complaint must include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). The short and plain statement under Rule 8(a)(2) must "give the defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atlantic v. Twombly*, 550 U.S. 544, 555 (2007). Under the federal notice pleading standards, a complaint must contain sufficient factual matter, accepted as true, to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

In order to withstand a motion to dismiss, a complaint must allege the "operative facts" upon which each claim is based. *Kyle v. Morton High Sch.*, 144 F.3d 448, 454-55 (7th Cir. 1998); *Lucien v. Preiner*, 967 F.2d 1166, 1168 (7th Cir. 1992). A plaintiff is required to include allegations in the complaint that "plausibly suggest that the plaintiff has a right to relief, raising that possibility above a 'speculative level'" and "if they do not, the plaintiff pleads itself out of court." *E.E.O.C. v. Concentra Health Serv., Inc.*, 496 F.3d 773, 776 (7th Cir. 2007). Furthermore, Rule 12(b)(6) authorizes a court to dismiss a claim on the basis of a dispositive

issue of law. *Hishon v. King & Spalding*, 467 U.S. 69, 73, 104 S.Ct. 2229, 2232 (1984); *Conley v. Gibson*, 355 U.S. 41, 45-46, 78 S.Ct. 99, 101-02 (1957).

B. Plaintiffs' Claim for False Arrest Should Be Dismissed Based on the Court Order Because there Was Probable Cause for the Arrest.

In Count III of the Amended Complaint, Plaintiffs attempt to assert a claim against Pritikin for false arrest. In Illinois, a false arrest is an arrest made without probable cause in violation of the Fourth Amendment. *Hooks v. City of Batavia, et al*, Docket No. 13-cv-01857 (N.D. Ill. Jan. 10, 2014); *see also*, *Bentz v. City of Kendallville*, 577 F.3d 776, 779 (7th Cir. 2009). Such an arrest is actionable under 42 U.S.C. § 1983 when the arresting party acted under the color of state law and deprived the plaintiff of a constitutionally protected right. *See Pourghoraishi v. Flying J, Inc.*, 449 F.3d 751, 760 (7th Cir. 2006). However, such a claim cannot proceed if there actually was probable cause for the arrest. *See Heck v. Humphrey*, 512 U.S. 477 (1994); *Friedman v. Vill. of Skokie*, 763 F.2d 236, 239 (7th Cir. 1985).

In this case, Plaintiffs' claim for false arrest against Pritikin fails because Plaintiff Funches-Wade was arrested on June 16, 2012, for a violation of a child visitation agreement, and the Cook County Circuit Court ultimately held her guilty of such a violation. Notably, on July 9, 2012, Judge Helaine Berger in the Circuit Court of Cook County Domestic Relations Division entered an order expressly holding that "[t]he testimony clearly shows (by both a preponderance of the evidence and clear and convincing evidence) that [Plaintiff Funches-Wade] committed visitation abuse as specified in 607.1(a)(1) on June 16, 2012 and that the abuse was willful and without justification" ("Court Order"). A copy of the July 9, 2012 Court Order is attached hereto as **Exhibit B**.[1] Furthermore, the Court Order also held, by a preponderance of the evidence, that

[1] While it is generally improper to consider facts outside of a plaintiff's complaint on a motion to dismiss, courts can take judicial notice of other proceedings that "have a direct relation to [the] matter at issue." *Opoka v. I.N.S.*, 94 F.3d 392, 394 (7th Cir. 1996) (stating that courts have an "obligation" to take judicial notice of proceedings in other

Plaintiff Funches-Wade "exercised her visitation rights in a manner that [was] harmful to the child or child's custodian." See Ex. B at p. 7.

Under § 1983, the existence of probable cause bars a claim for false arrest. *Harper v. Mega*, 96 C 1892, 1998 U.S. Dist. LEXIS 12535 (N.D. Ill Aug. 7, 2998). Therefore, Plaintiffs cannot bring a claim for false arrest based on their arrest, since there was probable cause to arrest Plaintiff Funches-Wade for violation of a child visitation court order. Accordingly, Pritikin respectfully requests that this Court dismiss Count III in its entirety against Pritikin.

C. Plaintiffs' Claim for Conspiracy Should Be Dismissed Because the Court Order Held that there Was Probable Cause for the Arrest.

In Count IV of the Amended Complaint, Plaintiffs attempt to assert a claim against Pritikin for § 1983 conspiracy. In general, to establish § 1983 liability through a conspiracy theory, a plaintiff must demonstrate that: (1) individuals reached an understanding to deprive the plaintiff of her constitutional rights; and (2) those individuals were willful participants in joint activity. *See Lewis v. Mills*, 677 F.3d 324, 333 (7th Cir. 2012); *Marshbanks v. City of Calumet*, et al., Docket No. 13-cv-02978 (N.D. Ill. Sept. 10, 2013).

In this case, Plaintffs' Amended Complaint fails to properly allege a conspiracy claim because it only offers conclusory statements, rather than specific allegations against the individual defendants. *See Bank of America, N.A. v. Knight*, 725 F.3d 815, 818 (7th Cir. 2013) (noting that the "Rules of Civil Procedure set up a system of notice pleading … [e]ach defendant is entitled to know what he or she did that is asserted to be wrongful"). In particular, Plaintiffs alleged that all of the named defendants conspired to engage in false arrest of the Plaintiffs.

Notably, Plaintiffs fail to identify the wrongful conduct that Pritikin actually engaged in. Instead, Plaintiffs allege that "[i]n furtherance of the conspiracy, each of the defendants

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courts, "if the proceedings have a direct relation to matters at issues").

committed overt acts and was a willful participant in joint activity." See Ex. A, ¶ 53. Plaintiffs simply make the blanket and conclusory allegation that "Defendants reached an agreement amongst themselves to arrest Plaintiffs without legal basis or probable cause." See Ex. A, ¶ 50. Plaintiffs assert that by calling the police to report a potential violation of a court ordered child visitation agreement, Pritikin "encouraged the false arrest and malicious prosecution of both Plaintiffs." See Ex. A, ¶ 54. Plaintiffs' Amended Complaint fails to allege any factual allegations that would support a claim for conspiracy against Pritikin.

Indeed, even accepting all of the allegations in the Amended Complaint as true and in a light most favorable to them, Plaintiffs have still failed to allege sufficient facts to state a claim to relief that is plausible on its face. *See Ashcroft v. Iqbal*, 556 U.S. 662, 662 (2009) (holding that a claim has facial plausibility only when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged). Plaintiffs fail to allege what Pritikin communicated to the police on the phone call and how such information was false. In fact, Plaintiffs even fail to assert that Pritikin entered into an agreement to falsely arrest Plaintiffs. Absent any factual allegations, such conclusory allegations cannot stand. Accordingly, Pritikin respectfully requests that this Court dismiss Count IV of Plaintiffs' First Amended Complaint in its entirety against him.

D. Plaintiffs' Claim for Defamation Per Se Should Be Dismissed Based on the Statute of Limitations as well as the July 9, 2012 Court Order.

In Count VI of the Amended Complaint, Plaintiffs attempt to assert a claim against Pritikin for defamation per se. In Illinois, a statement is defamatory if it impeaches a person's reputation and thereby lowers that person in the estimation of the community. *Kolegas v. Heftel Broadcasting Corp.*, 154 Ill.2d 1 (1992). In order to set out a claim for defamation, a plaintiff must set forth sufficient facts showing that the defendant made a false statement concerning the

plaintiff, that there was an unprivileged publication of the defamatory statement to a third party by the defendant, and that the plaintiff was damaged. *Myers v. The Telegraph*, 332 Ill.App.3d 917 (Ill. App. 5th Dist. 2002).

Furthermore, there are various statements that are "defamatory per se," or give rise to a cause of action for defamation without a showing of special damages. *SolaiaTech, LLC v. Specialty Pub'g Co.*, 852 N.E.2d 825, 839. One of these statements includes accusing the plaintiff of committing a crime. *Id.*; *Bryson v. News America Publications, Inc.*, 174 Ill.2d 77 (1996).

1. *Plaintiffs' Claim Is Barred by the Statute of Limitations*:

In Illinois, the statute of limitations on a defamation claim in Illinois is one year. 735 ILCS 5/13-201. Section 13-201 expressly states:

> Defamation – Privacy. Actions for slander, libel or for publication of matter violating the right of privacy, shall be commenced within one year next after the cause of action accrued. 735 ILCS 5/13-201.

In this case, Plaintiffs allege that Pritikin committed defamation per se by "disseminat[ing] the false criminal charge filings containing defamatory statements." See Ex. A, ¶ 64. By the release of this information, Plaintiffs allege that they are lowered in the eyes of the community because the alleged false charges impute that they committed the crimes of kidnapping, obstruction of justice and resisting arrest. See Ex. A, ¶ 66.

Moreover, while Plaintiffs fail to allege the exact date that Pritikin allegedly disseminated the criminal charges and allegedly made the defamatory statements, the Plaintiffs were arrested on or about June 16, 2012. See Ex. A, ¶ 12. Furthermore, as noted above, the Court Order was entered on July 9, 2012. See Ex. B. It is reasonable to infer that the allegedly defamatory statements were made on or around June-July 2012, which is when the Plaintiffs were arrested

and Plaintiff Funches-Wade was found to have committed child visitation abuse. Based on those dates, it is clear that Plaintiffs' claim for defamation per se is barred by the applicable statute of limitations, which would have required the defamatory statements to have occurred after June 16, 2013.

Indeed, Plaintiffs filed their first complaint in the instant matter on June 16, 2014. See D.E. #1. This date is two years from the date that Plaintiffs were initially arrested, and nearly two years from the Court Order finding that Plaintiff Funches-Wade was actually guilty of child visitation abuse that was willful and without justification. See Ex. B. As a result, 735 ILC 5/13-201 expressly bars Plaintiffs' claim for defamation.

2. *Plaintiffs' Claim Is Barred by the Absolute Privilege*:

In addition, in Illinois, an "attorney is absolutely privileged to publish defamatory matter concerning another … during the course and as a part of, a judicial proceeding in which he participates as counsel, if it has some relation to the proceeding." *Atkinson v. Affronti*, 369 Ill.App.3d 828, 861 N.E.2d 251, 255 (Ill. App. 1st Dist. 2006). The only requirement for the absolute privilege to apply is that the communication pertain to proposed or pending litigation or a quasi-judicial proceeding. *Popp v. O'Neil*, 313 Ill.App.3d 638 (Ill. App. 2d Dist. 2000). Further, the pertinency requirement is liberally applied, and the communication need not be confined to specific issues involved in the litigation. *Skopp v. First Federal Savings of Wilmette*, 189 Ill.App.3d 440 (Ill. App. 1st Dist. 1989). When the question of pertinency is raised, all doubts will be resolved in favor of a conclusion that the communication is pertinent or relevant. *Weiler v. Stern*, 67 Ill.App.3d 179 (Ill. App. 1st Dist. 1978).

In this case, the Amended Complaint outlines that the only alleged defamatory statements made by Pritikin were the dissemination of the false criminal charge filings. See Ex. A, ¶ 64.

Moreover, Pritikin is the attorney for Plaintiff Funches-Wade's ex-husband, who is also the father of the children involved in the child visitation abuse by Plaintiff Funches-Wade on June 16, 2012. Therefore, Pritikin, as an attorney for the father, has a connection to the child visitation abuse proceeding brought against Plaintiff Funches-Wade, and the subsequent Court Order on July 9, 2012. Therefore, based on the allegations in the Amended Complaint, any statements or "disseminations" made by Defendant Pritikin are expressly protected by the absolute privilege. Accordingly, Pritikin respectfully requests that this Court dismiss Count VI of the Amended Complaint against Pritikin in its entirety.

3. *Plaintiffs' Claim Is Barred by the Fair Reporting Privilege*:

Furthermore, the Fair Reporting Privilege also bars Plaintiffs' claim for defamation. Pursuant to the Restatement (Second) of Torts Section 611[2] provides: "The publication of defamatory matter concerning another in a report of an official action or proceeding … is privileged if the report is accurate and complete or a fair abridgment of the occurrence reported." The privilege protects news accounts based on the written and verbal statements of governmental agencies and officials made in their official capacities. *Myers v. The Telegraph*, 332 Ill.App.3d 917 (Ill. App. 5th Dist. 2002). In this case, Plaintiffs entire claim for defamation against Pritikin rely on his alleged dissemination of "the false criminal charge filings containing defamatory statements". See Ex. A, ¶ 64. Plaintiffs have failed to allege that Pritikin altered, inaccurately summarized, or changed the criminal charge filings at all prior to disseminating such material. Plaintiffs merely challenge the truth or falsity of the information contained in the report, not whether or not Pritikin altered or doctored any of the information contained therein. In any event, it is unclear from the pleading which alleged statements in the report purportedly come

[2] This section of the Restatement was adopted by the Illinois Supreme Court in *Catalano v. Pechous*, 83 Ill.2d 146 (1980).

from Pritikin. Accordingly, Plaintiffs have failed to plead sufficient facts to properly allege a cause of action for defamation that would not be subject to the Fair Reporting Privilege.

Accordingly, based on the fact that Plaintiffs' claim for defamation is barred by the applicable statute of limitations, as well as barred by the Absolute Privilege and the Fair Reporting Privilege, Pritikin respectfully requests that this Court dismiss Count VI of Plaintiffs' First Amended Complaint in its entirety against him.

E. Plaintiffs' Claim for Intentional Infliction of Emotional Distress Should Be Dismissed Because the Court Order Held that there Was Probable Cause for the Arrest.

In Count VII of the Amended Complaint, Plaintiffs attempt to assert a claim against Pritikin for intentional infliction of emotion distress. In Illinois, a plaintiff may recover damages for intentional infliction of emotional distress only if she can prove: (1) that the defendant's conduct was extreme and outrageous; (2) that the defendant intended to cause or recklessly or consciously disregarded the probability of causing emotional distress; (3) that she suffered severe or extreme emotional distress; and (4) that the defendant's conduct actually and proximately caused emotional distress. *Public Finance Corp. v. Davis*, 66 Ill.2d 85, 89-90 (1976). While failure to properly plead one element is fatal to Plaintiffs' claim, Plaintiffs have not sufficiently pled any element to support this cause of action against Pritikin.

First, Plaintiffs fail to sufficiently plead that Pritikin's conduct was extreme and outrageous. Indeed, a cause of action for intentional infliction of emotional distress must be premised on conduct that is so extreme and outrageous that it goes beyond all possible bounds of decency. *Public Finance*, 66 Ill.2d at 90; *see also, Rekosh v. Parks*, 316 Ill.App.3d 58 (2000). In this case, the only allegation connecting Pritikin to any alleged intentional infliction of emotional distress is the assertion that he, as the attorney for Funches-Wade's ex husband, called

the police to report a potential child visitation abuse violation by Plaintiff Funches-Wade. See Ex. A, ¶ 80. Aside from the fact that the Court Order expressly found that Plaintiff Funches-Wade was in fact found guilty of a child visitation abuse violation, such meager allegations do not rise to the heightened level required by Illinois law.

Furthermore, with respect to the second element, the Amended Complaint fails to sufficiently plead that Pritikin caused, or recklessly or consciously disregarded the probability of causing, Plaintiffs to suffer emotional distress. A defendant recklessly or consciously disregards the probability of causing emotional distress if he is certain, or is substantially certain, that his conduct will cause emotional distress. *Public Finance*, 66 Ill.2d at 90. In this case, the Amended Complaint merely contains one conclusory allegation that "[b]y its extreme and continuous nature, the conduct of the Defendants alleged in the abovementioned paragraphs was intended to … cause Plaintiffs emotional distress." See Ex. A, ¶ 83. Such scant allegations are not enough to put Pritikin on notice of what, if anything, he did wrong. Indeed, Pritikin reported a potential child visitation abuse violation to the authorities, who acted under color of law in arresting Plaintiff Funches-Wade and Plaintiff Alarcon. Therefore, Plaintiffs' allegations against Pritikin are insufficient to support this cause of action.

With respect to the third element, the Amended Complaint fails to sufficiently plead that Plaintiffs actually suffered severe or extreme emotional distress. Indeed, fright, horror, grief, worry, shame and humiliation may constitute emotional distress, but alone, they do not constitute severe or extreme emotional distress. *Public Finance*, 66 Ill.3d at 90. Emotional distress is considered severe or extreme when no reasonable person could be expected to endure it. *Id.* In this case, the Amended Complaint asserts that Plaintiffs suffered "loss of appetite and loss of sleep due to the Defendants' outrageous conduct and unlawful arrests;" as well as having to

endure "physical, emotional, mental and verbal abuse, humiliation, threats and intimidation." See Ex. A, ¶¶ 77, 79. These assertions are not enough to satisfy the heightened standards required for this cause of action. Indeed, Pritikin reported a potential child visitation abuse violation to the authorities, who acted under color of law in arresting Plaintiff Funches-Wade and Plaintiff Alarcon. Therefore, Plaintiffs' allegations against Pritikin are insufficient to support this cause of action.

Finally, Plaintiffs must prove that Pritikin's conduct actually and proximately caused emotional distress. Proximate cause consists of two elements: (1) actual cause; and (2) legal cause. *Mengelson v. Ingalls Health Ventures*, 323 Ill. App. 3d 69, 75 (Ill. App. 1st Dist. 2001). When determining whether a defendant's conduct is the actual cause of an injury, a "but for" analysis is applied. *Price v. Phillip Morris, Inc.*, 219 Ill.2d 182 (Ill. 2005). The question is whether the injury would have occurred "but for" the defendant's conduct. *Id.* at 269. If the injury would have occurred even absent the defendant's conduct, then there is no actual causation and, accordingly, no proximate causation. *Id.* Proximate cause is not established where the causal connection is contingent, speculative, or merely possible. *Mengelson*, 323 Ill. App. 3d at 75.

Further, the causal connection between a defendant's alleged conduct and a plaintiff's injury is broken if a third party causes the injury and the third party's conduct is unforeseeable. *Oakley Transport, Inc. v. Zurich Ins. Co.*, 271 Ill. App. 3d 716, 725 (Ill. App. 1st Dist. 1995). For example, a criminal act committed by a third party which causes a plaintiff's injury is unforeseeable and is ordinarily a superseding cause which breaks the causal connection between the injury and any original negligence. *Rowe v. State Bank of Lombard*, 125 Ill. 2d 203, 224 (Ill. 1988).

In this case, the only alleged action by Pritikin is calling the police to report a potential child visitation abuse violation. See Ex. A, ¶ 80. Subsequent to that phone call, the police went to Plaintiff Funches-Wade's house to investigate the matter and eventually made the determination to arrest Plaintiff Funches-Wade for child visitation abuse and Plaintiff Alarcon for obstruction of justice. See Ex. A, ¶¶ 15-23. Therefore, numerous superseding and intervening events separated Pritikin's alleged phone call to the police, and the eventual arrest of both Plaintiffs. Indeed, the police investigation and determination that both Plaintiffs had committed crimes superseded Pritikin's phone call, as well as the actual criminal activity of both Plaintiff Funches-Wade and Plaintiff Alarcon. Accordingly, Plaintiffs have failed to sufficiently allege any actions on the part of Pritikin that would establish a casual connection between his phone call to the police and Plaintiffs' alleged emotional distress.

As noted above, while failure to properly plead one element is fatal to Plaintiffs' claim, Plaintiffs have failed to sufficiently plead any element to support this cause of action against Pritikin. Therefore, Count VII of the Amended Complaint should be dismissed in its entirety against Pritikin.

F. Plaintiffs' Claim for Malicious Prosecution Should Be Dismissed Based on the Court Order Because Plaintiffs Cannot Satisfy Any Elements to Support the Cause of Action.

In Count IX of the Amended Complaint, Plaintiffs attempt to assert a claim against Pritikin for malicious prosecution.[3] In Illinois, in order to state a cause of action for malicious prosecution, the plaintiff must allege facts establishing: (1) the institution of a civil proceeding by the defendant; (2) termination of these proceedings in favor of the plaintiff; (3) lack of

[3] It is important to note that Defendant, Pritikin, expects that the Defendant Officers will move to dismiss the Amended Complaint's causes of action for false arrest, conspiracy, defamation and malicious prosecution based on the Tort Immunity Act (745 ILCS 10/2-107), as well as the entirety of the Amended Complaint based on the statute of limitations for state entities (705 ILCS 505/22-1). Accordingly, in the event the § 1983 claim is dismissed, this Court may no longer retain jurisdiction over this matter as to Pritikin.

probable cause for the proceeding; (4) malice on the part of the defendant in bringing the proceedings; and (5) special injury to the plaintiff. *See, e.g., Ross v. Mauro Chevrolet*, 369 Ill.App.3d 794 (Ill. App. 1st Dist. 2006); *Sutton v. Hofeld*, 118 Ill.App.3d 65 (Ill. App. 1st Dist. 1983); *Kurek v. Kavanagh, Scully, Sudow, White & Frederick*, 50 Ill.App.3d 1033 (Ill. App. 3d Dist. 1977). In this case, Plaintiffs' claim fails because Plaintiffs have failed to satisfy the pleading requirements for any of the elements of a cause of action for malicious prosecution against Pritikin. Moreover, even if Plaintiffs satisfied the pleading requirements, Count IX should be dismissed because Illinois law provides a tort remedy for malicious prosecution.

1. *The Amended Complaint Fails to Satisfy the Pleading Requirements*:

As to the first element, Plaintiffs have failed to allege that any *civil* proceedings were brought against them, let alone brought by Pritikin. The Amended Complaint expressly bases Plaintiffs' claim for malicious prosecution on the institution of an alleged *criminal* proceeding against Plaintiffs. As a private attorney, Pritikin does not even have the authority to institute a criminal proceeding against Plaintiffs based on Plaintiff Funches-Wade's child visitation abuse and Plaintiff Alarcon's obstruction of justice. Therefore, Plaintiffs have failed to satisfy this element.

As to the second element, and most significantly, Plaintiff Funches-Wade did not have a termination of the child visitation abuse proceeding in her favor. Indeed, as outlined above, on July 9, 2012, the Court Order expressly held that "[t]he testimony clearly shows (by both a preponderance of the evidence and clear and convincing evidence) that [Plaintiff Funches-Wade] committed visitation abuse as specified in 607.1(a)(1) on June 16, 2012 and that the abuse was willful and without justification." See Ex. B. Furthermore, the Court Order also held, by a preponderance of the evidence, that Plaintiff Funches-Wade "exercised her visitation rights in a

manner that [was] harmful to the child or child's custodian." See Ex. B at p. 7. The requirement of a favorable legal termination in a prior action is a longstanding one that arises from the policy that "courts should be open to litigants for the settlement of their rights without fear of prosecution for calling upon the courts to determine such rights. *Savage v. Seed*, 81 Ill.App.3d 744 (Ill. App. 1st Dist. 1980); *see also, Bonney v. King*, 201 Ill. 47 (1903); *Schwartz v. Schwartz*, 366 Ill. 247 (1937). Accordingly, based on the Court Order alone, Plaintiffs' claim for malicious prosecution against Pritikin fails.

Moreover, as to the third element, based on the Court Order ruling that a child visitation abuse actually occurred, it is clear that the police officers had probable cause to arrest Plaintiff Funches-Wade on June 16, 2012. See Ex. B. Therefore, Plaintiffs fail to satisfy the third element necessary to a cause of action for malicious prosecution. Finally, as to the last two elements, the Amended Complaint lacks any allegation at all regarding malice on the part of Pritikin and Plaintiffs have failed to properly plead the special injury prong as well.

Therefore, Plaintiffs cannot bring a claim for malicious based on their arrest and criminal proceeding for child visitation abuse, since there was probable cause to arrest Plaintiff Funches-Wade, as well as the adverse Court Order against her for violation of a child visitation court order. Accordingly, Pritikin respectfully requests that this Court dismiss Count IX in its entirety against him.

2. *The Amended Complaint Fails Because Illinois Plaintiffs Cannot State a § 1983 Claim for Malicious Prosecution*:

For the above reasons, Plaintiffs have failed to adequately plead a cause of action for malicious prosecution against Pritikin; however, even if this Court were to find that the Amended Complaint satisfied all of the elements for a claim for malicious prosecution, the Amended Complaint should still be dismissed because Illinois plaintiffs cannot state a § 1983

claim for malicious prosecution because Illinois provides a tort remedy. *See Newsome v. McCabe*, 256 F.3d 747, 751 (7th Cir. 2001). The *Newsome* court based its holding on *Albright v. Oliver*, 510 U.S. 266 (1994).

In *Albright*, Illinois authorities issued an arrest warrant for Albright based on a statement by a detective, who said Albright sold a substance that looked like narcotics. *Id.* When Albright heard about the warrant, he surrendered to police, but denied his guilt of the crime charged. *Id.* Police released him from custody when he posted bond and the trial court dismissed the criminal charge. *Id.* Subsequently, Albright filed suit against the detective under § 1983, alleging that the detective lied in the statement that led to Albright's arrest, thereby violating his civil right "to be free from criminal prosecution except upon probable cause." *Id.* at 269. According to the *Newsome* court, Albright failed to state a viable claim for relief under § 1983 because he had not alleged a violation of his rights under the fourth amendment. *Id.* at 268-69. Furthermore, the Court noted that he also failed to state a § 1983 claim because Illinois in fact protected his civil rights by providing him an adequate remedy for malicious prosecution. *Id.* at 284-86.

In this case, the Amended Complaint fails to identify the constitutional provision that any of the Defendant Officers, or Pritikin violated, and therefore, Plaintiffs fail to state a viable § 1983 claim. Accordingly, Count IX of the Amended Complaint against Pritikin should be dismissed in its entirety.

G. Plaintiff Alarcon should be dismissed as a Plaintiff from the Amended Complaint.

As a final matter, Plaintiff Alarcon should be dismissed from the Amended Complaint based on her direct violation of this Court's previous order. In direct contravention of this Court's July 3, 2014 Court Order, Plaintiff Alarcon failed to file a separate action and pay a separate filing fee for the Amended Complaint. As outlined above, Plaintiffs initiated this action

on June 16, 2014 when Plaintiffs filed their original Complaint. See Docket Entry ("D.E.") #1. On July 3, 2014, this Court dismissed Plaintiff Alarcon as a party. See D.E. #8. Plaintiff Alarcon was dismissed without prejudice and instructed that if she wanted to "proceed with her case, she must file a separate action and pay a separate filing fee." See D.E. #8. On August 23, 2014, Plaintiff Funches-Wade and Plaintiff Alarcon filed their First Amended Complaint against Pritikin. See D.E. # 26. Plaintiff Alarcon has failed to file a separate action. Accordingly, Plaintiff Alarcon should be dismissed from the Amended Complaint based on her failure to comply with this Court's Order.

IV. CONCLUSION

For the reasons stated herein, Defendant James Pritikin moves this Court to issue an ORDER dismissing the entirety of Plaintiffs' First Amended Complaint with prejudice and for any and all further relief this Court finds equitable.

Respectfully submitted,

/s/ Kimberly E. Blair
Attorneys for Defendant James Pritikin and Beerman Pritikin Mirabelli & Swerdlove, LLP

Michael P. Tone
Kimberly E. Blair
Joseph J. Stafford
Wilson, Elser, Moskowitz, Edelman & Dicker LLP
55 W. Monroe Street, Suite 3800
Chicago, IL 60603
312-704-0550 (T)
312-704-1522 (F)

CERTIFICATE OF SERVICE

I the undersigned, an attorney, hereby certify that I caused a copy of Defendant, James Pritikin and Beerman Pritikin Mirabelli & Swerdlove, LLP's Memorandum in Support of His Motion to Dismiss Pursuant to Fed. R. Civ. Pro.12(b)(6) to be served upon counsel of record via ECF filing on September 26 2014:

/s/ Kimberly E. Blair
Attorney for Defendant James Pritikin and Beerman Pritikin Mirabelli & Swerdlove, LLP

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SIOHVAUGHN FUNCHES-WADE and NADGEE ALARCON,	)	
Plaintiffs,	)	
v.	)	Case No. 14 C 4509
DETECTIVE V. GARRETT (#916), DETECTIVE THOMAS CLEMMONS (#921), SGT. POCHIE (#55), OFFICER HOLMES (#255), LT. DAVID M. CAPELLI (#3), UNKNOWN DOLTON POLICE OFFICERS, VILLAGE OF DOLTON, COOK COUNTY SHERIFF THOMAS DART, JAMES PRITIKIN, BEERMAN PRITIKIN MIRABELLI & SWERDLOVE, LLP, MAYOR TIMOTHY BALDERMANN, and the COUNTY OF COOK,	)	Judge Samuel Der-Yeghiayan
Defendants.	)	**JURY DEMAND**

FIRST AMENDED COMPLAINT

NOW COME the Plaintiffs, SIOHVAUGHN FUNCHES-WADE and NADGEE ALARCON, by and through their attorneys, Walters O'Brien Law Offices, and complaining against the Defendants, DETECTIVE V. GARRETT, DETECTIVE THOMAS CLEMMONS, SGT. POCHIE, OFFICER HOLMES, LT. DAVID M. CAPELLI, and UNKNOWN DOLTON POLICE OFFICERS (collectively "Defendant Officers"), individually, and the VILLAGE of DOLTON, COOK COUNTY SHERIFF THOMAS DART, JAMES PRITIKIN, BEERMAN PRITIKIN MIRABELLI & SWERDLOVE, LLP, MAYOR TIMOTHY BALDERMANN, and the COUNTY OF COOK, state as follows:

INTRODUCTION

1) This action is brought pursuant to 42 U.S.C. §1983 to address deprivations of Plaintiffs' rights under the Constitution of the United States. Other claims are brought pursuant to U.S.C. § 1367(a).

JURISDICTION

2) The jurisdiction of this Court is invoked pursuant to the Civil Rights Act, 42 U.S.C. §§ 1983 and 1985; the Judicial Code 28 U.S.C. §§ 1331 and 1343(a); the Constitution of the United States; and pendent jurisdiction as provided under U.S.C. § 1367(a).

VENUE

3) Venue is proper under 28 U.S.C. Section 1391 (b). All of the parties currently reside in this judicial district and the events described herein all occurred within this district.

THE PARTIES

4) The Plaintiffs, Siohvaughn Funches-Wade and Nadgee Alarcon, are United States citizens who are residents of Cook County, Illinois.

5) On information and belief, Defendant Officers Detective V. Garrett (#916), Detective Thomas Clemmons (#921), Sgt. Pochie (#55), Officer Holmes (#255), and Lt. David M. Capelli (#3) are employees and agents of Defendant Cook County, specifically the Cook County Sheriff's Department. At all times relevant, Defendant Officers acted under color of law as duly appointed law enforcement officers and within the scope of their employment.

6) The Individual Defendant Unknown Dolton Police Officers were, at all times relevant, duly licensed Dolton Police Officers. They engaged in the conduct complained of in the course and scope of their employment and under color of law as duly appointed law enforcement officers . They are sued in their individual capacities.

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7) Defendant Village of Dolton ("Village") is a municipal corporation duly incorporated under the laws of the State of Illinois, and is the employer and principal of the individual police officer defendants.

8) Defendant Thomas Dart is the Sheriff of Cook County. He is the final policymaker responsible for all policies and practices of the Cook County Sheriff's Deputies.

9) Defendant County of Cook is a municipal corporation organized under the laws of the State of Illinois. It is responsible for the policies, procedures, and practices implemented through its various agencies, agents, departments, and employees, and for injury occasioned thereby. The County of Cook was and is the public employer of Defendants.

10) Defendant, James Pritikin is employed, and conducts business, in Cook County, Illinois. James Pritikin is employed with Beermann Pritikin Mirabelli & Swerdlove, LLP, a corporation, which conducts business in the Cook County, Illinois. At all times relevant herein, Defendant James Pritikin was acting in the capacity as an employee for Beermann Pritikin Mirabelli & Swerdlove, LLP.

11) Mayor Timothy Baldermann resides in Cook County, Illinois. Mayor Balderman during the relevant time herein asserted that he was the Chief of Police for Chicago Ridge, Illinois, and was present, and actively participated, in the conduct, giving rise to these claims.

FACTS

12) On or about June 16, 2012, both Plaintiffs were at Plaintiff Funches-Wade's residence located at 1614 East 158th St. in Thornton Township.

13) Plaintiff Funches-Wade's children were at her residence as well.

14) The Plaintiffs were not committing and had not committed any crimes.

15) On or about the foregoing date, the Defendant Officers arrived at Plaintiff Funches-Wade's residence in response to a call regarding Plaintiff Funches-Wade's children.

16) Upon arrival, Defendant Officer Clemmons, who was dressed in plain clothes, approached Plaintiff Funches-Wade and grabbed hold of her person violently.

17) Defendant Officer Clemmons did so without announcing his office.

18) Defendant Officer Clemmons grabbed Plaintiff Funches-Wade's arm forcefully and pulled the Plaintiff's arm violently, without just cause or provocation, causing Plaintiff to suffer a torn rotator cuff, asthma attack, and panic attack.

19) Defendant Officer Clemmons proceeded to place Plaintiff Funches-Wade under arrest, falsely claiming that he had a court order indicating that she was in violation, even though Defendant Clemmons knew that no such order existed.

20) Plaintiff Alarcon did nothing to intervene during the false arrest of Plaintiff Funches-Wade.

21) However, several hours after the false arrest of Plaintiff Funches-Wade, Defendants, initiated, or caused to be initiated, an obstruction of justice charge against Plaintiff Alarcon for allegedly interfering with and attempting to stop the arrest of Plaintiff Funches-Wade.

22) Defendant Officers then falsely arrested Plaintiff Alarcon for obstruction of justice when they knew that Plaintiff Alarcon had not intervened.

23) The remaining Defendant Officers, including Defendant Dolton Police Officers, were nearby and present during the use of force against Plaintiff Funches-Wade and failed to intervene despite having a reasonable opportunity to do so.

24) The Defendants initiated or caused to be initiated false charges against both Plaintiffs.

25) Defendants Mayor Timothy Baldermann and James Pritikin of Beermann Pritikin Mirabelli & Swerdlove, LLP, actively conspired with the Defendant Officers in Joint action, and worked together in a common plan, to cause false charges to be initiated against both the Plaintiffs, and actively conspired in joint action with Defendant Officers

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to deprive the Plaintiffs of their constitutional rights, Defendants Mayor Baldermann and James Pritikin, along with the Defendant Officers, conspired in the initiating and effectuating of the false arrests against Plaintiffs, and therefore acted under color of state law. Both Defendants James Pritikin and Mayor Baldermann planned, along with the Defendant officers to effectuate the false arrest of Plaintiffs.

26) Defendant James Pritikin, while acting in his capacity as an attorney for Beermann Pritikin Mirabelli Swerdlove, LLP, initiated a call to the Defendant officers to effectuate the false arrests of both Plaintiffs.

27) Defendant Mayor Timothy Baldermann pretended as though he was the Chief of Police for Chicago Ridge, Illinois to effectuate the false arrests of both Plaintiffs. Mayor Baldermann was a witness for the State during the criminal proceeding and provided false testimony against both Plaintiffs.

28) There was no probable cause to support the Plaintiffs' arrests or the charges brought against Plaintiffs.

29) The Defendant Officers, in conspiracy with each other and the other named Defendants, caused Plaintiffs to be arrested when they knew there was no basis in law or fact for said arrests.

30) The false arrests of both Plaintiffs arose out of the same incident that occurred on June 16, 2012 when the Defendant Officers arrived at Plaintiff Funches-Wade's home.

31) The Plaintiffs were co-defendants in the same underlying proceeding and jointly had a single bench trial in which they were both found not guilty.

32) Both Plaintiffs were physically injured by Defendant Officers during the arrest of Plaintiff Funches-Wade.

COUNT I—EXCESSIVE FORCE
(on behalf of Plaintiff Funches-Wade against all Defendant Officers)

33) Plaintiffs hereby incorporates all previous paragraphs as though fully set forth herein.

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34) The actions of the Defendant Officers constituted unreasonable, unjustifiable, and excessive force against Plaintiff Funches-Wade, thus violating her rights under the Fourth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. Section 1983.

35) Said actions of the Defendant Officers were objectively unreasonable under the circumstances.

36) As a direct and proximate consequence of the Defendant Officers' conduct, the Plaintiff suffered damages, including without limitation violations of her constitutional rights, emotional anxiety, emotional distress, humiliation, fear, both mental and physical pain and suffering, and monetary loss.

WHEREFORE, Plaintiff Funches-Wade prays for judgment against the Defendant Officers for an award of reasonable compensatory damages, and because the Defendants acted maliciously, wantonly, or oppressively, punitive damages, plus the costs of this action and attorney's fees, and such other and additional relief as this court deems equitable and just.

COUNT II—FAILURE TO INTERVENE
(on behalf of Plaintiff Funches-Wade against all Defendant Officers)

37) Plaintiffs hereby incorporate all previous paragraphs as though fully set forth herein.

38) Each of the Defendant Officers was present during the use of force by his fellow police officers, yet failed to intervene to prevent the misconduct despite having a reasonable opportunity to do so.

39) Mayor Timothy Baldermann, who was present during the use of excessive force, asserted that he was the Chief of Police of Chicago Ridge, Illinois at the time the excessive force was used by the Defendant Officers against Plaintiff, and he failed to intervene to prevent the misconduct despite having a reasonable opportunity to do so.

40) In the manner described throughout this Complaint, during the constitutional violations described herein, one or more of the Defendants stood by without intervening to prevent

the misconduct.

41) As a result of the Defendant Officers' failure to intervene to prevent the violation of Plaintiff's constitutional rights, Plaintiff suffered financial damage, as well as emotional distress, physical injury, and a deprivation of her liberty, as is more fully described throughout this Complaint.

42) The misconduct described in this Count was undertaken with malice, willfulness, and reckless indifference to the rights of Plaintiff and others.

WHEREFORE, pursuant to 42 U.S.C. § 1983, Plaintiff demands judgment against the individual defendants, jointly and severally, for compensatory damages against Defendant Officers and Defendant Baldermann, and because these defendants acted maliciously, wantonly, or oppressively, punitive damages, plus the costs of this action and attorney's fees, and such other and additional relief as this court deems equitable and just.

COUNT III—FALSE ARREST

(on behalf of both Plaintiffs against all Defendant Officers and all other named Defendants)

43) Plaintiffs hereby incorporate all previous paragraphs as though fully set forth herein.

44) As described above, Defendant Officers detained and arrested Plaintiffs without justification and without probable cause, thus violating Plaintiffs' rights under the Fourth and Fourteenth Amendments to the United States Constitution.

45) Said actions of the Defendant Officers were intentional, willful and wanton and committed with reckless disregard for Plaintiffs' rights.

46) The other named Defendants worked together in a common plan to initiate and effectuate the false arrests of Plaintiffs, and therefore acted under color of state law. James Pritikin, while acting in his official capacity as an attorney for Beermann Pritikin Mirabelli Swerdlove, LLP, initiated a call to the Defendant officers to effectuate the false arrests of both Plaintiffs. Mayor Timothy Baldermann pretended to be the Chief of Police for

Chicago Ridge to effectuate the false arrests of both Plaintiffs. Mayor Baldermann was a witness for the State during the criminal proceeding and provided false testimony against both Plaintiffs. Defendants James Pritikin, Beermann Pritikin Mirabelli and Swerdlove, LLP and Mayor Baldermann encouraged the false arrest and malicious prosecution of both Plaintiffs.

47) Said actions of the Defendants were objectively unreasonable under the circumstances.

48) As a direct and proximate cause of the conduct of the Defendants, Plaintiffs suffered damages, including without limitation violations of their constitutional rights, loss of liberty, emotional anxiety, emotional distress, humiliation, fear, and both mental and physical pain and suffering and economic loss.

WHEREFORE, the Plaintiffs pray for judgment against the Defendants, jointly and severally, for an award of reasonable compensatory and punitive damages, plus attorneys' fees and costs.

COUNT IV—SECTION 1983 CONSPIRACY TO DEPRIVE CONSTITUTIONAL RIGHTS WITH JOINT ACTION, ENTANGLMENT AND CONSPIRACY
(on behalf of both Plaintiffs against all Defendant Officers and all other named Defendants)

49) Plaintiffs hereby incorporate all previous paragraphs as though fully set forth herein.

50) As described more fully above, the Defendants reached an agreement amongst themselves to arrest Plaintiffs without legal basis or probable cause, and to thereby deprive Plaintiffs of their constitutional rights, all as described more fully throughout this Complaint.

51) In this manner, Defendant Officers, and all other named Defendants, acting in concert with each other, have conspired by concerted action to accomplish an unlawful purpose by an unlawful means.

52) Defendants Mayor Timothy Baldermann and James Pritikin actively conspired with the Defendant Officers in joint action, and worked together in a common plan, to cause false

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charges to be initiated against the Plaintiffs, and actively conspired in joint action with Defendant Officers to deprive the Plaintiffs of their constitutional rights.

53) In furtherance of the conspiracy, each of the defendants committed overt acts and was a willful participant in joint activity.

54) Defendant James Pritikin, while acting in his official capacity as an attorney for Beermann Pritikin Mirabelli Swerdlove, LLP, and within the scope of his employment, initiated a call to the Defendant Officers to effectuate the false arrests of both Plaintiffs. Defendant Mayor Timothy Baldermann pretended to be the Chief of Police for Chicago Ridge to effectuate the false arrests of both Plaintiffs. Defendant Mayor Baldermann was a witness for the State during the criminal proceeding and provided false testimony against both Plaintiffs. Defendants James Pritikin, Beermann Pritikin Mirabelli and Swerdlove, LLP, and Mayor Timothy Baldermann encouraged the false arrest and malicious prosecution of both Plaintiffs.

55) As a direct and proximate consequence of the illicit prior agreement referenced above, Plaintiffs' rights were violated, and they suffered damages, including without limitation violations of their constitutional rights, loss of liberty, emotional anxiety, fear, economic loss, and pain and suffering.

56) Said actions of the Defendant Officers were intentional, willful and wanton and committed with reckless disregard for Plaintiffs' rights.

WHEREFORE, the Plaintiffs pray for judgment against the Defendants, jointly and severally, for an award of reasonable compensatory and punitive damages, plus attorneys' fees and costs.

COUNT V—INDEMNIFICATION

57) Plaintiffs hereby incorporate all previous paragraphs as though fully set forth herein.

58) At all relevant times, Defendants Cook County and the Village of Dolton were the employers of the respective Defendant Officers.

59) The Defendant Officers committed the acts alleged above under the color of law and in the scope of their employment as employees of Cook County and the Village of Dolton.

60) In Illinois, public entities are directed to pay for any tort judgment for compensatory damages for which employees are liable within the scope of their employment activities.

61) As a proximate result of the Defendant Officers' unlawful acts, which occurred within the scope of their employment, Plaintiffs were injured.

WHEREFORE, should one or more of the Defendants Officers be found liable on one or more of the federal claims set forth above, Defendants Cook County and the Village of Dolton would be liable for any compensatory judgment Plaintiffs obtain against said Defendant(s), respectively, plus attorneys' fees and costs awarded and such other and additional relief that this Court deems equitable and just.

COUNT VI—DEFAMATION PER SE
(Against all named Defendants)

62) Plaintiffs hereby incorporate all previous paragraphs as though fully set forth herein.

63) The Defendant Officers filed, and the other named Defendants who conspired with Defendant Officers, caused to be filed false criminal charges against both Plaintiffs containing false and defamatory statements including, but not limited to the following: that Plaintiff Funches-Wade kidnapped her own two minor children; that Plaintiff Alarcon obstructed justice; and that both Plaintiffs harmed, and/or endangered minor children.

64) The Defendant Officers, James Pritikin, and Mayor Timothy Baldermann disseminated the false criminal charge filings containing defamatory statements and made defamatory statements to the public, causing the Plaintiffs to be defamed and suffer damages as a direct and proximate result of the Defendants' willful and wanton conduct.

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65) The Defendant Officers knew their statements contained within the false criminal charges, that they caused to be disseminated, were false or were made with reckless disregard for their truth or falsity, which constitutes actual malice towards the reputation of Plaintiffs. The Defamatory statements have been televised and published in various print including, but not limited to, newspapers, magazines, and Internet, throughout the world. The defamatory statements about Plaintiffs continue to be disseminated and circulated in the media throughout the world causing the Plaintiffs harm and damages.

66) The aforementioned false statements that were made by Defendants and disseminated by the Defendants by multiple and various print and online media throughout the world, constitute defamation per se in that they impute that Plaintiffs committed crimes, including kidnapping, obstruction of justice, criminal visitation abuse and resisting arrest, which if true, would tend to cause Plaintiffs, to be excluded from society; lowers Plaintiffs in the eyes of the community; and deters third persons from associating with Plaintiffs, in the following ways:

a) Imputes that Plaintiffs committed the crimes of kidnapping, obstruction of justice, and resisting arrest.

b) Imputes that the Plaintiffs unlawfully disdain the legal system.

c) Imputes that Plaintiffs could harm minors, any of which if true, would tend to cause Plaintiffs to be excluded from society.

67) As a proximate result of Defendants' filing and dissemination of filings, Plaintiffs have sustained, continue to sustain, and will likely sustain in the future: humiliation; embarrassment; mental suffering; impairment of personal and professional reputation; impairment of standing in the community; and it is reasonably certain they will continue to suffer economic loss.

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68) For example, annual paid speaking engagements of the Plaintiff Alarcon were canceled due to these defamatory statements, and Plaintiff Alarcon suffered economic loss due to the Defendants' defamatory statements.

69) Plaintiff Funches-Wade was discharged from her employment as a result of the Defendants' defamatory statements, causing her to suffer economic loss.

70) Defendants maliciously defamed the reputation of Plaintiffs, contriving the aforementioned statements and actions by causing said statements to be published by various television airings, prints, and online media throughout the world.

71) The County and Village are sued in this Count pursuant to the doctrine of respondeat superior, in that Defendant Officers performed the actions complained of while on duty and in the employ of Defendant County and Village, respectively, and while acting within the scope of this employment.

WHEREFORE Plaintiffs, demand judgment against Defendants, jointly and severally, in an amount in excess of FIFTY THOUSAND DOLLARS ($50,000).

COUNT VII—INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(Against all named Defendants)

72) Plaintiffs hereby incorporate all previous paragraphs as though fully set forth herein.

73) Defendant Officers, and all other named Defendants, have engaged in a pattern of violence, corruption, abuse, threats and intimidation through both outrageous and extreme conduct designed and intended to cause and inflict upon the Plaintiffs severe emotional distress. Defendant officers did so while acting in the official capacity of their employment as police officers.

74) The Defendant Officers tore Plaintiff Funches-Wade's rotator cuff and caused her to suffer from an asthma attack, panic attack, faint and suffer physical, mental and emotional injuries, and caused Plaintiff Alarcon to suffer from a serious medical condition, sustain physical and emotional injuries

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75) Further, Defendants refused Plaintiff Nadine Alarcon medical treatment for a period of time despite her numerous requests to Defendant Officers, causing Plaintiff Alarcon's condition to worsen. As a result of the Defendant Officers refusing Plaintiff medical attention, Plaintiff fainted and sustained additional injuries, both physical and mental. Both Plaintiffs had to be rushed to the hospital as a result of the Defendant's outrageous conduct.

76) While Defendant Officers had Plaintiffs in their custody illegally, Defendant Officers called Plaintiffs derogatory and degrading names such as, but not limited to, bitches.

77) Both Plaintiffs suffered loss of appetite and loss of sleep due to the Defendants' outrageous conduct and unlawful arrests.

78) Plaintiff's children also suffered mentally and emotionally, as reported by their biological father, as a result of the illegal arrest that took place, as the children were present at the Plaintiff's resident. This detrimental effect the minor children suffered, as reported by their biological father, caused the Plaintiffs to suffer more anguish, as the children are family members, or considered family to the Plaintiffs.

79) Due to Defendant's physical, emotional, mental and verbal abuse, humiliation, threats and intimidation intentionally inflicted upon the Plaintiffs, Plaintiffs have sought treatment to try to deal with the trauma that Plaintiffs suffered as a result of the Defendants' outrageous conduct.

80) The Defendant Officers, with the other Defendants' assistance, caused false and defamatory charges to be initiated against the Plaintiffs, based upon an alleged court order, which the Defendants purported to have, but which never really existed. The Defendants then made those false and defamatory and damaging statements about Plaintiffs publicly, disseminated them, and even conducted interviews to further cause the Plaintiffs' mental anguish and suffering.

81) The Defendants continued to maliciously prosecute the Plaintiffs, knowing that the charges filed against them were illicit and unwarranted.

82) As a result of Defendants' illicit conduct and conspiracy to commit such illicit acts against the Plaintiffs, they have continued to suffer and sustain economic loss. Defendants stated they would provide the court with a court order to prove the charges against Plaintiffs were legitimate. However, Defendants never produced said court order, because the purported court order never existed. Defendants did this to delay the criminal proceedings and to continue to maliciously prosecute the Plaintiffs, causing them to be degraded in the eyes of society, to suffer mental and emotional distress, and to suffer economic loss.

83) By its extreme and continuous nature, the conduct of the Defendants alleged in the abovementioned paragraphs was intended to either cause Plaintiffs emotional distress or could be foreseen by any reasonable person to cause Plaintiffs emotional distress.

84) As a direct and proximate result of this onslaught of extreme and outrageous conduct as alleged herein, Plaintiffs have, in fact, suffered emotional distress. Among other things, Plaintiffs have needed medical care and have sought hospital medical treatment to deal with the devastating effects of the Defendants' conduct.

85) The County and Village are sued in this Count pursuant to the doctrine of respondeat superior, in that Defendant Officers performed the actions complained of while on duty and in the employ of Defendant County and Village, respectively, and while acting within the scope of this employment.

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against Defendants, jointly and severally, in an amount currently estimated to exceed Fifty thousand dollars $50,000.

COUNT VIII - ASSAULT AND BATTERY
(against Defendant Officers)

86) Plaintiffs hereby incorporate all previous paragraphs as though fully set forth herein.

87) Defendant Officers tore Plaintiff Funches-Wade's rotator cuff while initiating an illegal arrest, caused Plaintiff to suffer an asthma attack and a panic attack, to faint, and to lose consciousness during the illegal arrest. During the false arrest of Plaintiff Funches-Wade, Plaintiff Alarcon was injured.

88) Defendant Officers also falsely arrested Plaintiff Alarcon, causing her to suffer a medical condition, and then caused her medical condition to worsen by physically taking hold of her person when they placed her in a room. The Defendant Officers refused Plaintiff Alarcon medical treatment even after her repeated requests and threatened to detain her longer. Defendant Officers also caused Plaintiff to suffer extreme fear, faint and suffer injuries. Plaintiff Alarcon had to be taken to the hospital as a result of the Defendants' unlawful and outrageous conduct. Defendants also caused Plaintiff Alarcon to suffer reasonable apprehension of physical contact as they sat across from her alone, intimidated her, and threatened her, while refusing to allow her to have legal representation present.

89) The Defendants' conduct described above was intended to cause a harmful or offensive contact with the Plaintiffs, and an imminent apprehension of such contact, and harmful contact with the Plaintiffs did directly and indirectly result. Both Plaintiffs were injured as described above by the Defendants' conduct, and both Plaintiffs were injured as a direct and proximate result of the Defendants' conduct.

90) The County and Village are sued in this Count pursuant to the doctrine of respondeat superior, in that Defendant Officers performed the actions complained of while on duty and in the employ of Defendant County and Village, respectively, and while acting within the scope of this employment.

WHEREFORE, Plaintiffs request that judgment be entered in their favor and against Defendants, jointly and severally, in an amount currently estimated to exceed Fifty thousand dollars $50,000.

COUNT IX—MALICIOUS PROSECUTION

91) Plaintiffs hereby incorporate all previous paragraphs as though fully set forth herein.

92) The Defendants caused both Plaintiffs to be falsely arrested and brought criminal charges against both Plaintiffs in a criminal proceeding, maliciously, and without probable cause.

93) The Defendants' conduct was willful and wanton and with reckless disregard for the Plaintiffs or the truth.

94) The Plaintiffs herein were co-defendants in the criminal proceeding the Defendants brought against the Plaintiffs.

95) The Plaintiffs had a single bench trial jointly, during said criminal proceeding, whereby the Judge caused the termination of the underlying criminal judicial proceeding to conclude in both Plaintiffs' favor, and found both Plaintiffs not guilty of the charges initiated and effectuated by the Defendants.

96) The Plaintiffs suffered special injuries and damages as a result of the Defendants' malicious prosecution. Plaintiff Alarcon, who had a home in Florida, was forced to travel approximately 2,000 miles to Illinois to be present during the criminal proceeding on numerous occasions. Plaintiff Alarcon lost wages from her employment in Florida as a result of her time out of state because of the Defendants' malicious prosecution.

97) Ultimately, Plaintiff Alarcon lost the ability to stay in her home in Florida and was forced to move. Defendants' malicious prosecution caused Plaintiff Alarcon to be away from her home in Florida for weeks at a time for over two years.

98) Plaintiff Alarcon was court ordered to not be present with Plaintiff Funches-Wade's children, who were emotionally very close to Plaintiff Alarcon. Plaintiff Alarcon

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suffered special damages and injury as a result of Defendants' conduct. Plaintiff Alycon was also investigated by DCFS because of the false charges initiated by the Defendants.

99) Plaintiff Funches-Wade was also investigated by DCFS because of the false charges initiated by the Defendants and a call made by Defendant Pritikin. The custody judgment for Plaintiff Funches-Wade was modified to Plaintiff Funches-Wade's detriment. Plaintiff Funches-Wade was court ordered to not exercise timesharing with her minor children. Another court order prevented Plaintiff Funches-Wade from exercising her parenting time with her minor children in Illinois, and instead required her to travel approximately 2,000 miles to Florida as a result of the Defendants' malicious prosecution.

100) Further, both Plaintiffs were publicly defamed and humiliated due to the malicious prosecution of the Defendants, by various global media sources and outlets.

101) The County and Village are sued in this Count pursuant to the doctrine of respondeat superior, in that Defendant Officers performed the actions complained of while on duty and in the employ of Defendant County and Village, respectively, and while acting within the scope of this employment.

WHEREFORE, as a result of Defendant Officers' intentional and willful actions, Plaintiffs request actual, punitive and compensatory damages in an amount deemed at time of trial to be just, fair, and appropriate.

PLAINTIFFS DEMAND TRIAL BY JURY.

Respectfully Submitted,

s/ John O'Brien
One of the Attorneys for the Plaintiffs

Walters O'Brien Law Offices
800 W. Huron Street, Suite 4E
Chicago, IL 60642
312-428-5890

EXHIBIT B

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, DOMESTIC RELATIONS DIVISION

IN RE THE FORMER MARRIAGE OF: D.T. WADE, *Petitioner*, and S.L. WADE, *Respondent.*	)	No. 07 D 11714

OPINION AND ORDER

This cause came on for hearing on Petitioner D.T. WADE (D.T.)'s Emergency Petition to Suspend S.L.'s Visitation for Findings of Visitation Abuse and Criminal Visitation Abuse and Other Relief, due notice being had and the Court having conducted an evidentiary hearing and considered the testimony of Marrya McDaniel, Hon. Karen Shields (Ret) and all evidence received as well as the arguments and authorities presented. The Court was also presented with D.T.'s Motion for 215(a) evaluation of S.L. in relation to this incident.

THE COURT FINDS:

A Judgment for Dissolution of Marriage between D.T. (the Father) and S.L. (the Mother) was entered on June 25, 2010. D.T. and S.L. have two children together, namely Z.B.D. Wade, born February 4, 2002 and Z.M.A. Wade, born May 29, 2007. Judge Renee Goldfarb entered a Final Custody Judgment (Custody Judgment) on March 11, 2011 granting D.T. sole custody of the minor children and granting him leave to remove the children to Florida. D.T. resides in Miami, Florida while S.L. resides in Illinois. Judge Goldfarb spelled out the visitation schedule and appointed a Parenting Coordinator pursuant to Circuit Court of Cook County Rule 13.10. (See Custody Judgment pp. 92-100) The Judgment Ordered in pertinent part:

*9. **PARENTING COORDINATOR**-Consistent with the Circuit Court of Cook County Rule 13.10, it is in the best interest of the children to appoint a parenting coordinator to assist the parties in communication and aid in resolving conflicts related to the decision-making and parental access to the children. Accordingly, this Court hereby appoints former Judge Karen Shields as the parenting coordinator. . . .*

*a. **Duties:** The parenting coordinator shall have such duties as are enumerated in ...Rule 13.10(d)(i-xii) **In addition, the parenting coordinator shall assist the parties with creation and implementation of aparenting schedule each year and each summer.** ..*(Emphasis added).

*c. **Communication**: Both D.T. and S.L. shall each submit to the parenting coordinator a working e-mail address that shall be the designated e-mail address to be used for communications among D.T. and S.L. and the parenting coordinator.*

15. ***Father's Day**-D.T. shall have parenting time with the children every Father's Day.*

21. ***MODIFICATIONS TO THE PARENTING SCHEDULE**- . . . Modifications or changes to the parenting schedule must be by agreement of the parties and approved by the parenting coordinator.*

The alleged visitation abuse occurred on Saturday, June 16, 2012, the day before Father's Day. Judge Shields credibly testified and Exhibit C shows that she sent S.L. an e-mail dated May 29, 2012 with the dates for the boy's first Chicago summer trip (June 8-16) and the American Airlines itinerary showing that the boys were departing on Saturday, June 16 at 3:05pm from Chicago O'Hare airport with Maryya McDaniel accompanying them along with the minor, D. Morris. In that same e-mail, Ms. Shield's stated: "*Note that on Sat, June 16 they will be picked up at 12:30 so they do not miss the plane –traffic is always heavy on Sat.*" Ms. Shields credibly testified that she later revised the pick-up time to noon on June 16th. Judge Shields represented that S.L. discussed the parenting schedule on the telephone and acknowledged the itinerary through e-mail.

Marrya McDaniel, D.T.'s sister, testified and the Court finds her testimony to be credible. She testified that she arrived at S.L.'s home at noon to pick up the children; she was accompanied by the children's minor cousin. She had transported the children on 20 occasions

prior to this one[1]; she pulled up to the house and S.L. would know of her arrival through cameras or sensors. The children did not come out of the S.L.'s home which is surrounded by steel gating with mesh in between the gates and landscaping behind the gate. She remained in front of the house until 8:15pm with the exception of one 15 minute break where she took the minor cousin to McDonalds to get food. When the children did not appear from the home, she called her sister, Tragil and her brother, D.T. She had a conference call involving Judge Shields. At 4pm, the police arrived. They rang the doorbell and no one came to the door. At the request of the police, McDaniel accompanied them into a neighbor's home where they were able to view S.L.'s pool area. She observed the children to be in the pool with an unknown male and Darlene Funches, S.L.'s mother was also present. She did not see S.L. At 7:00pm, S.L. opened the side gate and came out with Nadgee Alarcon. The police asked McDaniel which one of the two people was S.L. McDaniel identified S.L. S.L. denied to the police that she was S.L. At that point, the police began to arrest S.L. McDaniel could not see them, but heard tussling, screaming, slaps and punches. She observed S.L. being arrested and brought to a squad car. At 8:15pm, the police brought the two minors out of the house and transferred them to McDaniel. There were no more commercial flights that evening, so the children and McDaniel flew back to Miami on a private plane arriving at 6am.

Judge Shields was credible in all respects of her testimony. She received a phone call at 2pm regarding the absence of the children. She repeatedly called both S.L. and Darlene Funches on their cell phones and left messages. No phone calls were returned.

[1] Judge Shields testified that McDaniel was an approved/authorized transporter and had been so since earlier in the year.

Attorneys for D.T. called S.L. as an adverse witness; S.L. refused to testify, exercising her 5th Amendment right against self-incrimination on the advice of counsel due to pending criminal charges.

OPINION

D.T. is seeking an order suspending the visitation of Respondent/Counter-petitioner S.L. FUNCHES-WADE (S.L.) and cites Sections 602, 603, 607, 607.1 and 610 of the Illinois Marriage and Dissolution of Marriage Act (IMDMA), 720 ILCS 5/10-5.5[2] and Local Circuit Rule 13.4(a)(ii). Although other Sections of the IMDMA and 720 ILCS 5/10-5.5 are cited, the pleading shows that this petition is essentially one for visitation abuse, which is Section 607.1 of the IMDMA. Therefore this Court is analyzing the case pursuant to that Section.

At bar, we have a Judgment scheduling parenting time with D.T. for Father's Day and a parenting coordinator who set up the specific time for exchange of the children for the court-ordered parenting time. The unrebutted testimony is that flights were scheduled; Maryya McDaniel (D.T.'s sister) was the transporter. Ms. McDaniel had been the transporter since January 13, 2012, and she had served in that role 20 times over that time period. On each occasion, Ms. McDaniel pulled up to S.L.'s home and S.L. was alerted to her arrival by cameras or sensors. However, on Saturday, June 16th, the day before Father's Day, Ms. McDaniel arrived at noon and the children were not sent to the car. The police arrived at 4pm, almost an hour *after* the flight was scheduled to depart and the children were seen in the swimming pool. S.L. was arrested at approximately 7pm and the children were escorted out of the home at 8:15pm. Ms. Shields repeatedly telephoned S.L. on that day, yet she did not answer the phone. All of this testimony was unrebutted; the evidence shows that S.L. knew of the departure time and

[2] This Section on Unlawful Visitation or Parenting Time Interference provides for criminal penalties. The Court declines to appoint a State's Attorney to prosecute S.L (if the Court even has the authority to do so) as criminal charges are pending and the Court finds that Section 607.1 is the appropriate statute under these facts.

scheduled flight for the children, was home with healthy children at that time, allowed the children to swim during the time they were supposed to be on a flight to Miami, ignored the repeated calls of the parenting coordinator and the fact that there was a waiting car for the children, police were outside, etc. Further, an adverse inference, namely that S.L. knew of the scheduled departure and interfered with D.T.'s parenting time, may be drawn from S.L.'s silence. See *Baxter v. Palmigiano*, 425 U.S. 308, 318-319 (1976); *Giampa v. Illinois Civil Service Commission*, 89 Ill. App. 3d 606, 613 (1st Dist. 1980).

Section 607.1(a)(1) of the IMDMA provides:

> *The circuit court shall provide an expedited procedure for enforcement of court ordered visitation in cases of visitation abuse. Visitation abuse occurs when a party has willfully and without justification: (1) denied another party visitation as set forth by the court.*

S.L. argues that this Court cannot find visitation abuse under this Section as there was no Court Order setting forth the visitation. This argument is disingenuous. The Custody Judgment specifically provides: *"D.T. shall have parenting time with the children every Father's Day."* This case presents an unusual situation: visitations require air travel from Miami to Chicago. So, although the trial judge ordered visitation on particular occasions, the court ordered, pursuant to Circuit Court of Cook County Rule 13.10, that Hon. Karen Shields (Ret.) coordinate the logistics of the visitation. To the extent that the law would require the Court to research flight schedules and determine the exact time of day that a child should arrive and depart and to the extent that the law would require to examine the children's school schedule each year, and to predict whether D.T. is in All-Star Game and NBA playoffs, both of which are variables, during the at least 9 visitations scheduled[3] each year, the court, pursuant to Circuit Court of Cook County Rule

[3] During the summer, S.L. has visitation in two week time blocks adding an additional 8 or so transitions between parents.

13.10, appointed a coordinator to communicate times of arrival and departure. The Custody Judgment was affirmed on appeal.[4]

S.L. correctly states that a court cannot delegate its responsibility to establish and modify a visitation schedule. *In re Marriage of Stribling*, 219 Ill. App. 3d 105, 109 (5th Dist. 1991) and "[c]ourts have no power to delegate their duties unless clearly authorized by law." *Smallwood v. Soutter*, Ill. App. 2d 303, 309 (1st Dist. 1955).

At bar, unlike in *Stribling* where the Court delegated the responsibility to the Department of Children and Family Services to determine when to modify the father's supervised monthly visitation, the Custody Judgment established when visitation should take place. The Court, as authorized by law, Circuit Court of Cook County Rule 13.10, designated a Parenting Coordinator to communicate the specific dates and times for the transfer of the children between the parents which is a purely ministerial act. The evidence showed that S.L. agreed that the transfer would take place pursuant to the proposed itinerary. If these arrangements are not enforceable, even after the Court was affirmed on appeal, the Rule allowing Parenting Coordinators role would be nullified and the parties would be forced into the unnecessary expense and burden of reducing all flight itineraries and transfer arrangements to court orders multiple times per year. For example school schedules change each year, there are multiple variables in the calendar year (e.g. when the first half of winter break falls), and the summer is a fluid time. Query: If S.L.'s argument holds water, then does D.T. have to send the children to Chicago at all? Or at what specific time and day must he send the children to Chicago for Mother's Day? If they arrived at 5pm on Mother's Day and departed at 6pm, would he be in violation of the Judgment?

[4] *IRMO D.T.W. and S.L.W.*, 2011 IL App (1d), 111225.

The testimony clearly shows (by both a preponderance of the evidence and clear and convincing evidence) that S.L. committed visitation abuse as specified in 607.1(a)(1) on June 16, 2012 and that the abuse was willful and without justification.

D.T. also asks for a finding of Visitation abuse under 607.1(a)(2) in that S.L. *exercised her visitation rights in a manner that is harmful to the child or child's custodian*. The Court finds that D.T. proved this abuse by a preponderance of the evidence. It can be reasonably inferred by the evidence that the children saw their mother arrested; they were in the house, a commotion occurred which was heard outside the gated residence and presumably could be heard by the children; moreover, they were escorted from the home by uniformed police officers. Clearly, the involvement of the police is harmful to the children. There was also harm to D.T. in that he was forced to charter a private plane to transport the children and was deprived of their presence on Saturday as previously agreed. It can also be reasonably inferred that Father's Day plans were disrupted due to the children's lack of regular sleep, having arrived at 6am.[5] Again, the abuse was willful and without justification.

RELIEF REQUESTED

D.T. requests the relief available under Section 607.1. Specifically, he asks for suspension of visitation or other relief that Court deems just. D.T. requests that the Court consider the previous findings of visitation abuse made by Judge Goldfarb in determining whether visitation should be suspended or what remedy should be ordered; S.L. claims that the Court cannot consider those findings based on the doctrine of "merger", claiming that S.L. was already "punished" by losing custody.

[5] D.T. argued that as no Response to the Petition was filed, all allegations therein should be taken as true, and the Court should accept as true the hearsay statements of the children and those made on information and belief. D.T. did not testify at this hearing as to these statements so those allegations have been disregarded for the purpose of this opinion. The Court has not considered statements made on information and belief as they are not sufficiently reliable.

Although it is an unwarranted comparison to equate an award of custody to D.T. as a punishment to S.L., it is true that the Custody Judgment gave S.L. unrestricted visitation even though Judge Goldfarb found multiple findings of visitation abuse. However, the Court is not aware of any legal principle that would preclude the Court to take into account pre-judgment incidents of visitation abuse when considering what remedy the Court should impose for a post-judgment incident of visitation abuse.

During the custody trial Judge Goldfarb found that there were many instances of *Drama-Trauma* that occurred during scheduled pick-ups caused in large part by the behavior of S.L.

Regarding the incident that occurred at Christmas time in 2008, Goldfarb found that:

> *The Pinecrest Police and an emergency room visit on succeeding days accomplished S.L. Wade's goals. She had thwarted the court order of Judge Fernandez, made visitation for D.T. difficult as well as traumatic, no visit with grandma Jolinda took place and no Christmas visit with Dad."*

(Custody Judgment p. 28).

On March 12, 2010, a scheduled visitation between the children and D.T did not occur after S.L. took Z.B.D. to the hospital at the time when both children were to be picked up from the residence by their aunt Tragil Wade. Judge Goldfarb found that the Dr. Amabile provided the best summary when she stated: "*S.L. chose to seek medical care for an ongoing child illness or symptom just prior to a scheduled paternal visit which led to cancellation of visitation.*" (See Custody Judgment p. 34) Judge Goldfarb found these actions to be volitional on the part of S.L. Wade to "control visitation." (Custody Judgment p. 51).

Regarding events that occurred in late May of 2010, in which complaints were filed by S.L. against Tragil, Judge Goldfarb found that in filing complaints, S.L. Wade *"intended to control visitation and [such actions] intended to lead to either a curtailment, restriction or*

cancellation of a scheduled visit with D.T. or further involvement with their aunt who the court designated as the transporter of the children for visitation purposes." (Custody Judgment p. 51).

In summary, Judge Goldfarb found that S.L.'s "*seeming disregard for court orders that displeased her [are] particularly harmful to the resolution of this case, harmful to the relationship of the children with their father and ultimately not in the best interests of the children.*" (Custody Judgment p. 70).

Judge Goldfarb further noted the previous findings of the Court made by other judges who presided over the case in coming to her conclusion.

> *Judge Nega: "I'm deeply troubled by this continuing pattern, what appears to a continuing pattern by S.L. to obey court orders when they go her way and disobey them when they don't." (Custody Judgment p. 71).*

> *Judge Fernandez, sitting in for Judge Nega: "Well, the problem is that the same thing keeps happening over and over again. We've got like a Ground Hog Day where every time there is an order by Judge Nega about these visits there's drama involved. And I don't know why there has to be drama over putting the child at the gate and saying bye... Maybe the first time you would think, okay, ... And then it's a second time, and then now the third time, and its back again... And obviously, every time there is drama, children don't deal well with drama, and so we try to keep the drama to a minimum." (Custody Judgment p. 73).*

From the findings of Judge Goldfarb, it is clear that S.L. has used various methods to disrupt visitation between the children and their father. In contrast, Judge Shields testified that this was the first major incident to occur since the Custody Judgment 15 months ago and this is a factor that weighs in S.L.'s favor as the pattern of interference waned for a period of time.

The Court considered entering a modification dealing with Father's Day alone. But, even if the Court was able to issue an order that essentially eradicated all problems that could occur on Father's Day, the field is still left wide open for S.L. to behave in such a way that could lead to Drama-Trauma during any of the drop-off/pick-up times for other scheduled visits and holidays. Therefore, the Court is making a general modification for a period of time in a way that provides

greater stability to the visitation schedule overall and gives S.L. a chance to show that she will always comply with the Judgment (as modified).

While S.L. may not have the intent to hurt her children, S.L. seems unwilling to realize that she is, in fact, hurting her children by adding Drama-Trauma to the transfers. While D.T. now has custody and is able to see his children with fewer disruptions, the level of stress that accompanied this particular transfer is of substantial concern to the Court; children should not need to see a parent arrested or be taken to another parent by uniformed police officers.

Taking all of the above into account and giving weight to the fact that this is the first instance of visitation abuse subsequent to entry of Judgment, the Court declines to suspend visitation at this time.

IT IS HEREBY ORDERED THAT:

1. Visitation is modified by separate order.

2. D.T.'s Motion for 215(a) evaluation, request for suspension of visitation and supervised visitation are reserved for 120 days further hearing should there be further instances of visitation abuse and/or further evidence of endangerment to the children's emotional or physical health. In the event that no further pleadings are filed within 120 days, then the Motion and requests are denied without prejudice.

3. D.T. is awarded his attorneys fees and costs for this Petition as well as any costs necessitated by the visitation abuse (private plane and/or other expenses). He is given leave to file such a Petition for those fees/costs within 30 days. Hearing on this fee award should be consolidated with the trial in this cause of the financial aspects of this case.

ENTERED
JUDGE HELAINE BERGER-1743
JUL 09 2012
CLERK OF THE CIRCUIT COURT
OF COOK COUNTY, IL
DEPUTY CLERK

ENTER:_____
Associate Judge HELAINE L. BERGER