

An unusual decision in custody case

BY ROBIN TOPPING
STAFF WRITER

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Plaintiff-Mother wanted her 11-year-old son to move to Canada with her.

But she and her ex-husband had joint custody of the boy, and the father wanted him to stay in New York.

After a 28-day trial in Central Islip, State Supreme Court Justice John Bivona made a rather novel decision.

The boy could go with his mother and new stepfather, who had been commuting to New York from Toronto. But Plaintiff-mother had to put up a \$60,000 bond ensuring the father's visitation at least once a month, and pay his travel and hotel expenses.

"Visitation with a parent is not the privilege of the parent but the right of the child. Both [the father and the boy] must have this right preserved by maximizing defendant's opportunity to maintain a positive and nurturing father-son relationship," Bivona wrote in the recent decision.

However, he added the mother's "past conduct does raise concern as to whether she will cooperate and abide by the order of this court." Bivona directed that Plaintiff-mother post a \$60,000 bond in the escrow account of the lawyer for her ex-husband, John Andrade, until her son becomes 18. Plaintiff-mother's attorney, Sari Friedman of Garden City, said the judge had later specified that her client put up \$60,000 in cash in the account, which will be returned to Plaintiff-mother when her son is 18.

"This is very unusual," said Friedman. "I think the judge was concerned that the relocation he was allowing was out of the country and out of U.S. jurisdiction ... and there could be problems for the father jurisdictionally if there is a proceeding for enforcement."

Bivona cited as precedent a 1997 opinion in which a Supreme Court judge from New York City allowed a mother to relocate to Saudi Arabia with her child but ordered that she post a bond guaranteeing the father's visitation and adherence to the court's jurisdiction. Plaintiff-mother said she was surprised by Bivona's actions.

"We are grateful for the decision but I was also dumbfounded. I was prepared to be generous in some way, letting [the child] spend a lot more time with his dad, but I wasn't prepared for this bond," she said in a phone interview.

"It's a tremendous financial strain," Plaintiff-mother said. "It's like sending your child to law school."

Andrade's attorney declined to comment.

In requiring the bond, Bivona cited instances in which Plaintiff-mother had interfered with Andrade's access to his son since the couple's divorce last year.

"Based on past history, plaintiff has dictated terms of visitation according to her whim," the judge wrote. Despite a separation agreement and both having joint custody, "plaintiff acts unilaterally."

Plaintiff-mother said she didn't need the bond to follow the court's directives. "I have complied with every court order and never did anything out of turn. This is like a punishment," she said.

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***Names have been omitted to protect the privacy of the child and our client.