



No mask, no custody. COVID-19 is a new factor in family law.

October 1, 2020

Rafael Olmeda

Melanie Joseph wants to see her son, but Broward Circuit Judge Dale Cohen won't let her — not because she was physically or psychologically abusive, but, in his words, because she's an "anti-mask person" who had the "audacity" to brag about it on Facebook.

Joseph's 14-year-old son has asthma, an underlying condition that could put him at increased risk of danger if he contracts COVID-19 during this pandemic, filings in the case show.

The Broward case is one example of how judges in family court cases now are considering the health risks of COVID-19 on top of already juggling the competing and often incompatible interests of feuding ex-spouses, single parents and reluctant child-support payers, It shows how coronavirus is affecting more than just health statistics, business decisions and recreation options.

COVID first made family law news in South Florida early in the pandemic, when an emergency room doctor treating coronavirus patients was **stripped of custody of her 4-year-old daughter.**

The decision was quickly overturned by an appeals court, and the child's estranged parents eventually resolved their custody disagreement.

The doctor's attorney, Steven Nullman, conceded that judges face a challenge when balancing parental rights and health concerns.

"There are so many unknowns with this disease," he said. "Making the right decision is not easy."

Broward Chief Administrative Judge Jack Tuter said he expects COVID-19 to come up in family cases for the foreseeable future.

"You might have one parent who's casual about the risk and the other who's hyper-careful," he said. "We're going to see them coming to judges to resolve their differences.

"I think we're going to see more cases arise when schools open, depending on what happens next with the virus."

Judges have been patient in considering both sides of coronavirus cases, said Nicole Alvarez, who practices family law mainly in Broward and Miami-Dade.

“The bar is still pretty high for a judge to change time-sharing schedules,” she said. “From my experience, judges are not going to deviate from agreements for hypothetical reasons.

“You don’t get to say you live in a low-risk area and you don’t want to let the child visit Miami or some other area with more cases. Unless someone comes out positive, judges are sticking with the existing agreements.”

That doesn’t mean they’re not willing to step in when they think the child’s health might be at risk.

Joseph, who moved to North Carolina from Coral Springs at the outset of the U.S. pandemic response, drew Cohen’s ire by posting a picture of herself, maskless, in the waiting room of her oral surgeon’s office in June.

“She’s one of those anti-mask people and she’s got the audacity to post that on social media,” the judge said. “She’s going to wear a mask. If she doesn’t, time-sharing is not going to happen.”

Cohen’s pointed criticism of Joseph during the Zoom hearing prompted Marro to ask the judge to remove himself from the case, which has dragged on for 13 years (the child at the heart of it is 14). The judge declined.

Cohen’s ruling in a Sept. 8 online court hearing became official late last week, minus some of the language that initially alarmed Joseph’s attorney, Meaghan Marro.

Melanie Joseph, formerly of Coral Springs, posted this selfie with the caption “no mask for this girl” on social media, drawing the ire of the Broward judge handling her custody case. She says she was alone in a doctor’s waiting room in North Carolina, where there was no mask requirement at the time. (Melanie Joseph, courtesy)

Cohen also said in-person visits would have to be supervised because he doesn’t trust Joseph, 43, to wear a mask, and he will not consider a long-distance parenting plan between Joseph and her son until the COVID crisis has passed.

“When this pandemic is over and there’s no cases and there’s a vaccine ... the mother is going to need to get a vaccine as well. When I have proof that everybody’s safe and the child’s not at risk or danger, then we can talk about a long-distance parenting plan.”

The judge’s comments raised eyebrows among some right-wing libertarians who blame coronavirus for what they believe is government abuse of authority.

“You see them using opinion grounded in science to justify government overreach,” said Tho Bishop, editor at the Mises Institute, a splinter of the Cato Institute. “They’ve far overstepped the justified power of their office under the premise that we’re in this emergency.”

Joseph, who moved from Coral Springs to North Carolina this spring as the COVID crisis was escalating, said in an interview this week that she posted a selfie taken at her oral surgeon’s office in June. “No mask for this girl,” she wrote in the caption. At the time, Joseph said, there was no mask mandate in North Carolina and, she said, she was alone in her doctor’s waiting room.

Get updates on the coronavirus pandemic and other news as it happens with our free breaking news email alerts.

She accused the judge of letting his personal political views cloud his judgment in the case. “My case has been in the court system for a number of years and I have experience with court proceedings,” she said. “What occurred is unconstitutional and should never happen to a parent.”

Miami family lawyer Diane Jarengui, who is not involved in Joseph’s case, said she was reluctant to criticize the judge because comments made in court don’t always find their way into the written ruling, which takes precedence.

“I don’t know how he can order her to get a vaccine, but again, his written ruling may not reflect that,” she predicted before the written order was filed.

Her prediction turned out to be accurate — the written ruling doesn’t mention masks at all and softens the vaccine mandate. “After a safe and reliable vaccination against COVID-19 is available, the mother may be vaccinated and the child may be vaccinated, thus eliminating that particular danger,” the order states.

“My client has a legal obligation to protect his son,” said Donna Goldman, attorney for the child’s father. “This case has been going on a long time, and the judge weighed more than just COVID. He made the right decision to protect the child’s health.”

Judges are not permitted to discuss their ongoing cases.