

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

<b>IN RE THE MARRIAGE OF:</b>	)	
	)	
<b>Rebecca Reyes</b>	)	
<b>Petitioner</b>	)	<b>No. 10 MC1-600050</b>
	)	
<b>and</b>	)	
	)	
<b>Joseph Reyes</b>	)	
<b>Respondent</b>	)	
	)	

**MOTION TO DISMISS PETITION FOR ADJUDICATION  
OF INDIRECT CRIMINAL CONTEMPT OF COURT**

Now comes Respondent Joseph Reyes, by and through his attorneys, **Joel A. Brodsky and Reem Odeh of Brodsky & Odeh**, and pursuant to 735 ILCS 5/2-619(a)(9) moves this Court to dismiss the Petition For Adjudication Of Indirect Criminal Contempt filed by the Petitioner. In support of his motion the Respondent states:

**I. Introduction:**

1. On December 11, 2009, an Order (hereinafter the "Order") was entered by the Court in the case of Rebbca Reyes v. Josesph Reyes, 08 D 4072 and 08 D 4080, which stated in pertinent part:

"That based on the Petitioners verified petition, a status quo preliminary injunction is issued enjoining and restraining Joseph Reyes, his agents, servents, and employees, from exposing Ela Reyes to any other religion other than the Jewish religion during his visitation...."

2. The Petition For Adjudication Of Indirect Criminal Contempt alleges that Respondent violated the said Order by taking his daughter, Ela Reyes, by taking "the minor child to a Roman Catholic mass at Holy Name Cathedral" (Petition para. 6), and further attaches and incorporates a news article (Petition Ex. D), as proof of Respondent's violation of the aforesaid Order.

3. In Petitioner's Exhibit D, it is reported that Respondent "walked through the doors of Holy Name Cathedral", and Respondent is quoted as saying: "I have been ordered by a judge not to

expose my daughter to anything non-Judaism, but I am taking her to hear the teachings of perhaps the most prominent Jewish Rabbi in the history of this great planet of ours. I can't think of anything more Jewish than that".

4. These allegations, contained in the forgoing paragraphs, are the sum and substance of the alleged indirect criminal contempt of the Respondent.

5. Therefore, in order to find that the Respondent is in violation of the Order, this Court would be required to define what is, and what is not, the "Jewish religion", and what constitutes "exposing Ela Reyes to any religion other than the Jewish religion". If the Court cannot do either one of these things, then Respondent cannot be held to have violated the Order and the Petition For Adjudication Of Indirect Criminal Contempt must be dismissed.

## **II. The Order Is Too Vague To Determine What Constitutes Exposing Ela Reyes To Any Religion Other Than The Jewish Religion:**

6. The law on contempt in Illinois is clear and long standing:

"A mandate of the court must be clear before disobedience can subject a person to punishment." Doe v. Lutz, 253 Ill. App. 3d 59, 65, 625 N.E.2d 325, 192 Ill. Dec. 365 (1993), quoting People v. Wilcox, 5 Ill. 2d 222, 228, 125 N.E.2d 453 (1955). "To support a finding of contempt, the order must be 'so specific and clear as to be susceptible of only one interpretation.' [Citation.] 'It [the order] must not only be capable of reasonable interpretation, but that interpretation must be to the exclusion of other reasonable interpretations; it must be unambiguous.' [Citation.]" In re Marriage of Steinberg, 302 Ill. App. 3d 845, 853, 706 N.E.2d 895, 236 Ill. Dec. 21 (1998), **In re Marriage of Capitani, 368 Ill. App. 3d 486, 488 (Ill. App. Ct. 2d Dist. 2006).**

7. The first question then is what constitutes "exposing a child to a religion other than the Jewish religion"? Does taking the child shopping for Christmas presents qualify? Does giving the child a Christmas present qualify? Does taking the child to an Easter egg hunt qualify? Does taking the child to see a Christmas Tree or Creche display qualify? Does taking the child to see Santa Claus qualify? Does walking into a Church building with the child when no ceremony is being held qualify? Does walking into a Church building when a ceremony is being held, but not participating in the ceremony, qualify? Does praying the Rosary at home during visitation with the child present

qualify? Does taking a child to a synagogue for Sabbath services, where music is played on the Sabbath, in violation of Jewish law, qualify? Does fasting during Ramadan when with the child for visitation qualify? Does praying 5 times a day at home while facing Mecca during visitation with the child present qualify?

8. If the answer to any one of these questions is not clearly and unambiguously a yes or no; if there can be alternate answer and interpretation to any one of these questions; then the Order cannot support of finding of contempt.

"To support a finding of contempt, the order must be 'so specific and clear as to be susceptible of only one interpretation.' [Citation.] 'It [the order] must not only be capable of reasonable interpretation, **but that interpretation must be to the exclusion of other reasonable interpretations; it must be unambiguous.**' [Citation.]" In re Marriage of Steinberg, 302 Ill. App. 3d 845, 853, 706 N.E.2d 895, 236 Ill. Dec. 21 (1998), **In re Marriage of Capitani, 368 Ill. App. 3d 486, 488 (Ill. App. Ct. 2d Dist. 2006)**. (emphasis added)

9. Because the Order cannot support a finding of contempt, the Petition For Adjudication Of Indirect Criminal Contempt filed by the Petitioner must be dismissed.

### **III. The Court Cannot Decide What Constitutes The Jewish Religion;**

10. In order to find that the Respondent violated the Order this Court is required to determine what is, and what is not, "the Jewish religion". The Court is required to do this in order to determine if the Respondent "exposed" his daughter to anything other than the "Jewish religion". If this Court cannot determine what is, and what is not, the Jewish religion, then it cannot hold the Respondent in contempt of Court.

11. More specifically, according to the Petition For Adjudication Of Indirect Criminal Contempt filed by the Petitioner, the Respondent stated: "I have not been ordered by a judge not to expose my daughter to anything non-Judaism, but I am taking her to hear the teachings of perhaps the most prominent Jewish Rabbi in the history of this great planet of ours. I can't think of anything more Jewish than that". In order to find the Respondent in indirect criminal contempt this Court would have to find that this alleged declaration of religious principle by the Respondent

is wrong.

12. However, in the United States Of America, our government and our courts are prohibited from determining matters of religious faith, and are barred from determining who is correct in a matter of religion.

13. As recently as 2008, the Illinois Appellate Court reaffirmed the ancient ***ecclesiastical abstention doctrine***, which holds that a court cannot make a decision on a matter of religion.

"The first amendment to the United States Constitution provides in part:"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof\*\*\*." U.S. Const., amend I. The ***ecclesiastical abstention doctrine*** is rooted in both the free exercise and the establishment clauses of the first amendment. See *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 449, 21 L. Ed. 2d 658, 665, 89 S. Ct. 601, 606 (1969); J. Nowak & R. Rotunda, *Constitutional Law* §17.12, at 1413 (6th ed. 2000) ("Of course, the government cannot declare which party is correct in matters of religion, for that would violate the principles of both religion clauses. A judicial declaration of such matters would simultaneously establish one religious view as correct for the organization while inhibiting the free exercise of the opposing belief"). ***Bruss v. Przybylo*, 385 Ill. App. 3d 399, 406 (Ill. App. Ct. 2d Dist. 2008)** (emphasis added)

14. Under the ***ecclesiastical abstention doctrine*** this Court cannot declare that Respondent's view, as alleged in the Petition for Indirect Civil Contempt, that taking his daughter to hear the teachings of Jesus Christ do not violate the Order because Christ is "perhaps the most prominent Jewish Rabbi in the history of this great planet of ours", is wrong. Therefore, because the Court cannot say that this view is incorrect, the Respondent cannot be said to have exposed his daughter to any religion other than the Jewish religion, and the facts alleged in the Petition For Indirect Criminal Contempt do not allege a charge of against the Respondent.

15. This view, that a court cannot decide a matter of religion, and in the United States Of America we are free to practice and believe whatever we want in regards to matters of faith, and that the government and courts cannot tell anyone that he is wrong, has been long established. Courts cannot determine matters of religion and say what is Jewish, what is Christian, what is Islam, what is Bhuddist, etc.

"The Free Exercise Clause of the First Amendment, which has been made applicable to the States by incorporation into the Fourteenth Amendment, see *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940), provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . . ." U. S. Const., Amdt. 1 (emphasis added). The free exercise of religion means, first and foremost, the right to believe and profess whatever religious doctrine one desires. Thus, the First Amendment obviously excludes all "governmental regulation of religious beliefs as such." *Sherbert v. Verner*, supra, at 402. The government may not compel affirmation of religious belief, see *Torcaso v. Watkins*, 367 U.S. 488 (1961), punish the expression of religious doctrines it believes to be false, *United States v. Ballard*, 322 U.S. 78, 86-88 (1944), impose special disabilities on the basis of religious views or religious status, see *McDaniel v. Paty*, 435 U.S. 618 (1978); *Fowler v. Rhode Island*, 345 U.S. 67, 69 (1953); cf. *Larson v. Valente*, 456 U.S. 228, 245 (1982), or lend its power to one or the other side in controversies over religious authority or dogma, see *Presbyterian Church in U. S. v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440, 445-452 (1969); *Kedroff v. St. Nicholas Cathedral*, 344 U.S. 94, 95-119 (1952); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 708-725 (1976). **Employment Div. v. Smith, 494 U.S. 872, 876-877 (U.S. 1990)**

"Freedom of thought, which includes freedom of religious belief, is basic in a society of free men. *Board of Education v. Barnette*, 319 U.S. 624. It embraces the right to maintain theories of life and of death and of the hereafter which are rank heresy to followers of the orthodox faiths. Heresy trials are foreign to our Constitution. Men may believe what they cannot prove. They may not be put to the proof of their religious doctrines or beliefs. Religious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. Many take their gospel from the New Testament. But it would hardly be supposed that they could be tried before a jury charged with the duty of determining whether those teachings contained false representations. The miracles of the New Testament, the Divinity of Christ, life after death, the power of prayer are deep in the religious convictions of many. If one could be sent to jail because a jury in a hostile environment found those teachings false, little indeed would be left of religious freedom. The Fathers of the Constitution were not unaware of the varied and extreme views of religious sects, of the violence of disagreement among them, and of the lack of any one religious creed on which all men would agree. They fashioned a charter of government which envisaged the widest possible toleration of conflicting views. Man's relation to his God was made no concern of the state. He was granted the right to worship as he pleased and to answer to no man for the verity of his religious views. The religious views espoused by respondents might seem incredible, if not preposterous, to most people. But if those doctrines are subject to trial before a jury charged with finding their truth or falsity, then the same can be done with the religious beliefs of any sect. When the triers of fact undertake that task, they enter a forbidden domain. The First Amendment does not select any one group or any one type of religion for preferred treatment. It puts them all in that position. *Murdock v. Pennsylvania*, 319 U.S. 105. As stated in *Davis v. Beason*, 133 U.S. 333, 342, "With man's relations to his Maker and the obligations he may think

they impose, and the manner in which an expression shall be made by him of his belief on those subjects, no interference can be permitted, provided always the laws of society, designed to secure its peace and prosperity, and the morals of its people, are not interfered with." See Prince v. Massachusetts, 321 U.S. 158. So we conclude that the District Court ruled properly when it withheld from the jury all questions concerning the truth or falsity of the religious beliefs or doctrines of respondents." **United States v. Ballard, 322 U.S. 78, 86-88 (U.S. 1944)**

16. Since a court cannot determine what is, and what is not, the Jewish religion, this Court cannot determine if Respondent violated the Order by "exposing Ela Reyes to any other religion other than the Jewish religion", as alleged in the Petition For Adjudication Of Indirect Criminal Contempt, and the said Petition must be dismissed.

WHEREFORE, the Respondent prays that this Court enter an order dismissing the Petition For Adjudication Of Indirect Criminal Contempt filed against the Respondent, and award the Petitioner his costs and fees for having to defend against a Petition so wrongfully brought, and for such other relief as the Court deems appropriate.

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