

DOCKET NO.: FA15-5014539-S : SUPERIOR COURT
: :
CARLTON M. HIGBIE IV : JUDICIAL DISTRICT OF STAMFORD/
: NORWALK AT STAMFORD
V. :
: :
KAITLYN M. HIGBIE : SEPTEMBER 18, 2015

**MOTION FOR REARGUMENT OF ORDER PROHIBITING ACCESS TO
FIREARMS FOR DEFENSE OF SELF AND CHILD DURING PARENTING TIME**
[Order of September 1, 2015, doc. # 112.01]

Plaintiff Carlton M. Higbie IV (“Father”), a decorated and honorably discharged Veteran with service including two combat deployments in Iraq as a United States Navy SEAL, moves pursuant to Practice Book §§ 25-23, 11-11(a)¹ for reargument of an Order issued by The Honorable Stanley Novack on September 1, 2015, depriving the Father of rights guaranteed under the second amendment to the United States constitution and article first, § 15, of the Connecticut constitution to keep and bear arms for defense of himself and his two year old child during visitation and parenting time.

I. BACKGROUND

The above-captioned case is a marital dissolution proceeding brought by the Father in March 2015 by summons and complaint pursuant to General Statutes § 46b-45(a) to dissolve his marriage to Defendant Kaitlyn M. Higbie (“Mother”). The parties are parents of a two year old child of the marriage. When the parties appeared for the Case Management Conference on July

¹ Practice Book § 11-11 provides: “Any motions which would, pursuant to Section 63-1, delay the commencement of the appeal period, and any motions which, pursuant to Section 63-1, would toll the appeal period and cause it to begin again, shall be filed simultaneously insofar as such filing is possible, and shall be considered by the judge who rendered the underlying judgment or decision. The party filing any such motion shall set forth the judgment or decision which is the subject of the motion, the name of the judge who rendered it, the specific grounds upon which the party relies, and shall indicate on the bottom of the first page of the motion that such motion is a Section 11-11 motion. The foregoing applies to motions to reargue decisions that are final judgments for purposes of appeal, but shall not apply to motions under Sections 16-35, 17-2A and 11-12.”

9, 2015, they had not reached agreement on a Parenting Plan. The parties later submitted separate proposed Custody and Parenting Plans. The proposed plans differed in three substantive respects:

First, the Father’s plan included a provision for the use of car seats. [doc. # 114.00 at ¶ 21]

The Mother’s plan did not. [doc. # 113.00]

Second, the Father’s plan included a provision prohibiting overnight intimate stays with unrelated partners until the minor child is four years old. [doc. # 114.00 at ¶ 22] The Mother’s plan did not. [doc. # 113.00]

Third, the Mother’s plan provided:

The parties agree that the father’s firearm collection shall be stored in a locked container during his visitation with the minor child in accordance with C.G.S. 29-37i, and that the minor child shall have no contact with firearms.

[doc. # 113.00 at ¶ 3]

The parties reached agreement on a Parenting Plan on September 1, 2015, with the exception of the provision in the Mother’s plan seeking to limit the Father’s access to firearms beyond the limitations imposed by state law. *See* General Statutes § 29-37i.² In the absence of the Father’s agreement, the Mother filed a motion for an Order that the Father store his firearms

² Section 29-37i provides: “No person shall store or keep any loaded firearm on any premises under such person's control if such person knows or reasonably should know that (1) a minor is likely to gain access to the firearm without the permission of the parent or guardian of the minor, (2) a resident of the premises is ineligible to possess a firearm under state or federal law, or (3) a resident of the premises poses a risk of imminent personal injury to himself or herself or to other individuals, unless such person (A) keeps the firearm in a securely locked box or other container or in a location which a reasonable person would believe to be secure, or (B) carries the firearm on his or her person or within such close proximity thereto that such person can readily retrieve and use the firearm as if such person carried the firearm on his or her person. For the purposes of this section, “minor” means any person under the age of sixteen years.”

in a locked container during visitation with the minor child. [doc. # 112.00] In support of her motion, the Mother stated:

Defendant asserts that the storage of Plaintiff's firearms in a locked container during his visitation with the minor child is a matter of public safety, and is in the child's best interests, and respectfully requests the court to order the same.

[doc. # 112.00 at ¶ 3] The court entered a written Order after hearing on September 1, 2015, stating: "Plaintiff Father Shall Lock All Weapons During Parenting Time With Minor Child." [doc. # 112.01] Ex. A, Written Court Order.

The Order was not supported by a finding nor was it alleged that the Father ever engaged in threatening or assaultive conduct or presented a danger to himself or others. Neither a temporary nor permanent restraining order was ever sought. The Father has no criminal record and possesses a valid state permit to carry handguns issued by the State of Connecticut ("state permit"). Issuance of a state permit requires a formal finding by the government, after investigation, that the holder is a suitable person. Information to the contrary after issuance subjects the holder to revocation of the permit. *See* General Statutes §§ 29-28(b), 29-32.

The Order delivered from the bench after hearing on September 1, 2015, explained the basis for the deprivation of the Father's constitutional rights to keep and bear arms in defense of himself and his child:

Look, I said this last time and I say it again. There's no doubt in my mind sir that you're a hero in my eyes. You're an honorable man, you love your child. I have no doubts about that. That isn't the issue before the Court today. Nobody, I don't think -- I think the Second Amendment has got nothing to do with what we're dealing with here. I'm not going to stop this man from bearing arms. He's got a right to bear arms. But I also have to weigh the fact that we're dealing in a court where there's the best interest of a child is concerned. You would not intentionally do anything to hurt the child. If you could guarantee it, there'd be no problem. I don't think it's a big burden on his rights to require that the guns be locked up

while he's visiting the child, a two year old child. It could change when the child's older, when you want to teach the child how to shoot a gun and things of that sorts, it's a different case. But while the child is two years old, no.

[doc. # 116.00] Ex. B, Oral Court Order; 09/01/2015 Hr'g Tr. 1:2-23.

II. LEGAL ARGUMENT

In accordance with Practice Book § 11-12(a), the Father sets forth the following specific grounds for reargument.

A. The Mere Fact that a Father in a Family Court Proceeding Owns Firearms³ Does Not Justify a Deprivation by Judicial Fiat of the Core, Fundamental, Enumerated Constitutional Right to Bear Arms

The Connecticut Supreme Court recently affirmed an individual's constitutional "right to possess and carry weapons in case of confrontation" *State v. DeCiccio*, 315 Conn. 79 (2014),⁴ citing *District of Columbia v. Heller*, 554 U.S. 570, 592, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008). *DeCiccio* further stated:

Self-defense is a basic right, recognized by many legal systems from ancient times to the present day, and, in *Heller*, [the court] held that individual self-defense is the central component of the [s]econd [a]mendment right.

Id., quoting *McDonald v. City of Chicago, Ill.*, 561 U.S. 742, 767, 130 S. Ct. 3020, 177 L. Ed. 2d 894 (2010) (Internal quotations omitted). In Connecticut, a citizen has the right to bear arms as well as to keep them. See *Kuck v. Danaher*, 600 F.3d 159, 165 (2d Cir. 2010) ("With respect to the first *Mathews* [v. *Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976)] factor, Kuck's stake in the firearm license is a liberty interest tied to the right to bear arms recognized

³ The court's written Order prohibits the father from access to "all weapons." [doc. #112.01] The statutory definition of "deadly weapon" is broader than firearms. See General Statutes § 53a-3(6). The Mother sought a prohibition on access to firearms during the Father's visitation with the child. For purposes of this motion for reargument it is presumed that the court's written Order intended to restrict access to firearms as this presumption is consistent with the court's oral Order which is limited to firearms.

⁴ The *DeCiccio* opinion is addressed in greater detail at Section II(C), *infra*.

by state law.”), citing Conn. Const. art. I, § 15 (“Every citizen has a right to bear arms in defense of himself and the state.”).

The Connecticut General Assembly enacted legislation regulating the storage of a firearm when a minor is likely to gain access to the firearm. *See* General Statutes § 29-37i. This statute provides two options for firearm storage: (1) Secure the firearm in a locked box, container, or in a location which a reasonable person would believe to be secure; or (2) carry the firearm or keep the firearm within such close proximity for ready retrieval and use as if the firearm were carried. This legislation imposes regulations on the right to bear arms while recognizing that the right to bear arms in self-defense is a constitutional right that must be taken seriously and not discarded without scrutiny and a balancing of interests. *See DeCiccio*, 315 Conn. at 112 (“First, the court asks whether the challenged law imposes a burden on conduct falling within the scope of the second amendment’s guarantee.... If it does, the court evaluates the law under some form of means-end scrutiny. If the law passes muster under that standard, it is constitutional. If it fails, it is invalid.”), quoting *United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010) (Internal quotations omitted, brackets omitted; internal citations omitted).

Limitations and prohibitions on core, fundamental constitutional rights are subject to constitutional scrutiny. *See DeCiccio*, 315 Conn. at 128 (“We therefore must decide whether the state's interest in prohibiting the defendant from possessing that weapon in his vehicle is sufficient to overcome the defendant's second amendment rights.”). “The appropriate degree of means-end scrutiny, generally some form of intermediate scrutiny, depends on the extent to which the challenged law burdens conduct protected under the second amendment.” *DeCiccio*, 315 Conn. at 111.

Presumably, legislators weigh and compare the impact on individual rights against the government's objective in restricting those rights when considering bills in the legislative process. The balancing of an individual's right to keep and bear arms against the government's objective of regulating firearms storage and possession in the best interests of minors was considered by the legislature and the result was § 29-37i. Further limitations or prohibitions on the right to keep and bear arms when in the presence of minors, beyond what the legislature has enacted to address the specific concern raised, are unconstitutional.⁵

The court's September 1, 2015, Order implies that access to weapons when in the presence of a two year old child is so averse to the best interests of the minor, even when the parent's conduct is impeccable, that access may be prohibited despite the constitutional right to bear arms. The Connecticut General Assembly disagrees. This disagreement is reflected in the balancing of interests codified in § 29-37i which specifies in what manner an individual must possess and store a firearm when a minor is likely to gain access to a firearm. There is no question that the Father must obey § 29-37i; it is the law. A hearing to decide whether the Father must obey § 29-37i was not necessary. However, the hearing addressed whether the Father should be subject to further restrictions than the law demands simply because he is a Father in family court and a firearms owner. The simple fact that the Father is in family court should not subject him to restrictions on constitutional rights. The fact that the Father is vulnerable to the possibility that access to his minor child may be terminated if he refuses to forego the constitutional rights that he fought for and protected while in service to his country should not empower a court to take

⁵ Whether or not § 29-37i would survive a second amendment challenge similar to the challenge in *DeCiccio* remains undetermined, as the Appellate Court and Supreme Court have not considered a second amendment challenge to § 29-37i since *Heller* and *McDonald*.

advantage by entering unconstitutional orders that family court parties may leave unchallenged rather than place in peril the time allotted for visitation and parenting.

By entering an Order on September 1, 2015, which the Father must follow at the risk of losing parenting time with his child, the court has enacted legislation that deprives the Father and foreseeably any parent, simply seeking a marriage dissolution and reasonable parenting time, of the constitutional right to defend in case of confrontation. An individual must access the courts to dissolve a marriage. Simply by accessing the courts for this purpose, as a captive party, an individual cannot be deprived of a constitutional right and the courts must not abuse their authority and power to separate parents from children who question the violation of their rights.

For this reason, because the Order violates state and federal constitutional guarantees to the right to bear arms in defense, the Father respectfully asks to reargue the court's September 1, 2015, Order.

B. The Order Exceeded the Limited Statutory Authority of Connecticut Family Courts to Enter Orders Regarding Firearms

The jurisdiction of the Family Division of the Superior Court ("family court") allows for a specific procedure to protect family and household members when there is evidence that an individual in possession of firearms has engaged in threatening or assaultive conduct. Section 46b-15 provides for an order of relief from abuse ("restraining order") after notice and hearing to protect family and household members.⁶ General Statutes § 46b-15 specifically addresses the

⁶ In her March 11, 2015, testimony before the Judiciary Committee regarding House Bill No. 6848, *An Act Protecting Victims of Domestic Violence*, Lieutenant Governor Nancy Wyman supported amending section 46b-15 to extend the prohibition on possession of firearms and ammunition to individuals subject to temporary restraining orders, in addition to those subject to full restraining orders, because "[t]here is currently no prohibition on the possession of firearms for individuals subject to a temporary restraining order." The Committee failed to vote on House Bill No. 6848 and the lawful authority of a family court to prohibit the possession of firearms remains conditioned upon notice and opportunity to be heard followed by a finding that the applicant has been subjected to a continuous threat of present physical pain or physical injury, stalking or a pattern of threatening. *See* Ex. 3, Testimony of Lieutenant Governor Nancy Wyman.

family court's statutory authority to limit or prohibit an individual's right to bear arms in self-defense and, in accordance with due process requirements that have survived scrutiny, establishes an opportunity for hearing. Prior to limiting or prohibiting an individual's right to bear arms in self-defense, § 46b-15 requires a finding by the court that the individual subjected another to a continuous threat of present physical pain or physical injury, stalking or a pattern of threatening. Even an individual found to have engaged in threatening conduct after hearing held pursuant to § 46b-15 is not deprived of every means to self-defense as the Father has been deprived by the court's September 1, 2015, Order banning him from access to all weapons during parenting time with his child.

This authority to issue a restraining order prohibiting the possession of firearms through the process of an application for relief and a hearing held within fourteen days of service described in § 46b-15, similar to § 29-37i, is the result of legislation enacted by state representatives and senators who, presumably, weighed and compared competing individual rights and government objectives when enacting legislation. The balancing of the rights of individuals in the right to keep and bear arms against the government objective to protect those who are subject to threatening or assaultive conduct, was considered by the legislature and the result was § 46b-15. Further limitations or prohibitions on the right to keep and bear arms by the family court beyond what the legislature has enacted to address violence toward a family or household member are unconstitutional.

For this reason, because the court exceeded its statutory authority by prohibiting the Father from lawfully possessing a firearm during parenting time with his child without the due process guarantees afforded him under § 46b-15 and placed the Father in the untenable position of choosing between his constitutional rights as a Connecticut and United States citizen or

maintaining parenting time with his child, the Father respectfully asks to reargue the court's September 1, 2015, Order.

C. The December 23, 2014, Unanimous Decision of the Connecticut Supreme Court in *State of Connecticut v. Jason DeCiccio*

Jason DeCiccio ("DeCiccio") was involved in a motor vehicle accident on July 22, 2010, in the Town of Clinton and transported to the hospital. Investigating officers discovered two machete knives, a sword, a large knife with a brass knuckle handle, lead weights, an expandable police baton, and a dirk knife in DeCiccio's Jeep Cherokee--all described by DeCiccio as mementos of his overseas military service in Afghanistan, Kosovo, and Germany. DeCiccio explained that he was using his Jeep to move personal property, including the items discovered by the officers, from Clinton to his new residence in Massachusetts to begin a new job at a nearby Veterans Administration Hospital.

The state charged DeCiccio with six counts of illegal possession of a weapon in a motor vehicle in violation of General Statutes § 29-38(a).⁷ A jury found DeCiccio guilty on two counts – illegal possession of the expandable police baton and the dirk knife. DeCiccio argued in a post-verdict motion that § 29-38(a) as applied to his case violates the second amendment. The trial court denied his motion for acquittal. In his appeal DeCiccio asked the Supreme Court to "place a judicial gloss on § 29-38 to permit the possession of those items [dirk knife, police baton]

⁷ Section 29-38(a) provides: "Any person who knowingly has, in any vehicle owned, operated or occupied by such person, any weapon, any pistol or revolver for which a proper permit has not been issued as provided in section 29-28 or any machine gun which has not been registered as required by section 53-202, shall be guilty of a class D felony, and the presence of any such weapon, pistol or revolver, or machine gun in any vehicle shall be prima facie evidence of a violation of this section by the owner, operator and each occupant thereof. The word "weapon", as used in this section, means any BB. gun, any blackjack, any metal or brass knuckles, any police baton or nightstick, any dirk knife or switch knife, any knife having an automatic spring release device by which a blade is released from the handle, having a blade of over one and one-half inches in length, any stiletto, any knife the edged portion of the blade of which is four inches or more in length, any martial arts weapon or electronic defense weapon, as defined in section 53a-3, or any other dangerous or deadly weapon or instrument."

during the transportation of them from a former residence to a new residence.” *DeCiccio*, 315 Conn. at 108.

In addressing *DeCiccio*’s claim the Supreme Court first had to determine “whether dirk knives and police batons constitute arms within the meaning of the second amendment.” *Id.* *DeCiccio* reviews the “landmark decision” of *District of Columbia v. Heller*, 554 U.S. 570, 128 S.Ct. 2783, 171 L.Ed.2d 637 (2008) where the United States Supreme Court determined whether a broad District of Columbia ordinance prohibiting handguns and readily dischargeable long guns in the home violated the United States constitution. *Id.*, at 109, citing *Heller*, 554 U.S. at 575, 128 U.S. 2783. *Heller* concluded that the second amendment “guarantees the individual right to possess and carry weapons in case of confrontation.” *Id.*, quoting *Heller*, 554 U.S. at 592, 128 S.Ct. 2783 (Internal quotations omitted). *Heller* further observed that the District of Columbia ordinance applied to the home, in particular, “where the need for defense of self, family, and property is most acute.” *Id.*, at 110, quoting *Heller*, 554 U.S. at 628, 128 S.Ct. 2783 (Internal quotations omitted.). Such a prohibition on an enumerated constitutional right, according to *Heller*, under “any of the standards of scrutiny ... would fail constitutional muster.” *Id.*, quoting *Heller*, 554 U.S. at 629, 128 S.Ct. 2783 (Internal quotations omitted).

In *McDonald v. Chicago*, 561 U.S. 742, 130 S.Ct. 3020, 177 L.Ed.2d 894 (2010), the United States Supreme Court considered whether the second amendment right to keep and bear arms is “incorporated into the concept of due process and, therefore, applicable to the states via the fourteenth amendment.” *DeCiccio*, 315 Conn. at 110, quoting *McDonald*, 561 U.S. at 750, 130 S.Ct. 3020 (Internal quotations omitted). In affirming that the right extends to every individual in every state, *McDonald* “concluded that the second amendment is applicable to the states because ‘the framers and ratifiers of the fourteenth amendment counted the right to keep

and bear arms among those fundamental rights necessary to our system of ordered liberty.”
DeCiccio, 315 Conn. at 111, quoting *McDonald*, 561 U.S. at 778, 130 S.Ct. 3020.

When a prohibition on the right to keep and bear arms is challenged, courts apply “a two-pronged approach” which asks first whether the “challenged law imposes a burden on conduct falling within the scope of the second amendment’s guarantee” and, if it does, application of a “means-end scrutiny” to evaluate the law determines if it is constitutional. *DeCiccio*, 315 Conn. at 111, quoting *United States v. Marzzarella*, 614 F.3d 85, 89 (3d Cir. 2010), cert. denied, 562 U.S. 1158, 131 S.Ct. 958, 178 L.Ed.2d 790 (2011). The degree of means-end scrutiny--rational, heightened, intermediate, or strict--is directly proportional to the burden created by the challenged law on the right to keep and bear arms. The greater the burden, the greater the scrutiny.

DeCiccio concluded that dirk knives and police batons are “arms” for purposes of the second amendment. *DeCiccio*, 315 Conn. at 128, 134. A law that prohibits their possession is a burden placed on an individual’s second amendment right. *DeCiccio* then considered whether statutory the ban in § 29-28(a) on an individual’s possession of the dirk knife and police baton in a vehicle for the purpose of transporting them to a new residence survives constitutional scrutiny. Following many courts throughout the country, *DeCiccio* applied a heightened, intermediate level of scrutiny to the second amendment challenge “in light of the nature and extent of the restrictions at issue in the present case” *DeCiccio*, 315 Conn. 142, citing *New York State Rifle & Pistol Assn., Inc. v. Cuomo*, 990 F.Supp.2d 349, 366 (W.D.N.Y. 2013). See *New York State Rifle & Pistol Assn.*, 990 F.Supp.2d at 366 (“[A]lthough addressing varied and divergent laws, courts throughout the country have nearly universally applied some form of intermediate scrutiny in the second amendment context.”), quoted in *DeCiccio*, 315 Conn. at 142

(Internal quotations omitted.) Intermediate scrutiny required the state in *DeCiccio* to “demonstrate that the absolute ban on transporting dirk knives and police batons is ‘substantially related to an important government objective.’” *DeCiccio*, 315 Conn. at 143, quoting *Clark v. Jeter*, 486 U.S. 456, 461, 108 S.Ct. 1910, 100 L.Ed.2d 465 (1988). According to *DeCiccio*, in determining whether or not a prohibition or limitation on the rights to bear arms is substantially related to an important government objective, substantial deference must be afforded the legislative branch of government:

In making this determination, substantial deference to the predictive judgments of [the legislature] is warranted.... The [United States] Supreme Court has long granted deference to legislative findings regarding matters that are beyond the competence of courts.... In the context of firearm [or weapon] regulation, the legislature is far better equipped than the judiciary to make sensitive public policy judgments (within constitutional limits) concerning the dangers in carrying firearms [or other weapons] and the manner to combat those risks.... Thus, [the court's] role is only to [ensure] that, in formulating its judgments, [the legislature] has drawn reasonable inferences based on substantial evidence....

DeCiccio, 315 Conn. at 143-44, quoting *Kachalsky v. Westchester*, 701 F.3d 81, 97 (2012), cert. denied sub nom. *Kachalsky v. Cacace* 133 S.Ct. 1806, 185 L.Ed.2d 812 (2013). The government objective relied upon by the state and rejected in *DeCiccio* as insufficient to survive intermediate scrutiny was that § 29-38(a) “further its public safety objective.” *DeCiccio*, 315 Conn. at 147. *DeCiccio* weighed the state’s reliance on a generic furtherance of public safety against the second amendment “core right to possess a protected weapon in the home for self-defense” to conclude that the conviction under § 29-38(a) “for using his Jeep to transport a dirk knife and police baton to his new residence violated his second amendment right to keep and bear arms.” *DeCiccio*, 315 Conn. at 148-49.

III. CONCLUSION

The court's September 1, 2015, Order violates the Father's core, fundamental constitutional right to keep and bear arms on the sole basis of a belief--unsupported by legislative findings or hearings--that storage and possession of firearms as ordered by the court while in the presence of a two year old minor promotes public safety and is in the best interests of the child. While the court opined in its oral opinion that when the minor child is older the prohibitions may no longer be necessary, another court may have the belief that the storage and possession of firearms as ordered by this court are in the best interests of a four year old child, another court may have the belief that the storage and possession of firearms as ordered by this court are in the best interests of a fifteen year old minor, while another court may have the belief that the storage and possession of firearms as ordered by this court are in the best interests of everyone under the jurisdiction of family court. It is for this reason that "[i]n the context of firearm [or weapon] regulation, the legislature is far better equipped than the judiciary to make sensitive public policy judgments (within constitutional limits) concerning the dangers in carrying firearms [or other weapons] and the manner to combat those risks...." *DeCiccio*, 315 Conn. at 143-44, quoting *Kachalsky*, 701 F.3d 81, 97.

The Order has stripped the Father of his right to defend himself and his child for no other reason than the Father sought dissolution of his marriage. Other mothers, fathers, relatives, friends, and community members who have contact with minors are held accountable to the law as stated in § 29-37i regarding storage and possession of their firearms. The legislature has not imposed upon them greater storage requirements when in the presence of minors than those in § 29-37i.

For all of the forgoing reasons and arguments of law, the Father respectfully moves for reargument of the September 1, 2015, Order which denies him the right to defend himself and his child in the home and in public in case of confrontation where other individuals, perhaps not subject to the jurisdiction of the family court, do possess firearms, both lawfully and unlawfully.

PRAYER FOR RELIEF

WHEREFORE, the Father prays for the following relief:

- (1) Vacate the September 1, 2015, Order as unconstitutional [doc. # 112.01];
- (2) Permit reargument of the Motion for Order [doc. # 112.00];
- (3) Such other relief in law or equity as may pertain.

PLAINTIFF
CARLTON M. HIGBIE IV



By: _____

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His Attorney

ORDER

The Court, having heard or considered the above motion, hereby orders the motion:

GRANTED / DENIED

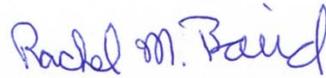
Judge of the Superior Court / Clerk

CERTIFICATION

This is to certify that the foregoing was sent to the following counsel and pro se parties of record by first class mail, postage prepaid or electronically on this 18th day of September 2015.

Lovejoy & Rimer PC
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Charles & Boni-Vendola, LLC
P.O. Box 213
Cos Cob, CT 06807



Rachel M. Baird
Commissioner of the Superior Court

EXHIBIT A

Higbie v. Higbie, Docket No. FA15-5014539-S
Motion for Reargument of Order Prohibiting Access to Firearms
for Defense of Self and Child During Parenting Time

September 18, 2015

CLERK, SUPERIOR COURT
JUDICIAL DISTRICT OF STAMFORD-NORWALK
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Docket Number: **FST-FA-15-5014539-S** Notice Issued: **09/01/2015**
Case Caption: **HIGBIE, CARLTON M IV v. HIGBIE, KAITLYN, M**

JDNO NOTICE

Sequence #: **1**

ORDER REGARDING: 09/01/2015 112.00 MOTION FOR ORDERS BEFORE JUDGMENT -
PENDENTE LITE

The foregoing, having been considered by the Court, is hereby:

ORDER OF THE COURT: PLAINTIFF FATHER SHALL LOCK ALL WEAPONS DURING
PARENTING TIME WITH MINOR CHILD.

BY THE COURT,

NOVACK, JTR
9/1/2015
J. BOTERO, TAC

EXHIBIT B

Higbie v. Higbie, Docket No. FA15-5014539-S
Motion for Reargument of Order Prohibiting Access to Firearms
for Defense of Self and Child During Parenting Time

September 18, 2015

NO: FST-FA-15-5014539 S : SUPERIOR COURT
CARLTON HIGBIE : JUDICIAL DISTRICT
OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
KAITLYN HIGBIE : SEPTEMBER 1, 2015

*** ORDERS ONLY ***

BEFORE THE HONORABLE STANLEY NOVACK, JUDGE

A P P E A R A N C E S :

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Recorded By:
Susan Burgess-Valdez

Transcribed By:
Susan Burgess-Valdez
Court Recording Monitor
123 Hoyt Street
Stamford, Connecticut 06905

1 [Excerpt begins: 1:10:13]

2 THE COURT: Look, I said this last time and I
3 say it again. There's no doubt in my mind sir that
4 you're a hero in my eyes. You're an honorable man,
5 you love your child. I have no doubts about that.

6 That isn't the issue before the Court today.
7 Nobody, I don't think -- I think the Second Amendment
8 has got nothing to do with what we're dealing with
9 here.

10 I'm not going to stop this man from bearing
11 arms. He's got a right to bear arms. But I also
12 have to weigh the fact that we're dealing in a court
13 where there's the best interest of a child is
14 concerned.

15 You would not intentionally do anything to hurt
16 the child. If you could guarantee it, there'd be no
17 problem. I don't think it's a big burden on his
18 rights to require that the guns be locked up while
19 he's visiting the child, a two year old child.

20 It could change when the child's older, when you
21 want to teach the child how to shoot a gun and things
22 of that sorts, it's a different case. But while the
23 child is two years old, no.

24 Neither parent should lock -- should lock up the
25 gun while they're visiting the child.

26 ATTY. CHARLES: You mean lock up --

27 THE COURT: What?

1 ATTY. CHARLES: I think you said in the negative
2 Your Honor. So the guns should be locked up during
3 any parenting time.

4 THE COURT: Yes, that's right.

5 ATTY. CHARLES: Thank you, Your Honor.

6 THE COURT: Great.

7 * * * * *

NO: FST-FA-15-5014539 S : SUPERIOR COURT
CARLTON HIGBIE : JUDICIAL DISTRICT
OF STAMFORD/NORWALK
v. : AT STAMFORD, CONNECTICUT
KAITLYN HIGBIE : SEPTEMBER 1, 2015

C E R T I F I C A T I O N

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk, Connecticut, before the Honorable Stanley Novack, Judge, on the 1st day of September, 2015.

Dated this 3rd day of September, 2015 in Stamford, Connecticut.

Susan Burgess-Valdez
Court Recording Monitor

EXHIBIT C

Higbie v. Higbie, Docket No. FA15-5014539-S
Motion for Reargument of Order Prohibiting Access to Firearms
for Defense of Self and Child During Parenting Time

September 18, 2015



STATE OF CONNECTICUT

LIEUTENANT GOVERNOR NANCY WYMAN

Testimony of Lieutenant Governor Nancy Wyman

House Bill No. 6848: An Act Protecting Victims of Domestic Violence
Wednesday, March 11, 2015

Good morning Senator Coleman, Representative Tong, Senator Kissel, Representative Rebimbas, and distinguished members of the Judiciary Committee. I am Lieutenant Governor Nancy Wyman, and with me I have Karen Buffkin, who is General Counsel to Governor Malloy.

Thank you for the opportunity to testify before you today regarding **House Bill No. 6848 An Act Protecting Victims of Domestic Violence**.

The goal of this bill is simple: to protect victims of family violence by prohibiting the possession of firearms by anyone who becomes subject to a temporary restraining order upon notice being served.

The days following a victim's application for a temporary restraining order are the most dangerous—as we were tragically reminded last May when a family violence incident took one of our own, a state employee at the Department of Energy and Environmental Protection who was murdered by her estranged husband, against whom she had a temporary restraining order.

Lori Jackson was murdered just one day before a hearing on a full restraining order was scheduled. She was shot and killed and her mother was shot and injured—all while her two young children were in the home.

It is important to note that a woman in an abusive relationship is five times more likely to be killed if her abuser has access to a firearm. Firearms are the most commonly used weapon in Connecticut to commit intimate partner homicides - they were used in 39 percent of the 188 intimate partner homicides that occurred between 2000 and 2012.

States with laws prohibiting firearm possession by persons subject to restraining orders saw a 12-13 percent reduction in intimate partner homicide of women. Changing our laws to prohibit firearms possession after a temporary restraining order is issued will make a difference.

There is currently no prohibition on the possession of firearms for individuals subject to a temporary restraining order. Under current law, up to 14 days after issuance of a temporary restraining order, a hearing is held to determine whether a full civil restraining order will be granted for a one-year period. If a full civil restraining order is issued, then the defendant has two business days to transfer their firearms and ammunition to either a federally licensed firearms dealer or the Department of Emergency Services and Public Protection. Since the current statute uses the term "business days," instead of "calendar days," the period during which a defendant must transfer a firearm can be significantly extended due to holidays and weekends.

House Bill 6848 does two things to remedy these issues:

1. It extends the prohibition on possession of firearms and ammunition to individuals subject to temporary restraining orders, in addition to those subject to full restraining orders, and
2. It reduces the length of time that a person subject to a restraining order has to surrender firearms and ammunition from two business days to immediately, but in no event more than twenty-four hours, after notice has been provided that the person is subject to such an order.

This bill contains the due process protections required by the Constitution, because in order for a temporary restraining order to be issued, the bill requires that (1) an affidavit be provided by the applicant, that is (2) sworn to under oath, and (3) signed by a judge. These are the same due process requirements that are used when a judge orders a search warrant or an arrest warrant, and the same due process requirements that are used in conjunction with temporary restraining orders under current law.

It is also worth noting that judges are very thoughtful in the granting of restraining orders, and only about half of the applications filed requesting temporary restraining orders are granted. For example, in 2014, only 51 percent of the ex parte restraining order applications were granted by a judge. If a judge believes that a victim faces an immediate and present physical danger, that judge should have the tools necessary to protect that victim. Passage of this bill will give them such a tool.

In conclusion, based on all of the statistics we have about domestic violence, one thing is very clear: there is a high risk that a lethal action will occur when an individual has access to firearms at the same time they have a pending judicial action against them, such as the imposition of restraining order.

We need to do everything in our power to protect domestic violence victims by prohibiting possession of firearms by anyone who becomes subject to a temporary restraining order *upon notice being served* — and *before* it is too late.

Thank you for your time today, and I urge your **support** of House Bill No. 6848.

We would be happy to answer any questions you may have.