

NORTH CAROLINA

FILED THE GENERAL COURT OF JUSTICE

WAKE COUNTY

DISTRICT COURT DIVISION

2008 JUL 25 AM 10:26  
FILE NO: 08CvD 12310

GARRY D. RENTZ,  
DONNA A. RENTZ, &  
KRISTA C. LISTER,

WAKE COUNTY, C.S.C.

BY \_\_\_\_\_

Plaintiffs,

v.

BRADLEY COOPER,

Defendant,

**MOTION**

**TO VACATE AND SET ASIDE**

**EX PARTE TEMPORARY CUSTODY ORDER**



NOW COMES Defendant by and through counsel pursuant to Rule 59(a)(1), 59(a)(2), 59(a)(7), 59(a)(8) and 59(a)(9) of the North Carolina Rules of Civil Procedure and moves this court for an order vacating and setting aside the *Ex Parte Temporary Custody Order* awarding emergency custody to Plaintiffs showing the court as follows:

1. Plaintiffs by and through counsel filed a "Complaint and Motion For Emergency Custody Order" on July 16, 2008. The complaint requests the court to grant emergency custody of the minor children to Defendants who are not natural parents of the minor children.
2. Defendant is the natural father of the minor children, Isabella Cooper, born February 23, 2004 and Gabriella Cooper, born July 23, 2006.
3. Plaintiffs are the mother, father and sister of Defendant's deceased wife.
4. Plaintiffs have alleged that Defendant has acted inconsistently with his constitutionally protected rights; however, the complaint is completely devoid of any facts that would support such allegations.
5. This court entered an order on July 16, 2008 must be vacated for the following reasons:
  - a. The *ex parte* emergency custody order was entered without any attempt to give notice to Defendant. Plaintiffs had been able to visit with the minor children prior to entry of the order with Defendant's consent. On July 16, 2008, Plaintiff Lister called and asked that Plaintiffs be able to visit with the minor children. Defendant had arranged to take the minor children to Bullwinkles so the children could play and eat at the same time. Defendant believed the parties were going to talk about funeral arrangements. When Defendant arrived at Bullwinkles, it was closed, he called Plaintiff Lister to let her know—she told him to not worry about it that they

would meet him there and they would figure out where they should go. Defendant waited and the police arrived and took away the children. Plaintiffs failed to notify Defendant and give him the opportunity to participate in the *ex parte* hearing. Upon information and belief, Cary Police were fully aware that Defendant was represented by Kurtz and Blum on the morning of July 16, 2008 in that a police officer followed Defendant to the Office of Kurtz and Blum and waited in the office of the attorneys. Upon information and belief, Cary Police were in contact with Plaintiffs' attorneys and Plaintiffs throughout the day. Had Plaintiff been aware of the attempt to gain emergency custody, he and/or his attorney would have participated in the emergency hearing. Neither the complaint/motion nor any other filing with the court indicates that any reasonable effort was made to give notice to Defendant or his attorney to allow his participation in the hearing.

- b. The *ex parte* emergency custody complaint is not supported by any evidence that would allow the court to enter an order divesting Plaintiff of his constitutionally protected parental rights. Furthermore, the court simply adopted Plaintiffs' allegations as its findings of fact and conclusions of law; thereby entering prejudicial findings of fact without giving Defendant the opportunity to refute any such findings of fact or conclusions of law.
- c. Furthermore, N.C. Gen. Stat. §50-13.5(d)(3) provides that no order changing the living arrangements of a minor child shall be entered without service of process or notice **if and only if** (1) there is a substantial risk of bodily or injury or sexual abuse to the child **or** (2) there is substantial risk that the child may be abducted or removed from the State of North Carolina for the purpose of evading the jurisdiction of the Court. The complaint is completely devoid of any substantiated allegation regarding this.
- d. Plaintiff Lister was in communication with Defendant on at least six occasions on July 16, 2008 and was fully aware that Defendant was located in Wake County, North Carolina and furthermore were fully aware that Defendant agreed to allow Plaintiffs to visit with the minor children that afternoon.
- e. Further, for the court to conclude or find that a parent has acted inconsistently with his parental rights, the court must use the standard of clear, cogent and convincing evidence. Nothing on the face of the order nor the complaint itself would support any finding of Defendant having acted inconsistently with his parental rights; thus the order must be dissolved and the case dismissed.
- f. At the very minimum the temporary *ex parte* order must be modified to eliminate any finding of fact or conclusion of law that is (a) speculative and/or (b) is prejudicial to Defendant in that even temporary orders that are entered after a hearing are non-prejudicial. Allowing such findings of fact and conclusions of law are void as against North Carolina public policy and contrary to North Carolina law.

Wherefore, Defendant prays this court:

1. Accept this verified motion of Defendant be allowed and taken as an Affidavit upon which the Court may base all of its Orders in this case;
2. Enter an order dissolving the *ex parte* Emergency Custody Order entered on July 16, 2008;
3. Enter an order dismissing Plaintiffs' cause of action;
4. In the alternative, modify the July 16, 2008 order to eliminate any findings of fact and conclusions of law that are prejudicial; and
5. Grant Defendant such other relief as is just and proper.

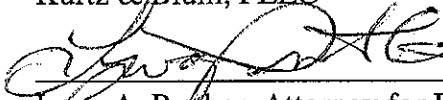
This the 26<sup>th</sup> day of July 2008.

Sandlin & Davidian *P.A.*

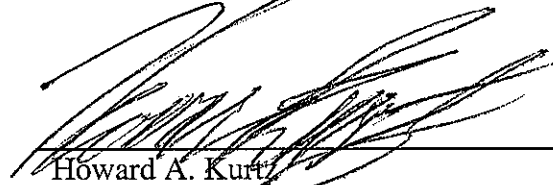


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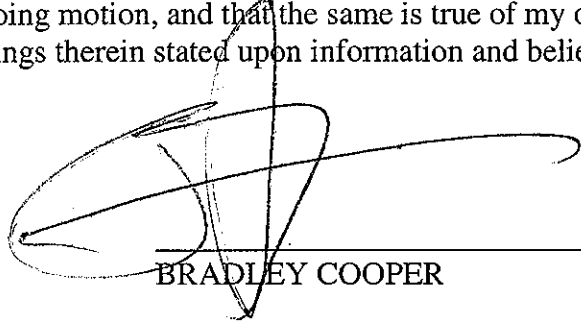
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NORTH CAROLINA

WAKE COUNTY

BRADLEY COOPER, first duly sworn deposes and says that I am the defendant in this action; that I have read the foregoing motion, and that the same is true of my own knowledge except as to those matters and things therein stated upon information and belief, and as to those I believe them to be true.



BRADLEY COOPER

Sworn to and subscribed before me

this the 24<sup>th</sup> day of July, 2008.

Valerie M. Bell  
Notary Public

My Commission Expires: 10-09-2010

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing MOTION FTO VACATE AND SET ASIDE EX PARTE TMEPORARY CUSTODY ORDER, was duly served on this the 25th day of July, 2008 on all parties to this action by confirmed telefacsimile transmittal and hand delivery to the party listed below in accordance with Rule 5 of the North Carolina Rules of Civil Procedure.

Alice C. Stubbs  
Attorney for Plaintiffs  
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Raleigh, North Carolina 27602

Telefacsimile: 919/ 829-1583

FILED  
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WAKE COUNTY, C.S.C.  
BY \_\_\_\_\_

This the 25<sup>th</sup> of July, 2008.

*Lynn A Prather by APR*

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