

Lehigh County Law Library Pathfinder

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SAMPLE PLEADING: MOTION TO RECONSIDER

This is a sample pleading illustrating the format for a Motion for Reconsideration for a Protection from Abuse Order. The facts here are based on Jack and Jill’s fictional tumble down the hill.

COURT OF COMMON PLEAS OF SAMPLE COUNTY, PENNSYLVANIA. Civil/Family Division

JILL SMITH,
123 Hill Street
Anytown, Pa 18100
v.

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PROTECTION FROM ABUSE

Docket No: 2018-FC-1234

JACK SMITH
123 Hill Street
Anytown, PA 18100

Defendant’s Motion For Reconsideration of Protection From Abuse Order

Defendant, JACK SMITH, by and through his counsel, Humpty L. Dumpty, Esquire, respectfully requests this Honorable Court to reconsider its Order of October 31, 2018, granting Plaintiff’s Petition for Protection and evicting Defendant from the marital residence at 123 Hill Street, Anytown, PA 18100 and in sup-port thereof avers as follows:

1. There was insufficient evidence to support a finding of abuse in that:
 - a. The Plaintiff failed to testify to any physical abuse, or any physical touching whatsoever;
 - b. The Plaintiff failed to testify to any actual threats of bodily harm or physical injury;
 - c. The Plaintiff did not testify that she was afraid that the Defendant would harm her, only that she was afraid that he might take the children or that she would tumble down the hill;
 - d. The Plaintiff did not testify to any incidents of threatened or actual violence or physical abuse, only that the Defendant said “mean things” to her and that she “had to go up the hill to fetch a pail of water.”
2. The Court abused its discretion in crediting all of the Plaintiff’s testimony and still entering a finding of abuse since the Plaintiff testified that the Defendant never made any threats of physical harm or abuse; that he only “watched her tumble down the hill” at some unidentifiable time in the past.
3. The Court abused its discretion and erred as a matter of law in failing to credit any of the Defendant’s testimony and in crediting all of the Plaintiff’s testimony in light of the fact that the Plaintiff’s testimony was sketchy, and utterly without detail.

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4. The Court erred as a matter of law because even if all of the Plaintiff's testimony is taken as true, and seen in the best possible light, there was no evidence of abuse or threatened abuse.
5. The Court erred in failing to allow the Defendant to cross-examine the Plaintiff regarding her state of mind and her motive for filing the Petition when the Court did not permit counsel for the Defendant to ask the Plaintiff if she "pushed Jack down the hill breaking his crown".
6. The Court erred as a matter of law because even if all of the Plaintiff's testimony is taken as true, and seen in the best possible light, there is no evidence of any attempt to cause bodily injury, of the Defendant's having placed the Plaintiff in reasonable fear of imminent serious bodily injury, of the infliction of false imprisonment, or of a knowing engagement in a course of conduct or repeated commission of acts under circumstances which would place the Plaintiff in reasonable fear of bodily injury.
7. The Court erred as a matter of law in not holding an evidentiary hearing relative to the best interests of the children before entering its Order granting primary physical custody of the children to the Plaintiff.
8. The Court erred as a matter of law in granting the Defendant only supervised visitation of the children within the sole discretion of the Plaintiff when there was no evidence of alleged abuse of the children, no request for supervision, no testimony as to the need of supervision, and in light of the fact that the children are not even listed as protected persons on the Order.
9. The Court abused its discretion in not identifying at least two acceptable dates for the Defendant to procure his personal belongings from the Hill Street marital residence, as the Plaintiff has thus far refused to allow Defendant to retrieve his belongings.

WHEREFORE, Defendant, JACK SMITH, respectfully requests this Honorable Court to reconsider Its Order of October 31, 2018, and enter the attached order in its place. *

Respectfully Submitted,
Humpty Dumpty, Esq
Humpty Dumpty, Esq.
123 Fairytale Street
Anytown, PA 18100
555-123-4567

*Note: Some Motions for Reconsideration are submitted with proposed alternative orders.