

APPENDIX 1

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STATE OF MICHIGAN
CIRCUIT COURT FOR THE TWENTY-FOURTH JUDICIAL CIRCUIT
SANILAC COUNTY
FAMILY DIVISION

TIFFANY GORDON,

Plaintiff,

No. 17-37305-DP

BILL SCHUETTE, Attorney General for
Michigan,

HON. GREGORY S. ROSS

Proposed Intervenor-Plaintiff,

v

CHRISTOPHER MIRASOLO,

Defendant.

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**ATTORNEY GENERAL BILL SCHUETTE'S BRIEF IN SUPPORT OF
MOTION TO SET ASIDE CONSENT JUDGMENT OF FILIATION**

FACTUAL BACKGROUND

In September 2008, a then 12-year-old female victim ("Victim") was sexually assaulted by then 18 year-old Christopher Mirasolo. The Victim and her 13-year-old sister snuck out of their home and eventually met up with Christopher Mirasolo, who then asked if they wanted a ride. Mirasolo took the young girls to a vacant house, where he held them captive for two days. During that time, Mirasolo sexually assaulted the Victim and threatened to kill the girls if they told anyone.

As a result of the assault, the 12-year-old Victim became pregnant. She gave birth to her child in 2009. That child is now 8 years old.

Before the child's birth, in October 2008, Mirasolo was arrested for the sexual assault perpetrated on the Victim. He was initially charged with first-degree criminal sexual conduct, MCL 750.520b, a life offense, for sexually penetrating a child under 13, and with harboring a runaway, MCL 722.151.¹ (Felony Compl.) On December 8, 2008, Mirasolo was permitted to plead to attempted criminal sexual conduct in the third degree (CSC-III), MCL 750.520d, a five-year felony.

After serving less than a year in jail, Mirasolo was released in October 2009. About six months later, Mirasolo sexually assaulted another young girl. He was charged with five counts of third-degree criminal sexual conduct and two counts of fourth-degree criminal sexual conduct against a victim between 13 and 15. Mirasolo was permitted to plead no contest to one count of third-degree criminal

¹ First-degree criminal sexual conduct involving any sexual penetration of a child under the age of 13 is a life offense, punishable by a mandatory 25-year minimum sentence. MCL 750.520b(2).

sexual conduct and one count of fourth-degree criminal sexual conduct. He was sentenced to 5 to 15 years in prison, serving 4 years of the sentence, and is currently on parole.

The Victim of Mirasolo's first sexual assault sought state assistance. As part of that process, a Paternity Complaint signed July 28, 2017, by the Victim and a Sanilac County Assistant Prosecuting Attorney set forth the basic, uncontested fact that Mirasolo is the biological father of the child. (7/28/17 Compl.)

As a result, this Court entered a Consent Judgment of Filiation, which, in addition to establishing Mirasolo's paternity, awarded him joint legal custody of the child. (9/22/17 Consent Judgment of Filiation.) It also barred the Victim and her child from moving more than 100 miles from Mirasolo. (*Id.*)

The Victim did not sign or otherwise ratify the Consent Judgment. Only the Prosecuting Attorney, the Friend of the Court, and Mirasolo signed it. (*Id.* at 6)

On October 6, the Victim, with the assistance of new counsel, filed objections to the Consent Judgment of Filiation. On October 10, the trial court stayed the Consent Judgment and set a hearing for October 17, 2017. (10/10/17 Sanilac Cir. Ct. Order.)

The Attorney General seeks to intervene pursuant to MCR 2.209(A) and MCL 14.101 in order to ensure protection of Michigan's sexual assault victims and the proper functioning of Michigan's Paternity Act, and asks this Court to set aside the Consent Judgment of Filiation.

ARGUMENT

This Court should set aside the Consent Judgment of Filiation because it is error under MCL 722.25(2) to grant Mirasolo joint legal custody. See also MCL 722.720(c).

When entering an order of filiation, the Paternity Act provides that a court “shall include . . . specific provisions for the custody and parenting time of the child *as provided in the child custody act of 1970[.]*” MCL 722.717b (emphasis added). Ordinarily, an order of filiation is entered without serious dispute, but this is no ordinary case. The mother was the victim of sexual assault at the hands of the biological father, triggering the newly enacted protections of MCL 722.25(2). That provision prohibits a court from awarding custody to a biological father if he “is found by clear and convincing evidence in a fact-finding hearing to have committed acts of nonconsensual sexual penetration.” MCL 722.25(2). That prohibition plainly applied here.

Mirasolo, who was originally charged with first-degree criminal sexual conduct, was permitted to plead down his case to a single count of attempted third-degree criminal sexual conduct for his attack, but no plea deal could change the Victim’s age. It is undisputed that at the time of the offense, the Victim was only 12 years old and Mirasolo was 18 years old. Given her age, the Victim was legally incapable of giving consent, necessarily making the sexual intercourse with Mirasolo nonconsensual. See *People v Armstrong*, 490 Mich 281, 292 n 14 (2011) (“[T]here is no issue of consent in a statutory rape charge because a victim below the age of consent is conclusively presumed to be legally incapable of giving his or

her consent to sexual intercourse.” (internal quotation marks omitted)). No additional fact-finding or hearing was necessary to establish that Mirasolo “committed acts of nonconsensual sexual penetration.” MCL 722.25(2). Under these circumstances, the ability of this Court to make specific provisions for the custody for the child under the Child Custody Act is clear: “[T]he court shall not award custody to that biological parent.” MCL 722.25(2). Thus, it is error as a matter of law to grant joint legal custody to Mirasolo.

Even if Mirasolo’s intercourse with the Victim had not been nonconsensual as a matter of law, the decision to award custody to Mirasolo was premature. Before a trial court awards legal custody under MCL 722.25, a mother is entitled to an opportunity demonstrate by clear and convincing evidence that the child was conceived as a result of nonconsensual sexual penetration. See MCL 722.25(5) (providing that a mother may assert subsection (2) as an affirmative defense). This fact-finding hearing is an important safeguard to protect victims of sexual assault, and it went unheeded here. If deemed necessary, at the very least, the Victim should be given the opportunity to prove what Mirasolo did to her nearly nine years ago and avoid the nightmare of sharing legal custody of her child with the man who sexually assaulted her.

CONCLUSION

Because it is error to award legal custody to Mirasolo without following the strictures of MCL 722.25, this Court should set aside the Consent Judgment of Filiation.

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