

FAMILY COURT OF THE CITY OF NEW YORK
COUNTY OF QUEENS

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In the Matter of:

MARIA BERNAL

Petitioner

- against -

JORGE BERNAL

Respondent

Docket Number
O-8307-06

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October 27, 2006
151-20 Jamaica Avenue
Jamaica, NY 11432

BEFORE: HONORABLE SALVATORE MODICA
Judge

APPEARANCES: MARIA BERNAL
Petitioner

JORGE BERNAL
Respondent

NESTOR SOTO
Attorney for Petitioner

MR. FRIEDMAN
Attorney for Respondent

TRANSCRIBER: Patricia H. Collins

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WITNESSES	DIRECT	CROSS	RE-DIRECT	RE-CROSS
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No Witnesses Examined

E X H I B I T S

DESCRIPTION	I.D.	IN. EV.
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No Documents Submitted/Received

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COURT OFFICER: (Inaudible) on the calendar in the matter of Bernal. Counsel, your appearances.

MR. SOTO: Appearing on behalf of Maria Bernal, is Nestor Soto, 31-26 Steinway Street, Astoria, New York.

MR. FREIDMAN: On behalf of Jorge Bernal, (inaudible) Friedman, 26 Court Street, Brooklyn, New York. Good morning, Your Honor.

HONORABLE MODICA: Good morning, Counsel.

COURT OFFICER: Both parties raise your right hands. Do you swear or affirm to tell the truth?

MR. BERNAL: I do.

COURT OFFICER: Ma'am?

MS. BERNAL: Yes, I do.

COURT OFFICER: Sir, your name, please?

MR. BERNAL: Jorge Bernal.

COURT OFFICER: And ma'am?

MS. BERNAL: Maria Bernal.

COURT OFFICER: Thank you, have a seat.

HONORABLE MODICA: Okay. A motion has been filed by Mr. Bernal pro se, a motion to

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2 vacate the Final Order of Protection entered
3 on August 4th, 2006, which was issued
4 following a fact finding hearing. The Order
5 expires April 30th, 2008. At this point,
6 Counsel, I have the moving papers by Mr.
7 Bernal.

8 MR. FRIEDMAN: Yes, Your Honor.

9 HONORABLE MODICA: Do you wish to be
10 heard?

11 MR. FRIEDMAN: Yes, I do. I do wish to be
12 heard, Your Honor.

13 HONORABLE MODICA: All right.

14 MR. FRIEDMAN: This motion -- even though
15 I didn't serve any papers -- I was just
16 recently retained -- I was retained to make
17 the oral argument on this matter, Your Honor.
18 And although it's not stated in this in Mr.
19 Bernal's pro se papers, this was made under
20 Section 844 of the Family Court Act which
21 allows for a reconsideration, even after a
22 hearing, if good cause is shown. And after
23 reviewing Mr. Bernal's papers, basically what
24 he is stating and what he is -- what he has
25 proposed is that there was -- there is

1 additional information that Mr. Bernal
2 couldn't have provided to the Court at the
3 time of the hearing, which bears upon the
4 Petitioner's credibility. And also, Your
5 Honor, he submitted evidence and documentation
6 with regard to an issue which he does not
7 consider collateral regarding incidents that
8 occurred some thirteen years before, which
9 were the subjects of the hearing. There is --
10 on Ms. Bernal's Petition, she -- she claimed
11 that there was some assault behavior. And
12 again, the offense was committed back in 1990
13 and 1993. And while the issue of collateral
14 estoppel was brought up, I don't think it was
15 dealt with completely, because not all the
16 information was available. Mr. Bernal did
17 submit a 1999 transcript from Judge
18 (inaudible), who was then sitting in Kings
19 County. At that time, he dismissed a Petition
20 of Ms. Bernal which would have -- which
21 included allegations of family offense. I
22 don't have a copy of that Petition, but he had
23 stated that -- that the incident had happened
24 five years before and that she was not going
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2 to re-litigate those issues. And I think,
3 Your Honor, that there certainly is some
4 evidence that those issues were re-litigated.
5 And while there may not be a statute of
6 limitations with regard to those issues, they
7 appear to be an important factor in Your
8 Honor's decision with regard -- with regard to
9 this case.

10 HONORABLE MODICA: Counsel, when were you
11 retained?

12 MR. FRIEDMAN: I was retained two days
13 ago, Your Honor.

14 HONORABLE MODICA: Thank you. Continue.

15 MR. FRIEDMAN: With regard, Your Honor, to
16 the credibility issue, there was cross
17 examination by Mr. Bernal with regard to those
18 past incidents that occurred fifteen years
19 earlier, that indicated that Ms. Bernal stated
20 that she was basically forbidden from leaving
21 the house and, therefore, couldn't have called
22 the police, which would have explained her
23 inability for her calling the police or the
24 absence of making any claim at the time.
25 (Inaudible) in the first place and the

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2 question which again, of course, became the
3 vital issue.

4 HONORABLE MODICA: Counsel, why don't you
5 do this. Since you represent Mr. Bernal --

6 MR. FRIEDMAN: Yes.

7 HONORABLE MODICA: And his papers frankly
8 don't support what you're saying at this time,
9 why don't you file papers?

10 MR. FRIEDMAN: If Your Honor so wishes, I
11 will do so.

12 HONORABLE MODICA: Oh, I wish. This is a
13 motion to vacate a judgment in August of 2006,
14 that I rendered. Mr. Bernal filed the
15 Petition to vacate judgment on September 5th,
16 of 2006. So why don't you file papers on
17 this. How long do you need to do that?

18 MR. FRIEDMAN: Three weeks.

19 HONORABLE MODICA: (Inaudible) for a
20 decision. Mr. Soto, I'll give you to -- I
21 will give Counsel to -- until, rather --
22 Counsel, November 22nd, I'll give you to
23 prepare a reply.

24 MR. SOTO: I'm sorry, Your Honor. He has
25 three weeks. I have -- my client was talking

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to me at the same time.

HONORABLE MODICA: (Inaudible).

MR. SOTO: No, no, it's okay. I -- I just want to know if he serves me with papers how much time I have to respond?

HONORABLE MODICA: December 21st, for response. For a decision, January 24th.

MR. SOTO: May I look at my calendar, Your Honor?

HONORABLE MODICA: Yes.

MR. SOTO: My client is asking for a Friday. Is it possible, Your Honor, that you can give us a Friday?

HONORABLE MODICA: Why does she need a Friday?

MS. BERNAL: It's my day off.

MR. SOTO: It's her day off.

HONORABLE MODICA: Okay. Mr. Soto, at this time I cannot accommodate her request. I'm on a committee that meets on Friday. I don't know which days. I don't have that in advance at this point. It's too far in the future. So I'm keeping Friday open until I get notification when the Criminal Jury

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Instructions Committee meets.

MR. SOTO: I understand, Your Honor.

HONORABLE MODICA: January 24th. Thank
you.

MR. SOTO: January 24th, you said?

HONORABLE MODICA: Yes.

MR. FRIEDMAN: Thank you, Your Honor.

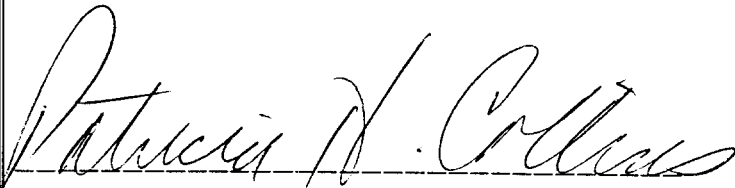
MR. SOTO: Thank you, Your Honor.

[Tape 1, Counter 330]

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C E R T I F I C A T E

I, Patricia H. Collins, certify that the foregoing transcript of proceedings Family Court of New York, County of Queens, Maria Bernal against Jorge Bernal, Docket Number O-8307-06, was prepared using four-track electronic transcription equipment and is a true and accurate record of the proceedings.

A handwritten signature in cursive script, reading "Patricia H. Collins", written over a horizontal dashed line.

Patricia H. Collins

Date cassette was transcribed:

April 30, 2007