

IN THE 21ST JUDICIAL CIRCUIT, COUNTY OF ST. LOUIS
STATE OF MISSOURI, FAMILY COURT

M. XXXXX,

Petitioner,

vs.

J. XXXXX,

Respondent.

Cause No.

Division 43

ORDER

Respondent's Motion to Dissolve Temporary Restraining Order was called, heard and submitted on September 8, 2017. Petitioner appeared in person and by counsel, ET. Respondent appeared pro se. The Guardian ad Litem, BD, appeared on behalf of the five year old child. Evidence was adduced and testimony heard. The Court takes judicial notice of its file in this cause. The Court considers the evidence, the witnesses' testimony and the reasonable inferences therefrom and the credibility of the witnesses. All fact issues upon which no specific findings are made shall be considered as having been found in accordance with the results reached. Rule 73.01(a)(2). Any finding of fact herein equally applicable as a conclusion of law is adopted as such and any conclusion of law herein equally applicable as a finding of fact is adopted as such.

Findings of Fact and Conclusions of Law

1. On January 18, 2017 Petitioner filed a Motion and Affidavit for Temporary Restraining Order Against Respondent. Petitioner requested that Respondent's custody and/or visitation be suspended pending further order of the Court, that Respondent be prohibited from

being within five hundred (500) feet of Petitioner and/or the child and from entering Petitioner's property or place of employment.

2. A Temporary Restraining Order ("TRO") was entered on that same date, without notice to Respondent, awarding Petitioner temporary sole physical custody of the minor pending further order of the Court and suspending all custody and/or visitation awarded to Respondent pursuant to the existing Judgment and Parenting Plan entered by the Court on May 22, 2014. Petitioner was ordered to post a One Hundred Dollar Bond and the matter was then set for hearing on January, 24, 2017 at 10:00 a.m.

3. On January 24, 2017 Respondent signed an Order stating as follows:

Petitioner's Motion and Affidavit for Temporary Restraining Order against Respondent is continued, at the request of Respondent, to 08/03/2017 at 10:00 a.m. Temporary Restraining Order entered on 01/18/17 shall remain in full force and effect pending further Court Order. Service remains intact concerning all filings set forth above.

This Order effectively extended the TRO by consent until further order of the Court.

4. On January 27, 2017, Respondent filed a Motion for Change of Venue and Change of Judge. After a hearing on February 23, 2017, Respondent's Motion for Change of Venue and Change of Judge was denied.

5. On March 6, 2017, Respondent filed a request for change of judge pursuant to Missouri Supreme Court Rule 51.05. That request was granted on March 13, 2017 and the matter reassigned to Division 43 on March 17, 2017.

6. On May 22, 2017 Respondent filed his Motion to Dissolve Temporary Restraining Order. That Motion was set for hearing by Respondent on June 29, 2017 at 10:00 a.m. Respondent then attempted to take various depositions and compel production of certain documents which lead to Motions to Quash.

7. Due to the discovery disputes and Respondent's request to submit briefs in response to the Motions to Quash, on June 20, 2017 Respondent vacated his June 29, 2017 Motion setting and his Motion was to be set upon reapplication.

8. Respondent then attempted to reset his Motion on August 10, 2017 at 10:00 a.m. without checking with Petitioner's counsel regarding his availability on that date to conduct a testimony hearing. Petitioner filed a Motion to Continue that setting due to the unavailability of his witness. The Court granted Petitioner's Motion to Continue and gave Respondent a two-hour special setting on September 8, 2017 for his Motion to Dissolve the TRO.

9. The Court has reviewed the court file and notes that at no time has Petitioner filed an application for Preliminary Injunction. The only reference to a preliminary injunction is in the last line of the TRO issued on January 18, 2017. Without an application for preliminary injunction, however, the Court cannot grant the same. Therefore, the sole issue before the Court is whether the TRO that was continued by consent until further order of the Court should be dissolved.

10. In accordance with Missouri Supreme Court Rule 92.02(b)(5), at the hearing on a Motion to Dissolve, the party seeking the TRO bears the burden of establishing her right to relief.

11. Petitioner testified that she is afraid of Respondent and concerned for the welfare of their child if Respondent is permitted to have unsupervised visitation with the child.

12. Petitioner recounted her general concerns regarding Respondent's mental health and instability. Petitioner testified that since the entry of the Judgment of Dissolution on May 28, 2014, that she has seen Respondent's mental health and stability deteriorate and his anger and aggression worsen significantly.

13. Petitioner testified that there was a history of domestic violence in her past relationship with Respondent.

14. Petitioner produced text and email correspondence between Petitioner and Respondent that evidenced Respondent's hostile, threatening and insulting responses to civil communications regarding the child.

15. In response to an inquiry about a custody exchange in November of 2016, Respondent, unprovoked, calls Petitioner a "dumb fuck" and then makes the following threatening statement "And multiple people (including yourself) are responsible. Pay back is imminent...stay tuned." (Pet'r Ex. 17.)

16. When Petitioner raised her concerns about Respondent discussing the "bad judge" and Respondent going to jail with their four year old daughter, Respondent's response included "XXXXXX WILL know that people who have fucked with me will be destroyed. She needs to know that there are repercussions to your actions." (Pet'r Ex. 18.)

17. Even in his Motion to Modify Respondent unapologetically shows contempt for Petitioner. He states in Paragraph 7 of his Motion to Modify, "Father considers mother to be a piece of garbage and cannot speak civilly to her."

18. On cross-examination of Petitioner, Respondent asked Petitioner to acknowledge that this was his usual way of communicating with her in an attempt to minimize his behavior. While Petitioner conceded that he has always been disrespectful and hostile, she further testified that she believes his anger and irrational behavior have gotten significantly worse. So much so that she is no longer comfortable with him having unsupervised visitation until he has undergone the appropriate treatment.

19. In his testimony, Respondent begrudgingly acknowledged that some of his statements to Petitioner were unnecessary but he was clearly unremorseful.

20. It appears to the Court that Respondent believes his lack of civility and his threatening statements to Petitioner are simply part of his normal dynamic with Petitioner and that this is an acceptable way to behave.

21. Respondent has little, if any, ability or desire to control his behavior and anger with respect to Petitioner. The Court questions whether Respondent would be able, or willing, to curb this hostile and threatening discourse with Petitioner around the child.

22. Respondent also filed a verified Amended Federal Complaint (“Complaint”) in Federal Court on March 6, 2017 against the judge that presided over the underlying dissolution case. (Pet’r Ex. 15.) In that Complaint he made thinly veiled threats to do harm to that judge and anyone he deems is “responsible.”

23. Respondent states in his Complaint:

The damages that were incurred as a result of this unlawful arrest warrant and the damages that incurred from the blatant disregard that government entities showed toward my grievance are psychological and can be summed up as follows. Prior to the unlawful arrest warrant, I was not a gun owner . . . never was. Now I am an owner of three. There is never a time that I travel in my truck without a gun in my possession. I am never far from a gun while inside my house. Though the element of danger from the public exists, that is not what I fear. The dangers that exist are the ██████████ County and State of Missouri governments. Specifically, the threats to me are judges who can sign arrest warrants indiscriminately, police who can arrest and detain me against my will despite lacking cause to do so, and a government which has proven to be unwilling to protect my civil rights and unwilling to restore justice. Post Traumatic Stress Disorder and Pain and Suffering are my damages which resulted from the unlawful arrest warrant, the unlawful arrest, and the unlawful detention. These events have changed me. Those responsible must be made to answer.

(Pet’r Ex. 15 ¶ 28.)

24. Respondent testified that he did not view these statements as threats but he was unable to adequately explain why he included references in his Complaint to his various firearms and the fact that he always has a gun nearby.

25. Respondent acknowledges in his Complaint that he has sustained significant “psychological” damage that has “changed” him, including a new perception that he needs guns to protect himself from judges, police, and government.

26. Respondent’s obsession with making those responsible “pay” has led to irrational decisions that have caused him substantial financial harm.

27. According to the Complaint, Respondent closed his dental practice in November 2016 to pursue “justice” for the alleged wrong committed by ██████████ County government. (Pet’r Ex. 15 ¶ 29.)

28. Respondent’s fixation on getting “justice” also resulted in the loss of his home and the significant equity he had in that home. Respondent testified that he refused to pay ██████████ County property taxes because of ██████████ County’s refusal to “make things right” after his arrest and detention. According to Respondent, when he received a demand letter for the past due property taxes, he stopped making his mortgage payments. His home was then foreclosed.

29. It appears from his Complaint that Respondent is alleging that his arrest and detention on the contempt warrant caused him such profound psychological harm that he is no longer able to work and now suffers from Post-Traumatic Stress Disorder. Yet, Respondent insists in this action that there is no need for him to be under the care of a psychiatrist or psychologist and that he does not present any risk of harm to the child. Such contradictory and confusing positions undermine his credibility.

30. Petitioner testified that the statements in the Complaint concern her because they are further evidence of his irrationality, anger, and determination to get retribution. Petitioner is genuinely fearful that her daughter would be placed in harm’s way if left unsupervised with Respondent.

31. In addition, the child repeated various statements made by Respondent concerning the various guns Respondent keeps around the house. The child told Petitioner that the purpose of the guns is to protect Respondent from the “bad judges.” According to Petitioner, the child also described the guns and how to load them.

32. The statements made by Respondent in the Complaint and to Petitioner directly, coupled with the statements made by the child led Petitioner to believe that Respondent’s mental stability was deteriorating.

33. Petitioner and Respondent recounted a specific incident that occurred on January 15, 2017 when Respondent frantically attempted to contact Petitioner because he feared that one of his guns may have fallen into their four-year-old daughter’s backpack.

34. Respondent unexpectedly showed up at Petitioner’s residence when he was unable to reach her by phone and frantically pounded on the door to get her attention. Petitioner was understandably startled and frightened by Respondent’s behavior.

35. Respondent explained to Petitioner that he was afraid one of his guns fell into the child’s backpack. Fortunately, it had not. According to Respondent, he later determined that the gun was where it should have been and he just did not see it.

36. Respondent was unable to adequately explain how he thought it was possible that his gun wound up in the child’s backpack.

37. Respondent testified that he kept the guns locked in a safe when his daughter was at the house but when he could not find one of his guns in its usual spot above the refrigerator he panicked and thought it may have been in her backpack.

38. While the panic about not being able to locate your gun is understandable, the fact that Respondent jumped to the conclusion that it was in his daughter's backpack is not credible given his testimony that he kept the guns locked in a safe during her visits.

39. Petitioner also testified that she was afraid that Respondent would flee with the child given the circumstances and the hostility he has demonstrated toward Petitioner.

40. When asked what harm could come to the child if Respondent's unsupervised visitation was reinstated, Petitioner stated that she believed emotional, physical, and psychological harm to the child was very likely. Petitioner fears that some psychological harm may have already occurred to some degree.

41. Petitioner recounted stories of the child, shortly after visits with Respondent, cowering under a table or scared at bedtime and talking about guns, who her father was going to shoot, and expressing fears about her father going to jail. One of these incidents is described in an email dated January 4, 2017 that was entered into evidence as Petitioner's Exhibit 18.

42. The totality of the circumstances makes Petitioner fearful that the "payback" Respondent promised in his November 16, 2016 text was indeed "imminent." (See Pet'r Ex. 17.)

43. Petitioner stated that she is fearful because Respondent is unable to control his anger, is obstinate, and will not comply with Court orders or take "no" for an answer.

44. The Court has witnessed some of Respondent's obstinate behavior and is also concerned about Respondent's willingness to abide by Court orders. Respondent's unyielding position is that he knows best. While Respondent has not violated the terms of this TRO, Respondent has ignored various other Court orders, some of which are mentioned in this Order, and there is currently pending another Motion for Contempt against Respondent. Respondent has made it clear to the Court that he has a profound lack of respect for and confidence in the judicial

process, especially in ██████ County. Therefore, Petitioner's fear that Respondent will do whatever he thinks best regardless of any Court order is well-founded.

45. Petitioner and the GAL agreed that Respondent could have supervised visits with the child but Respondent has refused to participate in any supervised visits. Petitioner does not want to keep the child from Respondent and would like for her to have meaningful contact with Respondent. Petitioner, however, believes that that contact must be limited to short periods of time and supervised until such time as Respondent has undergone the appropriate treatment. The Court believes that Petitioner wants to foster the child's relationship with Respondent but also wants to keep the child safe from potential harm.

46. Respondent insists that supervision is unnecessary and he will not participate in a supervised visit even knowing that the information provided from the supervisor could possibly aid him in the ultimate resolution of this matter. When given the choice between seeing his daughter in a supervised setting or not seeing his daughter at all, Respondent chooses to not see his daughter at all.

47. Petitioner has sole legal custody of the child. Despite this fact, Respondent, who is not a licensed physician but has a DEA license because he is a dentist, prescribed and administered antibiotics to the child without consulting Petitioner.

48. The issue is not whether the treatment prescribed would have been appropriate if prescribed by a licensed physician, but Respondent's refusal to acknowledge that he has no authority to make medical decisions on behalf of the child.

49. Respondent testified that he does not believe medical decisions are major decisions and are, rather, day-to-day decisions that he is free to make unilaterally when the child is in his

custody. The Parenting Plan entered in this matter, however, clearly sets out that medical decisions are to be made by the parent with legal custody absent an emergency situation.

50. While no harm resulted to the child, this is an indication of Respondent's refusal to abide by the limitations placed upon him in the agreed upon custody plan that was entered by the Court. Respondent's insistence that he could prescribe medications for the child without consultation with Petitioner, even though he is not a physician and does not have legal custody, could put the child at risk of physical harm.

51. The Parenting Plan also requires that Respondent "continue individual therapy with BE (or her designated successor should she be unavailable) until released and shall follow the therapist's recommendations."

52. Respondent was reluctant and often refused to answer any questions regarding his mental health treatment and cited HIPPA as the reason for his refusal to answer. Based upon the questions Respondent did answer, it is clear that he has not complied with the provision of the Parenting Plan that requires him to continue with therapy and follow his therapist's recommendations. This provision was integral to Respondent receiving unsupervised custody.

53. Dr. JR, a clinical psychologist who performed a Court ordered custody evaluation in the underlying dissolution action, substantiates Petitioner's concerns about Respondent's mental health at the time of the dissolution. (See Pet'r Exs. 13 & 14.)

54. Dr. JR diagnosed Respondent with unspecified personality disorder with narcissistic features and alcohol abuse, if not dependence. (Pet'r Ex. 14 at 30-31.)

55. Dr. JR had serious concerns about Respondent's mental health and recommended that his visitation be conditioned upon his compliance with an appropriate treatment protocol. (See Pet'r Exs. 13 & 14.)

56. Dr. JR recommended that Respondent enter an anger management program, an alcohol program, and intensive therapy to help him recognize his maladaptive personality traits and to begin to change them. (Pet'r Ex. 14 at 31.)

57. Dr. JR also testified in his deposition that he did not complete a home visit of Respondent's home because he was forwarded an email from Respondent indicating that anyone that entered Respondent's property would be shot. (Pet'r Ex. 14 at 12.)

58. Dr. JR went so far as to recommend supervised visitation in his deposition but backed off of this recommendation because while he had concerns about physical abuse directed toward the child due to Respondent's history of domestic violence, there was no evidence of any actual physical abuse of the child.¹

59. In his deposition, Dr. JR consistently expressed serious concern that if Respondent did not pursue treatment for his maladaptive personality disorder, anger management issues, and alcohol abuse that the child would be at substantial risk of emotional harm. (See Ex. 14.)

60. Further, Respondent, unbeknownst to Petitioner, moved outside of the [REDACTED] area to [REDACTED], Missouri. Respondent did not give the relocation notice required by Mo. Rev. Stat. § 452.377.

61. Respondent now lives in a one bedroom apartment in [REDACTED], Missouri. Previously, Respondent lived in the former marital home in [REDACTED] County. Petitioner continues to live in [REDACTED] County.

¹ The Court notes that during his deposition, Dr. JR was not specifically provided or questioned about the statutory standard by which supervised visitation may be ordered. Supervised visitation may be ordered if unsupervised visitation would endanger the child's physical health and/or impair her emotional development. Mo. Rev. Stat. § 452.400.1(1).

62. Respondent claims that he has given his guns to “friends and family.” When asked who he gave the guns to, Respondent refused to answer and had to be directed to do so by the Court. Respondent then disclosed that he gave his guns to his father. There is no evidence to support this claim other than Respondent’s testimony, which the Court does not find credible. Even if Respondent “gave” his guns to his father, they are arguably still accessible to him.

63. As Dr. JR feared, Respondent’s lack of insight into his mental health and anger issues and failure to continue the treatment required by the Parenting Plan, have led to a further deterioration of his stability and increased the likelihood of emotional, if not physical, harm to the child to such a degree that immediate relief is necessary to protect against irreparable harm.

64. The very serious concerns about Respondent’s mental health during the initial dissolution proceeding, Respondent’s refusal to continue treatment as required by the Parenting Plan, Respondent’s admission that he has suffered additional psychological damage in his Complaint, Respondent’s threatening and irrational behavior, and his move to a location outside of the [REDACTED] area without notice, support the conclusion that unsupervised visitation with Respondent would endanger the child’s physical health and/or impair her emotional development. Mo. Rev. Stat. § 452.400.1(1).

65. Further, Respondent’s unabashed hatred of Petitioner and the threats he has made against her put her at risk of physical and emotional harm and immediate relief is required to ensure her safety and the safety of the minor child.

NOW, THEREFORE, based upon the evidence presented, the Court denies Respondent’s Motion to Dissolve Temporary Restraining Order and the Court finds that the issuance of the TRO was proper in that Petitioner has demonstrated a risk of immediate and irreparable injury in the

form of harm to the child and/or Petitioner for which there is no adequate remedy at law if the relief prayed for is not granted.

It is hereby ORDERED, ADJUDGED and DECREED that Respondent, J XXXXX, is restrained from exercising the custody and/or visitation awarded to him in the Judgment and Parenting Plan; Petitioner is awarded sole legal and physical custody of the child with Respondent receiving supervised visitation as arranged and supervised by Domestic Relations Services or its designee for a maximum of two hours per week pending further order of the Court; Respondent shall not be within five hundred (500) feet of Petitioner, excluding during court proceedings; Respondent shall not be within five hundred (500) feet of the child, except during periods of supervised visitation as provided herein; and Respondent is prohibited from entering Petitioner's residence and place of employment.

This Order shall be effective as to all persons, from and after receipt of it, and shall remain in effect for a period of fifteen days from this date and time set forth below or until such other date subsequently ordered by this Court. In accordance with Missouri Supreme Court Rule 92.02(a)(5), this Order may be extended for a period not to exceed fifteen days upon a showing by the Petitioner that grounds specified pursuant to Missouri Supreme Court Rule 92.02(a)(1) continue to exist.

IT IS FURTHER ORDERED that the bond of \$100.00 previously posted by Petitioner shall remain posted with the Court until such time as discharged by further order of this Court.

SO ORDERED:

Hon. Mondonna L. Ghasedi, Div. 43

Date: _____

Time: _____