

STATE OF MISSOURI)
) SS
CITY OF ST. LOUIS)

**MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)**

In Re the Marriage of:)
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SSN: XXX-XX-)
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Petitioner,)
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v.)
)
)
SSN: XXX-XX-)
)
)
Respondent.)

Cause No.)
Division No. 9)

ORDER AND JUDGMENT

The Court has before it Respondent's Motion to Modify Child Custody and Support and Petitioner's Counter Motion to Modify Judgment. This matter was tried before the Court on August 24, 2017. All parties were present in person and represented by counsel. All parties were given a full and fair opportunity to present evidence and argument to the Court. The parties have submitted proposed findings of fact, conclusions of law and judgments. Upon review of the record, the evidence adduced at trial, and the submissions of the parties, the Court now rules as follows.

Respondent seeks the entry of an order modifying the judgment of dissolution of marriage entered by this Court

on August 8, 2014. This judgment awarded the parties joint physical and legal custody of their child, [REDACTED]. Respondent was designated the residential parent for school and mailing purposes.

Respondent's written motion seeks entry of a parenting plan reducing Petitioner's time with the party's minor child during the school year and a modification of child support. At trial, and in her proposed judgment, Respondent no longer sought a reduction in Petitioner's custodial time during the school week. The parenting plan attached to Respondent's proposed judgment (Respondent's plan) provides for an equal division of physical custody of the minor child between both parties.

Petitioner also seeks a modification of the August 8, 2014 judgment. Petitioner asks in part that he be deemed the residential parent for educational purposes, and entry of a parenting plan reducing Respondent's child custody to every other weekend during the school year.

FINDINGS OF FACT

1. The parties' child, [REDACTED], was six years old at the time of trial.
2. The August 8, 2014 judgment awarded Respondent \$171 in monthly child support and ordered Petitioner to provide the minor child with health insurance.

3. The parties both lived in the City of St. Louis at the time their marriage was dissolved but have since moved.
4. Petitioner currently lives at [REDACTED] Drive, in St. Louis County, Missouri.
5. Respondent currently lives at [REDACTED] Drive, in Imperial, Missouri.
6. Petitioner testified at trial and the Court finds that his testimony was credible.
7. Respondent testified at trial and the Court finds that most of her testimony was credible, however some of her testimony lacked credibility as specified below.
8. The parties have submitted proposed parenting plans, these plans significantly differ in several key respects including which parent would be considered the residential parent and in the amount of time each parent will have custody of their child.
9. The Court is considering the parenting plan submitted with Respondent's proposed findings of fact, conclusions of law and judgment as superseding all earlier proposed parenting plans submitted by Respondent. The Court finds that these prior submissions were based on different circumstances

and that they are not in the best interests of the child.

10. Both parties testified that diversity is important when considering which school their child should attend, in particular because their child is biracial. Petitioner is black and Respondent is white.
11. The assigned elementary school at Petitioner's current residence is Crestwood Elementary in the Lindbergh School District.
12. The assigned elementary school at Respondent's residence is Clyde Hamrick Elementary in the Fox School District. At the time of trial, the minor child was attending this school.
13. Both parties presented demographic evidence regarding the racial composition of the Lindbergh and Fox School Districts.
14. This evidence was in the form of reports dated August 23, 2017, presenting data from 2015 and 2016.
15. In pertinent part, the demographic evidence presented showed a larger percentage of white students in the Fox School District and a larger percentage of multi-racial students in the Lindbergh School District.

16. At Clyde Hamrick Elementary in 2016, 6.8% of the students attending were listed as multi-race and 91% were listed as white. At Crestwood Elementary in 2016, 7.3% of the students attending were listed as multi-race and 76.9% were listed as white. The percentage of black students attending was indicated as suppressed due to small sample size and was not listed at either school.
17. Petitioner testified that he moved to St. Louis County in reliance on Respondent's assertion that their minor child could go to public school in the district he moved to.
18. Respondent admitted that she sometimes lied to Petitioner and that she intended for the minor child to go to school in the district that she resides in.
19. Petitioner and Respondent testified regarding how long the child would be in the car or bus depending on which school she attends, the length of time she would spend in after school and before school programs, their own commute time, and when their child would have to leave home in the morning.
20. The time [REDACTED] would need to wake up in the morning and the time she would spend traveling

to and from school is not unreasonable if she attends school at Clyde Hamrick Elementary.

21. Neither parent would have an excessive commute time associated with taking their child to school should [REDACTED] attend school at Clyde Hamrick Elementary.
22. Respondent's testimony was not credible regarding Petitioner's instability due to frequent job changes, that he had never taken the child to the doctor or dentist, and that he had never gone to a parent-teacher conference.
23. Petitioner and Respondent both have meaningful relationships with their child.
24. The minor child needs to have a frequent, continuing and meaningful relationship with both of her parents.
25. Petitioner's proposed parenting plan drastically reduces the time that Respondent would have with their child during the school year.
26. Petitioner and Respondent are positive influences on their child.
27. Petitioner and Respondent have shown that they are capable of co-parenting.

28. Petitioner and Respondent are able and willing to actively perform their functions as father and mother in order to meet the needs of their child.
29. The parties have a history of changing residences without providing statutory notice of relocation but instead informally notifying each other of their move.
30. Respondent admits that she did not provide statutory notice when she moved to her current address.
31. Petitioner contends that his litigation costs were increased due to Respondent's failure to give him notice when she moved to her current address.
32. The record in this case reflects that there have been several filings made by Petitioner's counsel associated with Respondent's move to her current address and her failure to give statutory notice.
33. Petitioner requests that Respondent be ordered pay reasonable costs and attorney's fees incurred as a result of Respondent's actions requiring him to bring his claims.
34. The Court finds that Petitioner would not have incurred the bulk of his legal fees but for Respondent's violation of Section 452.377 RSMo.
35. In addition, the Court finds that Petitioner would

not have incurred the bulk of his legal fees but for Respondent's statement, which she admitted to be untrue, to Petitioner that their minor child could attend school in the Lindbergh School District should Petitioner move there.

36. Petitioner incurred legal fees as of August 12, 2017, in the amount of \$6750.00. This sum does not include his counsel's trial time on August 24, 2017, or her time preparing Petitioner's proposed judgment.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over the subject matter and the parties in this action.
2. Changed circumstances exist under Section 452.410 RSMo such that modification of the August 8, 2014 judgment is necessary to serve the best interest of the child.
3. Child custody should be determined "in accordance with the best interests of the child" and considering all relevant factors in Section 452.375.2 RSMo. Roush v. Roush, 195 S.W.3d 12, 15 (Mo. App. W.D. 2006).
4. Petitioner's proposed parenting plan does not provide the minor child with frequent, continuing

and meaningful contact with Respondent.

Respondent's plan provides for frequent, continuing and meaningful contact with both parents.

5. Petitioner's proposed parenting plan does not provide the minor child with interaction and interrelationship with Respondent and other family members who may significantly affect the child's best interests. Respondent's plan does provide the minor child with interaction and interrelationship with both parents and other family members who may significantly affect the child's best interests.
6. Both parents have allowed and are likely to continue to allow their child frequent meaningful contact with each other.
7. Petitioner and Respondent are in good mental and physical health and no credible evidence of abuse was presented to the Court.
8. No party has expressed the intent to relocate his or her residence.
9. The evidence presented supports a finding that the minor child is happy with both parents as custodians.
10. It would be in the best interests of the minor child to attend Clyde Hamrick Elementary at this time.

11. The Court should adopt Respondent's Parenting Plan filed as Exhibit 1 to her Proposed Findings of Fact, Conclusions of Law and Judgment as in the best interests of the minor child.
12. After considering the factors stated in Section 452.340 RSMo and Rule 88.01 the Court finds that the joint stipulations filed by the parties are fair and reasonable and should be incorporated into this judgment.
13. Respondent violated Section 452.377 RSMo when she failed to give notice when relocating the child.
14. Section 452.377 RSMo states that the Court may assess reasonable costs and attorney fees against a parent that fails to give the requisite notice.
15. Section 452.355 RSMo provides for the assessment of attorney fees in this action "after considering all relevant factors including the financial resources of both parties, the merits of the case and the actions of the parties during the pendency of the action... ."
16. The Court finds that reasonable attorney fees should be assessed against Respondent in the amount of \$4,500.00 under Sections 452.377 RSMo and 452.355 RSMo.

17. The Court did not consider any evidence regarding the parties' settlement negotiations when reaching its findings of fact and conclusions of law.

ORDER AND JUDGMENT

THEREFORE, it is Ordered, Adjudged and Decreed that Respondent's Motion to Modify Child Custody and Support and Petitioner's Counter Motion to Modify Judgment are hereby GRANTED IN PART and DENIED IN PART.

Respondent is ordered to reimburse Petitioner for his costs and reasonable attorney fees in the amount of \$4500.00, to be delivered to the Behrens Law Firm, LLC, in the form of a certified check payable to Petitioner and the Behrens Law Firm, LLC, delivery to be no later than November 30, 2017.

The Judgment of Dissolution of Marriage entered August 8, 2014 is hereby modified as follows:

The Parenting Plan marked as Exhibit 1 to this Judgment is hereby adopted as in the best interests of the minor child. The Court incorporates the provisions of this plan as if fully set out herein.

The parties are granted joint legal and physical custody of their minor child. Respondent 

shall be designated the residential parent for school and mailing purposes.

The stipulations of the parties are hereby ordered as follows:

A. Telephone: Each parent shall have an affirmative obligation to make the child available to talk privately to the non-custodial parent in the evening up to 7:30 pm.

B. Neither parent [shall] make any statements likely to upset the minor child regarding the child's toys, clothes, laundering practices or other items which imply that the parent cannot be trusted by the child to safeguard the possessions and clothes of the child.

C. Extracurricular Activities:

Unless agreed otherwise in writing:

(1) Neither parent shall enroll the child in an activity which takes place more than 30 miles from the home of the other parent;

(2) Each parent shall choose one sport or activity each season for the child. In

odd years, [Petitioner] shall choose the activity that the child engages in during the spring and fall seasons and [Respondent] shall pick the activity of the child in summer and winter.

(3) In even years, [Petitioner] shall choose the activity that the child engages in during the summer and winter seasons and in even years [Respondent] shall pick the activity of the child in spring and fall.

The parties shall take into consideration the wishes of the child. Additional activities for the child will require prior written agreement by both parties.

C. Child Support Arrearages:

The parties stipulate that as the date of trial, [Petitioner] was behind in child support payments in the sum of \$1,216.00.

The parties further stipulate, [Petitioner] is hereby ordered to pay one thousand two hundred sixteen dollars (\$1216.00) child support arrearage to [Respondent], through the Family Support

Division in Jefferson City, in the amount of two hundred two dollars per month (\$202.00), beginning September 15, 2017 until all arrearage owed is paid in full.

Under Section 452.377.11 RSMo, the following applies to all parties to this case:

Absent exigent circumstances as determined by a court with jurisdiction, you, as a party to this action, are ordered to notify, in writing by certified mail, return receipt requested, and at least sixty days prior to the proposed relocation, each party to this action of any proposed relocation of the principal residence of the child, including the following information:

- (1) The intended new residence, including the specific address and mailing address, if known, and if not known, the city;
- (2) The home telephone number of the new residence, if known;
- (3) The date of the intended move or proposed relocation;
- (4) A brief statement of the specific reasons for the proposed relocation of the child; and
- (5) A proposal for a revised schedule of custody or visitation with the child.

Your obligation to provide this information to each party continues as long as you or any other party by virtue of this order is entitled to

custody of a child covered by this order. Your failure to obey the order of this court regarding the proposed relocation may result in further litigation to enforce such order, including contempt of court. In addition, your failure to notify a party of a relocation of the child may be considered in a proceeding to modify custody or visitation with the child. Reasonable costs and attorney fees may be assessed against you if you fail to give the required notice.

Court costs in excess of the initial deposit taxed against Petitioner.

SO ORDERED:

Judge Paula P. Bryant
St. Louis City Circuit Court
Division 9

Dated: _____, 2017

